



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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BETHESDA, MD 20814

COMMISSIONER PETER A. FELDMAN

December 4, 2019

The Honorable Roger Wicker
Chairman
Committee on Commerce, Science
and Transportation
United States Senate
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science
and Transportation
United States Senate
Washington, DC 20510

Dear Chairman Wicker and Ranking Member Cantwell:

I write to thank you for holding today's hearing on "Examining Legislative Proposals to Protect Consumer Data Privacy," and to thank you for your efforts to craft a strong national data privacy law that will advance consumer interests and interstate commerce.

As the Senate Commerce Committee considers legislation in this area, I hope it will also consider the impact of certain privacy provisions on the ability of retailers, manufacturers, and others to conduct efficient recalls of hazardous consumer products. Specifically, I am concerned that the "Right to Delete" provision of the California Consumer Privacy Act (CCPA) limits the ability of firms to collect and use consumer data for direct notice recalls.¹

The U.S. Consumer Product Safety Commission (CPSC) is an independent federal regulatory agency responsible for protecting the public from unreasonable risks of injury and death associated with consumer products. Because CPSC is not a privacy regulator, I take no official position on the merits of broader consumer privacy considerations. However, given CPSC's extensive work on consumer product recalls, I would like to call your attention to the ways in which CPSC and recalling firms rely on industry-collected personally identifiable information (PII) of customers purchasing consumer products to advance safety.

To improve recall effectiveness, CPSC compliance staff works with manufacturers, distributors, and retailers to develop mutually acceptable programs that include a variety of notification methods to alert affected consumers about product recalls. Research shows, and the CPSC has long recognized, a powerful positive relationship between direct notification of consumers and recall success.² Direct notification is not possible without affected consumers' PII. Often,

¹ California Consumer Privacy Act of 2018, ch. 55, 2018 Cal. Stat. 91 (codified at Cal. Civ. Code tit. 1.81.5); Cal. Civ. Code § 1798.105 (effective Jan. 1, 2020); Cal. Civ. Code § 1798.120 (effective Jan. 1, 2020).

² See e.g. Dennis R. Murphy & Paul H. Rubin, *Determinants of Recall Success Rates*, 11 J. OF PROD. LIAB. 17, 17-28 (1988); and see U.S. CONSUMER PROD. SAFETY COMM'N, RECALL EFFECTIVENESS WORKSHOP REPORT 5 (2018), available at https://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop_Report-

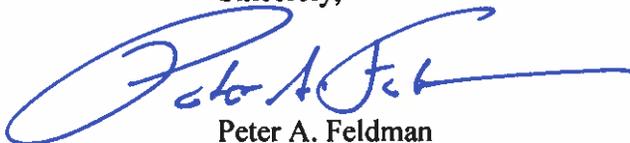
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CPSC will encourage a recalling firm to use the information it collects through registration cards, sales records, catalog orders, retailer loyalty cards, or other means, to effect direct notification.³ In other situations, companies may purchase commercially-available mailing lists of consumers who are likely to use a particular product.⁴ Industry-collected consumer PII, and the direct notification it enables, is an important tool to locate and remove hazardous product as quickly as possible.

Because State “Right to Delete” provisions could result in the deletion of this critical consumer PII, it is my hope that you will consider the importance of preserving the ability of firms to conduct efficient transmission of recall notifications. To that end, the Committee should consider language that provides a national and uniform federal framework that recognizes product recalls as a legitimate use of consumer PII. Also, federal privacy legislation should include an exemption for consumer safety and recall efficiency.

Thank you for your attention to this matter. As always, I am available to assist your Committee in any way I can.

Sincerely,



Peter A. Feldman
Commissioner

2018.pdf?R1VyLltrl8M_id.2vkAklHoUZjaSCab (last visited Dec. 4, 2019) (CPSC staff finding that “[d]irect notice recalls have proven to be the most effective recalls”).

³ See U.S. CONSUMER PROD. SAFETY COMM’N, RECALL HANDBOOK 19 (2012), available at <https://www.cpsc.gov/s3fs-public/8002.pdf> (last visited Mar. 25, 2019). NOTE: The CPSC regulations create no affirmative legal obligation for private sector firms to collect such information. See 16 C.F.R. pt. 1000 et seq. (2018).

⁴ Because such lists are generally available from business that sell personal information about consumers to third parties, the CCPA “Right to Opt-Out” provision raises additional concerns with respect to the commercial availability, accuracy, and completeness of consumer PII for these purposes. See Cal. Civ. Code § 1798.120 (effective Jan. 1, 2020).