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July 14, 2015

The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W., Room 4725
Washington, D.C. 20230

Dear Assistant Secretary Strickling:

I am writing to share my concerns about recent developments in the multistakeholder process convened by the National Telecommunications and Information Administration (NTIA) to develop a consumer data privacy code of conduct for companies that use facial recognition technology.

Since 2012, I have encouraged the NTIA to bring together stakeholders, including consumer advocates, to write such a voluntary code. There can be real benefits to the use of facial recognition technology, but it can also have serious implications for Americans' privacy, information security, and civil liberties. A number of factors contribute to the especially sensitive nature of "faceprints" or facial biometric templates, including the relatively immutable nature of biometric data and the many opportunities for misuse given the ease with which individuals may be photographed or their images obtained. In light of this, it is crucial that the NTIA's stakeholder process engage and involve all those with relevant interests, particularly those who advocate expressly for the privacy rights of individuals. It is critical that the end result of the NTIA's process is one that respects consumers' fundamental right to privacy and offers them fair baseline protections.

Earlier this month, the consumer privacy advocates that had been participating in the NTIA's multistakeholder process announced that they were withdrawing because the ongoing talks regarding potential guidelines for the fair commercial use of facial recognition technology had reached an impasse. The advocates reported that company and industry representatives indicated no willingness to embrace a general business standard that would have them default to asking consumers for permission *before* using facial recognition technology.

I am disappointed by this development, and I share the concerns voiced by the consumer privacy advocates. In encouraging the NTIA's multistakeholder process, I hoped that private sector participants would recognize the importance of Americans' basic right to decide who may collect and utilize their sensitive biometric information for commercial purposes. I am now concerned that a code of conduct for facial recognition technology created without the input and agreement of consumer groups will raise more questions than it offers answers for consumers.

Moreover, these developments may be cause for reflection on the role of multistakeholder data privacy processes, the likelihood that such an approach will produce results that are truly fair and reasonable for consumers, and the potential need for federal legislation to adequately protect the privacy of consumers' biometric information.

I appreciate the NTIA's efforts to organize and maintain an inclusive multistakeholder process, and I urge your careful consideration of both the issues raised by consumer privacy advocates and the implications of their absence for any effort to produce a code of conduct. As you have previously noted, the objective of the multistakeholder process is the creation of a "code of conduct that companies can adopt that will provide meaningful privacy protections for consumers and facilitate continued innovation in this growing marketplace." To reach that result, I believe we must see a new or renewed willingness by industry participants to engage with and address the concerns of consumer privacy advocates.

Thank you for your time and attention to these concerns. To discuss this matter further, please contact me, or Samantha Chaifetz on my staff, at 202-224-9623.

Sincerely,

A handwritten signature in blue ink, appearing to read "Al Franken", with a long horizontal flourish extending to the right.

Senator Al Franken
Ranking Member, Subcommittee on Privacy,
Technology, and the Law