



Written by [C. Mitchell Shaw](#) on April 6, 2017

## Despite Reports, FCC Rules Overturned by Trump Did Not Actually Protect Privacy

Late last month, President Trump signed a controversial bill preventing new restrictions on Internet Service Providers (ISPs) from going into effect. The issue is sharply divided along party lines, with Democrats arguing that the restrictions are necessary to protect the personal data of users and Republicans arguing that the restrictions would favor websites over ISPs. The rights of the individual user are predictably caught in the crossfire and are not represented by either side.



At the center of this debate is the issue of data-mining for the purpose of advertising. ISPs and websites have the capability to harvest vast amounts of information — much of it quite personal — about subscribers and visitors. In the waning days of the Obama administration, then-FCC Chairman Tom Wheeler shoved through a batch of new privacy rules. Those rules — which were approved by a 3-2 vote of the commissioners along party lines — would have prevented ISPs from mining and selling users data to advertisers without the consent of those users. But since websites — such as Facebook and Google, which make millions in profits each year selling that data — are regulated (for the biggest part) by the Federal Trade Commission (FTC) and not the FCC, the new rules would not have prevented them from continuing to mine and sell that data as part of business-as-usual.

So, Republicans — arguing that the privacy rules tipped the scales in favor of websites — drafted legislation to set the rules aside. That legislation passed unsurprisingly along party lines and was signed into law by President Trump before the new rules could even go into effect. Those who voted against the bill (read: Democrats) argued that the rules would have protected users from having their ISPs — who have immediate and first-hand access to their browsing habits — harvest their personal data and sell it off to advertisers.

As the *Wall Street Journal* [reported](#) when the bill — which had already passed in the Senate — was approved by the House:

What if your telecom company tracked the websites you visit, the apps you use, the TV shows you watch, the stores you shop at and the restaurants you eat at, and then sold that information to advertisers?

In theory, it's possible, given the stance Washington is taking on online privacy.

Lawmakers on Tuesday [voted to overturn](#) privacy rules that required telecom companies to get customers' permission before sharing their web-browsing and app usage history with third parties. The White House said Wednesday President Donald Trump intends to sign the measure into law.

The *Journal* added that preventing those rules from taking effect “is a boon to Verizon Communications Inc., Comcast Corp., and AT&T Inc., which are all in the process of building data-driven digital ad



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businesses to complement the broadband, wireless and TV services they offer.”

That report went on to say:

The telecom providers had argued the rules put them at a competitive disadvantage to online ad giants Google and Facebook, which generally aren't regulated by the FCC.

Google and Facebook have built huge businesses powered by reams of data they collect about consumers' online actions, both on their own properties and across the web. That trove of information largely explains their dominance — combined, they have a roughly 47% share of the global digital ad market, according to eMarketer.

And as *Time* [reported](#) when President Trump signed the bill into law:

President Donald Trump on Monday signed into law a controversial measure repealing online privacy protections established by the Federal Communications Commission under the Obama Administration.

The rules, which would have taken effect in December, required internet service providers — including Comcast, Verizon and AT&T — to obtain permission from customers before sharing personal data like their web-browsing history. The rules were aimed at preventing internet providers from selling that data without permission.

Critics of the rules argued they were an example of government overreach and were unfair because tech companies, like Google and Facebook, are not required to get such permission before tracking customers' habits.

By framing this as a dispute between ISPs and websites — instead of accurately presenting it as a struggle between Internet users and anyone who would mine and sell their data, the powers that be (including lawmakers, bureaucrats, corporations, and the media) have muddied the waters to conceal a simple fact: This is actually a struggle between those who value their privacy and those who would profit by violating it. And neither the FCC rules nor the new law were designed to protect privacy.

The choice between restricting ISPs from mining data for sale while allowing websites to do it or allowing both ISPs and websites to mine and sell users data is a false choice. It is more than a little like asking Internet users to choose between cyanide and arsenic where their privacy is concerned. The other false choice here is whether the FCC should do anything at all about this issue. It can easily be demonstrated that the FCC has no constitutional justification for existing in the first place, much less regulating the Internet.

Wheeler's pushing through of these rules was a last-ditch effort to save his beloved net neutrality rules. It was a foregone conclusion that so-called net neutrality (which is anything but neutral) would die in the advent of a Republican administration.

No. The FCC had no business addressing this issue. But that does not mean it is not a real problem requiring a real solution. The real solution — like most solutions dealing with digital privacy issues — is two-fold. It is both legislative and technological.

The correct course of legislative action is for individual states to address this issue by passing legislation to protect users' data from being mined without their explicit consent. States that do not protect Internet users' privacy will quickly learn that while they are loved by ISPs and Internet companies such as Facebook and Google, individuals who value privacy will either move to states that do protect that privacy, or work to change those legislators at the ballot box.



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The technological solution is simple enough for almost anyone to apply. By routing all Internet traffic through an encrypted Virtual Private Network (VPN), users can hide everything from their ISP except the fact that they're using a VPN. That is because the ISP sees only the connection to the VPN and the VPN then routes all the traffic to its destination. But beware — not all VPNs are created equal and some do their own data-mining and do not encrypt the data. The rule of thumb is to avoid free VPNs; they have to make a profit somewhere and if you are not paying for the service, you may find out that you are the product. There are VPNs that have built their businesses on the idea of protecting privacy. One such VPN is [VyprVPN](#), which is available for Windows, Mac, Linux, Android, and iOS. For those with the know-how, it can also be installed on many routers, offering privacy protection to any device connected to that router.

This case is a prime example of the federal government offering solutions which turn out to be as bad as the problem. The question that needs to be asked when the FedGov comes around to “help” is, “*Cuo bono?* — for whose benefit?” In this case, it is obvious that the intended beneficiary was the overreaching, heavy-handed FedGov. The purpose seems to have been to artificially prop up net neutrality and give the FCC even longer reach where the Internet is concerned.

While the new law — passed by Republicans and signed by Trump — is a rubber stamp to the ISP's collection of users' private data (and is therefore an anti-privacy law), the truth is privacy didn't have a dog in this fight.



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