

**BEFORE THE**  
**SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

**HEARING ON**  
**ENLISTING BIG DATA IN THE FIGHT AGAINST CORONAVIRUS**

**APRIL 9, 2020**

**TESTIMONY OF**

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Chairman Wicker, Ranking Member Cantwell, and Members of the Committee, thank you for the opportunity to provide testimony on ways data can contribute to the fight against coronavirus (“COVID-19”). The virus has already had catastrophic effects for far too many Americans and virtually every sector of the economy. We are grateful to you for providing a safe and timely forum for discussion about the value of data and the digital advertising industry’s role in supporting Americans and the economy throughout this crisis.

I am Dave Grimaldi, Executive Vice President of Public Policy of the Interactive Advertising Bureau (“IAB”). Founded in 1996 and headquartered in New York City, the IAB represents over 650 leading media and technology companies that are responsible for selling, delivering, and optimizing digital advertising or marketing campaigns. Together, our members account for the vast majority of online advertising in the United States. Working with our member companies, the IAB develops technical standards and best practices and fields critical research on interactive advertising, while also educating brands, agencies, and the wider business community on the importance of online marketing to digital trade. IAB has also led, with other prominent trade associations, the development and implementation of cross-industry self-regulatory privacy principles for online data collection, which is the program known as the Digital Advertising Alliance (“DAA”).

Data brings tremendous value to society. It has the power to facilitate useful insights and trends that can inform policymaking, crisis response, and the discovery of cures, as well as keep citizenry informed and enable access to vital services and communication channels. Like many industries, the digital advertising industry is a critical piece of our nation’s response to the health pandemic, particularly as a subsidizer and supporter of content like news, public health alerts, and announcements individuals receive about COVID-19. Subject to appropriate privacy

protections, advertising and data can play a significant role in supporting the fight against the coronavirus.

## **I. These Unprecedented Times Impact Every Facet of Society**

The individual impact of COVID-19 is clearly the most serious and catastrophic consequence of the virus. Many businesses have an ability, and I believe moral obligation, to play a crucial role in addressing this health threat and maintaining a sense of normalcy. But it is important to acknowledge that the businesses that drive the American economy and provide employment opportunities for individuals across the nation are struggling to stay afloat during this extraordinarily difficult time.

Despite the present exceedingly challenging economic circumstances, businesses are doing what they can to help their communities and all Americans. Companies have donated funds and medical supplies to states, hospitals, and healthcare workers to aid efforts to flatten the curve and slow the destruction caused by COVID-19.<sup>1</sup> Businesses all over the country have reoutfitted entire factories to pivot from their normal operations to producing ventilators, masks, and other vitally important devices and protective equipment with the goal of saving lives.<sup>2</sup> They are also developing initiatives and technologies to accelerate testing capabilities and create new treatments so individuals and healthcare systems can better care for patients and know

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<sup>1</sup> Mihir Zaveri and Derrick Bryson Taylor, *National Cathedral, Nasdaq, Businesses and Unions Locate Troves of N95 Masks*, NEW YORK TIMES (Mar. 26, 2020), located at <https://www.nytimes.com/2020/03/26/us/national-cathedral-masks-donation-coronavirus.html>.

<sup>2</sup> See, e.g., Samanta Masunga, *California companies jump in to supply ventilators needed in coronavirus fight*, LA TIMES (Mar. 23, 2020), located at <https://www.latimes.com/business/story/2020-03-23/coronavirus-california-companies-medical-supplies>.

whether someone is afflicted with the virus sooner.<sup>3</sup> Our member companies, both large and small, are offering connectivity, content, and services to consumers for free or at a reduced cost.<sup>4</sup> Our member organizations are also helping Americans get the latest news, online food deliveries, entertainment, access to digital conference calls, and many other essential services. Online advertising is helping to keep the world connected, both professional and personally.

However, these efforts have not insulated businesses from the extreme economic impacts of COVID-19. The reality is that many entities have been forced to institute dramatic cost savings in order to remain viable in the current climate. For those that can maintain at least some limited operations, entire workforces have been uprooted and forced to work from home, thereby decreasing overall business productivity due to the challenges of having to enable full remote capabilities nearly overnight. Like many industries, the advertising industry has felt the effects of COVID-19. According to a recent IAB survey of 400 buy-side marketers, 70% of buyers have already adjusted or paused their planned ad spend with nearly a quarter (24%) of respondents reporting they have paused all advertising spend for the remainder of Q1 and Q2.<sup>5</sup> Already, digital ad spend is down 33% and traditional media is down 39%. At a time when the need for news and information services is at a record high, the advertising budgets that fund this content are disappearing, thus threatening to deprive Americans of access to crucial cutting-edge research and the most up-to-date data about COVID-19.

