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Today's Senate Commerce Committee Hearing: Examining Safeguards for Consumer Data Privacy featured 6 industry panelists and lasted approximately two and one-half hours.

The panel included:

- Len Cali, Senior Vice President-Global Public Policy at AT&T Inc.
- Andrew DeVore, Vice President and Associate General Counsel, [Amazon.com](https://www.amazon.com), Inc.
- Keith Enright, Chief Privacy Officer, Google LLC
- Damien Kieran, Global Data Protection Officer and Associate Legal Director, Twitter, Inc.
- Guy Tribble, Vice President for Software Technology, Apple, Inc., and
- Rachel Welch, Senior Vice President, Policy & External Affairs, Charter Communications, Inc.

Chairman John Thune -

https://www.commerce.senate.gov/public/index.cfm/hearings?id=2FF829A8-2172-44B8-BAF8-5E2062418F31&Statement_id=E18C1B83-51D1-4C57-BCC8-047DCBAAA26D

Senator Nelson - https://www.commerce.senate.gov/public/index.cfm/hearings?id=2FF829A8-2172-44B8-BAF8-5E2062418F31&Statement_id=DA8DCB2D-26B8-42F0-9298-21020473711E

Leni Cali – Senior VP Global Public Policy AT&T Inc. -

https://www.commerce.senate.gov/public/_cache/files/b42b3943-1409-44f4-9aa9-91ad21ffb43a/C1C79DF5A0936D0F6769AD106E17D3D3.09.24.18cali-testimony.pdf

Andrew DeVore – VP and Associate General Counsel Amazon.com, Inc.-

https://www.commerce.senate.gov/public/_cache/files/7c30e97b-e5fb-49cc-806e-5cd126ee91dc/48369EAB81D0F112CEDC5672C9AF24AB.09-24-2018devore-testimony.pdf

Keith Enright – Chief Privacy Officer Google LLC – (not posted)

Damien Kieran – Global Data Protection Officer and Associate Legal Director Twitter, Inc. -

https://www.commerce.senate.gov/public/_cache/files/c684f1ad-4be7-4805-b447-57d3b2a1a790/4FA87C5CC4A1222EA3FAC02A904C7E6C.09-24-18kieran-testimony.pdf

Guy Tribble – VP for Software Technology, Apple Inc. -

https://www.commerce.senate.gov/public/_cache/files/2f5f8077-24bf-4a46-9156-c44913152d47/C5C28DFD93456AAB6EE7ACAD7CBE835E.09-24-18tribble-testimony.pdf

Rachel Welch – Policy & External Affairs, Senior VP Charter Communications, Inc. -

https://www.commerce.senate.gov/public/_cache/files/9cb79c7e-815c-4091-80d0-f425105b110b/2C25167C9296C00C1CBBEBD03171F49A.09-24-18welch-testimony.pdf

During the hearing 20 of the Senate Commerce Committee's members posed questions to the panelists. The questions mostly focused on: (1) how the Committee should consider the GDPR and the CCPA; (2) whether the FTC should be the primary regulator for any such legislation and whether its authority should be expanded; (3) the types of provisions federal legislation should

include; and (4) whether such legislation should preempt state laws. Some Senators veered off topic, taking up issues such as children's privacy and COPPA modifications, and whether Google was preparing a search engine for China.

Senator Thune opened the hearing by stating that the question before the committee was not whether a comprehensive federal law should be enacted, but rather what shape that law should take. He stated that the hearing would not be the last on the issue noting a hearing next month with other key stakeholders, and that today's hearing was not intended to be a "gotcha" hearing. He specifically asked for feedback on how both the GDPR and CCPA had affected business and how the committee should consider those laws in constructing comprehensive federal privacy legislation.

Opening statements by the panelists focused on their support for a single federal privacy framework and legislation that protects consumer privacy without stifling innovation. Both Twitter and Apple representatives stated that privacy is a fundamental right. Ms. Welch from Charter, who also supports a uniform privacy law, took the position that online companies should be required to obtain opt-in consent for any use of personal data other than to provide the service requested.

