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House of Representatives
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INTELLECTUAL PROPERTY, COMPETITION, AND THE INTERNET

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EMERGING THREATS AND CAPABILITIES

October 24, 2013

President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington D.C., 20500

Dear President Obama,

I write to encourage you to fulfill the promise of the Consumer Privacy Bill of Rights, to approach such legislation in an open and inclusive process, and to request that you consider H.R. 1913, the Application, Privacy, Protection, and Security (APPS) Act, as a foundation for protecting consumers' privacy on mobile devices.

According to a report by *Politico* on Monday, October 7, 2013, the White House is coordinating with the Department of Commerce to draft legislation that will "boost online privacy safeguards for consumers" by building upon the Consumer Privacy Bill of Rights, the blueprint for privacy protection that the White House released last year.[1] *Politico* further reports that this legislation aims to (1) define consumers' privacy rights; (2) follow a stakeholder-driven approach to creating codes of conduct for these rights; and (3) empower the Federal Trade Commission (FTC) to enforce these codes.[2]

I applaud your leadership in advancing consumers' privacy. Last year, you recognized in the Consumer Privacy Bill of Rights that "[n]ever has privacy been more important than today, in the age of the Internet, the World Wide Web and smart phones."[3] I couldn't agree more.

It is time to move forward with the Consumer Privacy Bill of Rights through legislation. Last year's white paper was a watershed moment in consumer privacy. Since then, it has become abundantly clear that trust is critical to consumers—we must strike the right balance between innovation and responsibility. A recent survey by TRUSTe shows that 72 percent of mobile

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[1] Alex Byers, *White House Pursues Online Privacy Bill Amid NSA Efforts*, POLITICO (October 7, 2013), http://www.politico.com/story/2013/10/white-house-online-privacy-bill-nsa-efforts-97897.html#ixzz2h3kgEf8J;
[2] *Id.*
[3] *We Can't Wait: Obama Administration Unveils Blueprint for a "Privacy Bill of Rights" to Protect Consumers Online*, The White House (Feb. 23, 2012), The White House, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (2012), *available at* http://www.whitehouse.gov/the-press-office/2012/02/23/we-can-t-wait-obama-administration-unveils-blueprint-privacy-bill-rights.

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users are more concerned about their mobile privacy than they were a year ago.[4] Similarly, the survey also showed that 81 percent of mobile users avoid apps that don't protect their privacy.

As you move forward in drafting legislation for the Consumer Privacy Bill of Rights, I strongly encourage a process that is open and inclusive. Prior to drafting the APPS Act, the first bipartisan mobile privacy legislation, I launched AppRights, an open and bottom-up approach to drafting privacy legislation.[5] Through a completely transparent process, I asked for the public's values and input. Policymaking ought to be guided by such transparency and accountability. Since the public backlash against the Stop Online Piracy Act (SOPA), policymakers have learned that there is a sustained and vigorous opposition to top-down legislation.[6] Privacy legislation should be no different.

I also commend you for continuing to approach consumer privacy in a stakeholder-driven process. The multi-stakeholder process convened by the National Telecommunications & Information Administration (NTIA) demonstrates the willingness of developers, stakeholders, and public-interest groups to come together with principles to inform and protect consumers. When drafting the APPS Act, I envisioned an innovative, marketplace solution to inform and protect consumers. That's why the APPS Act includes a safe harbor for developers who adopt the NTIA code. The industry code is an important step in building transparency and consumer choice into mobile apps without disrupting functionality or design. Though cooperation was sometimes difficult during the NTIA multi-stakeholder process, the industry code is the fruit of exhaustive work and thorough compromise. I hope to see this cooperation among consumer, public-interest, and industry groups to continue as we move forward to strengthen consumer protections. I am likewise encouraged by your decision to pursue legislation to equip the FTC with the tools to operationalize the requirements and prohibitions created through a stakeholder-driven process. Smart privacy legislation must avoid legislating user interface or causing notice fatigue. But it is equally important that the Commission continues to perform its mission protecting consumers' privacy by preventing deceptive or unfair practices.

Lastly, I ask that you keep the APPS Act in mind when looking for legislative solutions to consumer protection on mobile devices. We are more connected now than ever, and our mobile devices are always on. Since its inception only five years ago, the mobile ecosystem has swiftly evolved into one of the fastest growing industries in recent memory. In fact, more than 20 percent of Americans already rely on their mobile devices as their primary source for Internet Access, and this number grows more every year.[7] Consumers want simple controls over privacy on mobile devices, security to prevent data breaches, and effective notice and information about

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[4] On Data Privacy Day 2013, TRUSTe Research Reveals Increase in Mobile Privacy Concerns, TRUSTE (Jan. 28, 2013), http://www.truste.com/about-TRUSTe/press-room/news_truste_US_increase_in_mobile_privacy_concerns.

[5] *You Spoke, We Listened: H.R. 1913, the APPS Act, Bipartisan Legislation to Protect Your Mobile Privacy*, APPRIGHTS (May 9, 2013), http://apprights-hankjohnson.house.gov/2013/05/you-spoke-we-listened-hr-1913-the-apps-act-bipartisan-legislation-to-protect-your-mobile-privacy.shtml.

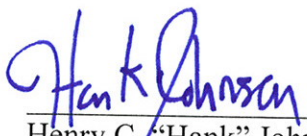
[6] Jonathan Weisman, *In Fight Over Piracy Bills, New Economy Rises Against Old*, N.Y. TIMES (Jan. 18, 2012), available at http://www.nytimes.com/2012/01/19/technology/web-protests-piracy-bill-and-2-key-senators-change-course.html?pagewanted=all.

[7] Maeve Duggan, Aaron Smith, Cell Internet Use 2013, PEW INTERNET & AMERICAN LIFE PROJECT (Sep. 16, 2013) http://pewinternet.org/Reports/2013/Cell-Internet/Summary-of-Findings.aspx.

on mobile devices, security to prevent data breaches, and effective notice and information about data collection. The APPS Act answers this call. By bringing baseline privacy protections to mobile devices, the APPS Act would protect and empower these consumers with transparency, notice, and control on mobile devices.

Thank you for your consideration and attention to this issue, I look forward to working together to protect consumers' privacy.

Sincerely,



Henry C. "Hank" Johnson, Jr.
Member of Congress

cc: Hon. Penny Pritzker