February 10, 2014

Director John P. Holdren
Office of Science and Technology Policy
Executive Office of the President
Eisenhower Executive Office Building
1650 Pennsylvania Avenue
Washington, DC 20504

**Re: Petition for OSTP to Conduct Public Comment Process on Big Data and the Future of Privacy**

Dear Director Holdren:

In response to the White House's plan to perform a comprehensive review of Big Data and The Future of Privacy,[1] the undersigned consumer privacy, public interest, scientific and educational organizations request the Office of Science and Technology Policy ("OSTP") solicit public comments so as to encourage meaningful public participation in the development of this important policy.

On January 17, 2014, President Obama stated:

> I have also asked my counselor, John Podesta, to lead a comprehensive review of big data and privacy. And this group will consist of government officials who, along with the President's Council of Advisors on Science and Technology, will reach out to privacy experts, technologists and business leaders, and look how the challenges inherent in big data are being confronted by both the public and private sectors; whether we can forge international norms on how to manage this data; and how we can continue to promote the free flow of information in ways that are consistent with both privacy and security.[2]

OSTP's primary function is to advise on "scientific, engineering, and technological aspects of issues that require attention at the highest levels of Government."[3] OSTP is also required to advise the President of "scientific and technological considerations involved in areas of national concern including, but not limited to, the economy, national security, homeland security, health, foreign

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[1] John Podesta, *Big Data and the Future of Privacy*, THE WHITE HOUSE BLOG (Jan. 23, 2014 03:30 PM EST), http://www.whitehouse.gov/blog/2014/01/23/big-data-and-future-privacy.
[2] *Remarks by the President on Review of Signals Intelligence,* THE WHITE HOUSE (Jan. 17, 2014), http://www.whitehouse.gov/the-press-office/2014/01/17/remarks-president-review-signals-intelligence.
[3] Functions of the Director, 42 USC § 6613 (a) (2014).

relations, the environment, and the technological recovery and use of resources" and "evaluate the scale, quality, and effectiveness of the Federal effort in science and technology and advise on appropriate actions."[4] In carrying out these functions, the Director of OSTP shall "to the extent practicable, consult with . . . such representatives of industry, the universities, agriculture, labor, consumers, conservation organizations, and such other public interest groups, organizations, and individuals as he deems advisable[.]"[5]

We believe that the public policy considerations arising from big data and privacy are issues of national concerns that "require the attention at the highest levels of Government."[6]

The current White House review underscores the ongoing significance of the privacy implications of "big data." Although a vogue term today, big data was a central concern of the Privacy Act of 1974. Congress enacted the Privacy Act with the understanding that secret databases threatened individual liberties and freedom.[7] Through big data, government agencies could covertly make decisions about individuals, while denying due process rights such as information access and correction.[8]

Today similar concerns arise about the use of personal data by large commercial entities.[9] Bulk collection of this data puts consumers at an ever-increasing risk. As President Obama stated when he proposed the Consumer Privacy Bill of Rights in 2012, "Never has privacy been more important than today . . . So, it is incumbent on us to do what we have done throughout history: apply our timeless privacy values to the new technologies and circumstances of our times."[10] President Obama further said:

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[4] *Id*. § 6613 (b)(1)-(2).
[5] Coordination with Other Organizations, 42 USC § 6617 (a)(2) (2014).
[6] *See supra* note 2, § 6613 (a).
[7] Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896, § 2 (a) (Congressional findings that "the increasing use of computers and sophisticated information technology . . . has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information" and "the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems . . .").
[8] Department of Defense, *Safeguarding Privacy in the Fight Against Terrorism: Report of the Technology and Privacy Advocacy Committee* (Mar. 2004) ("Data aggregation creates the risk that the resulting profile provides the government with substitutes for information it is otherwise not allowed to access or act upon. Similarly, the ability to aggregate records held by third parties may provide the government with precisely the same information it previously would have been required to obtain a warrant to access.")
[9] THERESA M. PAYTON & THEORDORE CLAYPOOLE, PRIVACY IN THE AGE OF BIG DATA 220 (Rowman & Littlefield 2014) ("As deep analysis becomes institutionalized, more companies will start or grow the depth of their data mining . . . . collecting more of our information, and using it to predict and influence our actions in more ways.").
[10] WHITE OUSE, CONSUMER DATA PRIVACY IN A NETWORKED WORLD: A FRAMEWORK FOR PROTECTING PRIVACY AND PROMOTING INNOVATION IN THE GLOBAL ECONOMY, (2012), *available at* http://www.whitehouse.gov/sites/default/files/privacy-final.pdf.

> One thing should be clear, even though we live in a world in which we share personal information more freely than in the past, we must reject the conclusion that privacy is an outmoded value. It has been at the heart of our democracy from its inception, and we need it now more than ever.[11]

We therefore urge the OSTP to issue a Request for Information in order to conduct a review that incorporates the concerns and opinions of those whose data may be collected in bulk as a result of their engagement with technology.

The OSTP should consider a broad range of big data privacy issues, including but not limited to:

(1) What potential harms arise from big data collection and how are these risks currently addressed?

(2) What are the legal frameworks currently governing big data, and are they adequate?

(3) How could companies and government agencies be more transparent in the use of big data, for example, by publishing algorithms?

(4) What technical measures could promote the benefits of big data while minimizing the privacy risks?

(5) What experience have other countries had trying to address the challenges of big data?

(6) What future trends concerning big data could inform the current debate?

The public should be given the opportunity to contribute to the OSTP's review of "Big Data and the Future of Privacy" since it is their information that is being collected and their privacy and their future that is at stake.[12]

We urge you to begin the public comment process as soon as possible.

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[11] *Id*.

[12] Marc Rotenberg, "Obama Sets Good Course on Privacy Debate," CNN, Jan. 17, 2014, available at http://www.cnn.com/2014/01/17/opinion/rotenberg-obama-nsa/ ("Obama said he would create a new panel to assess the impact of "Big Data" on personal privacy. The phrase may be cliché, but the problem is real. Increasingly data -- and also metadata -- reveal an extraordinary amount of personal information. We need a better approach, with technologists and legal scholars, and a deeper engagement from the White House and Congress, to make meaningful progress on this critical issue.")

Sincerely,

Electronic Privacy Information Center (EPIC)
American Association of Law Libraries
American Booksellers Foundation for Free Expression
American Civil Liberties Union
American Library Association
Association of Research Libraries
Brennan Center for Justice at NYU Law School
Center for Democracy & Technology
Center for Digital Democracy
Center for Financial Privacy and Human Rights
Center for Media Justice
Citizens for Responsibility and Ethics in Washington (CREW)
Common Sense Media
Consumer Action
Consumer Federation of California
Consumer Watchdog
Electronic Frontier Foundation
Free Press
Government Accountability Project
Knowledge Ecology International (KEI)
Open Technology Institute of the New American Foundation
Patient Privacy Rights
Privacy Journal
Privacy Rights Clearinghouse
U.S. Public Policy Council of the Association for Computer Machinery