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THE FREE STATE FOUNDATION

A Free Market Think Tank for Maryland.....Because Ideas Matter

Media Advisory

August 20, 2018

Contact: Randolph May at 301.984.8253

[FSF's Randolph May and Michael Horney Submit Comments on Privacy Regulation in FTC Proceeding](#)

Free State Foundation President Randolph J. May and Research Fellow Michael J. Horney submitted [comments](#) today in connection with the FTC's "Hearings on Competition and Consumer Protection in the 21st Century." These particular Comments are submitted on the topic of "The Intersection Between Privacy, Big Data, and Competition."

Below is the **Introduction and Summary** of the Free State Foundation's comments submitted today.

A PDF of the complete FSF comments, with footnotes, is [here](#).

Introduction and Summary

These comments express the views of Randolph J. May, President of the Free State Foundation, and Michael J. Horney, Research Fellow. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is an independent, nonpartisan, non-profit free market-oriented think tank focusing heavily on communications and Internet law and policy.

Within the realm of that communications and Internet law and policy work, the Free State Foundation has focused on and devoted scholarly resources to researching and writing about the public policy privacy-related issues raised in the context of service offerings by content providers such as Facebook and Google (so-called "edge providers") on the one hand and Internet service providers such as Verizon and Comcast on the other. It is with this expertise and experience in mind that we offer these comments on "The Intersection between Privacy, Big Data, and Competition."

The exchange of non-sensitive consumer information enables companies to sell targeted advertising, which covers the costs of offering "free" content and services to consumers. Substantial evidence shows that the overwhelming majority of consumers are willing to exchange personal information for "free" content and services. However, it is important that firms provide consumers with adequate disclosure regarding the collection and use of their personally identifiable data. This way, as part of the bargain, consumers are

empowered to make informed choices that reflect their preferences.

Because the functioning of much of the Internet ecosystem involves the exchange of non-sensitive consumer information, as a default, "opt-out" rules, as opposed to "opt-in" rules, spur the development of additional Internet content and services. This enables the monetization of a greater pool of consumer information, while still empowering consumers with a choice about whether or not they want their data collected and used. For certain clearly sensitive information, for example relating to health or financial services, the default should be opt-in rather than opt-out.

Consumers expect the application of consistent privacy rules throughout the entire United States. Therefore, privacy regulation in the U.S. should reflect those expectations, whether consumers are doing business with an Internet service provider (ISP) or an edge provider. Internet communications do not stop or change at state borders and neither should privacy laws. To the extent state-by-state privacy regulations differ, this creates a "patchwork problem" for service providers that, at a minimum, imposes additional costs but also is likely to stifle investment and innovation. The FTC should regulate the privacy practices of both edge providers and ISPs in a consistent manner, and to the extent that a "patchwork" of state laws and regulations develop that impose more stringent requirements on service providers than those imposed at the federal level, then those state laws and regulations that conflict with federal policy should be preempted.

A PDF of the complete FSF comments, with footnotes, is [here](#).

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Randolph J. May, President of the Free State Foundation, is a former FCC Associate General Counsel and a former Chairman of the American Bar Association's Section of Administrative Law and Regulatory Practice. Mr. May is a past Public Member and a current Senior Fellow of the Administrative Conference of the United States, and a Fellow at the National Academy of Public Administration.

Mr. May is a nationally recognized expert in communications law, Internet law and policy, and administrative law and regulatory practice. He is the author of more than 250 scholarly articles and essays on communications law and policy, administrative law, and constitutional law. Most recently, Mr. May is the co-author, with FSF Senior Fellow Seth Cooper, of the recently released [#CommActUpdate - A Communications Law Fit for the Digital Age](#) as well as [The Constitutional Foundations of Intellectual Property](#), and is the editor of the book [Communications Law and Policy in the Digital Age: The Next Five Years](#). He is the author of *A Call for a Radical New Communications Policy: Proposals for Free Market Reform*. And he is the editor of the book, *New Directions in Communications Policy* and co-editor of other two books on communications law and policy: *Net Neutrality or Net Neutering: Should Broadband Internet Services Be Regulated* and *Communications Deregulation and FCC Reform*.

Michael J. Horney is a Research Fellow at the Free State Foundation. He is a graduate of George Mason University, where he received a Master of Arts in Economics and was awarded a Mercatus MA Fellowship. He earned his Bachelor of Science with an Economics major and Political Science minor at Towson University. Mr. Horney was an MA Fellow and Research Assistant on policy research at the Mercatus Center at George Mason University, focusing on regulations, technology policy, and education policy, and he served as a Graduate Intern for the Committee on Ways and Means' Subcommittee on Social Security.

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