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<sup>3</sup> Giacomo Tognini, *Coronavirus Business Tracker: How the Private Sector is Fighting The COVID-19 Pandemic*, FORBES (Apr. 3, 2020), located at <https://www.forbes.com/sites/giacomotognini/2020/04/01/coronavirus-business-tracker-how-the-private-sector-is-fighting-the-covid-19-pandemic/#6535b1625899>.

<sup>4</sup> See Dave Grimaldi, *Good Works: IAB & Tech Lab Members vs. Coronavirus*, (March 25, 2020), located at <https://www.iab.com/blog/good-works/> (providing a partial list of the good works our IAB and IAB Tech Lab members are doing to help the world during this COVID-19 pandemic).

<sup>5</sup> IAB, *Coronavirus Ad Spend Impact: Buy-Side*, (March 27, 2020), located at <https://www.iab.com/insights/coronavirus-ad-spend-impact-buy-side/>.

## **II. The Advertising Industry is Playing an Important Role in the Fight Against COVID-19**

Advertising has served an essential role in the growth and sustainability of the digital ecosystem almost from the moment the first Internet browsers were released to the public in the 1990s. Its importance is even more apparent today. Advertising supports dissemination of vital news and public health information as well servicing millions who are reliant upon low cost and free services to maintain communications with family, friends, and day-to-day business operations. Never before in history has the open flow of data been more critical.

### **A. Advertising Enables Important Health Messages to Reach the Public**

Information promotes knowledge, and it is one of the most critical tools individuals can accumulate to protect themselves from the coronavirus. Advertising, and particularly advertising through digital media, has subsidized and delivered the wide proliferation of public health alerts, announcements, and other messages individuals receive about the virus that educate them and supply them with important insights.<sup>6</sup>

In response to the pandemic, the advertising industry has stepped forward. Industry members have donated ad inventory for important public health messaging about the virus, contributing millions in media dollars as well as graphic design and marketing expertise in collaboration with the Centers for Disease Control and Prevention (“CDC”) and the White House.<sup>7</sup> Media companies have provided a crucial public service of fostering a sense of community by creating social media hashtags such as #AloneTogether and #KidsTogether to

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<sup>6</sup> See, e.g., Ad Council, *Coronavirus Response Campaign Toolkit, New York State*, located at <http://coronavirus.adcouncilkit.org/newyork/>.

<sup>7</sup> Marty Stewart, *The Ad Council's COVID-19 Campaign Is Its Largest Effort Yet*, FORBES (Mar. 31, 2020), located at <https://www.forbes.com/sites/martyswant/2020/03/31/the-ad-councils-covid-19-campaign-is-its-largest-effort-yet/#7c40ef095c8e>.

unite people through effective social movements to keep our communities connected and healthy, even as they stay at home.<sup>8</sup> Furthermore, advertising technology providers are supporting their media and advertising partners and health organizations by providing access to additional advertising inventory and by preventing ad spend from reaching websites that author fake news or misinformation regarding the COVID-19 pandemic.<sup>9</sup>

Importantly, advertising allows vital information about the pandemic to be delivered through the right messaging to the right people at the right time. For instance, radio and other campaigns have been introduced through the Ad Council's partnership with the New York government to direct individuals to websites and other state-specific information about COVID-19.<sup>10</sup> Advertising enables public health information to reach particular audiences in specific localities and communities, thereby increasing the impact of the message and its relevancy.

Advertising also facilitates the vast amount of information individuals are able to access online for free or at low cost. The digital advertising industry provides value to website publishers and enables them to offer content to consumers at minimal or no expense. Advertising value is therefore a central driver of consumers' access to important information online, such as critical information individuals need to understand and prevent the spread of COVID-19. Through news and digital advertising mediums, the advertising industry has provided great societal benefit by serving as a megaphone that amplifies coronavirus information and messaging. Without data-driven advertising, these messages would be costly and far less

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<sup>8</sup> Jeanine Poggi, *ViacomCBS Promotes Being "Alone Together" in COVID-19 PSA*, ADAGE (Mar. 17, 2020), located at <https://adage.com/creativity/work/viacomcbs-alone-together/2244816>.

