

WIRED IN WASHINGTON

Security Trumps Privacy

Despite activity, privacy bill still faces long odds.

BY JULIANA GRUENWALD

It's been a year since Sen. **Claire McCaskill**, D-Mo., voiced the concern of many congressional members about how companies track consumers as they surf the Web in order to target ads to them.

"I understand advertising makes the Internet work, but I am a little spooked," she said during a Senate Commerce hearing on privacy last July.

McCaskill's concern over "online behavioral advertising," and the lack of control consumers seem to have over their own personal data, appeared to reflect a turning point in the decade-long debate over whether the United States should emulate most other Western nations and impose at least minimal privacy protections.

The Senate Commerce Committee held a hearing on the issue in early March. After weeks of talks with stakeholders and writing numerous drafts, Commerce Communications Subcommittee Chairman **John Kerry**, D-Mass., introduced a bill in April that would establish baseline privacy protections. Commerce Chairman **Jay Rockefeller**, D-W.Va., followed up with a bill that would require companies to let consumers opt out of being tracked.

Despite that flurry of activity, odds are still long that Congress will pass broad online privacy legislation this year. Senate Commerce held its third hearing on the issue on June 29, but that provided few clues on how lawmakers want to proceed.

Although Kerry said he still wants to move his bill, he has his work cut out for him. He has struggled to attract GOP support on the committee; Sen. **John McCain** of Arizona, the bill's chief GOP cospon-

sor, doesn't sit on the panel. Meanwhile, Rockefeller has echoed the concerns of some privacy advocates and indicated that he would like a stronger bill, according to several sources.

Committee members from both parties have become more wary about regulating an industry that has helped fund the availability of free content on the Web. McCaskill herself has conveyed that evolving caution. Despite her earlier concerns, she said at the March hearing that Congress had to be mindful of the unintended consequences of legislation.

"They just have to figure out what they think can get through," said Chris Calabrese, legislative counsel for the American Civil Liberties Union. "Clearly, they want to do something on privacy."

A Kerry spokeswoman said that her boss and Rockefeller have been working together and "both see merit in incorporating each other's ideas in a final proposal." Still, they have yet to set a date for a markup on either privacy bill.

Meanwhile, House lawmakers are just beginning to examine the issue after initially focusing on data security in the wake of high-profile security breaches at Citibank, Epsilon, and Sony. Two House Energy and Commerce subcommittees will hold a joint hearing on Internet pri-

vacuity on Thursday.

Rep. **Mary Bono Mack**, R-Calif., chairwoman of the Commerce, Manufacturing, and Trade Subcommittee, said that she plans a deliberate look at the privacy issue. "Frankly, I am skeptical right now of both industry and government," Bono Mack told *National Journal Daily* in an e-mail. "I don't believe industry is doing enough to protect American consumers, and government tends to overreach when it comes to new regulations.... That's why this debate must be deliberate and thoughtful, but clearly, it's time for this debate to take place."

Mike Zaneis, senior vice president of the Interactive Advertising Bureau, said that data security is driving the privacy debate right now. "It's really knocked privacy out of the spotlight for now," said Zaneis, whose group representing online advertisers does not support the Kerry bill.

He and others say that because most companies generally back legislation that would set a national standard for data security and notification when a breach occurs, it may be the easiest privacy-related bill to move this year. Bono Mack's subcommittee aims to mark up data-breach legislation within the next two weeks. That would make it the first measure related to online privacy to see any movement so far this Congress. ■



McCaskill: Leading a charge uphill.

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