

Before the
FEDERAL TRADE COMMISSION
Washington, DC 20530

In the Matter of)	
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FTC Hearings on Competition and Consumer)	FTC Docket ID: FTC 2018-0098
Protection in the 21 st Century:)	
)	
Feb. 12-13 Hearing on Consumer Privacy)	
)	

**COMMENTS OF THE
CONSUMER TECHNOLOGY ASSOCIATION**

The Consumer Technology Association (“CTA”)¹ commends the Federal Trade Commission (“FTC” or “Commission”) for its consistent leadership on consumer privacy at a time of evolving domestic and international privacy frameworks. CTA welcomes the Commission’s upcoming hearing on consumer privacy and is pleased to provide these comments to help inform discussion at the hearing.

I. INTRODUCTION

Both the responsible use of data and consumer trust are critical to innovation in the 21st century economy and to achieving the consumer, economic, and societal benefits of new technologies, including artificial intelligence (“AI”) and the Internet of Things. The consumer technology industry is thus highly incentivized to meet consumers’ privacy expectations and to work toward public policy solutions that support this result. As CTA noted in comments filed

¹ The Consumer Technology Association (“CTA”)TM is the trade association representing the \$377 billion U.S. consumer technology industry, which supports more than 15 million U.S. jobs. More than 2,200 companies – 80 percent are small businesses and startups; others are among the world’s best known brands – enjoy the benefits of CTA membership including policy advocacy, market research, technical education, industry promotion, standards development and the fostering of business and strategic relationships. CTA also owns and produces CES® – the world’s gathering place for all who thrive on the business of consumer technologies. Profits from CES are reinvested into CTA’s industry services.

with NTIA last month, “in light of recent changes in privacy laws in Europe and California ... it is an appropriate time for the U.S. federal government to provide leadership ensuring the United States remains at the forefront of enabling innovation with strong privacy protections.”² The best way to achieve these goals is through federal privacy legislation that harmonizes the regulatory landscape and establishes a flexible and consistent risk- and outcome-based approach to privacy,³ as both the Commission (acting unanimously) and agency staff have recommended in recent weeks.⁴

Concurrently with efforts toward federal privacy legislation and “rapidly-evolving changes in technology, business models, laws, and policy initiatives,” the Commission is right to embark on a “re-examin[ation of] the approach it developed in 2012.”⁵ As it does so, the FTC

² Comments of the Consumer Technology Association, *Developing the Administration’s Approach to Consumer Privacy*, Before the National Telecommunications and Information Administration, Docket No. 180821780-8780-01, at 10 (filed Nov. 9, 2018), *available at* https://www.ntia.doc.gov/files/ntia/publications/cta_comments_in_response_to_ntia_privacy_rfc-c1.pdf.

³ *Id.*

⁴ Prepared Statement of the FTC, *Oversight of the Federal Trade Commission*, Before the U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security, at 9 (Nov. 27, 2018), *available at* https://www.ftc.gov/system/files/documents/public_statements/1423835/p180101_commission_testimony_re_oversight_senate_11272018_0.pdf (“[T]he Commission urges Congress to consider enacting privacy legislation that would be enforced by the FTC.”); Comments of the FTC Staff, *Developing the Administration’s Approach to Consumer Privacy*, Before the National Telecommunications and Information Administration, Docket No. 180821780-8780-01, at 20 (filed Nov. 9, 2018), *available at* https://www.ntia.doc.gov/files/ntia/publications/federal_trade_commission_staff_comment_to_ntia_11.9.2018.pdf (“FTC Staff Comments”) (“The FTC also understands that both Congress and the Administration are considering federal privacy legislation, and the Commission strongly supports those efforts.”).

⁵ FTC, *FTC Hearings on Competition and Consumer Protection in the 21st Century*, An FTC Event on February 12-13, 2019, at 2, *available at* <https://www.regulations.gov/contentStreamer?documentId=FTC-2018-0098-0003&contentType=pdf> (“Hearing Notice”). After roundtables between December 2009 and March 2010, and a preliminary staff report released in 2010, in 2012 the FTC released a report

should focus on maintaining its important leadership role, regardless of when or whether new privacy legislation is adopted. In particular, the FTC should continue to monitor the marketplace and bring enforcement actions where information practices cause significant harm to consumers, as well as continue to develop and publish both business and consumer guidance. Moreover, the FTC should continue to support a balanced, flexible, and technology- and sector-neutral privacy framework, which remains critical to protect consumers while preserving data-driven innovation. The upcoming hearing will help identify appropriate priorities for privacy enforcement and policy that can be carried out by the FTC under its existing authorities and also can inform the development of any new federal privacy legislation.

