

May 22, 2024

The Honorable Gus Bilirakis
Chairman
Subcommittee on Innovation,
Data, and Commerce
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Innovation,
Data, and Commerce
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Bilirakis and Ranking Member Schakowsky:

The undersigned business associations oppose the American Privacy Rights Act (“APRA”) as released for markup, which your Subcommittee is expected to consider. This legislation would have devastating consequences for the American economy and U.S. technological leadership.

APRA would subject businesses, innovators, and entrepreneurs to more than ten new private causes of action. Similar private rights of action laws have driven away legitimate business in states that have implemented this ill-conceived remedy. APRA would empower plaintiffs’ attorneys to engage in sue-and-settle tactics against small businesses, startups, and charities. Companies acting in good faith and not engaging in willfully harmful activity will be forced to agree to pay expensive settlements or risk costly litigation. APRA would also gut arbitration agreements and enable activists to weaponize private rights of action against non-profit organizations with whom they may disagree politically.

In addition, APRA would fail to establish a single, national privacy standard which is necessary to ensure certainty for both businesses and consumers. The APRA’s approach cost the American economy as much as \$1 trillion, with \$200 billion being incurred by small businesses alone because of its failure to adequately preempt state law.

APRA would empower the trial bar to engage in litigation that could hinder the digital advertising ecosystem that has enabled people to do online research, get their news, and learn about educational and job opportunities without having to pay out of pocket. APRA would provide the Federal Trade Commission sweeping new authorities to restrict data for advertising. Such aggressive federal action would harm the online economic framework that has benefited consumers and businesses.

Universal “Do Not Collect” obligations would also endanger many societally beneficial uses of data like anti-fraud and security initiatives.

Ultimately, APRA would disadvantage U.S. technological leadership. For example, the proposal would require AI developers to undergo impact assessments that may be impossible to complete because of APRA’s data minimization and opt-in requirements. Since APRA would only permit data to be used for what is necessary for a service and sensitive data is subject to opt-in, companies may not have the full data to assure their AI systems are not disparately impacting communities.

The bill’s overly broad definition and regulation of “covered algorithms” would help enrich the trial bar and place online delivery, automated hotel check-in, and emerging AI technology in jeopardy because of the threat of plaintiffs’ attorneys suing legitimate businesses for having only an automated feature on their apps. The definition of “covered algorithm” would also capture and fundamentally change regulation for long-standing statistical models that many in the financial services sector have been using for decades. These restrictions could have a significant chilling effect on AI development and use.

We urge you to ensure APRA is not reported as drafted.

Sincerely,

American Fintech Council
American Hotel & Lodging Association
American Property Casualty Insurance Association
America's Credit Unions
Association of National Advertisers
Consumer Data Industry Association
Direct Selling Association
FMI-Food Industry Association
Interactive Advertising Bureau
International Franchise Association
National Association of Mutual Insurance Companies
National Association of REALTORS
National Restaurant Association
National Retail Federation
Small Business & Entrepreneurship Council
U.S. Chamber of Commerce

cc: Members of the House Committee on Energy and Commerce