

COLUMNS

## Two reasons why advertisers cannot support the BROWSER Act privacy bill yet

May 30, 2017



*Daniel L. Jaffe is group executive vice president for government relations at the Association of National Advertisers*

By **Dan Jaffe**

Subscribe to **Luxury Daily**  
Plus: Just released  
State of Luxury 2019 **Save \$246 ▶**

Two weeks ago, Tennessee Congressman Marsha Blackburn, chair of the communications and technology subcommittee of the House Energy and Commerce Committee, introduced the first major online privacy bill of the 115<sup>th</sup> Congress. The bill is titled "Balancing the Rights of Web Surfers Equally and Responsibly (BROWSER) Act of 2017."

According to the bill's caption, H.R. 2520 would "require providers of broadband Internet access service and edge services to clearly and conspicuously notify users of the privacy policies of such providers, to give users opt-in or opt-out approval rights with respect to the use of, disclosure of, and access to user information collected by such providers based on the level of sensitivity of such information."

We agree with the chairman that privacy regulation should be based on the sensitivity of the data involved. That has always been the approach in the United States, where both the Federal Trade Commission (FTC) and the industry's self-regulatory program, the **Digital Advertising Alliance** (DAA), recognize that financial, health, children's and other similar sensitive data should be treated differently than a wide range of non-sensitive data.

Unfortunately, Chairman Blackburn's **bill** treats a vast range of ISP browser and application data and similar data collected by edge providers as highly sensitive, requiring opt-in consent by consumers for its collection and use.

In our view, this goes way too far.

Substantial amounts of browser and app use data deals with highly innocuous information such as searches for sports scores, weather reports and a multitude of other innocuous every day activities.

ANA believes that treating too many categories and issues as highly sensitive will undermine the ability of consumers to focus on what is truly significant regarding their privacy interests.

This was one of the most serious flaws with the ISP privacy rule adopted last year by the FCC when Democrats still controlled that agency.

Chairman Blackburn and other Republicans in Congress led a successful effort this spring to repeal the FCC rule using the Congressional Review Act. That led to bills being introduced in more than 20 state legislatures to adopt some version of the FCC proposal.

ANA is working with two coalitions to oppose those bills and so far none have passed.

We believe that maintaining opt-out regimes for non-sensitive data and opt-in for truly sensitive data is the right way to differentiate between appropriate levels of privacy concern. This, in fact, is the stated goal of Chairman Blackburn's bill.

We agree that consumers should have control in the privacy arena and that is why we launched the DAA privacy self-regulatory program to assure and enhance this type of oversight.

However, if the definition of sensitive data is explosively expanded requiring a constant bombardment of opt-in consent notices, this will unintentionally harm both consumers and business. It also is still unclear in her legislation how explicit the opt-out provision of her bill will need to be.



*U.S. Representative Marsha Blackburn (R-TN). Image credits: U.S. House of Representatives*

THE ADVERTISING community has always had a very good working relationship with Chairman Blackburn.

We agree with her that the FTC should have regulatory primacy in the privacy arena for both ISPs and edge providers.

We agree that there should be federal preemption in regard to privacy regulation.

We will be reaching out to the chairman and her staff to express our concerns about the definition of "sensitive user information" in her bill and in order to assist in trying to find a better and more balanced approach to this critical issue.

*Dan Jaffe is executive vice president of government relations at the [Association for National Advertisers](#), Washington. Reach him at [djaffe@ana.net](mailto:djaffe@ana.net).*