<sup>9</sup> *Supporting Journalism During COVID-19*, AMOBEE (Apr. 2, 2020), located at <https://www.amobee.com/blog/supporting-journalism-during-covid-19/>.

<sup>10</sup> Ad Council, *Coronavirus Response Campaign Toolkit, New York State*, located at <http://coronavirus.adcouncilkit.org/newyork/>.

effective. A significant number of news providers are supplying valuable coronavirus coverage and health information for free as a public service to the communities and readers they serve.<sup>11</sup> At a time when accurate real-time news is more important than ever, our industry is stepping up to the challenge and ensuring that all communities, regardless of income or ability to pay, have access to the same high-quality news reporting.

U.S. Internet providers—through which we access news and information services—are also proactively supporting their communities. By giving away free, high-speed Internet to low-income families, educational content for children, and unlimited data, they too are working to keep us connected with friends and family while we remain physically isolated.<sup>12</sup>

## **B. Data Can Facilitate Powerful Responses to Contain the Virus**

Data can be of particular import in structuring strategies to respond to and prevent the spread of COVID-19. Researchers, government officials, academicians, public health workers, and other stakeholders are harnessing the power of data to leverage the value it can provide in the response to the virus. There is also evidence of data being used in privacy protective ways to provide meaningful insights to the public. For instance, data can be used to show which public spaces are still attracting large crowds to better inform policies. With this data, for instance, public health experts, NGOs, academics, and governments can better understand how to structure stay-at-home orders and essential business exceptions, so communities are less at risk. Data can also be used to observe whether stay-at-home orders are having an impact through heat maps and

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<sup>11</sup> Sara Jerde, *Major Publishers Take Down Paywalls for Coronavirus Coverage*, ADWEEK (Mar. 12, 2020), located at <https://www.adweek.com/digital/major-publishers-take-down-paywalls-for-coronavirus-coverage/>.

<sup>12</sup> David Matthews, *These are the internet providers offering free WiFi during coronavirus*, NEW YORK DAILY NEWS (Mar. 15, 2020), located at <https://www.nydailynews.com/coronavirus/ny-coronavirus-internet-providers-free-wifi-20200315-6k7pzukriffdfcic5odfizmnri-story.html>.

foot traffic to enable analysis of aggregate, anonymous individual movements. This data can be vital to public health experts in understanding which policies work and to better protect citizens while preserving individual privacy. Companies that conduct and analyze location intelligence, with the appropriate care for user privacy and data sanitization, can be a critical ally in the fight against COVID-19.

IAB companies are using maps to help monitor movements of individuals affected by COVID-19, to discover patterns that are leading to the spread of the virus, and to also identify areas that could be affected. Aggregated mobility reports, issued by leading data companies, are broken down by location and display the change in visits to places like grocery stores and parks.<sup>13</sup> These reports and maps help inform disease forecasting efforts and protective measures, and have become an indispensable tool for public health professionals on the front lines of COVID-19 analysis and prevention. As privacy technologists have highlighted, the use of aggregated location data by businesses and health experts from the examples above provides meaningful privacy protections for individuals.<sup>14</sup>

Data can also help government agencies, hospitals, and other critical organizations better manage the dramatic increase in demand that they are currently experiencing. For example, businesses are making available artificial intelligence and natural language processing services to assist workers in fielding the large volume of calls, emails, and inquiries that they are receiving,

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<sup>13</sup> James Glanz, Benedict Carey, Josh Holder, Derek Watkins, Jennifer Valentino-DeVries, Rick Rojas and Lauren Leatherby, *Where America Didn't Stay Home Even as the Virus Spread*, New York Times (April 2, 2020), located at <https://www.nytimes.com/interactive/2020/04/02/us/coronavirus-social-distancing.html>

<sup>14</sup> See Jacob Hoffman-Andrews and Andrew Crocker, *How to Protect Privacy When Aggregating Location Data to Fight COVID-19*, EFF (Apr. 6, 2020), located at <https://www.eff.org/deeplinks/2020/04/how-protect-privacy-when-aggregating-location-data-fight-covid-19>.



