



September 29, 2021

The Honorable Maria Cantwell
Chair
U.S. Senate Committee on Commerce, Science & Transportation
420-A Hart Senate Office Building
Washington, DC 20510

The Honorable Roger Wicker
Ranking Member
U.S. Senate Committee on Commerce, Science & Transportation
512 Dirksen Senate Office Building
Washington, DC 20510

RE: Hearing on Protecting Consumer Privacy

Dear Chair Cantwell and Ranking Member Wicker:

Today's hearing focuses on a critical issue: how to protect consumer privacy. Consumers today share their personal information with countless businesses in the course of using everyday products and services, both online and offline. Consumers deserve to know their personal information is being used responsibly.

A strong, comprehensive federal privacy law is the best way to ensure consumers have important rights over their personal data and to limit how businesses can collect, use, and share that information. We commend the Senate Commerce Committee for your bipartisan leadership on consumer privacy legislation, and we urge you to continue the important work to enact a strong and comprehensive federal consumer privacy law.

BSA | The Software Alliance is the leading advocate for the global software industry.¹ Our members are enterprise software companies that create the business-to-business technology products and services that power the digital transformation of companies in other industry sectors, including through cloud storage services, customer relationship management software, human resource management programs, identity management services, and remote collaboration software.

Businesses entrust some of their most sensitive information — including personal data — with BSA members. Our companies work hard to keep that trust. As a result, privacy and security protections are fundamental parts of BSA members' operations. BSA companies are not built on business models that monetize users' data; our members license software

¹ BSA's members include: Adobe, Atlassian, Autodesk, Bentley Systems, Box, CNC/Mastercam, DocuSign, IBM, Informatica, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, Workday, Zendesk, and Zoom.

and sell services, as partners to businesses of all sizes across every industry in the economy.

I. The Need For A Strong, Comprehensive Federal Consumer Privacy Law

BSA supports enactment of a strong, comprehensive federal privacy law that provides confidence to consumers that their data will be used responsibly – and ensures that companies that violate their obligations are subject to strong enforcement. We believe federal privacy legislation should achieve three goals: (1) establish consumers’ rights in their personal data, including the right to access, correct, and delete that data; (2) impose strong obligations on companies to safeguard consumers’ data and prevent misuse; and (3) provide strong, consistent enforcement.²

In each of these areas, a federal privacy law can – and should – build on the protections and obligations that states have advanced and enacted. State privacy laws share many core policies, including:

- *Consumer Rights.* State consumer privacy laws include important consumer rights, including access, correction, and deletion, which should also be included in any federal privacy law.
- *Obligations on businesses.* State consumer privacy laws also place meaningful limits on how businesses can collect, use, and share consumers’ personal information. A federal law should build on those obligations, to ensure that companies are required to use consumers’ personal data in ways they expect. For example, although consent obligations are an important aspect of any privacy law, we believe a federal privacy law should avoid relying on consent alone, and instead combine other guardrails such as data minimization, purpose specification, and data security obligations, to further safeguard consumers’ personal data.
- *Enforcement.* State consumer privacy laws also recognize the need for strong regulatory enforcement. We believe that a federal privacy law should not be enforced by a single regulator, but by federal and state agencies working together. In addition to the FTC, state attorneys general should be empowered to enforce a federal privacy law, which will complement their longstanding privacy enforcement efforts at the state level.

We also appreciate the Committee’s leadership in developing comprehensive federal privacy legislation, including the Consumer Online Privacy Rights Act (“COPRA”) and the Setting an American Framework to Ensure Data Access, Transparency, and Accountability (“SAFE DATA”) Act.

Earlier this year, BSA joined with the National Consumers League, Common Sense Media, and the 21st Century Privacy Coalition to support federal legislative efforts to enact a strong new data privacy law. We believe there is significant common ground on protecting consumer privacy and we remain committed to collaborating with leaders in Congress to create clear, comprehensive federal privacy protections.

² See Testimony of Victoria Espinel, President and CEO of BSA | The Software Alliance, before the Senate Committee on Commerce, Science and Transportation, at Hearing on Policy Principles for a Federal Data Privacy Framework in the United States, February 27, 2019, *available at* <https://www.commerce.senate.gov/services/files/1DECD81B-5947-4FEB-B3E1-E9DF65866321>.

II. The Role of the Federal Trade Commission

We also welcome the Committee's focus on ensuring the Federal Trade Commission has the resources it needs to safeguard consumers' privacy.

BSA supports the Federal Trade Commission's strong role in protecting consumer privacy. The FTC has demonstrated that it is highly capable of overseeing and enforcing existing consumer privacy protections, as is evident from the more than 150 privacy and data security enforcement actions the agency has brought under Section 5 of the FTC Act.³ The FTC has also developed a deep understanding of the complexities of the digital economy and has generally observed the principle of bringing cases that remedy and deter harmful conduct, rather than punishing technical lapses. Given its strong record, the FTC should maintain its leadership role as the primary federal enforcer of consumer privacy protections and it should have the tools and resources necessary to carry out its mission effectively.

Effective enforcement is critical to ensuring that organizations meet their commitments and legal obligations and to deterring potential violations. BSA supports giving the FTC new authorities to enforce a comprehensive privacy law, including targeted rule-making authority, the ability to fine first-time violators, and additional funding and staff, which we recognize are key aspects of several of consumer privacy bills put forward by members of this Committee. Ultimately, we believe the FTC needs more than resources to effectively address consumer privacy – it also needs a strong, comprehensive national consumer privacy law to enforce.

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BSA supports strong privacy protections for consumers, and we appreciate the opportunity to provide these comments. We welcome an opportunity to further engage with the Committee on these important issues.

Sincerely,



Aaron Cooper
Vice President, Global Policy
BSA | The Software Alliance

³ See FTC, Privacy and Data Security Update 2020, at 2-3, available at https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-2020-privacy-data-security-update/20210524_privacy_and_data_security_annual_update.pdf