

House Hearing Looks at Lessons from EU Privacy Model, Burdens on U.S. Companies

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On September 15, 2011, the U.S. House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade held a hearing examining the European Union's (EU's) privacy and data collection regulations and their impact on U.S. companies and the Internet economy. The hearing – *Internet Privacy: The Impact and Burden of EU Regulation* – focused on the EU's 1995 Privacy Directive and the burdens and benefits of the EU Privacy model as a means to inform the policy debate on potential U.S. privacy law.

In 1995, the EU promulgated the Data Privacy Directive, requiring EU member countries to enact privacy laws that satisfy certain baseline privacy principles such as notice and consent, and protecting the flow of personal data from EU countries to non-EU countries that lack privacy protections. The Directive applies to EU affiliates of U.S. companies but was amended in 2000 to include a "safe harbor" provision for U.S. companies that voluntarily comply with data protection principles.

Rep. Bono-Mack opened the hearing noting that, while it is not clear that privacy legislation is warranted at this time, it is clear that industry is not doing enough to protect U.S. consumers' privacy. At the same time, she indicated that the government needs to avoid regulatory overreach. The key, she noted, will be to balance innovation and privacy.

The first panelist, Nicole Lamb-Hale, Assistant Secretary for the Commerce Department's International Trade Administration, opposed adopting the EU privacy model for the U.S., emphasizing instead a greater need for flexible baseline privacy principles adaptable to technological advances, harmonized with sector-by-sector regimes.

Representatives raised concerns for U.S.-based multinational corporations, noting inconsistent EU regulatory privacy regimes, fractured compliance with the EU Privacy Directive and inconsistent enforcement targeting a "seemingly" disproportionate number of U.S. companies. Representatives were also concerned about the costs the EU privacy regulation imposed on the Internet economy.

MIT Professor Catherine Tucker testified that her studies revealed that the "advertising performance" – a measure of the will of consumers to make purchases based on online ads – decreased 65% after the EU privacy directive was implemented. On the other hand, Ohio State Law Professor Peter Swire, suggested that without privacy protections, U.S. companies risk facing protectionist policies and the loss of business when conducting international commerce as more countries adopt the EU privacy model.

The hearing is the second in a series of privacy hearings the Subcommittee plans to hold this fall and

adds important international considerations to the growing privacy debate in Congress.

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