and efficiently prioritize the most urgent requests and information.<sup>15</sup> And social media websites that have an understanding of social connections across different geographies can find aggregate trends to help researchers gain better insights about when and where the coronavirus might spread more quickly.<sup>16</sup>

Together, these big data applications, and the countless others that are being developed at this time, have significant positive benefits at this critical time. They empower first responders and healthcare workers to most efficiently use their limited resources to save the lives of the greatest number of individuals. They also enable researchers and public health officials to better anticipate health outbreaks and take appropriate preventative measures at the right time and place. And they facilitate all of this in the most efficient way that causes the least possible disruption to Americans lives and livelihoods.

Applying big data to this crisis can help everyone involved in the coronavirus response take decisive actions and develop effective solutions based on real-time information at scale.

#### **IV. The Data-Driven and Ad-Supported Online Ecosystem Benefits Individuals and Supports Essential Operations**

The Internet is perhaps the most powerful and empowering mode of communication and commerce ever invented, and the data derived through it creates untold opportunities for societal good and economic growth. Prior to the outbreak of the coronavirus, data became a central asset

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<sup>15</sup> Melody Petersen and Emily Baumgaertner, *Bottlenecks in coronavirus testing mean excruciating wait times for the sick*, LA TIMES (Mar. 30, 2020), located at <https://www.latimes.com/business/story/2020-03-30/its-taking-up-to-eight-days-to-get-coronavirus-tests-results-heres-why>.

<sup>16</sup> Christina Farr, *Facebook is developing new tools for researchers to track if social distancing is working*, CNBC (Apr. 6, 2020), located at <https://www.cnbc.com/2020/04/06/facebook-to-help-researchers-track-if-social-distancing-is-working.html>.

of every enterprise, enabling businesses to maintain relationships with millions of individuals at scale. Additionally, in times of crisis like the present, data can provide critical benefits.

The free-flow of data has provided tremendous value to individuals and the U.S. One driving force in this ecosystem is data-driven advertising. Advertising has helped power the growth of the Internet for decades by delivering innovative tools and services for individuals and businesses to connect and communicate and by underpinning the content and services individuals expect and rely on, including video, news, music, and more. As a result of this advertising-based model, U.S. businesses of all sizes have been able to grow online and deliver widespread consumer and economic benefits. According to a March 2017 study entitled *Economic Value of the Advertising-Supported Internet Ecosystem*, which was conducted for the IAB by Harvard Business School Professor John Deighton, in 2016 the U.S. ad-supported Internet created 10.4 million jobs.<sup>17</sup> Calculating against those figures, the interactive marketing industry contributed \$1.121 trillion to the U.S. economy in 2016, doubling the 2012 figure and accounting for 6% of U.S. gross domestic product.<sup>18</sup> The study, designed to provide a comprehensive review of the entire Internet economy and answer questions about its size, what comprises it, and the economic and social benefits Americans derive from it, revealed key findings that analyze the economic importance, as well as the social benefits, of the Internet.

People, across income levels and geography, embrace the ad-supported Internet and use it to create value in all areas of life, whether through e-commerce, education, free access to valuable content, or the ability to create their own platforms to reach millions of their fellow

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<sup>17</sup> John Deighton, *Economic Value of the Advertising-Supported Internet Ecosystem* (2017) <https://www.iab.com/wp-content/uploads/2017/03/Economic-Value-Study-2017-FINAL2.pdf>.

<sup>18</sup> *Id.*

citizens. Individuals are increasingly aware that the data collected about their interactions on the web, in mobile applications, and in-store are used to create an enhanced and tailored experience. Importantly, research demonstrates that consumers are generally not reluctant to participate online due to data-driven advertising and marketing practices. In fact, a DAA-commissioned Zogby survey found that consumers attributed a value of nearly \$1,200 a year to common online ad-supported services, like news, weather, video content, and social media.<sup>19</sup> A large majority of surveyed consumers (85 percent) like the ad-supported model, and 75 percent said they would greatly decrease their use of the Internet were they required to pay hundreds of dollars a year for currently free content.<sup>20</sup> Indeed, as the Federal Trade Commission (“FTC”) noted in its comments to the National Telecommunications and Information Administration, if a subscription-based model replaced the ad-based model, many consumers likely would not be able to afford access to, or would be reluctant to utilize, all of the information, products, and services they rely on today and that will become available in the future.<sup>21</sup> This is particularly relevant in today’s economically challenging times when obtaining information about the coronavirus is critical.

