

Internet Consumer Data Privacy

By: Mary Fitzpatrick, Associate Analyst
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Issue

Describe the federal law on internet service providers and consumer data privacy and related legislation in California and Connecticut.

Summary

The way the Federal Communications Commission (FCC) has classified broadband internet service has changed over time, shifting jurisdiction over internet privacy concerns from the Federal Trade Commission (FTC) to the FCC and back again. When the FCC had jurisdiction, under its 2015 Open Internet Order, it adopted new rules on internet privacy in 2016. Among other things, the rules generally required internet providers to obtain customers' permission before using or sharing sensitive customer information.

Before those rules took effect, Congress overturned them using the Congressional Review Act. In 2017, the FCC reclassified broadband internet service, restoring jurisdiction to the FTC, which, rather than enforce rules specific to internet service providers, can take action against companies that violate their own individual privacy policies or engage in false advertising or other deceptive trade practices, among other things.

After Congress overturned the internet privacy rules, several states including Connecticut considered legislation to enact similar policies at the state level. California's privacy law, enacted in June 2018 but not effective until January 1, 2020, grants various rights to consumers and contains several requirements for certain businesses. The act's passage has prompted proposals for a nationwide consumer privacy policy. Most recently, the National Telecommunications and Information Administration requested public comment on a proposed approach.

Federal Law

Internet privacy is a separate concept from net neutrality, but the two concepts are connected in a larger debate about how the internet should be regulated and by whom. The federal Telecommunications Act of 1996 distinguishes between telecommunications carriers that provide basic services (Title II or “common carrier”) and information-service providers that provide enhanced services (Title I). The way the FCC has classified broadband internet services has changed over time.

Internet as a Common Carrier

Prior to 2015, broadband providers were generally subject to the Federal Trade Commission’s (FTC) jurisdiction with regard to unfair or deceptive trade practices (15 U.S.C. § 45 et seq.). In February 2015, the FCC’s Open Internet Order changed the classification of the internet from Title I to Title II, allowing the FCC to (1) impose net neutrality requirements (e.g., prohibit blocking and throttling) and (2) use its authority to forbear (i.e., refrain from enforcing) other aspects of Title II (e.g., rate regulation) for internet services. Because federal law generally exempts common carriers from the FTC’s authority, this change effectively prevented the FTC from addressing internet privacy concerns. Section 222 of the federal Telecommunications Act includes certain requirements for telecommunications carriers to protect customer information, but according to the FCC, privacy rules in place at the time under that authority were not well suited for the internet and, in the Open Internet Order, it refrained from enforcing them pending the adoption of new rules. In a separate proceeding in 2016, the FCC adopted new rules on internet privacy ([FCC 16-148](#)).

Related Reports

[OLR Report 2018-R-0149](#) discusses the 2015 and 2017 FCC orders on net neutrality and describes related state actions.

[OLR Report 2014-R-0033](#) describes how the FCC classified the internet prior to 2015 and related court decisions.

Among other things, the rules generally required internet providers to (1) obtain customers’ permission before using or sharing sensitive customer information (e.g., financial or health information, web browsing history); (2) allow customers to opt out of policies allowing the providers to share or use non-sensitive information (e.g., email addresses); and (3) provide privacy notices that describe what information providers collect, how it is used or shared, and customers’ rights to opt in or out, as the case may be. According to the FCC, these provisions would have become effective no sooner than December 4, 2017, 12 months after publication in the Federal Register.

Internet as an Information Service

In March 2017, under the Congressional Review Act, Congress repealed the FCC's internet privacy rule before the provisions described above could take effect (P.L. 115-22). The Congressional Review Act allows Congress to overturn a rule issued by a federal agency, provided Congress must act within a certain timeframe. Generally, the act prevents agencies from issuing a rule in substantially the same form as the overturned rule unless authorized by subsequent law. As such, the FCC retained authority to regulate internet privacy, but not under the rules it adopted in 2016.

