



Should U.S. Federal Privacy Legislation Emulate GDPR?

A comprehensive federal consumer data privacy law must respect and protect consumers (giving them as much control as feasible), clearly and consistently prohibit the exploitation of personal data, facilitate compliance in the private sector, preempt the patchwork of conflicting state laws, centralize enforcement at the Federal Trade Commission (FTC) and state Attorneys General (AGs), and continue to allow for the informed decision-making provided by market research, insights and analytics services.

The U.S. Needs to Go Its Own Way – Replicating GDPR Would Be a Mistake

When it comes to a legislative approach, many activist groups and some of the largest multinational corporations urge the harmonizing of American law to European law, namely the European Union’s General Data Protection Regulation (GDPR). Unfortunately:

1. Big companies and platforms would potentially benefit most from a European model since many are already GDPR-compliant and have the resources to absorb extra bureaucratic red tape and compliance costs. In contrast, mid-sized and small businesses would face disproportionate burdens that threaten their ability to compete.¹
2. EU policymakers have made clear for decades that one of the primary motivators of their lawmaking was competition against U.S. businesses. Even if a federal privacy law replicated GDPR wholesale, along with its arcane enforcement regime, the EU would still refuse to designate the U.S. as providing “adequate” data protection and still discriminate against U.S. businesses.
3. Even the Europeans are recognizing they went too far; the European Commission has been considering cutting back GDPR.

Getting U.S. Privacy Right

Bad choices in crafting a federal privacy law could drive up costs for insights services -- costs which would be passed on to consumers, in the form of:

- higher prices for goods and services;
- limited competition;
- lengthier time before new or better goods and services are brought to the marketplace; and
- delayed introduction of new or better public policies.

This would all come from a decrease in the amount and quality of market research and analytics by businesses and organizations, whose decision-making capabilities would be impaired. These challenges would also pose a threat to the American economy, with U.S.

¹ See generally Carl Benedikt Frey & Giorgio Presidente, *The GDPR Effect: How Data Privacy Regulation Shaped Firm Performance Globally*, CEPR (Mar. 10, 2022), <https://cepr.org/voxeu/columns/gdpr-effect-how-data-privacy-regulation-shaped-firm-performance-globally>.

companies and organizations weakened in the global marketplace by attempts to use intuition and guess-work in place of tested scientific methods.