



## House updates 1988 privacy law to allow online sharing of Netflix choices

By [Timothy B. Lee](#)

The House of Representatives on Tuesday easily passed legislation that updates video privacy laws to make it easier for online rental services such as Netflix to share information about customers' viewing habits with user consent. Current law requires written consent to share video records, but the new law would allow companies to obtain consent over the web. The two-page bill needs to be approved by the Senate before it becomes law.

The United States affords unusually strict privacy protections to video rental records. During the confirmation hearings of Supreme Court nominee Robert Bork, an enterprising reporter obtained copies of Bork's video rental records. Bork's video rentals were innocuous, but the incident spooked Congress enough to pass the 1988 Video Privacy Protection Act, which required written consent from consumers before video rental records could be shared.

Two decades later, that rule continues to apply to Internet-based video rental services such as Netflix. Netflix and Facebook have been pushing to change the law because they want to give users the option to share information about their Netflix viewing habits with their friends on Facebook.

The problem is that since Netflix customers don't walk into brick-and-mortar Netflix stores to get their videos, Netflix never has a chance to ask users to sign a paper consent form. Also, current law requires the user to separately consent to each disclosure, which some users might find annoying.

So legislation sponsored by Rep. Bob Goodlatte (R-VA) would tweak the Video Privacy Protection Act to allow users to consent to video sharing over the web. It would also allow users to consent once to all future sharing.

The change was panned by Marc Rotenberg, the president of the Electronic Privacy Information Center. In an [open letter](#), Rotenberg argued that "blanket consent provisions transfer control from the individual user to the company in possession of the data and diminish the control that Netflix customers would have in the use and disclosure of their personal information."

But Jim Harper, a privacy scholar at the Cato Institute, had the opposite reaction. He told Ars that the passage of the VPPA in 1988 was a "knee-jerk reaction" to the Bork incident, and argued that the Reagan-era Congress failed to anticipate that "consumers' video-watching information might later serve an interesting and enriching social function for those who want to share it."

"Congress and government bureaucrats can't possibly know the direction of technology, society, and Americans' privacy and publicity interests," Harper said, rejecting the "prescriptive information regulation" approach represented by both the original VPPA and Goodlatte's tweak to the law.