

Baseline Privacy Legislation



Key Points

- In countries that lack comprehensive privacy laws (including the United States), local, state, and federal government policymakers should align a growing number of widely varied local and national laws through clear, cohesive, and comprehensive legislation.
- Microsoft has led the call for comprehensive privacy legislation in the United States since 2005. The company advocates national legislation that will give people greater control over the collection, use, and disclosure of their information and a greater sense of security about their transactions.
- Microsoft believes that baseline privacy legislation should apply to both online and offline computing and should include requirements for transparency, consumer control, and security. Privacy legislation should create legal certainty by preempting local laws that are inconsistent with national policy. It should also promote accountability by ensuring that all businesses are using, storing, and sharing commercial data in responsible ways.
- Privacy legislation cannot be expected to solve all these challenges. To achieve the broadest protection for consumers, such legislation should be paired with industry self-regulation and best practices, technology solutions, and consumer education.

BACKGROUND

Many countries have comprehensive privacy laws that govern how personal information is collected, used, and shared, and those laws are typically enforced by data protection authorities. In some countries that lack such comprehensive national laws (including the United States), privacy is governed through a combination of local and national sectoral laws that apply to specific industries. In the United States, a growing number of differing local and national laws have created an environment of uncertainty for organizations.

Baseline national privacy legislation would help create legal certainty by preempting state or provincial laws that are inconsistent with national policy. It could promote both accountability and innovation by helping to ensure that all businesses are using, storing, and sharing data in responsible ways, while still encouraging companies to compete on the basis of more robust privacy practices.

Government and industry can work together to develop effective, consistent, and constructive privacy protection frameworks that streamline an increasingly complex set of laws governing privacy and data protection. Greater clarity and alignment of regulatory efforts can improve transparency, security, and consistency—and give consumers greater control over their personal information.

Microsoft has long advocated for the development and implementation of comprehensive national privacy legislation. The company also works with various regional stakeholders to advance the Asia-Pacific Economic Cooperation (APEC) privacy framework. The existing EU Data Privacy Directive addresses many of these issues in Europe with principles for the collection, processing, and safeguarding of personal data.

MICROSOFT APPROACH

- Microsoft has been a leading advocate for comprehensive federal privacy legislation in the United States since 2005. The company believes that federal legislation is necessary to give consumers greater predictability regarding the collection, use, and disclosure of personal information and greater confidence in their online and offline transactions.
- Microsoft's longstanding commitment to privacy includes principles, policies, and procedures for building privacy protections into its products and services—from development through deployment and operation.
- Microsoft shares information and ideas about many of the privacy-related legislative proposals that are taking shape around the world. The company's efforts include providing comments and feedback to the U.S. Federal Trade Commission (FTC) on the preliminary staff report on consumer privacy and on supplemental proposed revisions to the rule implementing the Children's Online Privacy Protection Act (COPPA). Microsoft also participated in the consultation process for the European Union Data Protection Directive, and supported the development of the Asia-Pacific Economic Cooperation Privacy Framework.

POLICY CONSIDERATIONS

- Microsoft believes that baseline privacy legislation should apply both online and offline, and should include requirements for transparency, consumer control, and security. Legislation should create legal certainty by preempting state or provincial laws that are inconsistent with federal policy. It should also promote accountability by ensuring that all businesses use, store, and share data responsibly, while encouraging competition on the basis of more robust privacy practices.
- Privacy legislation is not a complete solution. While comprehensive legislation can and should create flexible, baseline standards, public policy is unlikely to keep pace with evolving technologies and business models. The most effective approach to protecting consumer privacy will be to pair baseline legislation with industry self-regulation and best practices, technology solutions, and consumer education.
- Privacy legislation should include safe harbors for companies that comply with local government-approved self-regulatory programs. Voluntary codes of conduct, which should be developed through open, multi-stakeholder processes, can build upon baseline statutory requirements—and therefore better address and adapt to emerging technologies and rapidly evolving business models.



Helpful Resources

An overview of Microsoft privacy policies and initiatives
www.microsoft.com/privacy

Privacy and cloud computing at Microsoft
www.microsoft.com/privacy/cloudcomputing.aspx

Privacy by Design at Microsoft
www.microsoft.com/privacy/bydesign.aspx