



### **Overview:**

On Wednesday, October 6<sup>th</sup>, from 10:00AM-12:00PM ET, the US Senate Committee on Commerce, Science, and Transportation held a [hearing](#) titled “Enhancing Data Security.” The hearing featured testimonies from the following witnesses: [James E. Lee](#) (Chief Operating Officer, Identity Theft Resource Center), [Jessica Rich](#), Of Counsel (Kelley Drye; Former Director, Bureau of Consumer Protection, Federal Trade Commission), [Edward W. Felten](#), (Robert E. Kahn Professor of Computer Science and Public Affairs, Princeton University; Former Chief Technologist, Federal Trade Commission), [Kate Tummarello](#) (Executive Director, Engine). This hearing is the second in a series examining the growing urgency to protect consumer privacy and safeguard our data, as well as the need to ensure the Federal Trade Commission (FTC) is equipped with the authorities and resources to fight digital harms and hold bad actors accountable for increasing privacy violations, data breaches, internet scams, ransomware assaults and other harmful data abuses.

### **Opening Statements:**

**Chair Maria Cantwell (D-WA)** said that today’s hearing will be focusing on enhancing data security. In the past nine months there have been more data breaches. The breaches have become more sophisticated, and consumers are the ones that are most affected. Ranking Member Maria Cantwell (D-WA) and fellow senior members Senators Brian Schatz (D-HI), Amy Klobuchar (D-MN), and Ed Markey (D-MA) shared comprehensive federal online privacy legislation to establish privacy rights, outlaw harmful and deceptive practices, and improve data security safeguards with the [Consumer Online Privacy Rights Act \(COPRA\)](#).

**Ranking Member Roger Wicker (R-MS)** discussed how breaches have increased significantly this year. He continued by stating cyber threats are evolving an growing complex and that is why the FTC needs flexibility to address these issues. Ranking member Wicker and Senator Blackburn introduced the SAFE DATA Act, which would allow the FTC more tools and authorities to improve data security. He believes the consumers have the right to have their privacy protected.

### **Testimony:**

**James E. Lee, Chief Operating Officer, Identity Theft Resource Center** discussed the unprecedented increase of identity related unemployment fraud. Three key areas to improve and prevent fraud included better cybersecurity standards and practices, improved enforcement, and improvement to the victim notification system is wholly inadequate.

**Jessica Rich, Of Counsel, Kelley Drye; Former Director, Bureau of Consumer Protection, Federal Trade Commission** discussed the need to strengthen data security protections. Current law fails to provide securities and remedies through the FTC and offers gaps in the system. The law should provide comprehensive protections and an equal playing field for the marketplace, the law should extend broadly to any data that could be used to cause consumer harm, provide clarity about companies' obligations while also giving them flexibility to tailor their data security protections to their business models, and should include the authority for the FTC to deter misconduct and compensate consumers for their losses.

**Edward W. Felten, Robert E. Kahn Professor of Computer Science and Public Affairs, Princeton University; Former Chief Technologist, Federal Trade Commission** covered two points in his testimony. First, he summarized two examples in which companies' data security failures led to breaches that harmed consumers. Second, he discussed three things Congress might do to strengthen the FTC's ability to protect consumers. These include: enabling civil penalties for first violations of the FTC Act; creating a statutory or rulemaking framework regulating data security practices; and providing resources to grow and empower the FTC's technology workforce.

**Kate Tummarello, Executive Director, Engine** discussed how the current patchwork of state laws provide unclear data security standards on the front end and varying or even conflicting requirements in the wake of a breach, which creates ambiguity and uncertainty for startups that want to protect their users. In addition to having to navigate state laws, startups also must worry about being sued if they are victims of a data breach in some states. Congress should promote training and support for a top cybersecurity talent pool because these professionals will be vital to keep pace with emerging technology and new threats.

#### **Q&A:**

**Chair Maria Cantwell (D-WA)** clarified that all the witnesses support an FTC bureau and first-time penalties. Chair Cantwell asked if there was absence of technology expertise. In response Ms. Rich hesitated then answered there was a lack of prioritizing data. Dr. Felten agreed.

**Chair Maria Cantwell (D-WA)** revisited a previous case to clarify with Mr. Lee stated they have moved from a theft (acquisition) to fraud over the years. Mr. Lee continued by noting that technology and software has yet to be updated or replaced in years. Reasons being that it is time consuming and expensive. Chair Cantwell asked Dr. Felten the requirements for companies to adhere to the technical support. Dr. Felten - an approach, consistency, and staff.

