



December 5, 2011

Congressman Mel Watt
2304 Rayburn HOB
Washington, DC 20515-3312

Dear Congressman Watt,

Thank you for your request for comments from the Electronic Privacy Information Center ("EPIC") regarding H.R. 2471, which would amend the Video Privacy Protection Act ("VPPA"). EPIC had hoped to provide comments at a hearing on the bill, but as the sponsors of the legislation chose to push through the legislation without the opportunity for public discussion, we appreciate the opportunity to share our views in response to your request.

EPIC is nonpartisan, public interest research organization, established in 1994 to focus public attention on emerging privacy and civil liberties issues. We maintain two of the most popular privacy sites on the Internet – EPIC.ORG and PRIVACY.ORG – and testify frequently in Congress. We have also represented the interests of Facebook users over the years in a wide range of privacy matters.

The Video Privacy Protection Act was passed in 1988 following the disclosure of the private video rental records of a Supreme Court nominee by a video rental store to a news organization. There was broad-based support for passage and the Act was signed into law by President Reagan. The VPPA is considered a model privacy law in many respects – it is technology neutral, focusing on the obligations of businesses and the rights of customers in the collection and use of personal information. It makes clear the circumstances when personal information may be disclosed and it provides a private right of action when violations occur.

The VPPA makes no specific references to particular technologies. First Amendment concerns are addressed in the Act by recognizing that when the press seeks to publish information, Congress may not limit the rights of the press. However, businesses that collect information from their customers have an obligation to safeguard that information and to ensure it is used only for appropriate purposes. As with most privacy laws, the VPPA contains a consent provision that allows individuals to disclose their personal information to others if they wish. There is nothing in the Act that prevents individuals from so doing.

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H.R. 2471 would undermine the key provision in the VPPA, which is the right of users to give meaningful consent to the disclosure of their personal information. Such blanket consent provisions transfer control from the individual user to the company in possession of the data and diminish the control that Netflix customers would have in the use and disclosure of their personal information. While we recognize that other companies routinely report on the activities of their customers, we note that Facebook users have never been particularly happy about this – the history of Beacon is well known – and also that the routine disclosure of video viewing activities is not something that most Facebook users are clamoring for. If anything, most Netflix users seem to be unhappy about the company’s disregard for its customers.

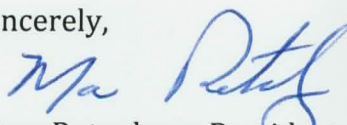
The proposal is particularly surprising in light of the recent decision by the Federal Trade Commission concerning Facebook and privacy, which found that when companies seek to change the privacy defaults of their users, they are essentially engaging in an unfair and deceptive trade practice. That would be the practical impact of this amendment – to take away control of the user’s information *after* the user had subscribed to the service. There is nothing in the proposal that would “modernize” the Act; it simply allows Netflix to post more information about the activity of its customers, whether or not the customers would choose to post such information themselves.

EPIC would therefore recommend that members of Congress vote NO on H.R. 2471. Users remain free to disclose their video viewing habits if they wish; there is no reason to change the default. EPIC would also recommend a hearing on the legislation so that all views, both for and against, can be presented, and Members are provided an opportunity to fully assess the proposal.

Privacy is the number one concern of Internet users today. It would be foolish to adopt an amendment that weakens privacy legislation already in place.

Please feel free to contact me if you have any further questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ma Roten", is written over the typed name.

Marc Rotenberg, President
Electronic Privacy Information
Center (EPIC)