II. THE COMMISSION’S HEARING AND ANY CORRESPONDING REPORT SHOULD REFLECT THAT THE DATA-DRIVEN ECONOMY OFFERS NUMEROUS BENEFITS TO CONSUMERS AND COMPETITION

CTA member companies are well suited to showcase “the actual and potential benefits for consumers and to competition of information collection, sharing, aggregation and use,” as well as to what extent consumers realize such benefits.⁶ While these benefits are visible all year round, the international CES brings them together in one place and time, demonstrating examples of the responsible use, collection, sharing, and aggregation of information. For instance, highlights of advances in consumer technology based on data-driven innovation and the responsible use of information at CES 2018 included:

“call[ing] on companies to act now to implement best practices to protect consumers’ private information” and establishing a framework to do so. *See* FTC, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Business and Policymakers* (Mar. 2012), available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf> (“FTC 2012 Privacy Framework”).

⁶ *Id.*

- Voice-activated assistants offered from an increasing number of manufacturers;⁷
- A prototype robot that would provide a user a movable chair with cargo space and another that can help comfort humans in need;⁸
- A smart toy to provide comfort to children diagnosed with cancer;⁹
- Augmented reality glasses that can provide convenience as well as life-changing capabilities for vision-impaired veterans;¹⁰
- A device to improve your sleep;¹¹
- An-add on car accessory that can improve safety;¹² and
- Cars with self-driving capabilities that foreshadow fully self-driving vehicle, which could save thousands of lives per year.¹³

The upcoming CES 2019 promises even more, such as AI-powered robotics that will improve our lives and clean our homes; how cities will be forever changed thanks to wireless connectivity and data-driven AI; and when self-driving cars, which require the collection and processing of data to perform and perform safely, will hit the road.¹⁴

⁷ Lisa Eadicicco, *10 of the Coolest Gadgets We Saw at CES 2018*, TIME (Jan. 13, 2018), <http://time.com/5100244/best-ces-2018-consumer-electronics-show/> (“*TIME 10 CES Gadgets*”); PCMag Staff, *The Best of CES 2018*, PCMAG (Jan. 11, 2018), <https://www.pcmag.com/article/358452/the-best-of-ces-2018> (“*PCMag Best of CES*”).

⁸ *TIME 10 CES Gadgets*.

⁹ *Id.*

¹⁰ *Id.*; Press Release, Vuzix, American Veterans with Low Vision and Blindness to Receive Smart Glasses from Vuzix Partner Cyber Timez and Wounded Warrior Program (Aug. 14, 2017), <https://ir.vuzix.com/press-releases/detail/1576/american-veterans-with-low-vision-and-blindness-to-receive>.

¹¹ *TIME 10 CES Gadgets*.

¹² *PCMag Best of CES*.

¹³ TechCrunch, Autonomous Cars at CES 2018, <https://techcrunch.com/tag/autonomous-cars-at-ces-2018/>.

¹⁴ CTA, CES Tech Talk Podcast, <https://www.ces.tech/Events-Programs/CES-Tech-Talk-Podcast.aspx>.

In sum, technologies and innovations made possible through the collection, use, and processing of data make consumers' lives easier, healthier, and safer. These uses of data can and must go along with consumer privacy protections; consumers must trust the technologies and devices that collect and use their information to actually adopt them and obtain the myriad benefits they offer. CTA members strive to develop and maintain consumers' trust in their products and services, including with respect to the collection and responsible use of data – in fact, it is a business imperative. CTA and its members therefore welcome the FTC's focus on consumer privacy as this effort can help to advance consumer trust.

III. THE FTC SHOULD MAINTAIN ITS ROLE AS A GLOBAL PRIVACY LEADER

The hearing notice asks about the role the FTC should play in the privacy area, and about how to define and measure success.¹⁵ The answer is simple: the FTC should maintain the leadership role it has developed over the last twenty years, particularly in the absence of new privacy legislation. Moreover, should Congress adopt new privacy legislation – and CTA believes Congress should – such legislation should maintain this critical FTC role.

