

Privacy

Over the past few years, a series of high-profile data breaches targeting household-name companies has transformed privacy into the topic of a debate involving lawmakers, civil society organizations, and more. In September 2018, Facebook acknowledged the largest breach of personal user information in the company's history.ⁱ In April 2019, Google began the process of shutting down and deleting all consumer accounts on its social networking platform, Google+, partly because of two breaches that potentially exposed private user data to outside developers.ⁱⁱ Furthermore, in July 2019, Capital One reported that a hacker had accessed the information of over 100 million Americans who have applied for credit cards since 2005.ⁱⁱⁱ Given how many people around the world use the services of internet-based companies, it is no surprise that the concept of privacy is under scrutiny.

Legislative Efforts to Protect Privacy

In the absence of a federal privacy law, state lawmakers have taken steps to safeguard users. In June 2018, California passed the California Consumer Privacy Act, which requires companies storing large amounts of personal information to disclose the types of data they collect and to allow users the choice of not having their data sold.^{iv} During that same month, Oregon updated its information security laws by clarifying which entities must report data breaches and expanding the definition of "personal information."^v Other states, such as Nevada and Maine, have also passed privacy laws, while others are still in the consideration stage.^{vi}

At the federal level, multiple stakeholders have become increasingly active in the privacy debate. Between late June 2018 and late July 2018, White House officials hosted 22 meetings with more than 80 companies, trade associations, and consumer groups in order to guide the Trump administration's approach to privacy policy.^{vii} In November 2018, the Federal Trade Commission (FTC) held a hearing in which stakeholders and experts representing a diverse range of viewpoints testified on the intersection between privacy, big data, and competition.^{viii} The FTC also held hearings in December 2018 and April 2019 regarding data security and the agency's approach to consumer privacy, respectively.^{ix} Additionally, the FTC has hosted workshops on privacy and data security, such as a workshop that explored whether to update the Children's Online Privacy Protection Rule due to evolving business practices in the online children's marketplace.^x

In both the House of Representatives and the Senate, committees have convened hearings to examine the importance of protecting personal data and to explore potential safeguards. In fact, the Senate held a hearing in December 2019, a week after Senate Commerce Committee Chairman Roger Wicker and ranking member Maria Cantwell dropped partisan privacy bills that took different approaches towards two key issues: whether any federal legislation should empower individuals to sue companies that violate their privacy and whether federal law should

override incoming state privacy laws.^{xi} In contrast, a draft that was circulated by Republican and Democratic staffers on the House Energy and Commerce Committee in December 2019 completely sidestepped these two issues.^{xii} Given that California's privacy law went into effect on January 1, 2020, lawmakers, consumer and civil rights advocates, and industry stakeholders are pushing for a comprehensive federal law to pass in Congress in order to avoid consumer confusion.

Privacy as a Civil Rights Issue

Although the right to privacy has traditionally been understood as a civil liberty, it is also a civil right. Privacy-related harms affect all Americans, but low-income people and people of color often suffer the most because they may lack critical resources to prevent or alleviate them. In the words of Alvaro Bedoya, the founding director of Georgetown Law's Center on Privacy and Technology, "when you're not [the "right" race, gender and sexual orientation], tracking [by consumer marketers] is more likely to be used to exclude or exploit you. This disparate impact is a civil rights issue."^{xiii} For example, low-income people and people of color are particularly vulnerable to entrapment in predatory lending schemes carried out by payday loan companies that use their personal data to target advertisements to them.^{xiv} In addition, individuals may lose out on housing or employment opportunities when internet-based companies allow advertisers to prevent users from viewing advertisements, based on the users' race, gender, or income.^{xv}

Privacy-related harms do not occur exclusively online. Mary Madden, a technology researcher at the Data & Society Research Institute, has pointed out that "the backdrop of these online experiences is a heightened sense of worry [experienced by marginalized people] about the precariousness of their physical privacy and security."^{xvi} For instance, undocumented immigrants are subject to a surveillance system designed to use their information to identify, find, and apprehend them.^{xvii} In addition, homeless people are required to reveal sensitive information, such as mental health status and substance abuse history, in order to access certain social services.^{xviii} This information is stored by the nationwide Homeless Management Information System and can be given to law enforcement officials in response to an oral request for the purpose of identifying and locating a suspect or material witness.^{xix}

Even people and organizations working on behalf of vulnerable communities have become objects of surveillance. Prior to hundreds of protests planned across the country in opposition to the Trump administration's family separation policy in 2018, the Department of Homeland Security gathered intelligence through a private company that tracked Facebook accounts affiliated with the protests.^{xx} Collectively, these examples demonstrate that in the era of big data, technology can perpetuate longstanding disparities by disproportionately harming individuals living on the margins of society and those who try to help them. Therefore, it is critical that stakeholders in the decision-making process address privacy concerns using a civil rights framework.

