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How new Congress will tackle privacy, Net neutrality

by [Declan McCullagh](#)

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Rep. Tom Price, chairman of the conservative [Republican Study Committee](#), said yesterday that this week's elections **will provide** "an opportunity for our Republican principles to shine through our policies."

But what that means for privacy, Net neutrality, and other regulatory areas that affect Internet companies isn't entirely clear.

The [Contract from America](#), a set of grassroots-derived governing principles signed by some incoming Republicans and backed by dozens of Tea Party groups, stresses evaluating the constitutionality of government programs but doesn't specifically address technology. Neither does the Republican Party's [2010 Pledge to America](#).

This should come as no surprise. After the number of unemployed, discouraged, or marginally employed Americans has doubled in the last two years and stands **at a recent record of 22 percent**, no politician hoping to be elected spends much time talking about regulation of transborder data flows. Or, say, the nuances of amendments to the 1994 Communications Assistance for Law Enforcement Act.

In fact, it's possible, even likely, that Washington's approach to technology topics will remain largely the same.

Nothing will change, says [Jim Harper](#), a former Hill staffer and policy analyst at the free-market Cato Institute.

"Proposals for 'baseline' federal privacy legislation will continue to float around, as they have for the last decade," Harper told CNET. "Net neutrality regulation, which was going nowhere before the election, will go nowhere. Intellectual property supporters will continue to have the stronger voice in Congress."

Net neutrality turned out to be something less than a compelling campaign slogan this year.

Scott Cleland, an industry analyst who **receives funding** from companies including AT&T, Sprint, and Verizon, **noted** that "every single one" of the 95 Democratic challengers who took a Net neutrality pledge lost in the mid-term elections.

Last month, the **Progressive Change Campaign Committee** announced **a list of Democratic candidates** who took a pledge saying: "In Congress, I'll fight to protect Net Neutrality for the entire Internet--wired and wireless--and make sure big corporations aren't allowed to take control of free speech online."

Whoops. Tuesday's results mean that pro-regulation groups like Free Press "can no longer legitimately claim their Net neutrality movement has significant grass roots political support," Cleland suggested.

Progressive Change Campaign Committee co-founder Adam Green replied in e-mail yesterday, saying the Cleland can't point to any candidates who campaigned against Net neutrality "for the obvious reason that such a position is a big political loser." In addition, Green said, other **Net neutrality supporters** currently in Congress were reelected, while some politicians who signed **a letter** opposing such regulations were not.

How the 2011 Congress views privacy probably won't change very much. But because it depends in large part on which politicians end up heading which committees, which hasn't been decided yet, it's difficult to say for sure.

Because Rep. Rick Boucher (D-Va.) lost his bid for reelection, longtime industry critic Ed Markey (D-Mass.) could become the senior Democrat on a House Internet subcommittee.

And whether Joe Barton (R-Texas) or fellow Republican Fred Upton (R-Mich.) will become the next chairman of the full House Energy and Commerce Committee remains a tossup. (Because Barton is running up against the GOP's term-limit rules for committee chairman, he'd need a waiver from party leadership.)

For a Republican who joined the Tea Party Caucus this summer and claims to be committed to "**limited government**" and "**free markets**," Barton's record on privacy includes repeated calls for more regulations and for handing more power to federal bureaucrats. Barton and Markey have singled out **Apple**, **Google**, and **Facebook**, for instance, for criticism.

Harper, from the Cato Institute, **says** that Boucher's **proposed privacy legislation** never had a serious chance of passing: "The result was that tech lobbyists could always report to the home office that they had something to do, and tech trade associations could garner corporate support for

all those noon-time strategy meetings over sandwiches--without generating a true threat to the business models of the companies they (purport to) represent."

"With the defeat of Rick Boucher, we are losing someone who understood the Internet and played a key role in opening it up to commercial activity, who co-founded the Internet Caucus, and who has taken a lead on key issues like privacy," said the [Center for Democracy and Technology](#). Public Knowledge's Gigi Sohn [called him](#) someone who understood the "importance of standing up for consumers' rights to use technology lawfully." (Boucher [introduced an unsuccessful bill in 2002](#) to amend the Digital Millennium Copyright Act, for instance.)

Marc Rotenberg, head of the [Electronic Privacy Information Center](#), which supports a broad law regulating the private sector's data collection and use practices, says "I think you're going to see continued bipartisan leadership on privacy issues" in the House.

In addition, Rotenberg said, the election of Richard Blumenthal (D-Conn.) and Rand Paul (R-Ky.) could have positive impacts on privacy. Blumenthal has "been a great champion on a lot of consumer-related Internet issues," he said. "Over on the government oversight side, I think having Rand Paul in the Senate is going to be (a significant check on) the growing surveillance state."

Another key departure on privacy and civil liberties: Russ Feingold (D-Wisc.), who lost his reelection bid. He was the [only senator](#) to vote against the Patriot Act and was a [fierce critic of warrantless wiretapping](#). He was even [endorsed](#) by Bob Barr, the Libertarian Party's 2008 presidential nominee.

The Computer and Communications Industry Association, whose members include Google, Facebook, and Microsoft, [suggested](#) that one area to watch will be what happens once Tea Party-backed candidates are sworn into office in the new Congress: "Will proposals to increase government surveillance of domestic phone calls and e-mails get these constitutional fundamentalists worked up?"



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