

April 18, 2024

House Energy and Commerce Subcommittee Hearing on Americans' Data Privacy Rights and Protecting Kids Online

On Wednesday (April 17), the House Energy and Commerce Subcommittee on Innovation, Data, and Commerce held a hearing entitled, "Legislative Solutions to Protect Kids Online and Ensure Americans' Data Privacy Rights." During the hearing, discussion centered on the importance of passing data privacy legislation that protects individual rights, particularly related to children. Several pieces of legislation were discussed, with most of the discussion focused on the American Privacy Rights Act (APRA), Kids Online Safety Act (KOSA) and the Children and Teens' Online Privacy Protection Act (COPPA 2.0). Lawmakers heard testimony from several witnesses who emphasized the importance of passing legislation such as APRA. However, many also provided recommendations to the Subcommittee to improve the bill further.

- For more information: [Innovation, Data, and Commerce Subcommittee Hearing: "Legislative Solutions to Protect Kids Online and Ensure Americans' Data Privacy Rights." \(house.gov\)](#)

Opening statements

Subcommittee Chairman Gus Bilirakis (R-FL): The Subcommittee Chairman noted the "need to provide certainty for Americans to know their rights online and for businesses to know their obligations on a consistent basis" before referencing the "bipartisan, bicameral" APRA. He described the bill as establishing "one national standard," "protecting small businesses" and directing "standards that minimize and protect against data being used by bad actors." He suggested that the Subcommittee was also "discussing proposals that require age verification" and noted two additional bills (KOSA and COPPA 2.0) that he was "looking forward to continuing to work towards passage of." He concluded by suggesting that it "is time for Big Tech to be held accountable for facilitating this activity and manipulating our kids to keep them addicted to their screens for longer than ever before." [Full testimony.](#)

Subcommittee Ranking Member Jan Schakowsky (D-IL): Subcommittee Ranking Member praised the bipartisan effort to "protect consumers online." She raised concerns over the business of data broking and noted that under APRA "they would not be able to help scammers go after consumers." She also spoke of the need for federal data privacy standards as more states introduce their own requirements and raised concerns over having "strong protections for fingerprints or DNA which we want to make sure is protected." However, she also noted that APRA was still a "work in progress." She concluded that she was very "grateful to be part of this effort" and was "confident...we are going to be able to move forward."

Committee Chairwoman Cathy McMorris Rodgers (R-WA): The Chairwoman spoke to the adverse consequences of Americans spending increasing amounts of time on social media platforms including "increased suicide rates and depression to increased polarization and loss of trust in our institutions." She labelled these consequences as a form of "digital tyranny." She praised APRA as "foundational for protecting our kids online" and KOSA and COPPA 2.0 as "important legislation." Chairwoman Rodgers concluded that she was "looking forward to continuing to work together to get this legislation through Congress and signed into law." [Full statement.](#)

Committee Ranking Member Frank Pallone (D-NJ): Ranking Member Pallone referenced the American Data Privacy and Protection Act (ADPPA) introduced last Congress as “historic legislation” that provided important protections. He expressed his appreciation that APRA “adopts so many of the key pillars of ADPPA, with data minimization rather than notice and consent as its foundation.” However, he noted key areas where APRA could be strengthened including: “explicitly prohibiting targeted advertising to children”; “asking companies to incorporate privacy by design”; and “establishing a Youth Privacy Division at the Federal Trade Commission (FTC).” He further suggested that ADPPA included a more “universal deletion mechanism” than APRA and without such, “consumers who don’t want data brokers retaining and selling their data would have to visit hundreds of data brokers websites and opt out on each one.” Ranking Member Pallone also raised concerns over the “combination of artificial intelligence and personal data” being “weaponized.” He also said that COPPA 2.0 “does not provide sufficiently robust privacy protections for children.” [Full statement.](#)

Witness testimony

Mr. David Brody, Managing Attorney, Digital Justice Initiative, Lawyer’s Committee for Civil Rights Under Law:

