

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

Examining Ways to Improve Vehicle and Roadway Safety

Before the

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE

UNITED STATES HOUSE OF REPRESENTATIVES

Washington, D.C.

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Doctor Burgess, Ranking Member Schakowsky, and members of the Subcommittee, I am
Maneesha Mithal,

SPAM Act,⁶ and the Children's Online Privacy Protection Act (COPPA).⁷ These actions have addressed practices offline, online, and in the mobile and connected device environments.

II. Discussion Draft

The Commission is pleased to offer its views on Title III of the discussion draft, which focuses on privacy and security for connected vehicles. We appreciate that one of the goals of the discussion draft is to improve privacy protections for consumers and to provide incentives for vehicle manufacturers to adopt and implement best practices for vehicle security and safety. However, we have concerns about several aspects of the provisions of Title III.

A. Privacy Provisions

The draft would amend title 49 of the U.S. Code to add Section 32402(e), which

action¹⁴ based on any privacy-related

provision would likely disincentivize such research, to the detriment of consumers' privacy, security, and safety.¹⁸

C. Security Provisions

Section 303 of the draft amends title 49 of the U.S. Code Section 30701 to establish an "Automotive Cybersecurity Advisory Council" to "develop best practices for cybersecurity for manufacturers of automobiles offered for sale in the United States." Section 30701(a)(4)(B). Manufacturers that implement these best practices will be immunized from liability under Section 5 of the FTC Act with respect to any unfair or deceptive conduct "relating to" these best practices. Section 30701(g). We appreciate that the drafters intend to spur the development of best practices in security. However, we are concerned that the current draft will not encourage best practices robust enough to protect consumers.

First, at least fifty percent of the Council's membership must consist of representatives of automobile manufacturers. Although NHTSA, the Department of Defense, and the National Institute of Standards and Technology would have seats on the Council, it appears that all other stakeholders, including consumer advocates, security researchers, other automotive industry members, and others would be limited to one member.¹⁹ Because any best practices approved by the Council will be "by a simple majority of members," manufacturers alone could decide what best practices would be adopted.

¹⁸ Arguably, such a move would be out of step with direction of other industries, in which many companies pay "bug bounties" to researchers who discover software vulnerabilities, to encourage researchers to report the vulnerabilities in a manner that allows companies to fix them. See, e.g., AT&T, AT&T Bug Bounty Program, available at <https://bugbounty.att.com/> (last visited Oct. 18, 2015); Microsoft TechNext, Microsoft Bounty Programs, available at <https://technet.microsoft.com/en-us/library/dn425036.aspx> (last visited Oct. 18, 2015); Mozilla, Bug Bounty Program, available at <https://www.mozilla.org/en-US/security/bug-bounty/> (last visited Oct. 18, 2015); United, United Airlines Bug Bounty Program, available at <https://www.united.com/web/en-US/content/Contact/bugbounty.aspx> (last visited Oct. 18, 2015).

¹⁹ Notably, despite the fact that a company will enjoy immunity from FTC Act liability if its plan is approved by the NHTSA Administrator, the FTC does not have a seat on the Council.

Second, the discussion draft contains eight areas the best practices “may” – not must – cover

In sum, the Commission understands the desire to provide businesses with certainty and incentives, in the form of safe harbors, to implement best practices. However, the security provisions of the discussion draft would allow manufacturers to receive substantial liability protections in exchange for potentially weak best practices instituted by a Council that they control. The proposed legislation, as drafted, could substantially weaken the security and privacy protections that consumers have today.

III. CONCLUSION

Thank you for the opportunity to provide the Commission's views on the privacy and cybersecurity provisions of the discussion draft. We look forward to continuing to work with the Subcommittee and Congress on this critical issue.