The GDPR and the CCPA

Senator Thune then opened the panel questioning by asking about the GDPR and CCPA and how a federal law should address them. Mr. Cali from AT&T noted that the GDPR is overly prescriptive and burdensome and may hurt innovation while the CCPA will encourage an unworkable patchwork of legislation and includes provisions that are detrimental (particularly the notice and consent process that AT&T will seek revisions to prior to implementation). Sen. Thune (and later Senator Lee) also inquired about the compliance costs for laws like the GDPR and CCPA and whether or how they create barriers to entry. The panelists agreed that while they are large enough to absorb such costs, the committee should carefully consider as it develops legislation how compliance costs could affect small and medium sized businesses. Senator Fisher later followed up on this point by asking what the best approach would be to not burden smaller businesses with compliance costs. Apple's representative, Mr. Tribble responded that clarifying the law to put in place one set of rules to follow would help with that effort.

Later Sen. Blumenthal asked somewhat rhetorically whether the panelists believed that Americans deserve less privacy than Europeans or whether Americans deserved less privacy than Californian's. He also asked if any of the company's had plans to pull out of the EU. He noted that the company's present have complied with the GDPR and are making efforts to comply with CCPA, so why shouldn't congress adopt the California or EU model? He said the question would continue to linger, and while the answer may be complex, despite the opposition the companies have expressed to these laws, they can comply with them.

The FTC as Primary Regulator

Senator Nelson and Senator Schatz focused their questioning on whether the FTC is the appropriate regulator for consumer privacy and whether or how the FTC should be expanded and provided with additional enforcement tools. The panelists generally agreed that the FTC

should be primarily responsible and that if additional resources are needed to enforce any such federal privacy legislation Congress should provide them, but panelists were unwilling to categorically agree that the FTC should be given rulemaking authority or be able to impose monetary penalties in the first instance.

Provisions for a federal privacy law

A number of Senators asked questions about what types of provisions should be included in federal legislation, such as requirements for simple, plain language disclosures, provisions for consumers to withdraw consent, rights for consumers to prevent the selling or sharing of their personal information, and the ability of consumers to access their personal information. The panelists were generally supportive of such requirements, many stating that they already do those sorts of things or provide consumers with those types of options. Senator Peters asked whether federal law should mandate disclosure of ad tracking. All supported this requirement. All panelists also agreed that all online entities should be subject to the same requirements.

Senator Cortez Mast asked whether it will be important to define personal information and whether the panelists support a default opt-in requirement for the use of personal information. All agreed that defining personal information will be important, but Ms. Welch from Charter added that there should not be any differentiation between sensitive and non-sensitive personal information because the distinction is confusing. Later Sen. Peters asked about how personal information should be defined to ensure it is adaptable to future technology. Mr. Enright from Google stated that Google believes an appropriate definition is a logical definition, that which a reasonable user would expect, such as name and email. Regarding a default opt-in, all but Ms. Welch were opposed stating that an opt-in would impact innovation and cause consumer fatigue at being constantly presented with an opt-in; Apple gave cookie tracking banners as an example of the consumer fatigue. Ms. Welch, by contrast believes that a default opt-in is the right approach, empowers consumers and is good for business and competition.

Federal Preemption

When asked, all panelists agreed that any federal legislation should preempt state privacy law. Mr. Cali from AT&T added that it was necessary as federal legislation would not be helpful if it is just the 51st law to comply with on top of 50 other state laws. Mr. Tribble from Apple stated that he agreed it would be helpful to prohibit a patchwork of state laws, but that it is important that federal legislation set the bar high enough to provide consumers with protection. Senator Lee asked about Congress's authority to pass federal privacy legislation and preempt state law, then pointed to the answer, i.e. congress' power to regulate trade and commerce.

Other Issues

Senator Hassan noted that there is a basic disconnect between business models built on driving consumer behavior, such as keeping consumers online, and robust consumer privacy rights. She stated that it may be in the panelists best interest to come up with a regulatory scheme that removes the conflict between that type of business model that thrives on consumer data and interaction and consumer privacy needs.

Senator Udall noted that there is a serious lack of compliance with COPPA and asked Sen. Thune for a separate hearing for a future framework to protect children's privacy.