

Federal Privacy Law – Could It Happen in 2019?

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This was a busy week for activity and discussions on the federal level regarding existing privacy laws – namely the European Union’s General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA). But the real question is, could a federal privacy law actually happen in 2019? Cybersecurity issues and the possibility of a federal privacy law were in the spotlight at the recent Senate Judiciary Committee hearing. This week also saw the introduction of bipartisan federal legislation regarding Internet of Things (IoT)-connected devices.

Senate Judiciary Committee Hearing on GDPR and CCPA

Let’s start by discussing this week’s hearing before the Senate Judiciary Committee in Washington. On March 12, the Committee convened a hearing entitled [GDPR & CCPA: Opt-ins, Consumer Control, and the Impact on Competition and Innovation](#). The Committee received testimony from several interested parties who discussed the pros and cons of both laws from various perspectives. One thing was clear – technology has outpaced the law, and several of those who provided testimony to the Committee argued strongly for one uniform federal privacy law rather than the collection of 50 different state laws.

Some of the testimony focused on the impact of the GDPR, both on businesses and economic concerns, and some felt it is too early yet to truly know the full impact. Others discussed ethical concerns regarding data use, competition, artificial intelligence, and the necessity for meaningful enforcement by the Federal Trade Commission (FTC).

One thing made clear by the testimony presented is that people want their data protected, and maybe they even want to prevent it from being shared and sold, but the current landscape makes that difficult for consumers to navigate. The reality is that many of us simply can’t keep track of every privacy policy we read, or every “cookie” we consent to. It’s also increasingly clear that putting the burden on consumers to opt in/opt out or try to figure out the puzzle of where our data is going and how it’s used, may not be the most effective means of legislating privacy protections.

Model Federal Privacy Law

Several of the presenters at the Senate hearing included legislative proposals for a federal privacy law. (See the link included above to the Committee website with links to individual testimony).

Recently, the U.S. Chamber of Commerce also released its version of a [model](#) federal privacy law. The model legislation proposal contains consumer opt-out rights and a deletion option, and would empower the FTC to enforce violations and impose civil penalties for violations.

IoT Federal Legislation Is Back – Sort of

In 2017, federal legislation regarding IoT was introduced but didn't pass. This week, the [Internet of Things Cybersecurity Improvement Act of 2019](#) was introduced in Congress in a bipartisan effort to impose cybersecurity standards on IoT devices purchased by the federal government. The new bipartisan bill's supporters acknowledge the proliferation of internet-connected things and devices and the risks to the federal government of IoT cybersecurity vulnerabilities. This latest federal legislation applies to federal government purchases of IoT devices and not to a broader audience. We recently discussed the [California](#) IoT law that was enacted last year. Effective January 1, 2020, all IoT devices sold in California will require a manufacturer to equip the device with "reasonable security feature or features" to "protect the device and any information contained therein from unauthorized access, destruction, use modification or disclosure."

The convergence of the new California law and the prospect of federal IoT legislation begs the question of whether the changes to California law and on the federal level would be enough to drive change in the industry to increase the security of all IoT devices. The even bigger question is whether there is the political will in 2019 to drive change to enact a comprehensive federal privacy law. That remains to be seen as the year progresses.

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