

**STATEMENT OF PETER P. SWIRE**  
**ON BEHALF OF THE CONSUMER PRIVACY LEGISLATION FORUM**  
**BEFORE THE**  
**SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER**  
**PROTECTION**  
**OF THE**  
**U.S. HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON ENERGY AND COMMERCE**  
  
**HEARING ON “PRIVACY IN THE COMMERCIAL WORLD II”**  
**JUNE 20, 2006**

Mr. Chairman, Ms. Ranking Member, thank you very much for the invitation to testify before you today on the subject of federal consumer privacy legislation. My name is Peter Swire. I am the C. William O'Neill Professor of Law at the Ohio State University, and today I am representing the Consumer Privacy Legislation Forum.

To summarize the testimony, increased use and access to information, often made possible through advances in technology, has greatly benefited society through the exchange of ideas, enhanced economic productivity, and increased access to goods and services. Without the appropriate safeguards, however, access to information can pose potential harms to consumers, resulting in a general lack of confidence that their information is safe. Unaddressed, a loss of trust has an adverse impact on economic growth and innovation.

I became aware of the promise and perils of information uses when I served as the Chief Counselor for Privacy in the U.S. Office of Management and Budget from 1999 until early 2001. While at OMB, I worked on issues such as online privacy, medical privacy, and financial privacy. I also oversaw the federal government's own use of personal information. We were subject to the Privacy Act and other legal requirements, so I learned what it feels like to be regulated. From that experience, I came away with a keen appreciation for the benefits and protections that come from good privacy laws. I also saw, however, the serious problems that can arise if privacy rules are not crafted carefully.

The CPL Forum, whose creation we are announcing today, grew out of the announcement last fall by eBay, Hewlett-Packard, and Microsoft that they supported a national standard for privacy protection that will benefit consumers while allowing

commerce to flourish. Those companies, along with the Center for Democracy and Technology and myself, have become the Steering Committee for the CPL Forum. It is an honor and privilege today to be appearing at this hearing alongside Ms. Meg Whitman, the CEO and President of eBay, Inc. and Mr. Scott Taylor, the Chief Privacy Officer of Hewlett-Packard. Both Ms. Whitman and Mr. Taylor today are giving the perspectives of their respective companies, and there may be specific items where the Forum as a group has not settled into a group position. Having their personal participation, including at the CEO level, underscores the importance of the issue of comprehensive consumer privacy legislation.

Since the late winter, an expanded group of organizations has come together into the Forum to work on the topic of comprehensive consumer privacy legislation. The list of companies signing onto the Forum's statement today is a significant moment, showing the expanded number and range of industry leaders who are stepping forward on the consumer privacy issue. In addition to the companies that are explicitly signing the statement, we are calling this the *CPL Forum* because we have reached out to, and will continue to learn from, a much broader array of experts and stakeholders, both on the industry and consumer sides. The Forum has been working on more detailed Principles that would inform comprehensive consumer privacy legislation. We hope and expect to have additional materials for public release in the future.

Let me now turn to the formal Statement of the CPL Forum that we are releasing today.

## **Statement of Support in Principle for Comprehensive Consumer Privacy Legislation**

“Today we live in a digital economy where both beneficial and potentially harmful uses of personal information are multiplying. Information about individuals is used by businesses to: provide consumers with an unprecedented array of goods and services; increase productivity; promote access to financial products; and protect individuals, business and society from fraud and other bad acts. However, that same information can also be misused to harm individuals, with results such as identity theft, deception, unwarranted intrusion, embarrassment, and loss of consumer confidence.”

“The time has come for a serious process to consider comprehensive harmonized federal privacy legislation to create a simplified, uniform but flexible legal framework. The legislation should provide protection for consumers from inappropriate collection and misuse of their personal information and also enable legitimate businesses to use information to promote economic and social value. In principle, such legislation would address businesses collecting personal information from consumers in a transparent manner with appropriate notice; providing consumers with meaningful choice regarding the use and disclosure of that information; allowing consumers reasonable access to personal information they have provided; and protecting such information from misuse or unauthorized access. Because a national standard would preempt state laws, a robust framework is warranted.”

That is our statement today, as signed by 12 companies. Before closing, let me briefly indicate four reasons why members of the Forum believe that this process for federal privacy legislation should occur now.

First, it is important to promote consumer trust. A nationwide survey released in May 2006 by the Cyber Security Industry Alliance reports that 94 percent of people

polled cite identity theft as a serious problem and only 24 percent feel that businesses are placing the right emphasis on protecting information.

Second, address the patchwork. Comprehensive federal consumer privacy legislation can unify today's inconsistent and incomplete patchwork of obligations at both the state and federal levels. This approach would simplify compliance for companies while at the same time providing uniform, meaningful, and understandable protections for individuals.

Third, fill the gaps. Many organizations have already developed effective privacy policies. Bad or careless actors, however, do not have the same policies in place, undermining consumer trust.

Fourth, provide an understandable U.S. framework. Compared with the current patchwork, comprehensive federal consumer privacy legislation can be more easily understood by entities and persons both inside and outside of the United States. In a global world of e-Commerce, this simplified and understandable privacy framework helps consumers and businesses.

In conclusion, this Committee is once again showing leadership on consumer privacy issues by calling this hearing today. We thank the Committee for the invitation to testify, and pledge to work diligently to assist you in your continued consideration of these important issues.

Appendix to Swire Statement

**Statement of Support in Principle for Comprehensive Consumer Privacy Legislation**

Today we live in a digital economy where both beneficial and potentially harmful uses of personal information are multiplying. Information about individuals is used by businesses to: provide consumers with an unprecedented array of goods and services; increase productivity; promote access to financial products; and protect individuals, business and society from fraud and other bad acts. However, that same information can also be misused to harm individuals, with results such as identity theft, deception, unwarranted intrusion, embarrassment, and loss of consumer confidence.

The time has come for a serious process to consider comprehensive harmonized federal privacy legislation to create a simplified, uniform but flexible legal framework. The legislation should provide protection for consumers from inappropriate collection and misuse of their personal information and also enable legitimate businesses to use information to promote economic and social value. In principle, such legislation would address businesses collecting personal information from consumers in a transparent manner with appropriate notice; providing consumers with meaningful choice regarding the use and disclosure of that information; allowing consumers reasonable access to personal information they have provided; and protecting such information from misuse or unauthorized access. Because a national standard would preempt state laws, a robust framework is warranted.

CPL Forum members signing the statement today, June 20, 2006, are:

Eastman Kodak Co.  
eBay Inc.  
Eli Lilly and Co.  
Google, Inc.  
Hewitt and Associates  
Hewlett-Packard Co.  
Intel Corp.  
Microsoft Corp.  
Oracle Corp.  
Procter & Gamble Co.  
Sun Microsystems, Inc.  
Symantec Corp.

###