



not be using companies that sell data.

Birny Birnbaum (Center for Economic Justice—CEJ) said there is a need for balance; consumer consent should be required for any action and be limited to only that which is necessary. He said industry should understand just how limited a consumer's understanding of privacy really is, and there should be best practices like those in the CCPA. He said telematic companies that harvest data from phones, geo, and vocations also sell marketing programs based on the telematics being collected. He said he is sure that consumers do not know this is being done, and they have not consented to their data being shared or sold, so it is unreasonable for companies to expect consumers to be knowledgeable or responsible for their own data privacy decisions. However, he said he disagrees with opt-in because the notices are too long, and the consumer does not understand what all the wording means. Mr. Petersen said such notices are required to attain a Flesch score of a high school level reader. Erica Eversman (Automotive Education & Policy Institute—AEPI) said consumer understanding does not have the level necessary. She said most readers are at a fourth- or fifth-grade level, as evidenced by a 1992 survey by the federal government, which indicated most readers were at a sixth-grade level.

Mr. Diederich said it is hard to know what companies will do, but he asked if allowing a consumer to opt in for marketing would help. Dr. Ting said yes, that is an appropriate approach. He suggested that the Working Group give examples in the privacy policy statement of how it would be used; otherwise, the default should be to not allow the sharing or selling of consumer data at all. Mr. Diederich asked if some type of nondiscrimination or nonretaliation disclosure needs to exist. Dr. Ting said yes, if limited to need certain information, but only if it were limited to what is really needed. Ms. Eversman said the concept is good, but her experience with lawyers is that it is impossible to obtain retaliatory evidence that leads to prosecution. Peter Kochenburger (University of Connecticut School of Law) said people do not read them, so the federal government puts most personal information as opt-in because opt-out pretty much guarantees that consumers will not do it. Mr. Diederich said opt-in should not hinder sales or legal compliance. He asked if, given state insurance regulator concerns, consumers should have to opt in for companies to share data for marketing to external parties.

Mr. Petersen said HIPAA does not allow the sharing of non-personal health information (PHI) data, but it has a safe harbor for sharing PHI. He also said HIPAA has a more stringent definition of PHI. Ms. Gleason said opt-in has spots to opt out of marketing.

Ms. Amann said this type of information is sort of in the exposure document, but it needs to be streamlined because people just click through privacy notices and disclosures; but insurance is not retail, so it needs to be considered more carefully. She said the selling of information is the crux of the problem, and the question is if there is a doable fix, perhaps some overt statement that a consumer cannot be retaliated against for their refusal to opt in. Dr. Brenda J. Cude (University of Georgia) said consumers need a reason to read a disclosure. She said consumers feel they have no power because they cannot get service without agreeing, so there is no real or perceived need to read any notices or disclosures.

Ms. Amann said during the next call on Oct. 11, the Working Group will discuss comments received by Oct. 4 on Segment Three – the right to correct information, as addressed in Pages 32–36, would be discussed at the Oct. 11 meeting.

She said:

- Comments received by Oct. 18 on Segment Four – the right to delete information, as addressed in pages 36–39, would be discussed at the Oct. 25 meeting.
- Comments received by Nov. 1 on Segment Five – the right of data portability, as addressed in pages 39–46, would be discussed at the Nov. 8 meeting.
- Comments received by Nov. 15 on Segment Six – the right to restrict the use of data, as addressed in pages 46–50, would be discussed at the Nov. 22 meeting.

Ms. Amann said this schedule had been posted to the web page.

Ms. Amann said the next Working Group meeting is scheduled for Oct. 11.

Having no further business, the Privacy Protections (D) Working Group adjourned.