## **V. IAB Members Have Long Supported Strong Consumer Privacy Protections**

The IAB and its members have been at the forefront of promoting responsible data practices, and consumer trust is vital to our member companies’ ability to operate successfully in the marketplace. The success of a business is premised on having personalized relationships with millions of consumers at scale, and that is best achieved only when companies responsibly

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<sup>19</sup> Zogby Analytics, *Public Opinion Survey On Value Of The Ad-Supported Internet* (May 2016) [https://digitaladvertisingalliance.org/sites/aboutads/files/DAA\\_files/ZogbyAnalyticsConsumerValueStudy2016.pdf](https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/ZogbyAnalyticsConsumerValueStudy2016.pdf).

<sup>20</sup> *Id.*

<sup>21</sup> Federal Trade Commission, *In re Developing the Administration’s Approach to Consumer Privacy*, 15 (Nov. 13, 2018) [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-ntia-developing-administrations-approach-consumer-privacy/p195400\\_ftc\\_comment\\_to\\_ntia\\_112018.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-ntia-developing-administrations-approach-consumer-privacy/p195400_ftc_comment_to_ntia_112018.pdf).

use the information gathered from consumers. Such data is the key driver of companies' growth, ability to reach individuals, and creation of consumer value in the modern digital age.

Consumers expect and appreciate the tailored experiences that are possible using data.

This commitment to consumer trust, and recognition that data is essential for business success, is best exemplified through IAB's integral role in the creation of the self-regulatory systems administered by the DAA. The DAA is an industry body convened more than a decade ago to create a self-regulatory code for all companies that collect or use data for interest-based advertising online, based on practices recommended by the FTC in its 2009 report on online behavioral advertising.<sup>22</sup> The rules set by the DAA have continued to evolve in the intervening years to account for new data practices. Today, the DAA Principles provide consumer transparency and control regarding data collection and use of web viewing data, application use data, precise location data, and personal directory data.<sup>23</sup> The DAA Principles also contain strong prohibitions on the use of such data for eligibility purposes for employment, insurance, credit, and healthcare treatment,<sup>24</sup> and detailed guidance around the application of the Principles in the mobile<sup>25</sup> and cross-device<sup>26</sup> environments. Most recently, to provide users with increased

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<sup>22</sup> DAA, *Self-Regulatory Principles for Online Behavioral Advertising* (July 2009), located at [https://digitaladvertisingalliance.org/sites/aboutads/files/DAA\\_files/seven-principles-07-01-09.pdf](https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/seven-principles-07-01-09.pdf); FTC, *FTC Staff Report: Self-Regulatory Principles for Online Behavioral Advertising* (Feb. 2009), located at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-staff-report-self-regulatory-principles-online-behavioral-advertising/p085400behavadreport.pdf>.

<sup>23</sup> DAA, *Self-Regulatory Principles for Online Behavioral Advertising* (July 2009), located at [https://digitaladvertisingalliance.org/sites/aboutads/files/DAA\\_files/seven-principles-07-01-09.pdf](https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/seven-principles-07-01-09.pdf); DAA, *Self-Regulatory Principles for Multi-Site Data* (Nov. 2011), located at [https://digitaladvertisingalliance.org/sites/aboutads/files/DAA\\_files/Multi-Site-Data-Principles.pdf](https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/Multi-Site-Data-Principles.pdf) (hereinafter "*MSD*"); DAA, *Application of Self-Regulatory Principles to the Mobile Environment* (Jul. 2013), located at [https://digitaladvertisingalliance.org/sites/aboutads/files/DAA\\_files/DAA\\_Mobile\\_Guidance.pdf](https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/DAA_Mobile_Guidance.pdf) (hereinafter, "*Mobile*").

<sup>24</sup> DAA, *MSD* at 4-5 (Nov. 2011); DAA, *Mobile* at 31-32 (Jul. 2013).

<sup>25</sup> DAA, *Mobile* (Jul. 2013).