Mr. Brody labelled privacy rights as “civil rights” before noting that “our nation lacks a strong federal privacy standard.” As a result, he said “data about Black communities and other historically marginalized communities” has been used “to deny equal opportunities” to members of those communities through “discriminatory algorithms and exploitative data practices.” He praised APRA for representing “significant progress” on efforts to safeguard data privacy and civil rights. However, he noted that it is an “imperfect but needed bargain” and recommended several improvements to the subcommittee. First, he recommends fixing “current language in the anti-discrimination provision [which] contains an exception which could unintentionally allow advertising, marketing or soliciting that segregates based on racial groups.” Second, he criticized the bill for not recognizing “the right of individuals to bring claims based on violations of the rules governing the collection, processing and retention of sensitive covered data” and said that “service providers for government entities need to be covered by the bill.” He also criticized parts of the bill as undermining “protections enforced by other federal agencies” such as the Federal Communications Commission (FCC) and not doing enough to “protect the subsequent spread of sensitive information once it is initially transferred.” Finally, he called on Congress to provide the FTC with the necessary funding. [Full testimony.](#)

Ms. Maureen K. Ohlhausen, Co-Chair, 21 Century Privacy Coalition: Ms. Ohlhausen noted the importance of consumer “confidence that their personal information is not subject to varying protections from state to state.” She praised APRA for: addressing transparency; designating the FTC as the “federal agency responsible for enforcing the new law”; providing the FTC with “useful enforcement tools”; providing a “national privacy and data security framework”; and pre-empting “legacy privacy requirements in the Communications Act.” She also recommended areas for improvement, criticizing the bill for stopping “short at pre-empting the FCC’s data breach notification authority.” Further, she suggested that “new draft language could unintentionally cause significant disruption to operational, marketing and advertising practices” and said the bill “creates uncertainty for routine operational uses of information that are necessary to serve customers” and “includes a number of exceptions to broad state pre-emption...that may unduly limit its application.” [Full testimony.](#)

Ms. Ava Smithing, Director of Advocacy, Young People’s Alliance: Ms. Smithing began her testimony by acknowledging that social media is “a crucial place of connection and socialization” for young people. However, she also noted that “social media companies are exploiting our existence on their platforms for profit” through algorithms that “are designed to keep us online for as long as possible” and are “incentivised to show us content” encouraging “hatred.” To address these problems, Ms. Smithing emphasized the need to “minimize data collection and establish user control over data” by passing legislation such as KOSA which would “protect minors from harmful design features” such as content recommendation algorithms or appearance altering filters. She

specifically called for “recommendations based on user-related data” to be “turned off by default for users.” [Full testimony](#).

Ms. Kara Frederick, Director, Tech Policy Center, The Heritage Foundation: Ms. Frederick noted harmful consequences of the status quo including privacy abuses and the deleterious impact of social media on kids. To address such harms, she suggested “proposals to hold Big Tech companies accountable” which would “empower citizens to redress the balance between the companies and their users.” First, she advocated for the need to pass data privacy legislation which would “establish a federal data protection framework.” Second, to “require transparency on algorithmic impacts through quarterly transparency reports.” Third, to scrutinize “ad tech models” through actions including “severely curtailing microtargeting practices.” Regarding third-party data collection tools, legislation that governs “partnerships between tech companies and the third parties they share data with.” Finally, creating provisions that promote transparency for young users while allowing recourse for kids and parents where companies have “become more aggressive in targeting children.” [Full Statement](#).

Mr. Samir C. Jain, Vice President of Policy, Center for Democracy and Technology: Mr. Jain began by emphasizing the need for comprehensive federal privacy law and noted that the “explosive emergence of artificial intelligence and related systems has accelerated the need for a privacy law.” He praised APRA for addressing important issues including “data minimization, effective consumer rights, prohibition of discrimination, restrictions on data brokers, requirements for data security and an enforcement regime with complementary roles for the...FTC, state Attorneys General and individuals.” However, Mr. Jain similarly had recommendations for the subcommittee. Regarding protection for kids, he suggested that “KOSA, while well-intentioned [raises] concerns...content-based restrictions can hurt young people...who need to access important information” and that “age verification requirements” raise “significant constitutional concerns.” Regarding government service providers, he suggested that “APRA should include within its scope service providers to government entities.” He also noted that “APRA should be clearer in its advertising language...have stricter requirements for data brokers...include language modelled from California’s Delete Act...[and] the ‘do not collect’ provision should not fully exempt credit reporting agencies under FCRA.” [Full Statement](#).

