



Office of Commissioner
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

STATEMENT OF COMMISSIONER REBECCA KELLY SLAUGHTER
Regarding the Report to Congress on Privacy and Security

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The FTC recently provided a report to Congress detailing our efforts to protect American's privacy and data security, setting forth priority areas for improving our effectiveness, and highlighting areas in need of increased resources. I strongly support the priority areas the Commission advances: integrating our approaches to competition and data privacy; refining our remedies to better maximize deterrence and mitigate consumer harm; increasing our focus on the data practices of dominant digital platforms; and deepening our understanding of the consumer and competitive harms arising from unchecked algorithms. I also strongly support the call for more resources. The FTC has less than 50 full-time employees striving to anticipate, investigate, and litigate complex data harms perpetrated by both the biggest companies in the world and an endless stream of smaller actors that often inflict outsized harm. To do more, we need more.

At the same time, we should figure out what more we can do with what we already have. Congress specifically delegated to the FTC the authority to write rules regarding unfair and deceptive acts and practices that are prevalent in the markets; we should use it. Specifically, as I have been saying for several years, the Commission should open a rulemaking proceeding to address widespread data harms and abuses. Clear, bright-line rules developed on a public record through a participatory process with stakeholder engagement can help honest businesses comply with the law and prevent people from being harmed in the first place. Of course, rules cannot operate outside the bounds of the statute. A rule can only bar practices that are already unfair or deceptive; it cannot make otherwise legal conduct illegal.

My friend and colleague, Commissioner Phillips, suggests that using the FTC's statutory rulemaking authority to protect consumers from rampant data abuses might amount to replacing "market preferences with regulatory fiat." He also resists the notion that the FTC should take a comprehensive approach to digital markets and address intersecting competition and data privacy concerns holistically. He argues that the synchrony in these areas is overstated and bristles at phrases such as "tackl[ing] these issues on a structural level," suggesting that our focus "should remain on helping consumers." I respectfully but strongly disagree on both counts.

The FTC's failure to use our congressionally-delegated rulemaking authority in the area of data abuses has coincided with the emergence of a market driven by consumer data with

vanishingly few limitations.¹ We are all surveilled, tracked, targeted—some of our communities more than others—and too often our choices are manipulated and limited. This is not the result of the expression of preferences in a well-functioning marketplace, as Commissioner Phillips suggests. Large intermediaries dominate data markets, and consumers are not able to exercise meaningful choice with respect to how their data is collected, used, and shared. It is incumbent on us to identify the unfair, deceptive, and anticompetitive practices that are harming consumers and use all of our statutory tools to strategically and structurally address illegal conduct.

I am reminded of a universal example, captured brilliantly in a recent novel, *A Girl is a Body of Water*, by Jennifer Nansubuga Makumbi:

“If your roof leaks, what do you do?”

“Find the hole, plug it, and then mop.”

“Those women . . . have started with mopping.”

Let us not be an agency content with mopping when it is past time to try and fix the roof. I am confident that the FTC is ready and able to begin this important endeavor, and I am eager to learn from an open rulemaking record.

¹ Indeed, nine Senators recently asked the FTC to use its statutory authority 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.” <https://www.blumenthal.senate.gov/imo/media/doc/2021.09.20%20-%20FTC%20-%20Privacy%20Rulemaking.pdf>.