<sup>26</sup> DAA, *Application of the DAA Principles of Transparency and Control to Data Used Across Devices* (Nov. 2015), located at [https://digitaladvertisingalliance.org/sites/aboutads/files/DAA\\_files/DAA\\_Cross-Device\\_Guidance-Final.pdf](https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/DAA_Cross-Device_Guidance-Final.pdf).

transparency about the source of the political advertising they see online, the DAA released guidance on the application of the Principles of transparency and accountability to political advertising.<sup>27</sup> Importantly, the YourAdChoices Program and the DAA Principles are a novel kind of industry-led initiative whereby all companies engaging in the covered practices are subject to established privacy safeguard obligations. The DAA Principles are independently monitored and enforced by accountability programs. To date, more than 100 compliance actions have been publicly announced, and additional investigations have occurred without being made public. IAB is very proud of its involvement in this one-of-kind privacy program.

This approach will persist as entities find new ways to use data to combat COVID-19. The DAA Principles—and the strong privacy protections they afford consumers—apply even in times of crisis. Public-private partnerships to discover beneficial uses of information that can strengthen the public health response will be of considerable importance during this unprecedented time. In addition, businesses may implement processes, based on these standards, to deidentify, aggregate or otherwise protect the privacy of consumers while still allowing for important statistical observations to inform our response to COVID-19. These approaches enable businesses to create value based on insights while limiting how data is shared. Now more than ever, data can provide individuals with direct benefits by offering government stakeholders key insights they can use to develop strategies to stop the spread of the virus. Central to such uses of data will be maintaining consumer trust and committing to responsibly using information in ways that will improve the public response to COVID-19.

## **VI. The Existing U.S. Privacy Framework Should be Updated**

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<sup>27</sup> DAA, *Application of Self-Regulatory Principles of Transparency & Accountability to Political Advertising* (May 2018), located at [https://aboutpoliticalads.org/sites/politic/files/DAA\\_files/DAA\\_Self-Regulatory\\_Principles\\_for\\_Political\\_Advertising\\_May2018.pdf](https://aboutpoliticalads.org/sites/politic/files/DAA_files/DAA_Self-Regulatory_Principles_for_Political_Advertising_May2018.pdf).

While self-regulation has been a useful mechanism to encourage responsible data use, federal leadership is now needed to ensure that robust consumer privacy protections apply consistently throughout the country. The time is right for the creation of a new paradigm for data privacy in the United States. To this end, IAB is a key supporter of Privacy for America, a broad industry coalition of top trade organizations and companies representing a wide cross-section of the American economy that advocates for federal omnibus privacy legislation.<sup>28</sup> Privacy for America has released a detailed policy framework to provide members of Congress with a new option to consider as they develop data privacy legislation for the United States.<sup>29</sup> Participants in Privacy for America have met with leaders of Congress, the FTC, the Department of Commerce, the White House, and other key stakeholders to discuss the ways the framework protects consumers while also ensuring that beneficial uses of data can continue to provide vast benefits to the economy and mankind.

IAB, working with Congress, and based on our members' successful experience creating privacy programs that consumers understand and use, can achieve a new federal approach that, instead of bombarding consumers with notices and choices, comprehensively describes clear, workable, and consistent standards that consumers, businesses, and law enforcers can rely upon. Without a consistent federal privacy standard, a patchwork of state privacy laws will create consumer confusion, present substantial challenges for businesses trying to comply with these laws, and fail to meet consumers' expectations about their digital privacy.

Privacy for America has developed such a new framework for nationwide privacy legislation that would fundamentally change the way personal data is protected and secured in

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<sup>28</sup> *Privacy for America*, located at <https://www.privacyforamerica.com/>.

<sup>29</sup> *Privacy for America Releases Detailed Policy Framework to Provide Strong Data Privacy Protections for All Americans* (Dec. 3, 2019), located at <https://www.privacyforamerica.com/detailed-policy-framework-to-provide-strong-data-privacy-protections/>.

this country. Unlike existing domestic and international approaches to privacy regulation, the framework would not rely on burdensome “notice and choice” schemes to protect personal data. Rather, it would clearly define and prohibit practices that put personal data at risk or undermine accountability, while preserving the benefits to individuals and our economy that result from the responsible use of data.

Notably, the new framework would shift the burden away from individuals to read hundreds of lengthy privacy policies to protect themselves and toward a common set of data privacy and security norms. To ensure widespread compliance and rigorous enforcement, the framework would significantly expand federal and state oversight of data practices, including by creating a new data protection bureau at the FTC, authorizing FTC rulemaking in certain key areas, and providing civil penalty authority to both the FTC and State Attorneys General.