However, in December 2017, the FCC issued the Restoring Internet Freedom Order to largely reverse its 2015 order, classifying broadband internet services once again under Title I. In addition to reversing the net neutrality provisions in the 2015 order that prohibited throttling, blocking, and paid prioritization, the 2017 order returned jurisdiction over internet privacy to the FTC. Under its general authority, the FTC can take action against internet providers who engage in unfair competition or unfair or deceptive practices (e.g., fraud, deceptive advertising). As such, the agency can pursue action against those internet providers that fail to honor their own policies on privacy or data security.

Proposals for a Nationwide Policy

Responding in part to a newly enacted state law in California (see below), the National Telecommunications and Information Administration within the U.S. Department of Commerce requested public comment on [a proposed approach](#) to consumer privacy in September 2018. The proposal includes discussion of general outcomes of a consumer privacy policy (e.g., transparency and user control) and potential agency actions or priorities when creating such a policy (e.g., employing a risk and outcome-based approach and encouraging privacy research). The proposal maintains (but submits for comment) the view that the FTC is generally the appropriate federal agency to address consumer privacy. Comments are due by November 9, 2018.

Related State Legislation

After Congress overturned the FCC's 2016 internet privacy rules that had yet to take effect, several states, including Connecticut, considered legislation to enact similar policies at the state level. According to [the National Conference of State Legislatures](#) (NCSL), 24 states and the District of Columbia considered privacy legislation related to internet service providers in 2018 and two states, Nevada and Minnesota, already required internet service providers to get permission from customers before disclosing certain types of information. This report describes California's law and two bills related to internet privacy in Connecticut.

California

Among other things, California's privacy law ([AB-375](#)), enacted in June 2018 but not effective until January 1, 2020, allows a consumer to:

1. request that a business that collects or sells personal information about the consumer disclose to him or her the categories and sources of personal information collected, the business or commercial purpose for collecting the information, and how the information is shared;
2. direct a business that sells his or her personal information to discontinue doing so;
3. direct a business to delete any personal information the business has collected from the consumer; and
4. pursue civil penalties in certain cases in response to a breach of personal information.

The act requires businesses to (1) designate at least two methods of submitting requests for information and (2) disclose and deliver required information to a consumer at no cost within 45 days of receiving a request. Under the act, a business must also provide a conspicuous link on its homepage that enables consumers to opt out of sale of their personal information. The act also prohibits businesses from discriminating against consumers who take any of the actions described above, but it allows businesses to offer financial incentives and different pricing options to customers who allow their information to be collected or sold.

With certain exceptions, the act's provisions apply to businesses that (1) have annual gross revenues over \$25 million, (2) annually buy sell or share personal information of at least 50,000 customers, or (3) derive at least half of their revenue from selling consumers' personal information. It also applies to controlling entities of such businesses.

Connecticut

Among other things, the 2018-2019 budget act ([PA 17-2, June Special Session \(JSS\), \(§ 555\)](#)) established an eight-member working group on consumer data privacy. The act requires the group to examine and make recommendations on consumer data privacy, industry standards, consumer notifications, enforcement mechanisms, and definitions for sensitive and nonsensitive information. The act required the group to report findings and recommendations to the Energy and Technology and Commerce committees by January 15, 2018, but the group has not convened to date.

During the 2018 regular session, the Energy and Technology Committee considered [SB 335](#), which would have required internet service providers, with certain exceptions, to have a consumer's express and written permission in order to (1) sell or transfer personally identifying information or

(2) send or display an advertisement selected because of a consumer's browsing history. The bill ultimately died in the committee after a motion for a joint favorable report failed.

Resources

Congressional Research Service, [“The Congressional Review Act: Frequently Asked Questions.”](#) November 17, 2016

FCC, [“Wireline Competition Bureau Announces Effective Dates of Broadband Privacy Rules.”](#) DA 16-1387, December 14, 2016

National Telecommunications and Information Administration, [“Extension of Deadline for Comments on Developing the Administration's Approach to Consumer Privacy.”](#) October 11, 2018

NCSL, [“Privacy Legislation Related to Internet Service Providers – 2018.”](#) October 15, 2018

Reuters, [“Trump Administration Working on Consumer Data Privacy Policy.”](#) July 27, 2018

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