



The Honorable Mary Bono Mack
Chair, Subcommittee on Commerce, Manufacturing and Trade
United States Congress
2125 Rayburn House Office Building,
Washington, DC 20515

The Honorable G.K. Butterfield
Ranking Member, Subcommittee on Commerce, Manufacturing and Trade
United States Congress
2125 Rayburn House Office Building,
Washington, DC 20515

September 14, 2011

Dear Chairwoman Bono Mack, Ranking Member Butterfield and Members of the House Subcommittee on Commerce, Manufacturing and Trade,

We are writing to you regarding the hearing entitled "Internet Privacy: The Impact and Burden of EU Regulation" scheduled for Thursday, September 15, 2011 on behalf of the Transatlantic Consumer Dialogue (TACD), a coalition of more than 80 consumer organizations in North America and Europe.¹

We appreciate the interest of the United States Congress in the very important issue of Internet privacy. There are few issues of greater concern to Internet users in Europe and the United States today than the protection of personal information. [One has only to open a newspaper to read a report (mostly from the United States) about the loss of sensitive medical information, the mismanagement of security protocols at banking institutions, or the enormous cost that identity theft continues to impose on consumers and businesses.]

TACD is therefore somewhat surprised by what appears to be an effort to call into question the purpose and "burden" of the EU Data Directive. Given the widespread agreement across consumer organizations in both Europe and the United States that the United States lacks adequate privacy safeguards and that the US privacy laws lag woefully behind current technology and business practices, we expected a hearing that would focus on the lessons that the Congress might draw from the EU experience with data protection.²

¹ "The TACD is a forum of US and EU consumer organisations which develops and agrees on joint consumer policy recommendations to the US government and the European Union to promote the consumer interest in EU and US policy making." TACD, <http://www.tacd.org/>

² By way of example, the US federal wiretap law the Electronic Communications Privacy Act has only been updated twice in the past twenty-five years and both times to comply with law enforcement demands (the "CALEA of 1994" and the "PATRIOT Act of 2001.") None of the recent consumer privacy concerns, such as locational tracking, online advertising or mobile services, have been addressed in US federal law as they have been in European Union law.

As it does not appear that your hearing plans to provide this perspective, we offer this letter and ask that it be entered in the hearing record so that the Members of Congress and their staffs might better understand the important role that the EU Data Directive, and the associated EU E-Privacy Directive, play in safeguarding the interests of consumers and businesses. We hope this will also lead to a substantive effort on the US side to address these issues.

First, as a matter of history, the EU Data Directive came about in the 1990s to streamline the European regulatory process and to encourage the growth of markets. As Europe moved to integrate its national economies and to promote trade across national borders, there was a clear recognition of the need to develop EU-wide directives that would promote the transfer of “good, services, labor, and capital.” The EU Data Directive is one of many Directives adopted by the European Union to promote trade and commerce.

Second, the EU Data Directive seeks to protect fundamental human rights, the right to privacy, the right to protection of personal data and also the right to informational privacy, which is established as a Constitutional right in Article of the Charter of Fundamental Rights and Article 8 of the European Convention on Human Rights.

Third, the EU Data Directive is a concise statement of principles that make clear to business and consumers what their rights and obligations are. Unlike the extraordinarily complicated regulatory process that the United States tends to follow (the “HIPAA” rules are more than 1,500 pages), EU privacy law is reasonably straightforward relying on commonsense terms and not a lot of “legalese.”

Fourth, the EU Data Directive is technologically neutral, focusing on the collection and use of personal information and not the specific technologies involved. As such it has weathered technologically change over the last two decades fairly well. By comparison, many of the US privacy laws, e.g. for “video rental records,” seem very much out of date.

Fifth, the EU Data Directive seeks to make business practices more transparent so that consumers can make more informed decisions in the marketplace. This includes a legal requirement that companies disclose to consumers the actual information about them that is collected, and not simply a rudimentary “privacy policy.” Without the ability to obtain this information, consumers cannot make meaningful decisions and markets cannot operate. The current US position on consumer access to information stifles both markets and innovation.

Sixth, the aim of the Directive is not to “burden” businesses but rather to ensure that businesses comply with basic privacy obligations that help ensure trust and confidence in the marketplace and facilitate the cross-border flow of data. Without such baseline standards, the risk of consumer revolt and market collapse is very real, as the U.S. experienced over the last several years in housing markets when it chose to remove safeguards that protected both consumers and businesses.

Seventh, the EU Data Directive also incorporates a structure to assess new challenges to privacy and to make appropriate recommendations following study and review. The Article 29 Data Protection Working Party, established by the Directive, has produced almost 200 reports and recommendations for the consideration by EU policymakers. The United States does not appear to have any comparable agency to meaningfully assess such topics as Geolocation services, the use of RFID in identity documents, cloud computing services, or data protection issues related to money laundering.³

Eighth, the EU Data Directive borrows much from the original formulation of privacy laws developed in the United States. Your “Fair Information Practices,” which set out the rights and responsibilities for those

³ “Justice – Data Protection – Documents Adopted by the Data Protection Working Party, “http://ec.europa.eu/justice/policies/privacy/workinggroup/wpdocs/2011_en.htm

who collect personal data, were established in your Privacy Act, your credit reporting laws, and your laws to protect the privacy of educational records before they were incorporated in the EU privacy laws. Europeans sometimes also refer to the privacy tort as "the American tort" because it was adopted in the United States before it was recognized in other countries.

There is much that US lawmakers could learn from a fair and balanced review of the EU Data Directive, just as the EU has learned much from the US experience. Certainly, the Directive needs improvement. Strengthening enforcement is critical as is extending the principles to law enforcement activity. Much of this work is already underway.

As organizations representing several hundred million consumers in North America and the United States, we believe there is great urgency in the need for the US Congress to address meaningfully the new challenges to privacy. We see in the United States spiraling levels of identity theft and security breaches. The US generates more spam (unsolicited commercial email) than any other country in the world and spends more money monitoring its own citizens than any other country in the world.

Certainly, there is much the United States could learn from other countries about how to address such challenges and the EU Data Directive provides a very good starting point.

TACD and its member organizations would be pleased to assist the Committee and the US Congress on these efforts.

Yours sincerely,



Julian Knott
TACD Head of Secretariat
On behalf of the TACD Steering Committee:

- Rhoda Karparkin, **Consumers Union**
- Edmund Mierzwinski, **Public Interest Research Group**
- Robert Weissman, **Public Citizen**
- Jean Ann Fox, **Consumer Federation of America**
- Monique Goyens, **BEUC (The European Consumers' Organisation)**
- Benedicte Federspiel, **Danish Consumer Council**
- Conchy Martin Rey, **Spanish Confederation of Consumers and Users (CECU)**
- Breda Kutin, **Slovene Consumers' Association**

Cc: Chairman Fred Upton and Ranking Member Henry Waxman, Energy and Commerce Committee

Cc: Energy and Commerce Committee members