ⁱ Mike Isaac and Sheera Frenkel, "Facebook Security Breach Exposes Accounts of 50 Million Users," *The New York Times* (Sep. 28, 2018), <https://www.nytimes.com/2018/09/28/technology/facebook-hack-data-breach.html>.

ⁱⁱ Chris Welch, "Google begins shutting down its failed Google+ social network," *The Verge* (Apr. 2, 2019), <https://www.theverge.com/2019/4/2/18290637/google-plus-shutdown-consumer-personal-account-delete>.

ⁱⁱⁱ Megan Leonhardt, "The 5 biggest data hacks of 2019," *CNBC Make It* (Dec. 17, 2019), <https://www.cnbc.com/2019/12/17/the-5-biggest-data-hacks-of-2019.html>.

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- ^{iv} Colin Lecher, "California just passed one of the toughest data privacy laws in the country," *The Verge* (Jun. 28, 2018), <https://www.theverge.com/2018/6/28/17509720/california-consumer-privacy-act-legislation-law-vote>.
- ^v Daniel J. Moses, "Oregon Enacts Tougher Data Breach Notification Law," *Society for Human Resource Management* <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/oregon-enacts-tougher-data-breach-notification-law.aspx>.
- ^{vi} Cynthia Brumfield, "11 new state privacy and security laws explained: Is your business ready?" *CSO* (Aug. 8, 2019), <https://www.csoonline.com/article/3429608/11-new-state-privacy-and-security-laws-explained-is-your-business-ready.html>.
- ^{vii} Mallory Locklear, "White House reportedly working on federal data privacy policy," *Engadget* (Jul. 27, 2018), <https://www.engadget.com/2018/07/27/white-house-federal-data-privacy-policy/>.
- ^{viii} "FTC Hearing #6: Privacy, Big Data, and Competition (Audio)," *Federal Trade Commission*, <https://www.ftc.gov/news-events/audio-video/audio/ftc-hearing-6-privacy-big-data-competition-audio>.
- ^{ix} "Hearings on Competition and Consumer Protection in the 21st Century," *Federal Trade Commission*, <https://www.ftc.gov/policy/hearings-competition-consumer-protection>.
- ^x "The Future of the COPPA Rule: An FTC Workshop," *Federal Trade Commission*, <https://www.ftc.gov/news-events/events-calendar/future-coppa-rule-ftc-workshop>.
- ^{xi} Emily Birnbaum, "Senators inch forward on federal privacy bill," *The Hill* (Dec. 4, 2019), <https://thehill.com/policy/technology/473071-senators-inch-forward-on-federal-privacy-bill>.
- ^{xii} Emily Birnbaum, "Key House committee offers online privacy bill draft," *The Hill* (Dec. 18, 2019), <https://thehill.com/policy/technology/475191-key-house-committee-offers-online-privacy-bill-draft>.
- ^{xiii} Alvaro M. Bedoya, "A License to Discriminate," *The New York Times* (Jun. 6, 2018), https://www.nytimes.com/2018/06/06/opinion/facebook-privacy-civil-rights-data-huawei-cambridge-analytica.html?ref=collection%2Fsectioncollection%2Fopinion-contributors&action=click&contentCollection=contributors®ion=stream&module=stream_unit&version=latest&contentPlacement=2&pgtype=sectionfront.
- ^{xiv} "Advocates Applaud Google's Ban on Payday Loan Advertisements," *The Leadership Conference on Civil and Human Rights*, <https://civilrights.org/2016/05/11/advocates-applaud-googles-ban-on-payday-loan-advertisements/>.
- ^{xv} Julia Angwin and Terry Parris Jr., "Facebook Lets Advertisers Exclude Users by Race," *ProPublica* (Oct. 28, 2016), <https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race>.
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- ^{xviii} *Ibid.*
- ^{xix} *Ibid.*
- ^{xx} Ryan Devereaux, "Homeland Security Used a Private Intelligence Firm to Monitor Family Separation Protests," *The Intercept* (Apr. 29, 2019), <https://theintercept.com/2019/04/29/family-separation-protests-surveillance/>.