



Comments of the Center for Digital Democracy on the Transatlantic Trade and Investment Partnership (TTIP)

Docket Number USTR-2013

10 May 2013

The Center for Digital Democracy (CDD), one of the leading not-for-profit organizations focused on data protection in the digital era, respectfully submits this Comment. We have already filed a request to speak at the forthcoming public hearing scheduled for later this month. CDD is also a U.S. member of the Transatlantic Consumer Dialogue (CDD), and we strongly support its Comment filed in this docket.

CDD respectfully urges the USTR not to address cross-data flow issues in the TTIP. It is extremely critical that both the European Union and the United States first address their own frameworks. As USTR knows, the U.S. is woefully inadequate in protecting the privacy of its consumers and citizens. The U.S. has no overall privacy law. At the moment, only minors 12 and under have any comprehensive legal protection in the U.S. regarding privacy. Sectorial laws governing such critical areas as financial and health privacy largely fail to protect consumers when they are online. While the Obama Administration's "Privacy Bill of Rights," released in February 2012, is promising, it is unlikely that Congress will enact any legislation soon. The "multi-stakeholder" framework embraced by the Administration to help develop its privacy plan—and which appears to be part of a pending legislative proposal—is flawed and inadequate. As demonstrated by the failure of the World Wide Web Consortium's (WC3) more-than-two-year multi-stakeholder convening to develop a "Do-Not-Track" technical standard, and the inability of the nearly one-year multi-stakeholder effort on "mobile app transparency," overseen by the

NTIA/Department of Commerce, to adequately assess and address privacy concerns, this largely industry-dominated approach cannot be relied on to develop a meaningful baseline standard of protection for U.S. consumers.

While the U.S. Federal Trade Commission has been more proactive during the last several years, it lacks the regulatory authority to ensure that consumer privacy is protected online. Industry lobbyists prevented Congress from expanding the FTC's ability to regulate as part of the Dodd-Frank financial reform legislation. Despite the FTC's recent work on privacy, it has largely failed to stem the flow of ever-increasing data collection being conducted on U.S. consumers. Even with the FTC's 20-year privacy-related "Consent Decrees," both Google and Facebook are dramatically expanding their data collection nearly every day.

USTR should also acknowledge that U.S. digital marketing and technology companies are largely responsible for the growth of privacy-threatening applications and services in both the EU and elsewhere. Led by U.S. interests, a consumer today faces a "360-degree" data collection system that tracks, analyzes, and makes actionable their every move—whether they are using personal computers, mobile devices, gaming platforms, or engaged in e-commerce and using social media. Information on a consumer's finances, health, race/ethnicity, location and more is compiled. The data surveillance conducted on U.S. digital consumers is largely non-transparent, with individuals having little or no rights of access, correction, or control.

Given the prominent role of the U.S. in this sector, USTR should not try to advance the interests of our digital marketing industry in a manner that will ultimately challenge and undermine the European Union's data-protection framework. CDD urges USTR to allow the EU to finalize its own approach to data protection, now subject to legislative and other proposals. Indeed, the EU's conceptualization of data protection as a fundamental Human Right is one that the U.S. should first embrace, then enact legislation, and only much later discuss how to promote inter-operability.

CDD also supports the establishment of a Consumer Advisory Committee, and for the adoption of policies ensuring there is meaningful transparency and access by the public. Like many of my consumer-protection colleagues, CDD will vigorously oppose any attempt to undermine the EU's more comprehensive approach to data protection through the TTIP initiative. We stand ready, however, to work with USTR so it can better be informed about contemporary commercial data collection practices in the U.S.

Respectfully,

A handwritten signature in blue ink, appearing to read 'J. Chester'.

Jeffrey Chester

Executive Director