

**UNITED STATES FEDERAL TRADE COMMISSION
REQUEST FOR PUBLIC COMMENT:
FTC HEARING ON COMPETITION AND CONSUMER PROTECTION IN THE 21ST
CENTURY – FEBRUARY 2019**

On behalf of the membership of MPA - The Association of Magazine Media (MPA), we are pleased to submit the following response to the Federal Trade Commission's (FTC) recent request for public comment on the "FTC Hearing on Competition and Consumer Protection in the 21st Century – February 2019," ("Hearing") which will focus on consumer privacy. As the national trade association for the consumer magazine industry, MPA represents approximately 100 domestic magazine media companies with more than 900 national publications that span an enormous range of genres across print and digital media. Our members connect more than 90 percent of all U.S. adults to the print and digital magazine titles they trust and value most.

MPA and our members believe there is a need for federal action on privacy. In 2018, all 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands have general or specific laws imposing varying levels of data privacy, security, and breach notification requirements on entities holding consumer data. This patchwork creates competing and inconsistent baseline laws, which are difficult for magazine publishers and other companies to reconcile, harms the American economy by imposing a large compliance burden, and fails to improve privacy outcomes for individuals. Following the recent passage of the *California Consumer Protection Act*, which creates a vast array of restrictions on the handling of data and exposes virtually all businesses, including magazine publishers with readers in California, to severe economic harm for data practices that may not even have an impact on consumer privacy, the need for a uniform, risk-based federal standard has never been more important.

In addition to these comments, we also endorse the attached comments being filed with the FTC today by a coalition of data-driven associations across industries. These comments encourage the FTC to consider and support a new privacy regulatory paradigm that can serve as a guide to regulators, consumers, and market participants to distinguish between reasonable and unreasonable data practices. The associations also encourage the FTC to take action to address the emerging fragmentation in state privacy laws and to analyze and report on the impact of proposed privacy frameworks and emerging state laws on consumers and the economy.

I. A Reasonableness Standard Supports the First-Party, Customer-Facing Relationship Between Publishers and Consumers

Magazine publishers have a consumer-facing, first-party relationship with our readers, both print and digital, and are a trusted source for information and entertainment. Our industry's approach to privacy is built on consumer expectations and trust. It is designed to foster an environment of confidence that strengthens the bond between publisher and reader. Whether consumers subscribe to magazines or consume our content by visiting our websites and digital platforms,

consumers take an active role in interacting with our brands. Magazine customers give publishers their personal information because they have a reasonable expectation for how the information will be used, they trust that publishers will use the data to enhance the customer's experience, and they are comfortable with the well-established procedures and choices publishers provide to limit sharing of customer information.

Because of our first-party relationship with long-term customers, our notice and choice procedures and options are well-known and understood. Publishers provide multiple customer contact touch-points, which may include physical addresses, telephone, web site, and email. For subscribers, publishers increasingly maintain an online portal, where subscriptions can be managed and data practices viewed and controlled. The appropriate choices for customer interaction may differ depending on a particular magazine's audience and characteristics, with publishers tailoring communication channels and processes to their individual customers' behaviors and desires.

Magazine media data practices evolve with technology and consumer expectations and the FTC's approach to a data privacy framework likewise should be adaptable in an innovative marketplace. The recommended reasonableness standard in the attached comments would enable marketplace flexibility and innovation, while maintaining the fundamental privacy protection goal for consumers. This reasonableness standard is consistent with existing US privacy laws, including the Gramm-Leahy-Bliley Act (GLBA) and the Fair Credit Reporting Act (FCRA), as well as principles previously articulated by the FTC.

As detailed in the coalition comments, a reasonableness standard could assess: (i) consumer harms and benefits, (ii) the objective expectation of a reasonable consumer, and (iii) the relevant risk management practices of an organization. While some data practices could be readily classified as *per se* unreasonable or reasonable, further actions by regulators will yield increased clarity regarding specific data practices.

II. A Federal Data Privacy Framework will Benefit Both Consumers and Businesses

MPA, along with other associations, has previously expressed support for a national standard for data breach legislation. The need for a Federal data privacy framework and standard is even stronger following the passage of the *California Consumer Protection Act* (CCPA). The hurried nature of CCPA deliberations, which passed in a matter of days in response to a ballot referendum deadline, did not allow for a measured and considered approach to privacy. Under the CCPA, all businesses—including magazine publishers—face difficult-to-implement, costly requirements and significant legal exposure without improving privacy outcomes for consumers. We have concerns in several areas.

a. Transparency:

As a first principle, we believe that users should be able to easily understand how an organization collects, stores, uses and shares their personal information. Magazine publishers consistently strive to effectively communicate our data practices to our

customers. We also understand that lengthy privacy notices can lead to notice fatigue and consumer disengagement. The CCPA creates a long list of new disclosure requirements that will significantly add to the length and complexity of privacy policies without evidence that such disclosures will improve consumer understanding of data practices.

b. Private Right of Action:

One of the most chilling provisions of the CCPA is the private right of action. In the event of a data breach, the CCPA would allow damages up to \$750 per consumer per incident, or actual damages, whichever is greater. The CCPA does not clearly require that consumer financial harm be demonstrated. As a result, a business with data from 100,000 California consumers, for instance, could face damages of \$75 million for a data breach that does not cause consumer harm. This level of risk will incentivize companies to settle litigation regardless of the merits of a particular case, diverting funds from beneficial consumer uses. A federal standard that accounts for consumer harm could protect consumers without risking the very existence of data-intensive businesses.

c. Unintended Cybersecurity and Fraud Risks:

Several consumer rights prescribed under the CCPA—including the rights to data access and deletion of data—will likely require businesses to combine information from various data systems and entities to respond to consumer access requests. As a result, businesses may be forced to store large amounts of consumer data in one place, which increases the risk of cyberattacks and fraud and the consequences of a data breach. The accumulation of data and new rights to access that data will provide hackers and fraudsters an increasingly tempting target, with severe potential consequences to businesses. Further, the procedures companies will necessarily have to put in place to verify the identity of consumers seeking access to data, while crucial to protect both businesses and consumers, may cause significant customer confusion, frustration, and dissatisfaction.

III. The Federal Trade Commission is the Appropriate Authority to Oversee Consumer Privacy Enforcement

The FTC has a long history of examining data privacy issues, issuing guidance, and taking enforcement actions under its existing authority. With this base of knowledge and practical application, MPA believes that the FTC—which has brought hundreds of privacy and data security enforcement actions—is the appropriate federal agency to enforce consumer privacy standards to achieve balanced outcomes for consumers and businesses alike. In addition to its law enforcement expertise, the FTC has time-tested experience developing practical guidance and resources for both consumers and businesses.

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We thank the FTC for providing this opportunity to submit comments on behalf of our membership. Our organization is committed to working with the FTC as it assesses its approach to consumer privacy. If you have any questions regarding these comments please feel free to contact MPA.

Sincerely,

Rita D. Cohen
Senior Vice President, Legislative and Regulatory Policy
MPA – The Association of Magazine Media