

**Statement of Chairman Joseph J. Simons and
Commissioners Noah Joshua Phillips and Christine S. Wilson**
*Regarding the Report to Congress on the FTC's
Use of Its Authorities to Protect Consumer Privacy and Security*

June 17, 2020

The work the Federal Trade Commission has done to protect consumer privacy and to ensure that consumers' data are secure is without equal, worldwide. We are proud of the volume, quality, and impact of the work this agency has done with a fraction of the staff and resources of our international sister agencies. There is no question that with more authority and more resources, we could do more. With the resources at our disposal and as the Staff Report details, the Commission has:

- Brought more than 80 general privacy lawsuits, more than 70 data security cases, and more than 130 spam and spyware cases.
- Obtained a groundbreaking settlement against Facebook that entails unprecedented, sweeping injunctive relief (including creation of two new Board committees, CEO and CPO certifications, and obligations to implement both privacy and data security programs) and one of the largest civil penalties in U.S. history— alongside only cases involving enormous environmental damage and massive financial fraud.
- Augmented its own finite resources by working closely with state attorneys general in numerous privacy and security cases, including on the Equifax settlement that involved cooperation with 50 state attorneys general and the CFPB and the YouTube settlement (see below) in which we worked with the New York Attorney General.
- Strengthened data security order obligations and oversight for order compliance, including by giving the agency the ability to withhold approval for third-party security assessors if they underperform.
- Obtained the largest-ever civil penalty under COPPA in our settlement with YouTube, announced other significant COPPA matters, and launched a COPPA rule review on education technologies and other emerging issues to ensure that children continue to receive protections even as technologies evolve.
- Resolved our first case against providers of “stalking apps,” barring the developers from selling such apps for unlawful purposes.
- Announced new 6(b) projects, like the one examining collection, use, and disclosure of information by Internet service providers.

The Commission has also worked closely with international partners on enforcement matters and policy issues on both bilateral and multilateral bases, including through APEC, OECD, the Global Privacy Assembly, and the Global Privacy Enforcement Network and used the authority granted to the Commission by the US SAFE WEB Act (which we have called on Congress to renew) to facilitate cross-border cooperation in enforcement matters.

While many of Commissioner Chopra's recommendations speak to work already underway, we wish to respond to certain aspects of his statement. First, Commissioner Chopra asserts that the Commission is biased against small companies, and applies a double standard

favoring large companies. This is simply not true. In support of this proposition, he cites two cases – Facebook and YouTube – in which the Commission obtained unprecedented relief. Citing these cases to suggest that the Commission is letting big companies off easy makes no sense.

Second and relatedly, Commissioner Chopra suggests that the Commission should not settle cases against large companies, but should instead file more cases in court. The Commission is prepared to litigate any matter, and our ability and willingness to do so means that the Commission has a very active litigation docket, including against large companies. At the same time, the filing of an action in court is no guarantee that the relief in a particular case will be stronger than in a pre-filing settlement. For example, while we are gratified that the Wyndham courts issued opinions that upheld the Commission’s data security authority, the settlement in that case was not materially different than other settlements that the Commission had previously, and has since, obtained pre-filing. Litigation also takes time and resources, which is why every government agency with litigating authority – from state attorneys general to the Department of Justice – settles cases. Emphasizing the form of litigation over the function of law enforcement will leave consumers worse off.

Finally, the Commission, like any other agency or institution, is resource-constrained. Doing one thing – whether rulemaking, litigation, or another initiative – effectively means choosing not to do something else. Commissioner Chopra has called for a sweeping program of new rules, well beyond the privacy and data security rules he mentions in his statement: an energy privacy rule under 42 U.S.C. § 16471;¹ a privacy rule for car dealers; and a data protection rule under the Commission’s “Mag-Moss” rulemaking authority.² He has also called for a rule banning misrepresentations about placement rates or accreditation in higher education;³ a rule declaring certain – or perhaps all – non-compete clauses in employment contracts unlawful;⁴ a rule to codify the agency’s existing policies regarding Made in the USA labeling;⁵ a rule to govern the auto sales process;⁶ and a rule that would limit the role of observers on

¹ While there are certainly privacy concerns presented by the disclosure of electricity consumers’ data, we are unaware of any widely-reported commercial abuses in this area. In our collective tenure, we are not aware of one member of Congress nor advocacy group asking us to pursue such a rule.

² 15 U.S.C. § 57a. Statement of Commissioner Rohit Chopra Joined By Commissioner Rebecca Kelly Slaughter, *Regarding Data Security and the Safeguards Rule* (Mar. 2, 2020), https://www.ftc.gov/system/files/documents/public_statements/1567795/final_statement_of_rchopra_re_safeguards.pdf.

³ Statement of Commissioner Rohit Chopra, *In the Matter of University of Phoenix* (Dec. 10, 2019), https://www.ftc.gov/system/files/documents/public_statements/1557180/152_3231_statement_of_commissioner_rohit_chopra_0.pdf. It is worth noting that such misrepresentations are already illegal under the Commission’s deception authority.

⁴ Commissioner Rohit Chopra, Comment Letter on Dep’t of Justice Initiative on Competition in Labor Markets (Sept. 18, 2019), https://www.ftc.gov/system/files/documents/public_statements/1544564/chopra_-_letter_to_doj_on_labor_market_competition.pdf.

⁵ Statement of Commissioner Rohit Chopra, *Activating Civil Penalties for Made in the USA Fraud* (Apr. 17, 2019), https://www.ftc.gov/system/files/documents/public_statements/1514808/chopra_-_activating_civil_penalties_for_made_in_usa_fraud_4-17-19.pdf.

⁶ Statement of Commissioner Rohit Chopra, *In the Matter of Liberty Chevrolet, Inc. d/b/a Bronx Honda* (May 27, 2020),

corporate boards.⁷ We do not share his enthusiasm for such an across-the-board increase in regulation. But that aside, Commissioner Chopra's statement does not specify the projects that he would have the agency drop in order to pursue the projects he lists. On privacy and data security, the Commission is currently engaged in initiatives focused on the financial sector (addressed in the ongoing GLB rulemakings and upcoming public workshop) and technology directed to children (addressed in the ongoing COPPA regulatory review, which generated over 170,000 comments). More broadly, as the nation's primary consumer protection agency, our Staff is engaged in protecting Americans from deception, fraud, and unfair activities throughout the economy, regularly bringing cases that address substantial and ongoing harms.

In sum, we agree that the Commission should employ our resources as powerfully and as strategically as possible. We believe arguments to pull resources away from other priorities bear the burden of explaining those tradeoffs. The Commission is accomplishing great things on privacy and data security within the budgetary and jurisdictional limits that we face. We do not support pulling resources away from other priorities. Rather, the best way to protect American consumers' privacy is to have Congress give the Commission additional authority and resources.

https://www.ftc.gov/system/files/documents/public_statements/1576002/bronx_honda_final_rchopra_bronx_honda_statement.pdf.

⁷ Statement of Commissioner Rohit Chopra Joined By Commissioner Rebecca Kelly Slaughter, *In the Matter of Altria Group, Inc and JUUL Labs, Inc.* (Apr. 2, 2020),

https://www.ftc.gov/system/files/documents/public_statements/1570265/statement_of_comm_chopra_in_the_matter_of_altria-juul.pdf.