Ms. Katherine Kuehn, Member, Board of Directors and CISO-in-Residence, National Technology Security Coalition: Ms. Kuehn described the “complex landscape of state-specific privacy laws” which create a “patchwork of disparate regulations that can be confusing for consumers and burdensome for businesses.” She praised APRA as a “significant step towards consolidating and enhancing consumer privacy protections in the U.S.” Ms. Kuehn also noted that APRA “would prevent” a “race to the bottom” by “setting a baseline level of protection that states cannot undercut.” She called on Congress to adopt APRA as “a major step forward in aligning the U.S. with global best practices” and noted the support of the National Technology Security Coalition in this regard. [Full Statement](#).

Discussion Topics

During the hearing, discussion centered on the importance of creating a federal standard to protect the privacy rights of individuals while also striking the right balance to enable commerce to continue. In particular, topics of concern included protecting children, striking the right balance, subsidiaries as covered entities, data minimization, regulating algorithm design and marginalized communities, individual control over data, centralized deletion mechanisms and other technical considerations.

Protection of children. Subcommittee Chairman Bilirakis referenced his KOSA bill before asking Ms. Smithing to comment on design feature harms. To which, she responded that design-specific legislation is “incredibly important,” noting that design features such as “likes” or beauty filters encourages negative comparisons. When asked by Chairwoman McMorris Rodgers how APRA would have protected her, Ms. Smithing suggested that data

minimization would have prevented a “data arsenal” being built against her and that the ability to opt out of target advertising as in COPPA 2.0 would have been helpful too. Responding to Pallone’s query on protecting children, Mr. Jain said that children are unable to provide meaningful consent and are particularly vulnerable to targeted advertising. He called for the creation of a youth marketing division at the FTC and confirmed that establishing a baseline privacy for all would be helpful because additional child safety provisions could be layered on as needed. Rep. Kathy Castor (D-FL) commented on the importance of passing legislation to protect children because they “are too lucrative” for Big Tech to change their current practices. Rep. Tim Walberg (R-MI) asked Ms. Smithing why targeted advertising is particularly harmful to children, she suggested that advertising was predicated on insecurity - citing diet content and eating disorders as an example. Regarding a question by Rep. Walberg on efforts to addict young users, Ms. Frederick described a “race to the bottom” to entice younger and younger users. She suggested that Congress should expose these practices. Rep. Kim Schrier (D-WA) noted that childhood and adolescence is a critical time for brain development and emphasized the importance of acting now.

Striking the right balance. There was much discussion about balancing the need to protect data privacy with other concerns. There was largely a consensus among the witnesses that APRA strikes the right balance. Rep. Larry Bucshon (R-IN) noted the importance of health research and asked whether legislation should be more tailored to avoid the unintended consequences of stifling innovation in biomedical research. Ms. Kuehn disagreed and suggested that the ability to opt-in would be more effective. Rep. Bucshon also asked whether the bills would bar children from participating in the online world. Ms. Smithing replied that APRA puts the onus on companies to properly design platforms. Rep. Debbie Lesko (R-AZ) asked whether pre-emption language was strong enough in APRA. Mr. Jain said this is an issue that requires compromise and APRA tries to come up with the right compromise. Mr. Brody added that it is difficult to strike a careful balance in this regard. Rep. Russ Fulcher (R-ID) asked about striking a balance with targeted advertising. Mr. Jain said there is a role for contextual or first party advertising and that we want an economically viable marketing system, but that privacy must be protected too.

Data minimization. When asked by Rep. Jeff Duncan (R-SC) about the single most important provision in APRA, most witnesses suggested data minimization was critical. Rep. Debbie Dingell (D-MI) asked whether APRA sufficiently addressed data minimization. Mr. Jain suggested that the basic standard is strong but should look at the permissible purposes to make sure don’t develop loopholes. Rep. John James (R-MI) asked about data security and the potential for elder abuse. To which, Ms. Kuehn suggested that data minimization was a good step forward in this regard.

Regulating algorithm design and marginalized communities. Chairwoman McMorris Rodgers asked whether Big Tech should be subject to algorithm design regulation. Ms. Frederick suggested that “private companies shouldn’t be considered sacrosanct” and highlighted the problem that Big Tech companies aren’t transparent, making enforcement mechanisms necessary. Rep. Yvette Clarke (D-NY) referenced her Algorithmic Accountability Act, from which some provisions were included in APRA. She asked Mr. Brody why it was important to include provisions that prohibit algorithmic discrimination. He noted the importance of the provisions which require entities to test their algorithmic systems before and after deployment as the only way to know whether they will affect vulnerable communities. Mr. Jain added that greater transparency was necessary in this regard. Rep. Robin Kelly (D-IL) also asked about algorithmic discrimination. Mr. Brody reinforced the need for assessments before and after deployment as well deletion rights and the private right of action. Rep. Clarke asked about an APRA provision providing exceptions for targeted advertising. Mr. Brody suggested he had serious concerns about this provision and that it could risk continuing the practice of redlining or only providing opportunities to some groups.