**Ranking Member Roger Wicker (R-MS)** confirmed that all the witnesses supported inclusion of a data security requirement in a federal data privacy law. He then asked if they agreed with the statement that a preemptive federal does not mean a weaker law, to which all witnesses agreed. Ms. Rich clarified to the ranking member that her oral and written statement is consistent between the two after being asked. After, Ranking Member Wicker questioned Mr. Lees testimony was an argument for preemption.

Ranking Member Wicker asked what data security laws are good and the ways it can be improved. Mr. Lee showed that there was no uniform reporting which in turn shows that there hasn't been data breaches. Maine, New York, and California have better data breach laws, with Maine being one of the best. Ms. Rich chimed in and clarified that there is a difference between data breach and data security.

**Sen. Baldwin (D-WI)** asked Mr. Lee for common sense incentives that should be implemented for data securities. Mr. Lee suggested there are basic practices that should be required. Senator Baldwin moved on to ask how congress can ensure that smaller business can participate in data security. Ms. Tummarello suggested to provide small business owners clear and consistent guidelines to owners would improve startup businesses. Senator Baldwin asked what additional necessities that are necessary to improve and expand authority on data security. Dr. Felten stated hiring staff members would greatly help. Ms. Rich contributed by stating that data security does not offer a career path and has outdated ethics. She continued by stating the FTC needs not only money but authority and that the FTC can help provide leadership and guidance.

**Senator Job Tester (D-MT)** asked Ms. Tummarello as a representative of startups, if she agreed with prescribing practices. She believed that the FTC should send out a security of practices. It will not fit every company perfectly, but it will give them a blueprint that will allow them a guide.

**Senator Deb Fischer (R-NE)** asked how to create more trust throughout the software supply chains. Ms. Rich responded by sharing that having accountability, sharing it with those who are responsible to have it, ensuring control data is not being passed along, and data is kept safe. For this to happen there needs to be an enforceable law or rule.

**Senator Klobuchar (D-MN)** believes a national privacy law is important and it creates resources and is part of a comprehensive privacy legislation to ensure consumers can control their own data.

**Senator Klobuchar (D-MN)** referred to Dr. Felten's testimony and wanted to know the importance of rule making for consumers data. Dr. Felten reiterated that it provides more specificity than the current structure of the FTC. Next, Senator Klobuchar sought answers on how a federal privacy law would help with over-collecting consumer information. Ms. Rich stated both bills address the unnecessary collection of a data security. Continuing, she recounted that the FTC's resources in privacy's is miniscule in comparison to sectoral enforces.

**Senator Ted Cruz (R-TX)** asked all witnesses who should be responsible for a data security law. Ms. Rich and Dr. Felten stated that the FTC should be responsible because they have the most experience. Ms. Rich continued and stated that the FTC shouldn't be responsible for notifying other agencies on what is permissible, but it should be that of congress' duties. Then, Senator Cruz inquired about risks of overregulation. Ms. Rich stated that it will very quickly become outdated as technology changes, may not be suited for small business, or no chance for congress the amend laws. A process-based rule that is scalable would be one way in avoiding those risks.

**Senator John Hickenlooper (D-PA)** asked what a national recording process should look like. Ms. Tummarello pressed that having one standard businesses follow is an important. Otherwise owners will have to start researching other state laws. Senator Hickenlooper asked what resources that congress can provide to businesses to support them. Dr. Felten encouraged the use of educational resources that the government can provide to consumers and small businesses. For larger organizations, the government can provide convening roles.

**Senator Marsha Blackburn (R-TN)** wanted to discuss the relevance between social media and data security. She asked if there should be a separate set of obligations from social media companies to abide by when considering data security. Dr. Felten shared that social media companies differ in degree, not type when it refers to data security. Ms. Rich backed up Dr. Felten.

**Senator Richard Blumenthal (D-CT)** asked the witnesses what congress should be asking Facebook about their algorithms. Dr. Felten suggested questions that should be directed towards Facebook include: what data is going into the algorithm, what is the algorithm trying to optimize, and what is Facebook doing to understand the consequences. Senator Blumenthal clarified that the start for congress is to require greater transparency for algorithms. Ms. Rich disagreed and said that consumers won't read information regarding algorithms, just like they don't read privacy policy. She believes that congress should have oversight of institutions that are responsible for reading algorithms.

**Senator Ed Markey (D-MA)** introduced the [Cyber Shield Act](#) with Congressman Ted Lieu and reiterated President Biden's efforts to cyber security to ask if there should be a permanent internet labeling program. Dr. Felten and Ms. Tummarello agreed that it should be permanent. Senator Markey also reintroduced his bipartisan legislation, the [Children and Teens' Online Privacy Protection Act](#).

**Senator Gary Peters (D-MI)** asked Mr. Lee for data security standards that would help prevent ransom attacks. Mr. Lee reiterated that the starting focus point be to prevent data breaches. Once that is possible, attacks will subside.

