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Statement of Commissioner Rebecca Kelly Slaughter
Regarding the Health Breach Notification Rule and the Biometric Policy Statement
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Thank you, Ben, and everyone at DPIP, for that presentation and for doing the hard work of protecting Americans' privacy. Despite DPIP's modest size and our considerable resource constraints compared to our sister agencies abroad, I believe we're doing some of the most innovative privacy and consumer protection work in the world. Ben's presentation shows just how adaptable and innovative our staff have been at addressing new technological challenges in this rapidly changing environment.

Picking up one thread in that presentation: I'm especially proud of the work the FTC has done to advance the privacy protections of kids and teens. All three Commissioners currently serving are parents, and I think it's fair to say that we're all above average in our tech-savviness. We know just how exhausting and impossible it is in practice for parents to navigate digital consents for every online service their kids use. That's why the novel provisions in our settlements with Epic Games and Chegg are so important. They move the burden away from parents and toward the companies to make their services more privacy-protective by default and to minimize the data that companies collect on our kids. A key insight—that data that isn't collected can't be misused, breached, or shared—is one that we've put in place across DPIP's enforcement work, in *Drizly*, *GoodRx* and others. I hope we continue to make it clear that protecting their users' privacy, including by shifting the burden of doing that away from their users, has to be a priority for companies that traffic in consumer data. Which brings me to the two other items on today's agenda.

I'm pleased to support the Commission's biometric policy statement. It appropriately highlights the risk of widespread deployment of this technology, including more commercial surveillance out in the real world—in retail stores, arenas, airports, and other venues. The risks of collecting and using this information go beyond privacy and data-security risks. The statement makes clear that we're also watching for the potential discriminatory and civil rights risks of this information being used to approve or deny people access to economic and other benefits or opportunities. I hope that this policy statement and the ongoing work of the Commission shows industry that we are well-prepared to use our Section 5 authority prohibiting unfair or deceptive acts or practices against abuses of this, or any other new, technology.

I want to particularly acknowledge Commissioner Bedoya's leadership in the field of biometric privacy and thank him for his work—long before he came to the Commission—that helped call attention to the risks of biometric surveillance. When I first started at the FTC some

five years ago, and I wanted to better understand the issues surrounding biometric surveillance, then-Professor Bedoya was my first call. He generously gave his time and energy to help explain the markets, the research, and the implications of this technology to me. I appreciated it then, and I appreciate even more now that the Commission gets to benefit directly from his input, expertise, and leadership.

I am also happy to support the notice of proposed rulemaking to update, clarify, and strengthen the Commission's Health Breach Notification Rule. As has been mentioned, this rule went unenforced for its first decade, despite its potential to protect Americans' most sensitive data concerning their health and wellness. I even partially dissented in a matter, *Flo Health*, a few years ago, because I thought that it should have included a count alleging a violation of this Rule. We have now brought two important cases—*GoodRx* and, just yesterday, *Premom*—putting this important rule to work. These cases built on Commission's 2021 policy statement about the Rule, which clarified that many health-related apps that are not otherwise covered by HIPAA are covered by the Rule, emphasized that breaches of security can involve any unauthorized access and not only the work of nefarious hackers, and forecasted stepped-up enforcement. And now the notice of proposed rulemaking builds on these foundations by proposing important clarifications and updates to the Rule's text. I will look forward to reviewing the comments we receive to ensure that the Rule can keep pace with rapid changes in society to keep Americans' most sensitive health and wellness data private.

I also want to thank everyone that helped work on today's items. Thanks again to Ben Wiseman and thanks also to Alejandro Rosenberg and everyone in the BCP front office for their work on both items. For the biometric policy statement, thanks to Robin Wetherill, Amanda Kouliosias, and Tiffany George in DPIP, Josephine Liu in OGC, Mike LeGower & Devesh Raval in BE. On the Health Breach Notification Rule, I'd like to thank Tiffany George, Ryan Mehm, Ronnie Solomon, and Elisa Jillson in DPIP; Maggie Cole in DLTA; Beth Freeborn in BE; Josephine Liu, Richard Gold, and Franzi Schroder in OGC.