



U.S. SENATE COMMITTEE ON

Commerce, Science, and Transportation

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Statement by Senator Ernest F. Hollings Hearing on S. 2201, The Online Personal Privacy Act April 25, 2002

Today, the Commerce Committee will examine S. 2201, the Online Personal Privacy Act of 2002 – a bipartisan bill that is sponsored by 10 Senators on this Committee. We plan to report a bill in May, and that makes today’s hearing exceedingly timely. It’s past time for action on this issue, today will mark the 6th hearing on Internet privacy in the last two congresses. American consumers deserve better privacy protection on the Internet. We intend to give it to them.

I am pleased to be joined in my efforts by nine cosponsors on this Committee. We have those who were with me from the beginning – Senators Inouye, Rockefeller, Breaux, and Cleland. And we have additional support, from Senators Kerry, Nelson, Carnahan, Stevens and Burns. I particularly want to commend senators Kerry, Stevens, and Burns, who have worked with me over the past seven months to craft the sensible, balanced approach that we introduced last week.

Let me articulate the principles that allowed us to achieve strong bipartisan support for our legislation –

- Strong preemption (to give business the certainty it needs in the face of conflicting state standards)
- Opt-in protection for sensitive personal information (like your financial and health information, your ethnicity, religious preferences, or sexual orientation)
- Opt-out protection for non-sensitive personal information (like your name and address, and marketplace purchases)
- Reasonable access
- Reasonable security
- Sensible enforcement by the FTC and the state AGs, with the limited exception of violations involving sensitive information, which permit a right of action in federal court, premised on a showing of actual harm.

Why do we need legislation? Businesses keep confounding consumers with unclear privacy policies that state, “your privacy is important to us,” but subsequently outline exceptions crafted to allow almost any use of personal information. Other Web sites don’t post privacy policies, safe in the knowledge that they face no legal jeopardy under current law for selling your information.

Some have argued that Americans' concerns about privacy no longer exist after September 11th. But poll after poll consistently demonstrates the American people want companies they patronize to seek their permission prior to using their personal information for commercial profit. As recently as February, a Harris survey found that 63% of Americans want Internet privacy legislation.

At the same time, advances in technology have provided the tools to seamlessly compile and enhance highly detailed personal profiles and histories of Internet users. Cookies and web bugs, and who knows what other technologies, all enable the surreptitious collection of individuals' personal information, including every click of their computer mouse, online.

Moreover, severe privacy breaches continue without consequence. Last year, Eli Lilly disclosed a list of hundreds of customers suffering from depression, bulimia, and obsessive compulsive disorder. Eli Lilly's response? An apology, and a promise it won't happen again. But an apology and a promise is not enough for those patients whose medical history was divulged publicly.

Sensible privacy legislation like s. 2201 will stop this, promote consumer confidence, and bolster online commerce. A recent Forrester study reports that online businesses lost \$15 billion due to consumer privacy concerns. Those numbers are significant in light of the economic downturn and its exaggerated impact on the high tech Internet sector. Good privacy means good business, and the Internet economy could use a dose of that right now.

The shame is that it has taken us this long to get here. It has been nearly two years since the FTC recommendation for Internet privacy legislation, which was reached after five years of diligent study. This recommendation was particularly credible in light of the FTC's record of extensive analysis and its two prior recommendations to allow self-regulation a chance to work.

We will hear from our opponents today that it is unfair to regulate online only. But this argument is nothing more than a straw man designed to kill Internet privacy legislation. Does anyone remember a similar argument when we passed the children's privacy legislation? Were children's Web sites complaining that we were regulating them differently from Toys R Us? Of course not. The Internet industry supported that legislation. This Committee stands ready to pass similar legislation for all users. Let's start there and then we'll see about the entire marketplace.

Others will complain that our bill is premature - that we need to give the Gramm-Leach-Bliley financial privacy rules a chance to work, before we alter them for the Internet. Well, we've seen those rules, and they don't work.

Americans have been receiving billions of notices in the mail telling them they can opt-out of the sharing of their personal financial information by financial institutions. These notices make a mockery of the claim that notice and opt-out provides sufficient protection for sensitive information. In many cases, the notices are internally inconsistent and outright deceptive.

We need to bring transparency and consistency to privacy protection on the Internet by building on the many existing statutes that protect privacy for telephone customers, cable subscribers, video renters, credit card customers, and children on the Internet. All Internet users deserve similar protection.

Some forward thinking companies know this. Microsoft, Intel, Hewlett Packard, Expedia, and Earthlink provide opt-in right now. 185 U.S. companies, including, Microsoft, Intel, Hewlett Packard, and one of the largest data collection companies, Axiom, have signed on to the EU Safe Harbor, which requires notice, opt-in for sensitive information, access and security. Why should European citizens be granted more protection than Americans?

Finally, I want to note that the following high tech trade associations have called for privacy legislation that preempts state law, requires notice and an opportunity to opt-out (and sometimes, even opt-in): the Information Technology Industries Association; the American Electronics Association; the Computer Systems Policy Project; and the Computer Technology Industry Association. Many of the members of these associations actually provide better privacy protection themselves, voluntarily.

Despite the good intentions of these companies, unless we take action to establish common-sense protections that will deter bad actors, consumer fears will continue to stifle use of the Internet as a trusted commercial medium.

I look forward to our witness testimony, and the remarks of my distinguished former chairman, Senator McCain.