The FTC generally has used its privacy authority to take action against companies whose practices cause significant harm to consumers. Using its existing authorities, the FTC has brought over 500 data privacy and security enforcement actions, and it has a deep bench of experienced and tech-savvy staff who are uniquely suited to address these issues. These FTC actions help to guide well-intentioned companies as they seek to avoid practices that, at least in the FTC's view, could cause harm their users. The FTC's ex post enforcement approach to privacy has permitted innovative uses of data while ensuring that consumers are protected against conduct that harms them. To that end, the FTC should continue to monitor the

¹⁵ Hearing Notice at 4.

marketplace and bring enforcement actions where information practices cause significant harm to consumers.

Another effective tool in the FTC's arsenal is its business guidance, which often plays a helpful role by alerting companies of practices that raise concerns and suggesting ways to address those concerns. For example, the FTC's 2012 privacy framework recommended certain practices that not only informed many companies' data practices but also remain sound foundations for the current environment.¹⁶ Indeed, as part of the launch of a new product or service, companies regularly look to the privacy report for guidance on, for instance, how best to calibrate the choices they offer to the sensitivity of the data and to what consumers may expect.¹⁷ They also look to the report's guidance on de-identifying data to help mitigate the risks to their customers and to the companies themselves.¹⁸ The FTC's business guidance on data and device security also has proven to be valuable to many companies. Most notably, the FTC's *Start with Security* guide and follow-up blog initiative offer digestible and implementable advice that a burgeoning company can employ before it has sufficient resources to hire security-focused professionals, consultants, and vendors.¹⁹

Similarly, the FTC's consumer education efforts provide practical, actionable advice to help individuals better protect themselves. The resources the FTC provides to consumers are accessible and practical, identifying key issues for consumers to consider when doing everything

¹⁶ FTC 2012 Privacy Framework.

¹⁷ *Id.* at 30.

¹⁸ *Id.* at 21.

¹⁹ FTC, *Start with Security: Lessons Learned from FTC Cases* (June 2015), available at <https://www.ftc.gov/tips-advice/business-center/guidance/start-security-guide-business>; Thomas B. Pahl, Acting Director, FTC Bureau of Consumer Protection, *Start with security – and stick with it* (Jul. 28, 2017 11:30AM), <https://www.ftc.gov/news-events/blogs/business-blog/2017/07/start-security-stick-it>.

from buying an internet-connected smart toy²⁰ to disposing of an old mobile device,²¹ to using IP cameras.²² Irrespective of any potential legislative changes, helping consumers make informed decisions about how they use online services should remain an FTC priority.

CTA encourages the FTC to continue its business and consumer education efforts. In particular, the FTC should continue to work with industry and other stakeholders to identify and publish consensus best practices around consumers' privacy expectations, including through this upcoming hearing and any update to the Commission's privacy framework.

IV. THE FTC SHOULD CONTINUE TO CHAMPION THE MERITS OF A BALANCED, FLEXIBLE, AND TECHNOLOGY-NEUTRAL PRIVACY FRAMEWORK

The hearing notice also asks several questions about privacy legal frameworks, including the tradeoffs between ex ante regulatory and ex post enforcement approaches to privacy protection and what federal privacy legislation should look.²³ CTA believes that a balanced, flexible, and technology-neutral framework remains critical to protect consumers while preserving data-driven innovation.

Although the U.S. privacy framework, comprised primarily of Section 5 and sector-specific privacy laws (*e.g.*, the Children's Online Privacy Protection Act, Gramm-Leach-Bliley Act, and Fair Credit Reporting Act) has served the U.S. economy and consumers well for more than 20 years, recent changes in privacy laws in Europe and California create an urgent need for

²⁰ Cristina Miranda, Division of Consumer and Business Education, FTC, *Buying an internet-connected smart toy? Read this.* (Dec. 6, 2018), <https://www.consumer.ftc.gov/blog/2018/12/buying-internet-connected-smart-toy-read>.

²¹ FTC, Consumer Information, *Disposing of Your Mobile Device*, <https://www.consumer.ftc.gov/articles/0200-disposing-your-mobile-device>.

