



## **Written Testimony on Comprehensive Privacy Legislation in the Commonwealth of Pennsylvania before the Senate Committee on Communications and Technology**

**February 5, 2020**

Microsoft would like to express its strong support for the Committee's interest in addressing data privacy and related issues with state legislation. As a growing number of jurisdictions have recognized, now is time to modernize our privacy laws, which have failed to adequately address privacy risks facing consumers today or keep pace with innovative technologies that are rapidly changing the world while also introducing new challenges and risks.

### **The Time to Update Our Privacy Laws is Now**

Pennsylvania is one of a growing number of states considering new privacy laws. While Microsoft continues to call for a comprehensive federal privacy law (as we have done since 2005), it is far from clear whether federal privacy legislation will move anytime soon, and we also recognize that states will not sit around and wait. Nor should they. A growing consensus between states and interoperability with privacy laws across the United States and around the world is an important consideration so that businesses in Pennsylvania will be prepared and able to compete in other markets without unnecessary complexity or cost. The European Union's implementation of its robust privacy law, the General Data Protection Regulation (GDPR), set a global gold standard and the model for privacy legislation around the world and breathed new life into efforts to update privacy laws in the U.S. California followed suit and passed the first omnibus state privacy law, the California Consumer Privacy Act (CCPA).

## **Legislation Would Be Good For Privacy**

In light of the very real and serious privacy risks that collecting and processing consumers' personal data potentially creates, laws that provide consumers transparency and control over their personal data and require responsible data management of companies that deal extensively with personal data are needed. Legislation that builds off of the best aspects and consumer rights of the GDPR, the CCPA, and even existing federal laws like the Fair Credit Reporting Act could provide Pennsylvania some of the strongest privacy protections in the country. New state legislation should include consumer rights to access, delete, correct, and object to the processing of their personal data. It should also place affirmative obligations on companies to act as responsible stewards of consumers' personal data by requiring them to conduct risk assessments—i.e., to carefully weigh the benefits and privacy risks of all that they do with personal data.

The concept of requiring companies to act as responsible data stewards addresses a growing criticism of existing U.S. privacy laws, which is that they rely too heavily on notice and consent, placing too great of a burden on each and every consumer to make informed decisions about what companies do with their data. As consumers interact with an ever-increasing number of apps, websites, and internet services, the volume of decisions a consumer needs to make is overwhelming. Notice and consent are and will continue to be extremely important, but by themselves, they are insufficient to protect consumers' privacy. More is needed. New laws must pair strong consumer rights that give individuals control over their personal data with affirmative obligations on companies to act as responsible stewards of consumers' personal data.

## **Legislation Would Be Good For Businesses**

Thoughtful state legislation would also help make companies' efforts to comply with privacy requirements less complex and less costly. The CCPA already covers one out of every eight Americans, which means that many U.S. companies already

have to comply with its requirements. Furthermore, every company that wishes to do business overseas, both in the EU and elsewhere, will increasingly need to meet requirements modeled off the GDPR. Making Pennsylvania law interoperable with this growing consensus will help ensure that companies are not forced to make duplicative, unnecessary investments to build different infrastructure to meet different legal obligations. New legislation could also help ensure that Pennsylvania businesses have the compliance muscle and good data management necessary to enter and compete in other markets. By requiring companies to conduct risk assessments, new legislation could incentivize good data management and ensure that companies have a clearer picture of the data that they collect—something which not only frees companies to discard data that they truly do not need, but that also often leads to new discoveries of innovative and beneficial uses to which the data can be put.

## **Conclusion**

Microsoft has long taken the privacy of its customers very seriously. We also have a track record of supporting responsible, thoughtful efforts at reform. Pennsylvania has an opportunity to take a leadership role in the global effort to update and modernize privacy law. We urge you to do that and would be happy to discuss this with you further, including providing draft legislation for your consideration. Thank you for the opportunity to provide these comments.