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The views and opinions expressed in these articles are those of the authors and do not necessarily reflect the views of the New York City Bar Association.

Senators Introduce Legislation to Address Airline Cybersecurity and Privacy

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In recent months, Senators introduced two bills addressing airline cybersecurity and privacy.

The first bill, the Passenger Privacy Protection Act of 2019, was introduced by Senators Jeff Merkley (D-OR) and John Kennedy (R-LA) on April 11, 2019 and referred to the Senate Committee on Commerce, Science and Transportation.² The bill was introduced less than a month after Senators Merkley and Kennedy wrote a letter to executives of eight air carriers including Delta, Southwest, United and JetBlue expressing concern regarding airlines' monitoring of passengers after CNN reported that multiple airlines had cameras embedded in aircraft seats.^{3 4} The Senators' letter asked the airline executives to provide information regarding whether they use cameras to monitor passengers, the purpose of any such camera usage, and security measures used to prevent the hacking of cameras monitoring passengers or data obtained from cameras monitoring passengers.⁵

The Act, which would apply to all air carriers and foreign air carriers, would prohibit the installation of any in-flight entertainment system with an embedded camera or microphone or any camera or microphone separate from an in-flight entertainment system that is designed to observe a passenger.⁶

The Act would require that any camera already embedded in an in-flight entertainment system be removed, permanently disabled and covered, or covered to prevent it from making any

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² Passenger Privacy Protection Act of 2019, S. 1206, 116th Cong. (2019).

³ Office of Senator Jeff Merkley, "Merkley, Kennedy Raise Privacy Alarms After Revelations that Airlines May be Monitoring Passengers through In-Flight Entertainment Systems," Office of Senator Jeff Merkley (March 18, 2019) <https://www.merkley.senate.gov/news/press-releases/merkley-kennedy-raise-privacy-alarms-after-revelations-that-airlines-may-be-monitoring-passengers-through-in-flight-entertainment-systems> accessed November 21, 2019.

⁴ Francesca Street, "Can Airplane Seat Cameras Spy on Passengers?," CNN (March 3, 2019) <https://www.cnn.com/travel/article/airplane-seat-camera-intl/index.html> accessed November 21, 2019.

⁵ Office of Senator Jeff Merkley, "Merkley, Kennedy Raise Privacy Alarms After Revelations that Airlines May be Monitoring Passengers through In-Flight Entertainment Systems," Office of Senator Jeff Merkley (March 18, 2019) <https://www.merkley.senate.gov/news/press-releases/merkley-kennedy-raise-privacy-alarms-after-revelations-that-airlines-may-be-monitoring-passengers-through-in-flight-entertainment-systems> accessed November 21, 2019.

⁶ Passenger Privacy Protection Act of 2019, S. 1206, 116th Cong. (2019).

observations within two months of the Act's enactment.⁷ The Act would also require that any microphone already embedded in an in-flight entertainment system be removed or physically disconnected and covered to render it ineffective within two months of the bill's enactment. The Act further requires that any cameras or microphones separate from an in-flight entertainment system designed to observe a passenger be removed within two months of the Act's enactment.⁸

The second bill, the Cyber AIR Act, was introduced by Senators Ed Markey (D-MA) and Richard Blumenthal (D-CT) on July 18, 2019 and referred to the Senate Committee on Commerce, Science, and Transportation.⁹ Although Senators Markey and Blumenthal previously introduced a version of the Act in 2017 and Senator Markey introduced a version of the Act in 2016, the Senate Committee on Commerce, Science, and Transportation never voted or held hearings on either bill.^{10 11}

The Cyber AIR Act would direct the Secretary of Transportation to prescribe regulations requiring air carriers, foreign air carriers, and manufacturers of aircraft or electronic control, communications, maintenance, or ground support systems for aircraft to notify the Federal Aviation Administration (FAA) of any attempted or successful cyberattack on any system on board an aircraft or any maintenance or ground support system for aircraft.¹² The Act would also direct the Commercial Aviation Communications Safety and Security Leadership Group established by the January 29, 2016 memorandum of understanding between the Department of Transportation (DOT) and Federal Communications Commission (FCC) to evaluate the cybersecurity of broadband wireless communications equipment designed for consumer use on aircraft, develop effective methods for preventing foreseeable cyberattacks that exploit such equipment, and require air carriers, manufacturers, and communication service providers to implement technical and operational security measures deemed to be necessary and sufficient.¹³

⁷ *Id.*

⁸ *Id.*

⁹ Cyber AIR Act, S. 2181, 116th Cong. (2019).

¹⁰ Cyber AIR Act, S. 679, 115th Cong. (2017).

¹¹ Cyber AIR Act, S. 2764, 114th Cong. (2016).

¹² Cyber AIR Act, S. 2181, 116th Cong. (2019).

¹³ *Id.*