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May 20, 2024

The Honorable Cathy McMorris Rodgers
Chair of Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Maria Cantwell
Chair of Committee on Commerce, Science and Transportation
U.S. Senate
Washington, DC 20515

Dear Chair McMorris Rodgers and Chair Cantwell,

The undersigned researchers and groups commend your bipartisan efforts to create comprehensive privacy legislation through the American Privacy Rights Act (APRA).[1] The draft represents a step forward in establishing robust privacy protections for all Americans.

As researchers and academics, we understand that privacy protections are critical. At the same time, informed research plays a vital role in helping us understand the nuances of online activities and the operations of large digital platforms, and to hold them accountable. This research is essential for ensuring transparency and accountability in the digital space, providing critical insights into the complexities of online environments.[2]

However, we are concerned that the current draft of the APRA may inadvertently limit the capabilities of public interest researchers under the bill. In particular, Section 3(d)(7)(C), which stipulates that covered data must be processed "such that the data becomes de-identified data," could significantly impair researchers' ability to validate findings, replicate studies, and could lead to the exclusion of certain demographic groups or vulnerable populations from research initiatives. This requirement for de-identification could pose significant challenges, as it often necessitates the removal or modification of key identifiers and critical contextual information essential for comprehensive research, including detailed demographic studies. Furthermore, the process of de-identifying online data could disproportionately exclude or obscure data related to specific demographic groups or vulnerable populations, thereby skewing research outcomes and undermining the inclusivity and relevance of online data-driven studies. Moreover, the current language in Section 3(d)(7) that states "with respect to covered data previously collected in accordance with this Act"[3] seems to extend the permissible purpose only to data previously

[1] American Privacy Rights Act of 2024, available at https://d1dth6e84htgma.cloudfront.net/PRIVACY_02_xml_005_6e97fe914c.pdf
[2] Nathaniel Persily and Joshua A. Tucker, "How to fix social media? Start with independent research." Brookings, December 1, 2021, available at https://www.brookings.edu/articles/how-to-fix-social-media-start-with-independent-research/
[3] American Privacy Rights Act of 2024, Sec 3(d)(7)

collected under APRA for purposes other than public research, significantly limiting the scope of information available to researchers, since, unlike companies they generally will have no other purpose for collecting data. These restrictions might inadvertently diminish the quality and relevance of the research that is crucial for informed policy making and governance.

We specifically suggest revisiting and clarifying the language in Section 3(d)(7)(C) of APRA to clarify that researchers have access to data and that access to data remains useful and representative for their studies. To this end, we propose aligning with the language and provisions found in Section 101(b)(10)[4] of the American Data Privacy and Protection Act (ADPPA), which offers a more balanced approach to handling research data while ensuring privacy. This provision from ADPPA provides a standalone permissible purpose for public interest research, distinct from research conducted by companies, and does not impose a de-identification requirement, thus facilitating more robust and inclusive research outcomes.

For your reference, here is the language from Section 101(b)(10) of the ADPPA:

> *A covered entity may collect, process, or transfer covered data for any of the following purposes if the collection, processing, or transfer is limited to what is reasonably necessary and proportionate to such purpose*
> *(10) (A) To conduct a public or peer-reviewed scientific, historical, or statistical research project that—*
>
> *(i) is in the public interest; and*
>
> *(ii) adheres to all relevant laws and regulations governing such research, including regulations for the protection of human subjects, or is excluded from criteria of the institutional review board.*
>
> *(B) Not later than 18 months after the date of enactment of this Act, the Commission should issue guidelines to help covered entities ensure the privacy of affected users and the security of covered data, particularly as data is being transferred to and stored by researchers. Such guidelines should consider risks as they pertain to projects using covered data with special considerations for projects that are exempt under part 46 of title 45, Code of Federal Regulations (or any successor regulation) or are excluded from the criteria for institutional review board review.*

We believe that adopting this adjusted or similar language will significantly strengthen the bill, enhancing its capacity to protect privacy effectively while also supporting critical research activities. Such enhancements will ensure that the APRA legislation not only meets its intended goals but also adapts to the complex and evolving landscape of digital interactions. We commend you for your dedication and leadership on this critical issue and look forward to collaborating closely with your offices to ensure the American Privacy Rights Act serves as a robust framework for privacy.

Sincerely,

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[4] American Data Privacy and Protection Act, H.R. 8152, 117th Cong. (2022), available at https://www.congress.gov/bill/117th-congress/house-bill/8152/text

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