

LETTER FROM PROMINENT US CONSUMER AND CIVIL LIBERTIES ORGANIZATIONS
TO US GOVERNMENT LEADERS
REGARDING EFFORTS TO UPDATE AND STRENGTHEN PRIVACY LAW
IN EUROPE AND THE UNITED STATES

February 4, 2013

Hon. Eric Holder Holder,
Attorney General
Washington, DC

Ambassador Ron Kirk,
United States Trade Representative
Washington, DC

Hon. John Kerry,
Secretary of State
Washington, DC

Ambassador William Kennard
United States Mission to European Union
Brussels, Belgium

Hon. Rebecca Blank,
Acting Secretary of Commerce
Washington, DC

Dear Mr. Attorney General, Mr. Secretary, Madame Secretary, Ambassador Kirk, and
Ambassador Kennard,

We are writing to you regarding the role of the United States Government in the development of the new European privacy law. Many US consumer and civil liberties organizations support the EU effort to strengthen privacy protection. And we believe the President shares our concerns. Therefore, we are writing to seek a meeting to ensure that the efforts of US policymakers in Europe advance the aim of privacy and are not averse to the views expressed by the President.

The challenges we face today are very real. Users around the world are experiencing increases in identity theft, security breaches, government surveillance, and secretive, discriminatory profiling. Users find that personal information given for one purpose is often used for another purpose, often without their knowledge or consent.

Our personal data -- our privacy -- is being abused by both the commercial sector and governments. In fact, the line is increasingly blurred as personal data passes between both with few restrictions.

Europeans are working together to update and modernize their framework for privacy protection. There are many important, innovative proposals contained in the package of reforms, as well as the recognition that the process of data protection can be simplified to the benefit of all. Europe is considering both an overarching Data Protection Regulation and a Directive on Law Enforcement that will help strengthen the safeguards on police collection and use of personal data.

Our organizations support this effort. Leading US consumer and privacy organizations wrote to the European Parliament to say that the “promotion of stronger privacy standards in Europe will benefit consumers around the globe, as businesses improve their privacy practices and security standards.”¹

A group of US NGO leaders just returned from Brussels where we met with Members of the European Parliament from across the political spectrum. Without exception the MEPs and staff reported that both the US Government and US industry are mounting an unprecedented lobbying campaign to limit the protections that European law would provide.

We also found that the Europeans were excited to hear a different view from the US. They had many questions about the laws that applied to European data transferred to the US government and American corporations. They were concerned about the absence of safeguards for personal data stored in the Cloud. And most significantly, we learned that Europeans and Americans have very similar concerns about the need for privacy protection. We share a fundamental belief that Europe and the United States need to update their privacy laws.

We believe that President Obama has an equally strong commitment to the protection of privacy. In February 2012, the President set out a comprehensive privacy framework with principles designed to establish new safeguards for consumers and new responsibilities for companies that collect and use personal information. As President Obama explained, “Never has privacy been more important than today, in the age of the Internet, the World Wide Web and smart phones. In just the last decade, the Internet has enabled a renewal of direct political engagement by citizens around the globe and an explosion of commerce and innovation creating jobs of the future.”²

The principles include (1) individual control over the collection and use of personal data; (2) transparency; (3) respect for the context in which data is collected; (4) security; (5) access and correction rights for consumers; (6) data limitation; and (7) accountability. President Obama stated that “even though we live in a world in which we share personal information more freely than in the past, we must reject the conclusion that privacy is an outmoded value. It has been at the heart of our democracy from its inception, and we need it now more than ever.”³

These principles reflect many of the same goals contained in the European privacy initiative. But the key is that these principles must be given legal force. Without implementation and enforcement, the Consumer Privacy Bill of Rights will become a hollow

¹ Letter to European Parliament from 22 US Consumer Organizations (Sept. 5, 2012) (“On EU General Data Protection Regulation.”)

² The White House, “Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy,” (Feb. 23, 2012), *available at* <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>

³ *Id.*

promise. We do not believe that is the President's intent.

We also note growing support in the United States Congress for updates to US privacy law that would make clear, for example, that government access to communications data under the Electronic Communications Privacy Act (ECPA) must be pursuant to a rigorous legal process. Updating ECPA would be a good start for the strengthening of US law and policy to bring us into compliance with International Human Rights norms.

To be clear, we do not view privacy as a partisan issue. The tradition of privacy law in the United States is bipartisan, and we urge you to work with leaders in both parties to ensure that this fundamental American right is safeguarded. At the same time, we expect leadership from those who represent the United States overseas and we expect that the views of American consumers and privacy advocates, not simply business leaders, will be conveyed to your counterparts.

Enactment of robust privacy legislation in the United States should be a top priority for the Administration. As the President explained last year, the Consumer Privacy Bill of Rights is "a blueprint for privacy in the information age. . . . My Administration will work to advance these principles and work with Congress to put them into law."⁴ And the US should not stand in the way of Europe's efforts to strengthen and modernize its legal framework.

We look forward to discussing these issues with you soon.

Sincerely,

Advocacy for Principled Action in Government
American Civil Liberties Union
Center for Digital Democracy
Consumer Action
Consumer Federation of America
Consumer Watchdog
Defending Dissent Foundation
Electronic Frontier Foundation
Electronic Privacy Information Center
Friends of Privacy USA
Government Accountability Project
Liberty Coalition
National Association of Consumer Advocates
Patient Privacy Rights Foundation
Privacy Rights Clearinghouse
Privacy Times
Privacy Journal
U.S. PIRG

⁴ *Id.*