



September 20, 2021

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan,

We write to encourage the Federal Trade Commission (FTC) to begin a rulemaking process to protect consumer privacy, promote civil rights, and set clear safeguards on the collection and use of personal data in the digital economy. As Congress continues to develop national privacy legislation, FTC action on this front will ensure that Americans have every tool at their disposal to protect their privacy in today's online marketplace.

Consumer privacy has become a consumer crisis. Big Tech companies have used their unchecked access to private personal information to create in-depth profiles about nearly all Americans and to protect their market position against competition from startups. Consumers have been forced to accept continuous data breaches and security lapses that compromise their intimate personal records. Americans' identities have become the currency in an unregulated, hidden economy of data brokers that buy and sell sensitive information about their families, religious beliefs, healthcare needs, and every movement to shadowy interests, often without their awareness and consent. Meanwhile, communities of color have faced setbacks in the fight to protect their civil rights as new forms of discrimination have proliferated on social media platforms. This sustained failure has fostered a market that punishes companies for protecting and respecting users, rather than rewarding pro-consumer practices.¹

We believe that a national standard for data privacy and security is urgently needed to protect consumers, reinforce civil rights, and safeguard our nation's cybersecurity. Accordingly, and in parallel to congressional efforts to create federal privacy laws to give power back to consumers, the Commission should take advantage of every tool in its toolkit to protect

¹ *Axios|SurveyMonkey poll: privacy deep dive*. March 2019.
<https://www.surveymonkey.com/curiosity/surveymonkey-axios-poll-privacy-deep-dive/>

consumers' privacy. Continuous high-profile and costly privacy violations and data breaches have shown the limits of the FTC's general prohibition on unfair and deceptive practices. Big Tech companies have routinely broken their promises to consumers and neglected their legal obligations, only to receive wrist-slap punishments after long delay, providing little relief to consumers, and with minimal deterrent effect.

We urge the Commission to undertake a rulemaking process with the goal of protecting consumer data; the rulemaking should consider strong protections for the data of members of marginalized communities, prohibitions on certain practices (such as the exploitative targeting of children and teens), opt-in consent rules on use of personal data, and global opt-out standards². Under the FTC Act, the Commission is able to promulgate rules to define and prevent business practices that violate our consumer protection law's prohibition on unfair or deceptive acts or practices. FTC Commissioners Chopra, Slaughter, and Wilson, and former FTC Chairs have all provided compelling arguments that unfair and deceptive practices are prevalent in the digital economy and that the market has failed consumers. These arguments are bolstered by the FTC's enforcement record, numerous staff reports, and revealing market investigations.³ This record provides a powerful and compelling basis for urgent action.

The FTC has substantial institutional knowledge and expertise to contribute to the legislative process through its track record of enforcement and its existing privacy authorities, such as those under the Children's Online Privacy Protection Act and the Fair Credit Reporting Act. An FTC rulemaking initiative would contribute to congressional efforts to develop federal privacy legislation through the research, public comment record, and dialogue required under the Commission's rulemaking procedure under the Mag-Moss process.⁴

Consumers deserve strong and enforceable privacy safeguards in the digital economy – opening a rulemaking would be a powerful step toward addressing this long overdue need.

² Such as the Global Privacy Control recognized by California's consumer privacy laws.

<https://oag.ca.gov/privacy/ccpa>

³ *Joint Statement of FTC Commissioners Chopra, Slaughter, and Wilson*. December 2019.

https://www.ftc.gov/system/files/documents/public_statements/1584150/joint_statement_of_ftc_commissioners_chopra_slaughter_and_wilson_regarding_social_media_and_video.pdf

FTC. List of Privacy Cases. <https://www.ftc.gov/enforcement/cases-proceedings/terms/245%2B247%2B249%2B262>

⁴ Commissioner Slaughter. *The Near Future of U.S. Privacy Law*. September 6, 2019.

https://www.ftc.gov/system/files/documents/public_statements/1543396/slaughter_silicon_flatirons_remarks_9-6-19.pdf

Indeed, Congress and FTC Commissioners have, on a bipartisan basis, recognized the need for the Commission to write and update rules on consumer privacy to set standards that follow changes in technologies and business practices. See also:

Prepared Remarks of Chairman Joseph J. Simons, Hearing on "Oversight of the Federal Trade Commission: Strengthening Protections for American's Privacy and Data Security" Committee on Energy and Commerce Subcommittee on Consumer Protection and Commerce. May 8, 2019.

https://www.ftc.gov/system/files/documents/public_statements/1519226/2019_ec_oral_remarks.pdf

Thank you for your attention to this important matter.

Sincerely,



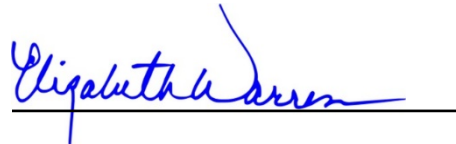
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BRIAN SCHATZ
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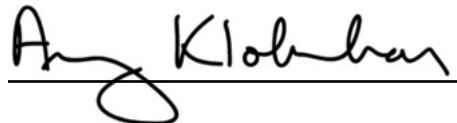
ELIZABETH WARREN
United States Senate



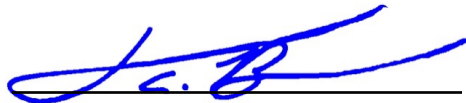
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