

# THE JOURNAL RECORD

## Gavel to Gavel: Consumers and Big Data – new protections on the horizon?

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Most consumers are probably familiar with the concept that if they are not paying for a product, they are the product. What most may not appreciate is how valuable a product they are.

Collecting, buying, and selling consumer data is a \$227-billion-per-year industry fueled by traditional data brokers like Experian and LexisNexis, and by technology companies like Google and Meta. While traditional data brokers became successful by aggregating and analyzing data from third-party sources, Google and Meta extract data straight from the consumer.

From their massive troves of data, Big Data companies infer consumer interests, sort them into categories, and sell lists to highest bidders. Many buyers are advertisers, but data companies also sell to individuals, insurance companies, and even law enforcement agencies.

While the Fair Credit Reporting Act of 1970 restricts the use of consumer data in determining consumers' eligibility for credit, employment, and housing, it does not apply to companies' use of consumer data for marketing purposes. In practice, companies interpret "marketing purposes" very broadly.

What is left is a significant regulatory gap. Without federal privacy legislation, states have been left to craft their own. States like California, Colorado, and Virginia have passed robust data privacy laws. In 2021 and 2022, Oklahoma legislators proposed bipartisan bills that would have offered Oklahomans some of the strongest data privacy protections in the country. Despite bipartisan support, both Oklahoma bills died in the House. As states pass their own data privacy legislation, businesses will find it increasingly difficult to comply with the patchwork of state laws.

Federal consumer privacy regulation has been proposed to fill the regulatory gap. The America Data Privacy and Protection Act (ADPPA), a bill with bipartisan support in Congress, passed House Committee in July and is moving to a floor vote in the House. And, the Federal Trade Commission issued an Advanced Notice of Proposed Rulemaking on Commercial Surveillance and Data Security. The FTC is seeking public comment, which can be submitted through October 21 at <https://www.regulations.gov>.

For more on the state of Big Data and consumer privacy, see Madeline M. Cook, Comment, *Bringing Down Big Data: A Call for Federal Data Privacy Legislation*, 74 L. Rev. 733 (2022). Madeline M. Cook and Susan Lindberg are attorneys with the law firm [GableGotwals](#).

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