

**Written Testimony of Julie Brill
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**Washington State Senate Committee on the Environment, Energy, and Technology
Hearing on Protecting Consumer Data**

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Chairman Carlyle, Members of the Committee on the Environment, Energy, and Technology, thank you for this opportunity to provide Microsoft's perspective on the pressing issue of privacy protection in the digital age and to express our support for Senate Bill 5376. We believe this bill offers a thoughtful approach that will establish Washington State as a leader in protecting and preserving consumer privacy, promoting innovation, and enabling businesses of all sizes to use the power of technology to prosper and grow.

My name is Julie Brill. I am Microsoft Corporate Vice President and Deputy General Counsel and I also serve as Co-Chair of the Business and Industry Advisory Committee for the Organization of Economic Cooperation and Development (OECD).

I joined Microsoft after a long career in public service dedicated to consumer protection that included six years as a Commissioner on the U.S. Federal Trade Commission and more than 20 years working at the state level on privacy and consumer protection as Chief of Consumer Protection and Antitrust for the States of North Carolina and Vermont, and as head of the Privacy Working Group of the National Association of State Attorneys General.

I came to Microsoft because it offered an opportunity to play a role in defining the future of privacy at a company that is both a world leader in creating the technologies that are transforming peoples' lives, and in developing new approaches to privacy that are based on the responsible, transparent, and respectful use of our customer's personal information.

The Urgent Need for a New Generation of Privacy Law

Senator Carlyle, let me start by thanking you for your leadership in drafting and introducing this important bill.

We are here at a pivotal moment—a time of remarkable change and opportunity, and of sweeping disruption and uncertainty. During the past few years how people work, play, shop, and learn has changed dramatically. Industries have been reinvented. Jobs are being redefined. How people connect with one another is being reimagined.

But change at this scale always comes with deep uncertainty and significant questions. One of the most important—and most difficult—questions concerns how we protect the privacy of people's personal information.

At the heart of this issue is the fact that this transformation is built on a foundation of groundbreaking technologies like cloud computing that enable us to collect and analyze data at a scale that's never been possible before. Much of this data comes from people. If we are to realize the promise of advanced data-driven technologies, people must trust that companies and governments will keep their personal information safe, and collect and use it in ways that are responsible and respectful. This issue has become even more pressing with the rapid emergence of artificial intelligence.

To achieve trust, a new generation of privacy laws and regulations is required.

The fact is that U.S. privacy law has failed to keep pace with advances in technology. While Microsoft believes that the time has come for the U.S. Federal government to update this country's framework for privacy protection, we know we can't wait for Congress to act.

Today, there is an urgent need for new, comprehensive privacy laws that provide strong protections for consumers within a framework that enables innovation to thrive. We support Senate Bill 5376 because it is a meaningful and important step in this direction.

A New Global Standard for Protecting the Right to Privacy

Privacy has always been a deeply held value and a fundamental right in this country. But because so much of how we interact with each other and the world now happens digitally, our understanding of what constitutes the right to privacy has changed. Now, instead of primarily protecting our personal information from being accessed by others without our permission (or a court order), modern privacy law must also embrace two fundamental realities of life in the digital era.

The first is that people expect to be able to use digital tools and technologies to engage freely and safely with each other and the world.

Second, people want to be empowered to control how their personal information is used.

The European Union has led the way in responding to these desires with last year's implementation of the General Data Protection Regulation (GDPR).

GDPR is an important step forward for privacy in Europe and around the world. It offers a comprehensive framework that sets a strong standard for privacy and data protection by empowering people to control their personal information and establishing new privacy rights for individuals.

This is why Microsoft was the first company to extend the privacy rights defined in GDPR to our customers around the world—including the right to know what data is collected, the right to correct it, and the right to delete it or take it somewhere else.

As part of our commitment to extend these rights to our customers around the world, we offer a privacy dashboard where people can manage their privacy settings, see what data we are

collecting, and clear that data if they choose to. Since GDPR went into effect in May, more than 10 million people have used our privacy dashboard to manage their data.

What we've seen is that people in the United States are the most actively engaged in controlling their data. So far, 4 million U.S. residents have used the site, compared to about 2.9 million in the European Union and 3.7 million in the rest of the world.

Meanwhile, there is a global movement to adopt frameworks that enhance consumer control mechanisms modeled on those required by GDPR. New privacy laws have passed or are being developed in Brazil, Japan, China and India that are based on GDPR-inspired provisions. In the United States, California has enacted the groundbreaking California Consumer Privacy Act of 2018 (CCPA), which is the first major privacy law to be passed in the United States in many years.

The Washington Privacy Bill Builds Upon California Law and Will Do More to Protect Privacy

We believe that SB 5376 builds upon the new law in California and will place Washington at the forefront of the important effort to preserve and protect consumer privacy.

