Online (No)Privacy Rules

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There has been substantial debate over the past few years regarding the regulation of internet privacy and the sale of consumers' personal data. 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 Services—that were proposed during former President Obama’s Administration. Congress utilized the Congressional Review Act ("CRA"), which enabled them to overturn recently-passed federal agency regulations.

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. In addition to overturning the previous internet privacy rules from the Obama Administration, the new

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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-congressss-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.


6 See Cecilia Kang, Congress Moves to Strike Internet Privacy Rules From
law prohibits the FCC from creating rules that are substantially similar.\textsuperscript{7} Whether consumers are the losers in this latest episode of deregulation is a matter of perspective.\textsuperscript{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.\textsuperscript{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.\textsuperscript{10} The major concern now is whether consumers are provided sufficient protection.\textsuperscript{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


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

\textsuperscript{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.


\textsuperscript{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").

\textsuperscript{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. 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. 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.

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.

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12 See Kang, supra note 9.


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.