



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

COMMISSIONER PETER A. FELDMAN

March 1, 2023

The Honorable Gus Bilirakis
Chairman
Subcommittee on Innovation, Data,
and Commerce
United States House of Representatives
Washington, DC 20510

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Innovation, Data,
and Commerce
United States House of Representatives
Washington, DC 20510

Dear Chairman Bilirakis and Ranking Member Schakowsky:

I write to thank you for holding today's hearing on "Promoting U.S. Innovation and Individual Liberty through a National Standard for Data Privacy," and to thank you for your efforts to craft a strong national data privacy law that will advance consumer interests and interstate commerce.

As the House Energy and Commerce Committee develops legislation in this area, I hope it will also consider the impact of certain privacy provisions on the ability of retailers, manufacturers, and others to conduct efficient recalls of hazardous consumer products. I am concerned with "Right to Delete"-style provisions, for example, the one contained in the California Consumer Privacy Act (CCPA), which limit the ability of firms to collect and use consumer data for direct notice recalls.¹

The U.S. Consumer Product Safety Commission (CPSC) is an independent federal regulatory agency responsible for protecting the public from unreasonable risks of injury and death associated with consumer products. Because CPSC is not a privacy regulator, I take no official position on the merits of broader consumer privacy considerations. However, given CPSC's extensive work on consumer product recalls, I would like to call your attention to the ways in which CPSC and recalling firms rely on industry-collected personally identifiable information (PII) of customers purchasing consumer products to advance safety.

CPSC is currently exploring innovative ways to effect consumer notification.² These efforts would be severely limited without access to the consumer PII the "Right to Delete" provisions seek to restrict.

¹ California Consumer Privacy Act of 2018, ch. 55, 2018 Cal. Stat. 91 (codified at Cal. Civ. Code tit. 1.81.5); Cal. Civ. Code § 1798.105 (effective Jan. 1, 2020); Cal. Civ. Code § 1798.120 (effective Jan. 1, 2020).

² Sean Oberle, *Innovative Consumer Notification is a CPSC Theme at ICPHSO*, 52 PROD. SAFETY LTR., Feb. 27, 2023, <https://productsafetyletter.com/Content/8802.aspx>.

Hon. Bilirakis and Hon. Schakowsky

March 1, 2023

Page 2

To improve recall effectiveness, CPSC compliance staff works with manufacturers, distributors, and retailers to develop mutually acceptable programs that include a variety of notification methods to alert affected consumers about product recalls. Research shows, and the CPSC has long recognized, a powerful positive relationship between direct notification of consumers and recall success.³ Direct notification is not possible without affected consumers' PII. Often, CPSC will encourage a recalling firm to use the information it collects through registration cards, sales records, catalog orders, retailer loyalty cards, or other means, to effect direct notification.⁴ In other situations, companies may purchase commercially-available mailing lists of consumers who are likely to use a particular product.⁵ Industry-collected consumer PII, and the direct notification it enables, is an important tool to locate and remove hazardous product as quickly as possible.

Because existing state "Right to Delete" provisions could result in the deletion of this critical consumer PII, it is my hope that you will consider the importance of preserving the ability of firms to conduct efficient transmission of recall notifications. To that end, the Committee should consider language that provides a national and uniform federal framework that recognizes product recalls as a legitimate use of consumer PII. Also, federal privacy legislation should include an exemption for consumer safety and recall efficiency.

Thank you for your attention to this matter. As always, I am available to assist you in any way I can.

Sincerely,

Peter A. Feldman
Commissioner

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| cc: | The Honorable Cathy McMorris Rodgers Chair Committee on Energy and Commerce U.S. House of Representatives | The Honorable Frank Pallone Ranking Member Committee on Energy and Commerce U.S. House of Representatives |
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³ See e.g., Dennis R. Murphy & Paul H. Rubin, *Determinants of Recall Success Rates*, 11 J. OF PROD. LIAB. 17, 17-28 (1988); and see U.S. CONSUMER PROD. SAFETY COMM'N, RECALL EFFECTIVENESS WORKSHOP REPORT 5 (2018), available at https://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop_Report-2018.pdf?R1VyLtrI8M_id.2vkAklHoUZjaSCab (last visited Mar. 1, 2023) (CPSC staff finding that "[d]irect notice recalls have proven to be the most effective recalls").

⁴ See U.S. CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 19 (2012), <https://www.cpsc.gov/s3fs-public/8002.pdf> (last visited Mar. 1, 2023).

⁵ Because such lists are generally available from business that sell personal information about consumers to third parties, the CCPA "Right to Opt-Out" provision raises additional concerns with respect to the commercial availability, accuracy, and completeness of consumer PII for these purposes. See Cal. Civ. Code § 1798.120 (effective Jan. 1, 2020).