²² FTC, Consumer Information, *Using IP Cameras Safely*, <https://www.consumer.ftc.gov/articles/0382-using-ip-cameras-safely>.

²³ Hearing Notice at 4.

the United States to develop a more comprehensive, baseline framework that protects consumers and is workable in practice and friendly to innovation. The U.S. privacy framework should maintain consumers’ trust while also facilitating data-driven innovation. To this end, CTA welcomes and agrees with the FTC staff’s recent comment to NTIA that “[a]ny legislation should balance consumers’ legitimate concerns about the protections afforded to the collection, use, and sharing of their data with businesses’ need for clear rules of the road, consumers’ demand for data-driven products and services, and the importance of flexible frameworks that foster innovation.”²⁴ CTA appreciates and supports the FTC’s continued efforts to champion a flexible, innovation-friendly privacy framework within the government, including through the NTIA comment.

The United States must demonstrate global leadership and show that the more burdensome and prescriptive regimes adopted abroad, which impose major costs without creating commensurate benefits to privacy, are not the only effective frameworks to protect consumer privacy. In fact, early evidence suggests that Europe’s more prescriptive privacy regime hurts innovation and investment.²⁵ Accordingly, CTA recommends making these principles the foundation of the U.S. approach to consumer privacy, including in any legislation that Congress adopts as well as for the FTC’s enforcement approach and priorities:

- A Uniform, Technology-Neutral National Standard: Consistent protections across technologies, companies, agencies, and state borders are the bedrock prerequisite to ensure consumer trust, continue data-driven innovation, and protect against competitive

²⁴ FTC Staff Comment at 20.

²⁵ See, e.g., Glenn G. Lammi, *Regulatory And Legal Barriers To Tech – Company Market Entry, Success, Stubbornly Persist*, FORBES (Nov. 6, 2018), <https://www.forbes.com/sites/wlf/2018/11/05/regulatory-and-legal-barriers-to-tech-company-market-entry-success-stubbornly-persist/#6081b1868e64> (noting that Europe’s General Data Protection Regulation “has dramatically disrupted the balance between regulation and innovation, erecting a barrier to European market entry for startups and propelling some established companies to either physically or virtually exist Europe”).

distortions in the marketplace realize its benefits. The most effective way to achieve such consistency is a federal privacy law. CTA also encourages the FTC to advocate for nationally consistent standards, for example as states consider additional consumer privacy laws and regulations.

- A Risk-Based Focus on Data: Privacy requirements should focus on the type of data at issue, recognizing that sensitive data may warrant heightened protections, rather than specific technologies or industry sectors. Legal requirements and enforcement should be focused on addressing specific, concrete privacy harms, in order to ensure that statutory obligations serve to advance meaningful protections for consumers and make efficient use of companies' resources.
- Freedom to Innovate: Privacy legislation and enforcement should provide legal clarity while maintaining the flexibility to innovate. In particular, neither privacy legislation nor enforcement priorities should inhibit small businesses' ability to innovate and compete with more established companies. Red tape imposed in the name of privacy could prevent innovative companies from proving their technologies and services in the marketplace.
- Follow Time-Tested, Consensus-Based Principles: The U.S. approach to privacy should continue to rest on the principles of transparency, consumer choice, security, and heightened protections for sensitive data. Given the complexity and potential marketplace impacts of privacy laws, any additional principles should only be pursued to the extent they have widespread and broad-based support.
- FTC Leadership: The FTC is the appropriate federal agency to enforce consumer privacy. CTA supports maintaining the FTC's leadership role under a federal legislative framework – and supports the FTC continuing its leadership, with or without additional federal legislation.

These principles have proven to preserve the critical innovation that drives the digital economy while also ensuring that consumers' information is respected and protected.

V. CONCLUSION

CTA welcomes the FTC's review of its approach to privacy, which comes at an opportune moment. Measured federal privacy legislation is the optimal way to preserve a workable and innovation-friendly environment in light of changes to privacy laws in California and Europe. Regardless of whether such legislation is enacted, the FTC should maintain its important leadership role on protecting consumer privacy. CTA encourages the FTC to use the upcoming hearing not only to identify appropriate priorities for privacy enforcement and policy that can be carried out by the FTC under its existing authorities, but also to inform the development of any new federal privacy legislation.

Respectfully submitted,

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