First, the Washington Privacy Bill will extend robust and meaningful rights to consumers that will give them strong control of their data and privacy preferences, including the right to access and delete data, as in California. SB 5376 also includes additional important rights, such as the right to correct data; the right to restrict the processing of data; the right to be notified regarding the correction or deletion of data; the right to object to data processing; and the right to not be subject to certain decisions based solely on automated processing, including profiling.

California's new privacy law does not extend any of these additional rights to consumers.

Second, the Washington Privacy Bill provides comprehensive protection for consumers by applying its obligations to everything a company might do with personal data, from collection to sharing, profiling, storing, copying, selling, and more. This broad scope applies not only to the privacy control rights described above but also to notification requirements and mandatory risk assessments.

In contrast, CCPA is narrower, with a primary focus on allowing consumers to opt out of the sale of their personal information to third parties. This is an important protection, but will have less impact on the practices of very large companies that collect so much personal information that they can undermine consumer privacy without trading in personal data with third parties. The broader scope of the Washington bill ensures greater protection against online advertising practices by all companies, while strengthening consumer protections that may not be covered by CCPA.

Third, the Washington Privacy Bill promotes corporate responsibility and accountability by ensuring that companies will act as responsible stewards of consumer data by requiring risk assessments before processing personal data. If the assessment determines that there are risks to

consumers from processing their data that outweigh the interests of the company, the company will be required to get consent.

This approach to risk assessment is similar to the “legitimate interest” basis for processing data and the data protection impact assessment obligation included in GDPR. It will force companies to think and act more rigorously and more responsibly about how they collect and use their customer’s personal information, and about how they design services and consumer experiences. This is less true of CCPA, which focuses on consumer control of the sale of their data to third parties but doesn’t place proactive obligations on corporations to demonstrate accountability.

Fourth, the Washington bill takes groundbreaking steps to regulate facial recognition technology. Facial recognition is an important emerging capability made possible by AI that offers significant positive benefits to society, but that also raises real risks and potential for abuse, including the possibility for biased outcomes, privacy intrusions, and mass surveillance that can encroach on individual freedom. This bill requires humans to play a meaningful role in the decision-making process before actions that have a significant effect on people’s lives can be taken by private entities or by governments based upon facial recognition. This approach limits the potential for abuse.

Other provisions of the Washington Privacy Bill require companies to obtain consent from consumers before deploying facial recognition services and to make their technology available for independent testing to check for unfair bias. The bill also limits government use of facial recognition technology for surveillance without a court order or in an emergency.

None of these protections regarding facial recognition technology are included in CCPA.

Through this bill, Washington State would begin to address legitimate concerns about the potential for facial recognition technology to reinforce social bias, and to be used as a surveillance tool by governments.

Promoting Business Success and Fostering Trust

Microsoft also supports SB 5376 because it will be good for business.

Because Senate Bill 5376 is based on consumer rights protected by GDPR, companies that comply with GDPR will also comply with Washington law. This kind of interoperability will enable companies doing business in Washington as well as outside of the United States to avoid unnecessary investments to build different infrastructures or purchase different cloud services to meet the requirements of multiple incompatible laws. And it will help Washington-based companies that are not yet required to comply with GDPR to meet emerging global standards and compete more successfully in international markets. At the same time, the bill will avoid overburdening small businesses in Washington by exempting them from its requirements.

There’s one more critical reason why this bill is so important. To deliver the benefits that today’s technology innovations promise, trust is essential. But over the past year or so, people have grown increasingly distrustful of technology companies and how they use consumer information.

SB 5376 includes the kind of substantive obligations needed to strengthen trust in technology by giving consumers control of their data, and by requiring companies to be responsible stewards of consumer data and then holding them accountable when they do not live up to their obligations through robust penalties enforced by the Attorney General.

The Opportunity to Lead the Way Forward into a New Era of Privacy Law

At Microsoft we believe that privacy is a fundamental human right and a universal value.

But as technology has transformed how people interact with each other, manage their lives, run their businesses, and so many other things, our basic understanding of what privacy means has shifted. And while laws in many countries have begun to change to reflect this new understanding of privacy, in the United States, we have yet to take the necessary steps to address this transformation.

It is fitting that here in Washington State, where so many of the technologies that are changing the world are being developed, that the Washington State legislature is poised to lead the world by adopting privacy protections that are necessary to engender consumer trust, preserve an open and democratic society, and promote innovation and opportunity.

Passing this bill would be a landmark moment in U.S. privacy law. It would ensure that Washington State guarantees its residents the strongest set of privacy rights in the United States. And it would provide a framework that will make Washington companies more competitive and the Washington State economy more vibrant.

I want to thank Senator Carlyle for his leadership in proposing this important legislation. Now, the Washington State legislature has a historic opportunity to protect consumers in this state while helping define privacy protection in a way that will influence privacy law in this country for many years to come.

I urge you not miss this opportunity.