

February 13, 2019

The Honorable Roger Wicker
Chairman
Senate Committee on Commerce,
Science, & Transportation
512 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Maria Cantwell
Ranking Member
Senate Committee on Commerce,
Science, & Transportation
425 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey Graham
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Frank Pallone, Jr
Chairman
House Committee on Energy and
Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
House Committee on Energy and
Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairs Wicker, Graham, Pallone, and Nadler, and Ranking Members Cantwell, Feinstein, Walden and Collins:

We, the undersigned members of the civil rights and racial justice community, write to ensure that civil rights retain a fundamental place in the ongoing online privacy debate, hearings, and legislation in your committees.

For over 50 years, federal law has prohibited discrimination and our economy has thrived as more people had opportunities to pursue their dreams. Our groups have been at the forefront of ensuring that civil and human rights, equity, and equal opportunity are recognized and respected as technology, society, and the economy evolve. To further

that effort, many of the undersigned organizations supported the Civil Rights Principles for the Era of Big Data in 2014.¹

In the years since 2014, our groups have continued to raise the alarm as data security and privacy abuses have disproportionately harmed marginalized communities, especially communities of color. These harmful practices include:

- Deceptive voter suppression and misinformation targeting African Americans.
- Housing discrimination and digital redlining.
- Employment discrimination through profiling and targeted advertising.
- Predatory lending, such as for student loans and payday loans.
- Exploitation of poor tech literacy through misleading notice and choice practices.
- Facilitation of discriminatory government surveillance and policing practices.

These practices violate the Civil Rights Principles for the Era of Big Data, which underscore the importance of ensuring fairness in automated decisions, enhancing individual control of personal information, and protecting people from inaccurate data.

Civil rights protections have existed in brick-and-mortar commerce for decades. It is time to ensure they apply to the internet economy as well. Platforms and other online services should not be permitted to use consumer data to discriminate against protected classes or deny them opportunities in commerce, housing, and employment, or full participation in our democracy. Companies also should be required to be transparent about their collection and use of personal information in automated decisionmaking, and to anticipate and protect against discriminatory uses and disparate impacts of big data.

To address these concerns, any new privacy legislation should be consistent with the Civil Rights Principles for the Era of Big Data:

- *Stop High-Tech Profiling.* New surveillance tools and data gathering techniques that can assemble detailed information about any person or group create a heightened risk of profiling and discrimination. Clear limitations and robust audit mechanisms are necessary to make sure that if these tools are used it is in a responsible and equitable way.
- *Ensure Fairness in Automated Decisions.* Computerized decisionmaking in areas such as employment, health, education, and lending must be judged by its impact on real people, must operate fairly for all communities, and in particular

¹ The Leadership Conference on Civil and Human Rights, *Civil Rights Principles for the Era of Big Data*, (Feb. 27, 2014), <https://civilrights.org/civil-rights-principles-era-big-data/>.

must protect the interests of those that are disadvantaged or that have historically been the subject of discrimination. Systems that are blind to the preexisting disparities faced by such communities can easily reach decisions that reinforce existing inequities. Independent review and other remedies may be necessary to assure that a system works fairly.

- *Preserve Constitutional Principles.* Search warrants and other independent oversight of law enforcement are particularly important for communities of color and for religious and ethnic minorities, who often face disproportionate scrutiny. Government databases must not be allowed to undermine core legal protections, including those of privacy and freedom of association.
- *Enhance Individual Control of Personal Information.* Personal information that is known to a corporation — such as the moment-to-moment record of a person’s movements or communications — can easily be used by companies and the government against vulnerable populations, including women, the formerly incarcerated, immigrants, religious minorities, the LGBT community, and young people. Individuals should have meaningful, flexible control over how a corporation gathers data from them, and how it uses and shares that data. Non-public information should not be disclosed to the government without judicial process.
- *Protect People from Inaccurate Data.* Government and corporate databases must allow everyone — including the urban and rural poor, people with disabilities, seniors, and people who lack access to the Internet — to appropriately ensure the accuracy of personal information that is used to make important decisions about them. This requires disclosure of the underlying data, and the right to correct it when inaccurate.

Privacy rights are civil rights. Protecting privacy in the era of big data means protecting against uses of consumer information that concentrate harms on marginalized communities while concentrating profits elsewhere. Both individuals and the government must be empowered to enforce these fundamental principles of civil rights through agency rulemaking authority, strong enforcement, and the availability of effective legal redress. Historically, marginalized communities could not rely on government actors to protect their rights; this is why most civil rights laws contain a private right of action. **Privacy legislation that does not reflect these values should be rejected.**

It is long past time to see effective privacy laws for commercial data practices established in the United States. We look forward to offering our expertise and vision as the debate continues and your committees craft legislation to protect everyone's rights and create a more just and equitable society.

Sincerely,

Access Humboldt	Lawyers' Committee for Civil Rights Under
Access Now	Law
ACLU	Media Alliance
Action Center on Race and Equity (ACRE)	Media Mobilizing Project
Algorithmic Justice League	NAACP
Asian Americans Advancing Justice –	National Consumer Law Center (on behalf
AAJC	of its low income clients)
Campaign for a Commercial-Free	National Hispanic Media Coalition
Childhood	National Organization for Women (NOW)
Center for Democracy & Technology	Foundation
Center for Digital Democracy	National Urban League
Center for Media Justice	New America Public Interest Technology
Center on Privacy & Technology at	New America's Open Technology Institute
Georgetown Law	Open MIC (Open Media and Information
Color Of Change	Companies Initiative)
Common Cause	Organization United for Respect
Common Sense Media	Partnership for Working Families
Consumer Action	Public Citizen
Consumer Federation of America	Public Knowledge
Consumer Watchdog	Ranking Digital Rights
Electronic Privacy Information Center	Stop Online Violence Against Women
Ella Baker Center for Human Rights	The Leadership Conference on Civil and
Fight for the Future	Human Rights
Free Press Action	UnidosUS
Human Rights Campaign	United Church of Christ, OC Inc.
	Upturn