

DOJ Notes on the May 29 Consultation with the Center for Democracy and Technology (“CDT”) Regarding Bulk Thresholds

Notes | 5/29/2024 10:00 AM – 10:30 AM EST

On May 29, 2024, representatives from the Department of Justice (“DOJ”) and the Commerce Department (“Commerce”) consulted with representatives from CDT regarding CDT’s comments on DOJ’s March 5, 2024 Advanced Notice of Proposed Rulemaking (“ANPRM”) entitled “Provisions Regarding Access to Americans’ Bulk Sensitive Personal Data and Government-Related Data by Countries of Concern.”

The consultation specifically focused on CDT’s comments on the proposed bulk thresholds set forth in the ANPRM. During the consultation, representatives from DOJ and Commerce asked CDT questions about the bulk thresholds proposed in the ANPRM and listened to CDT’s responses.

The notes that follow are DOJ’s brief summary of the input shared by CDT.*

- **Participants:** Representatives from the National Security Division of the Department of Justice, the International Trade Administration of Department of Commerce, and CDT.
- **CDT members’ concerns:**
 - CDT is not in the business of selling or transferring data. They only do analytics. CDT does not engage in data brokerage.
 - CDT believes that the bulk threshold numbers should be as low as possible to promote responsible data brokerage, especially for biometric and genomic data. CDT does not expect that the proposed rule will require companies to “decrypt” data to know what kinds of data they have – brokers should know this before it is encrypted or at the time they acquire it. If DOJ does make an exception for de-identified data, there should still be a threshold that is set appropriately low.
 - CDT does not share others’ concerns about having to de-encrypt data in order to identify it and comply with the proposed rule because this is not an accurate interpretation of the requirement, and a data broker should still know what data is before it is encrypted or at the time they buy it.
 - CDT generally supports the restrictions on data brokers as an effort to promote responsible data management.
- **Other suggestions and feedback:**
 - CDT prefers a broad definition of Sensitive Health Data. Suggests defining data based on what it reveals, not what it objectively relates to or constitutes. Some general data (for example, location data on who goes to an abortion clinic) could be considered health data because it reveals a health condition. CDT suggests defining data based on what it *reveals*, rather than what it objectively relates to or is.

*These notes are a summary of the consultation; they are not a transcript. The Department of Justice has not shared these notes with meeting participants to confirm their accuracy.

DOJ Notes from Consultation on Data Security ANPRM Proposed Bulk Thresholds

- CDT recommends including government clearance holders in the definition of federal employees.
- CDT recommends including other categories of data under the proposed rule, such as data about children and photos/video recordings of people.

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