Subsidiaries as covered entities. Rep. Lesko suggested that APRA applied to companies that sell data but asked about a scenario in which the parent company shares data with subsidiaries but don’t sell their data outside these subsidiaries. In response, Ms. Frederick said that the “bad can outweigh the good” and added that if we don’t put

a structure on the ecosystem of data transfer it will allow “nefarious actors to use loopholes.” Ms. Kuehn added that the subcommittee should use caution on their definition of small business and dollar cap language because there are small organizations using data in interesting ways that should be covered. For example, she suggested there should be concern over emerging AI companies looking for data.

Individual control over data. Subcommittee Chairman Bilirakis asked Ms. Frederick how the considered bills could give control back to the American people. She suggested that the private right of action provision is critical. Mr. Brody told Rep. Darren Soto (R-FL) that the private right of action was only for data transfer but that this was not broad enough and that ADPPA had a broader right of private action. Rep. Kat Cammack (R-FL) floated the idea of an opt-in rather than opt-out mechanism. The witnesses suggested this was an interesting idea given the power of the default option. However, Mr. Jain suggested that striking a balance was necessary and Ms. Kuehn suggested that there may be technical ramifications in some cases.

Centralized deletion mechanism. Ranking Member Pallone asked whether Congress should provide a centralized deletion mechanism for individuals and Mr. Jain suggested that this wasn’t included in APRA which means individuals would have to go from data broker to data broker to delete their data in each place. Rep. Lori Trahan (D-MA) referenced the Delete Act and noted that not all provisions were included in APRA. Mr. Jain suggested that they should create a centralized mechanism to delete all data.

Other. There were many other technical considerations made by members including the following:

- **Importance of a uniform federal standard.** Committee Chairwoman McMorris-Rodgers asked about the importance of a federal standard. Ms. Kuehn suggested that it would be a simplification for a lot of businesses and international organizations and pointed to Europe’s General Data Protection Regulation as an example.
- **Simplifying notice and consent.** Ranking Member Pallone queried whether notice and consent would be an effective method of protecting kids’ privacy. To which, Mr. Brody suggested it would not be as people don’t read privacy policies. Rep. Trahan referenced the TLDR Act when asking whether clearer terms of service were needed. Ms. Smithing agreed that it was important and that it would be beneficial to kids who get fatigued at such privacy statements.
- **Biological data.** Subcommittee Ranking Member Schakowsky noted that APRA has protections for data such as fingerprints and asked Mr. Jain why this was important. He suggested that such genetic information is immutable and so it is important to be extremely protective of this data - particularly because it can be used in discriminatory ways.
- **Addressing scams.** Several members asked about protecting individuals from scammers including Subcommittee Ranking Member Schakowsky. Mr. Jain suggested that data minimization requirements will reduce the amount of data flowing through the broader system that data brokers can then purchase.
- **Identify theft.** Rep. Soto asked whether APRA protected from identity theft. Mr. Jain suggested that it would help by establishing liability and private right of action.
- **Small businesses.** Rep. Diana Harshbarger (R-TN) suggested that Big Tech like Meta or Google could comply with any law thrown at them. In response to her question about how small businesses would interact with APRA, Ms. Ohlhausen suggested that APRA would benefit small businesses by creating a single standard rather than them having to adapt to a changing landscape.
- **Importance of acting now.** Subcommittee Ranking Member Schakowsky asked why it was so important that legislation be enacted now and Mr. Brody responded that we are at an “inflexion point for the future

of the internet” and “can’t afford to wait” given the frequent data breaches, disinformation and algorithmic discrimination.

- **Importance of an enforcement mechanism.** Ms Frederick told Subcommittee Chairman Bilirakis that an enforcement mechanism is critical to making progress on data privacy. She praised APRA for its “teeth.”

If you have questions, please contact [Heather Meade](#) or [Heather Bell](#).

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