

**Center for Democracy & Technology Transition Memo**  
**Theme: Protecting Consumer Privacy**  
**Issue: National Consumer Privacy Law**

★ **Issue/Problem.** Americans are increasingly living their lives online and taking advantage of all the benefits the Internet has to offer. Consumers do things online today that were unthinkable even a few years ago: shopping for houses, maintaining personal medical records, or using social networks to tell their friends what they are doing at any given moment. Even as they adopt these new technologies, consumers remain justifiably apprehensive about the privacy and security of the information they disclose online.

Unlike many other countries, the U.S. does not have a comprehensive consumer privacy law. Americans deserve one, and the future of innovation and online commerce may depend on it. A federal privacy law would bolster consumer trust while giving both businesses and regulators a consistent standard for protecting consumers.

★ **Policy History.** For decades, the United States has pursued a “sectoral” approach to privacy, passing laws aimed at certain industries, technologies or practices based on the perceived threat of the moment. Thus, we have very strong laws regarding our cable viewing and video rental records, but less protection for our banking information, and no legal protection for our travel records and online purchasing data (aside from the voluntary protections some companies undertake). This confusing patchwork of disparate, and sometimes inadequate or nonexistent, standards has grown worse over the years, making data protection law in the U.S. the most difficult to understand in the world.

In the 106<sup>th</sup> Congress (2000), several legislators introduced privacy legislation to protect consumers on the Internet. The immediate impetus for the legislation was the looming privacy threat surrounding the practices of Internet advertisers such as DoubleClick. With the dotcom crash, partially for economic reasons and partially for privacy reasons, DoubleClick significantly changed its business model, the privacy threat seemed to recede, and no action was taken. In every Congress since, privacy legislation has been introduced or discussed but never came close to being enacted

The last two years have seen a new surge in privacy threats. It has become more and more difficult for consumers to keep track of when, where, how, and to whom their information is disclosed. Meanwhile, high-tech scammers are taking advantage of consumers’ dependence on digital technology to find new opportunities to commit fraud. Consumer distrust has grown to such an extent that it is seen as a threat to the growth of online commerce. Even major technology companies are now calling for comprehensive consumer privacy legislation.

The colossal Google/DoubleClick merger, which was approved in 2007 by the FTC, raised significant questions about the new marketplace for online advertising. As Commissioner Jon Leibowitz noted:

“Notwithstanding the Commission’s decision to approve the merger, we still need to address the fundamental issues of consumer privacy and data security raised by online behavioral advertising, which go well beyond the two companies involved in this acquisition . . . the Commission should consider how to address these privacy issues across industries and from multiple perspectives.”

Other new technologies such as radio frequency identifiers (RFID) and location-based services raise similar concerns.

**★What the Obama Administration Should Do.** President Obama should work with Congress to enact a comprehensive, technology-neutral consumer privacy law establishing meaningful safeguards for the personal information that companies collect from consumers. Such a law should be broad enough to protect American consumers both online and in the “brick and mortar” world and should be flexible enough to permit appropriate uses of information and not stifle innovation. A national privacy regime should give consumers the right to:

- Know which companies are collecting information from them;
- Provide no more information than is necessary for a transaction;
- Find out what companies are doing with this information;
- Know who else might have access to their personal data;
- Check to ensure that the data held about them is timely, accurate and complete; and
- Obtain assurance that their information is protected against loss or misuse.

**★Campaign Platform.** As a candidate, President Obama pledged to strengthen privacy protections for the digital age.

**★Other Voices.** Several years ago, 13 high-profile companies announced their support for the creation of such a national consumer privacy law. The 13 companies – Eastman Kodak, eBay, GE, Eli Lilly, Google, Hewlett and Associates, Hewlett Packard, Intel, Microsoft, Oracle, Procter & Gamble, Sun Microsystems and Symantec – created the Consumer Privacy Legislative Forum to develop their position in greater detail. It is likely that these companies – and others that are burdened by compliance with multiple different privacy regulations – will support efforts to develop a national privacy law.

The biggest opponents of such a law are certain to be financial institutions and the data broker industry. Despite the fact that both these industries claim to be overregulated, they are subject to relatively limited privacy requirements. These industries fear that, even if they are exempted from a new comprehensive privacy law, the law would highlight the weakness in their practices. CDT believes that these industries can no longer be allowed to stand in the way of establishing privacy rights for American consumers in other sectors.

**★For More Information.**

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**Resources:**

- CDT/CAP Report, Protecting Consumers Online (2006):  
<http://cdt.org/privacy/20060724consumer.pdf>
- Consumer Privacy Legislative Forum Statement (2006):  
<http://www.cdt.org/privacy/20060620cplstatement.pdf>

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