

July 18, 2022

The Honorable Frank Pallone Jr.
U.S. House of Representatives
Chairman, U.S. House Committee on Energy and
Commerce
2107 Rayburn House Office Building
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
U.S. House of Representatives
Ranking Member, U.S. House Committee on
Energy and Commerce
1035 Longworth House Office Building
Washington, DC 20515

The Honorable Janice Schakowsky
U.S. House of Representatives
Chair, Subcommittee on Consumer Protection and
Commerce
2367 Rayburn House Office Building
Washington, DC 20515

The Honorable Gus Bilirakis
U.S. House of Representatives
Ranking Member, Subcommittee on Consumer
Protection and Commerce
2354 Rayburn House Office Building
Washington, DC 20515

Re: Standards in the American Data Privacy and Protection Act Need Improvement

Dear Representatives Pallone, McMorris Rodgers, Schakowsky, and Bilirakis:

The undersigned trade associations and organizations represent a broad cross-section of the American economy. We appreciate the changes from the initial discussion draft reflected in the operational standards in the version of the American Data Privacy and Protection Act (“ADPPA” or “bill”) reported out of the House Energy and Commerce’s Subcommittee on Consumer Protection and Commerce. We support the passage of preemptive, comprehensive, federal privacy legislation when that legislation presents clear and workable standards to benefit both consumers and businesses. To that end, while we have concerns regarding the scope and nature of the preemption and private right of action provisions in the bill, we also believe that the bill’s operational standards need significant improvements. Key, but not all, concerns of ours with the ADPPA’s operational standards include the following:

1. Responsible uses of data must be preserved. The bill as reported by the Subcommittee retains various provisions that would limit responsible data uses. This approach goes beyond that present in any state law enacted, including California, Colorado, and Virginia, and likely would violate the First Amendment as an unreasonable constraint on commercial speech. For example, the bill requires opt-in consent for the processing of “aggregated browsing history” for targeted advertising, subjecting the very data used for the practice to an opt-in. The bill consequently does not allow an opt out for the kind of digital advertising most Main Street companies, charities, nonprofits, small businesses, and candidates for elected office use every day to engage with consumers and voters. [A 2017 study by the Information Technology & Innovation Foundation](#) found that opt-in standards “negatively impact[] the efficiency of online advertising, limiting the primary funding for today’s [free] Internet.” The bill should be amended so that responsible advertising—the lifeblood of the American economy—is subject to an opt out. Such a change would help ensure targeted advertising practices can continue so that all types of businesses, mission-driven organizations, governments, and political campaigns can reach relevant audiences of consumers, donors, and voters.

2. Non-interference with legal data practices should be a foundational aspect of the bill.

The bill should include a provision to prevent certain private actors from interfering with or blocking the legitimate and legally compliant data practices of other covered entities. If a goal of the legislation is to create a uniform national standard, private corporate actors should not be able to set their own standards different from the federal law. A corporate entity should not be able to set a standard where individual states have been precluded from doing the same.

3. Affiliated companies should be allowed to share covered data. The bill should allow all companies, regardless of size, to share information between their affiliated entities without undue interruption to ensure efficient and responsible uses of data continue, avoiding the need to duplicate data collection and data processing, and permitting the type of content customization consumers expect across affiliated entities.

4. First-party marketing and advertising should be fully allowed. The bill's first-party marketing and advertising provision is unreasonably limited to the use of first-party covered data to market their own products. Absent the removal of that limitation, news sites would be permitted to use their data to advertise only subscriptions to the news, but not products or services of third parties. The provision should allow broader uses of data for first-party advertising practices to help ensure effective funding for a variety of voices in the market.

5. Basic information about the use of video content should not be “sensitive covered data.” Information about video viewing activity is classified as “sensitive covered data” and would unreasonably limit the ability of content creators and distributors to understand how their content is viewed or what their audiences want. The bill should not classify such data as “sensitive.”

6. A “do not collect” requirement is unreasonable. The unprecedented requirement for an FTC-operated “do not collect” registry link effective against third-party collecting entities would cut small and Main Street businesses off from efficient advertising services they depend on to grow their audiences, thereby choking the essence of the economy. The “do not collect” registry should be removed from the ADPPA because the bill already empowers consumers to opt out of data practices they do not wish to permit. The bill should be focused on defining appropriate and inappropriate data uses.

7. Industry opt-out tools should be recognized for compliance with opt-out requirements. Industry has long provided consumers with opt-out control tools for a variety of data practices. Any centralized tool requirement in the bill should leverage such already existing, well-recognized, and functioning marketplace solutions to simplify opt outs for consumers.

8. Commission-sanctioned compliance programs should be available to all covered entities and provide real protections. The bill's allowance for compliance programs to meet certain of its requirements should be available to companies of all sizes. Companies that meet the requirements of such programs should be offered true protections from enforcement and liability.

9. New requirements for teens should allow for operational and intra-company data usage. The ADPPA should clearly permit operational uses of data from individuals known to be under

17 years of age to help ensure free and easy access to information and entertainment for all users aged 13 and older. If the ADPPA's prohibitions regarding covered data for individuals known to be under 17 continue to sweep in vital operational activity that is allowed under COPPA, that access will be unreasonably limited. Additionally, the age threshold regarding teens should be lowered to the age of 16, down from 17, in order to focus the protections on the appropriate group of individuals.

10. The bill should clarify treatment of previously collected data. The bill should clearly state that its requirements apply to data collected, processed, or transferred *after* its effective date, and that data collected before that date may continue to be used lawfully to avoid wasteful litigation simply to determine how such data should be handled under the law.

We reiterate our support for a national, preemptive, comprehensive privacy law and an iterative, thoughtful process to achieve that goal in Congress. We thank you for your efforts to advance privacy legislation and look forward to working with Congress in short order to improve the ADPPA's operational provisions to help ensure the final product represents a truly workable national privacy standard for consumers and businesses alike.

Sincerely,

Privacy for America

American Advertising Federation

American Association of Advertising
Agencies

Association of National Advertisers

Insights Association

Interactive Advertising Bureau

The National Business Coalition on
E-Commerce & Privacy