#### **A. Scope of the Framework**

The framework would apply to virtually all personal information collected and used in the United States and practically all companies doing business here. It would give the FTC expanded authority over nonprofits and common carriers for purposes of the new law. In addition, the framework would apply broadly to all personal information, whether collected or inferred, that is linked or can reasonably be linked to a particular individual or device. The framework would, therefore, serve as a strong and useful set of standards to guide companies as well as government in its efforts to harness the benefits of data to meet the unprecedented challenges our nation now faces from the coronavirus.

#### **B. Prohibitions on Data Misuse**

The Privacy for America framework would prohibit, rather than allow consent for, a range of practices that make personal data vulnerable to misuse. Many of these prohibitions would apply not only to companies that engage in these harmful practices directly, but to suppliers of data who have reason to know that the personal information will be used for these purposes.

- **Eligibility Determinations.** Determining whether individuals are eligible for benefits like a job or credit are among the most important decisions that companies make. Although many of these decisions are currently regulated by existing sectoral laws (*e.g.*, the Fair Credit Reporting Act), companies can easily purchase data on the open market to evade compliance with these laws. Privacy for America’s framework would prevent this abuse by banning the use of data to make eligibility decisions—about jobs, credit, insurance, healthcare, education, financial aid, or housing—outside these sectoral laws, thereby bolstering and clarifying the protections already in place. It also would provide new tools to regulators to cut off the suppliers of data that undermine these protections. To the extent that companies are unsure about whether a practice is permitted under existing law, they would be able to seek guidance from the FTC.
- **Discrimination.** The widespread availability of detailed personal information has increased concerns that this data will be used to discriminate against individuals. The new framework envisioned by Privacy for America would supplement existing anti-discrimination laws by banning outright a particularly pernicious form of discrimination—using data to charge higher prices for goods or services based on personal traits such as race, color, religion, national origin, sexual orientation, or gender identity. As discussed below, the framework also would allow individuals to opt out of data personalization, which can contribute to discrimination.
- **Fraud and Deception.** For decades, the FTC and the states have pursued cases against companies that engage in fraud and deception. The new framework would focus specifically on the use and supply of data for these purposes. Thus, it would ban a range of fraudulent practices designed to induce the disclosure of personal information and, more generally, material misrepresentations about data privacy and security.
- **Stalking.** In recent years, the proliferation of data has made it easier to track the location and activities of individuals for use in stalking. Of note, mobile apps designed for this very purpose have been identified in the marketplace. The framework would outlaw the use of personal information for stalking or other forms of substantial harassment, and would hold these types of apps accountable.
- **Use of Sensitive Data Without Express Consent.** Consumers care most about their sensitive data, and companies should have an obligation to protect it. The new



framework would prohibit companies from obtaining a range of sensitive information—including health, financial, biometric, and geolocation information, as well as call records, private emails, and device recording and photos—without obtaining consumers’ express consent.

- **Special Protections for Individuals Over 12 and Under 16 (Tweens).** The Privacy for America framework includes a robust set of safeguards for data collected from tweens, an age group that needs protection but is actively engaged online and not subject to constant parental oversight. Specifically, the framework would prohibit companies from transferring tween data to third parties when they have actual knowledge of age. It also would ban payment to tweens for personal data, except under a contract to which a parent or legal guardian is a party. Finally, companies would be required to implement data eraser requirements allowing individuals to delete data posted online when they were tweens.

Privacy for America’s approach would offer strong safeguards for individuals and robust guidance to businesses. The framework strikes an appropriate balance of allowing for clear prohibitions on certain kinds of harmful data uses and conduct while enabling beneficial uses that can inform strategies to minimize the spread of COVID-19. We encourage the Committee and Congress to enact legislation this year that is consistent with the Privacy for America framework.

The use of data has tremendous benefits for first responders, doctors, epidemiologists, and policymakers as they work tirelessly to tackle the unprecedented crisis we are experiencing. When used in privacy protective ways that align with industry best practices, companies can apply data to protect the lives and livelihoods of Americans. And a federal privacy framework should support beneficial uses of data while enhancing consumer trust. We look forward to working with Congress to protect the public health and individual privacy of all Americans as we collaborate to support the national response to COVID-19.

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