



Myths vs. Facts: The Great Consumer Internet Privacy Debate

Debunking industry objections to privacy-protective bills to prevent Internet Service Providers (ISPs) from collecting and selling sensitive personal information about their customers' internet use without opt-in consent.

Industry Myth #1: Regulating consumer internet privacy protections in Alaska will create a “patch-work” of unworkable laws, rendering ISPs unable to provide consistent service.

Reality: Good Alaska privacy law will help the entire country by raising the standard. The ISPs say it's not workable to institute consumer privacy protections in one state but not in the others. But that makes no sense. Think of how California does environmental regulation, which ends up benefiting the rest of us. When you buy a bottle of shampoo, it might say something about California environmental protection law on the bottle. Companies won't make fifty different types of shampoo; instead, they'll make one version, which conforms to California's high environmental standard. That ends up benefitting the rest of the country, and there's no reason to believe it would work differently with the internet. If Alaska lawmakers pass a consumer internet privacy law, the rest of the country will benefit—confirming our status as a leader in the area of privacy law.

This argument from the ISPs is particularly galling because they lobbied so hard against the FCC (Federal Communications Commission) regulations, which of course would have been uniform across the country. The real reason they don't want this kind of legislation has nothing to do with consistency; it's all about maximizing corporate profits at the expense of consumer privacy protections.

Industry Myth #2: The ISPs don't sell your personal information, and the industry promises to self-police are good enough.

Reality: If the ISPs didn't want to sell your information, they wouldn't be lobbying so hard to stop these straightforward consumer privacy protections from becoming law. If it's really true that the ISPs don't engage in any practices these bills would prohibit, why not codify those practices into law? In no other space do we accept large corporations' promises to self-police, particularly when so much money is on the line. We don't let coal companies self-police when it comes to carbon emissions, and we don't let pharmaceutical companies exchange regulations for promises about drug safety. Consumer internet privacy rules should be no different.

Industry Myth #3: Passing consumer ISP privacy law will hurt Alaska's businesses or tech economies.

Reality: The proposals don't say anything about start-ups or other technology businesses; they regulate only ISPs. App developers, software companies, and medical device manufacturers will not see any enhanced regulation as a result of law that restricts *an ISP's* ability to sell—without consumer opt-in consent—sensitive customer data. The bills only regulate ISPs, not small start-ups or other technology companies. Talk of “unintended economic consequences” is vague wording for a reason; this language is meant to scare legislators away from doing the right thing. Don't be fooled.

Industry Myth #4: It's not fair to regulate ISPs while letting companies like Google and Facebook off the hook.

Reality: ISPs are not like so-called “edge providers” like Google and Facebook, in that consumers don't have a choice but to use ISPs if they want access to the internet. ISPs are more like phone companies than they are like Google or Facebook. Consumers in Alaska can choose to use Google or Facebook or choose not to. But if they want to use the internet, they must pay an ISP to get online. For that reason, in the 21st century, when everyone relies on the internet to do everything from get jobs to find love, ISPs are like utilities. And just like the government has long regulated utilities, it should regulate ISPs to ensure fairness and privacy online. ISPs are also different from Google and Facebook in that the former charge customers to get online, while Google and Facebook exchange services for user data—not a direct deposit payment or check once per month. Finally, in many places in Alaska, consumers don't have a choice between different ISPs. That anti-competitive environment makes it more important for the state legislature to act.

Industry Myth #5: The federal government and state Attorney General will take care of regulating the ISPs, so there's no need for the legislature to get involved.

Reality: The Trump administration has demonstrated that it has no interest in protecting consumer privacy rights. One of the few things the Trump administration has done since he came into office is gut Obama-era Federal Communications Commission (FCC) privacy rules.

The Federal Trade Commission (FTC) does not have the legal authority necessary to ensure consumers are protected, and in this political climate in Washington, Congress is unlikely to change that. Indeed, Trump's FCC commissioner is now working to kill net neutrality regulations, too—meaning ISPs may soon be able to slow down traffic to certain websites, while speeding up traffic to others. If net neutrality rules are eliminated, it will be even harder for the federal government to hold ISPs accountable for consumer privacy violations.

The ISPs also claim current state law is sufficient because the state AG can sue them for “unfair and deceptive” business practices. But the current state of the law is woefully inadequate to protect consumers in the digital world. Just think about the last time you clicked “I Agree” on a Terms of Service agreement. The deck is stacked against ordinary people, and litigating “unfair and deceptive” practices cases is costly, politically challenging, and legally thorny.

The reason the ISPs are lobbying so hard against these proposals is that they would actually limit the corporations' ability to collect, use, and sell our information without our consent. That's what we need, whether they like it or not. If federal law and AG enforcement provided equivalent protections to the ones in these bills, the ISPs wouldn't mind if we passed a state law resembling the now-gutted FCC rules.