

2017

Online (No)Privacy Rules

Rahmon Brown

Follow this and additional works at: <https://lawcommons.luc.edu/lclr>



Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Rahmon Brown *Online (No)Privacy Rules*, 29 Loy. Consumer L. Rev. 410 (2017).

Available at: <https://lawcommons.luc.edu/lclr/vol29/iss3/6>

This Consumer News is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.

ONLINE (NO)PRIVACY RULES

Rahmon Brown

There has been substantial debate over the past few years regarding the regulation of internet privacy and the sale of consumers' personal data.¹ On April 3, 2017, President Donald Trump signed a bill into law that overturned the Federal Communications Commission's ("FCC") internet privacy protections—Protecting the Privacy of Customers of Broadband and Other Telecommunications Services²—that were proposed during former President Obama's Administration.³ Congress utilized the Congressional Review Act ("CRA"),⁴ which enabled them to overturn recently-passed federal agency regulations.⁵

The FCC's Obama-era rule categorized internet service providers as utilities—similar to telephone service providers—and required that they obtain consent from consumers they could sell or release consumers' information to advertisers.⁶ In addition to overturning the previous internet privacy rules from the Obama Administration, the new

¹ See Amy Miller & Mike Swift, *FTC report on 'Internet of Things' likely to reignite debate over data minimization*, MLEX (Jan. 27, 2015), <http://mlexmarketinsight.com/editors-picks/comment-ftc-report-internet-things-likely-reignite-debate-data-minimization/>; and Natasha Singer, *Sharing Data, but Not Happily*, N.Y. TIMES (June 4, 2015), https://www.nytimes.com/2015/06/05/technology/consumers-conflicted-over-data-mining-policies-report-finds.html?_r=0.

² Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, 81 Fed. Reg. 87,274 (Dec. 2, 2016).

³ Pub. L. No. 115-22, 131 Stat. 88 (2017); see Larry Downes, *Why Congress's Rejection Of Proposed FCC Data Rules Will Not Affect Your Privacy In The Slightest*, FORBES (Mar. 30, 2017, 6:00 A.M.), <https://www.forbes.com/sites/larrydownes/2017/03/30/why-congresss-rejection-of-proposed-fcc-data-rules-will-not-affect-your-privacy-in-the-slightest/#382b700f8b14>. The full text of the resolution is less than thirty words, and states that "Congress disapproves the rule submitted by the Federal Communications Commission relating to 'Protecting the Privacy of Customers of Broadband and Other Telecommunications Services' and such rule shall have no force or effect." *Id.*

⁴ Congressional Review Act, 5 U.S.C. §§ 801-808 (2006).

⁵ Harper Neidig, *Trump signs internet privacy repeal*, THE HILL (Apr. 3, 2017, 7:24 P.M.), <http://thehill.com/homenews/administration/327107-trump-signs-internet-privacy-repeal>.

⁶ See Cecilia Kang, *Congress Moves to Strike Internet Privacy Rules From*

law prohibits the FCC from creating rules that are substantially similar.⁷ Whether consumers are the losers in this latest episode of deregulation is a matter of perspective.⁸

The Obama Administration's FCC rules allocated significantly more control to consumers and allowed them to limit or establish boundaries over what internet service providers could do with their personal data.⁹ Now, internet service providers are free to sell their customers' browsing history and other sensitive data without first obtaining their consent. Many technology policy experts believe that overturning the Obama Administration's internet privacy rules will allow internet service providers to collect data on its customers' location, app usage, financial information, and browsing history and sell it to advertisers and other companies with very little to no supervision from the FCC.¹⁰ The major concern now is whether consumers are provided sufficient protection.¹¹ Due to the nature of internet service, many markets throughout the country offer few internet service providers leaving little to no competition. Consumers often have few internet providers to choose from. Consumers, therefore, have little bargaining power over their terms of service with their internet service providers and will likely have to acquiesce to the new privacy regulations; exchanging

Obama Era, N.Y. TIMES (Mar. 23, 2017), https://www.nytimes.com/2017/03/23/technology/congress-moves-to-strike-internet-privacy-rules-from-obama-era.html?_r=0.

⁷ See Neidig, *supra* note 5 ("A successful CRA bill also prevents the agency from implementing similar rules in the future.")

⁸ See *id.*; Jeff Dunn, *Trump just Killed Obama's internet-privacy rules – here's what that means for you*, BUSINESS INSIDER (Apr. 4, 2017, 10:55 A.M.), <http://www.businessinsider.com/trump-fcc-privacy-rules-repeal-explained-2017-4/#how-did-all-of-this-get-started-1>. Considering the current hyper-partisan divide on many issues, including this internet privacy issue, whether the consumer is the loser may very well depend on one's political affiliation.

⁹ Cecilia Kang, *Broadband Providers Will Need Permission to Collect Private Data*, N.Y. TIMES (Oct. 27, 2016), <https://www.nytimes.com/2016/10/28/technology/fcc-tightens-privacy-rules-for-broadband-providers.html>.

¹⁰ Steve Lohr, *Trump Completes Repeal Of Online Privacy Protections From Obama Era*, N.Y. TIMES (Apr. 3, 2017), https://www.nytimes.com/2017/04/03/technology/trump-repeal-online-privacy-protections.html?_r=0. The FCC is the only regulatory body currently authorized to regulate internet activity. The FTC cannot regulate common carriers and the new law classifies internet service providers as common carriers. Dunn, *supra* note 8 (internet service providers "are common carriers, so their internet-privacy policies are exempt from FTC oversight").

¹¹ Lohr, *supra* note 10. Technology policy experts are not convinced that self-regulation and market competition would encourage behavior leading to the protection of consumers.

their internet browsing data to access the internet.

On the other hand, Congress has only preserved the status quo. The internet privacy rules that the FCC created during the Obama Administration would have taken effect later this year.¹² One stated purpose of repealing the Obama Administration's internet privacy rules is to restore what internet service providers and proponents of the repeal consider a level playing field with internet advertisers.¹³ While internet-based companies like Google and Facebook are required to allow consumers to opt out of having their information collected, internet service providers would have had to first obtain consent to collect their information.¹⁴

Although there has been much debate about the merits of the policy regarding this issue, just how valuable consumers' data is for internet service providers remains uncertain.¹⁵

¹² See Kang, *supra* note 9.

¹³ Daniel Lyons, *Column: Privacy Rules Impact Internet Ecosystem*, DETROIT NEWS (Apr. 22, 2017), <http://www.detroitnews.com/story/opinion/2017/04/22/lyons-trump-internet-privacy/100801410/>.

¹⁴ See Kang, *supra* note 9 ("Online ad juggernauts, including Google, Facebook and other web companies, are not subject to the [Obama Administration's] regulations. The F.C.C. does not have jurisdiction over web companies. Those companies are instead required to follow general consumer protection rules enforced by the Federal Trade Commission.").

¹⁵ See Lohr, *supra* note 10. Although online advertising is a very lucrative business, Google and Facebook dominate the market.