



Office of the Chair

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

**Opening Remarks of Chair Lina M. Khan
As Prepared for Delivery
Commercial Surveillance and
Data Security Public Forum**

September 8, 2022

Good afternoon and welcome to the FTC's Public Forum on commercial surveillance and lax data security practices.

As you all know, last month the Federal Trade Commission initiated a proceeding to examine whether we should issue new rules addressing data practices that are unfair or deceptive. Today's public forum is a key next step. As part of our effort to gather public input, we have today invited industry representatives, consumer advocates, researchers, and the broader public to share their views and experiences with us. This public input will directly inform our analysis and thinking—both with determining *whether* to proceed with a proposed rule and *what form* a proposed rule may take.

We've received significant interest in today's public forum, with a sizable number of individuals from the public signing up to share comments. This outpouring of interest underscores how critical and urgent these issues are to people's lives today. We know that today's digital tools can deliver huge conveniences—but we also know that these tools and the business models that underlie them can be used to track and surveil individuals in entirely new ways. Firms are collecting data on where we go, what we read, who we meet, and what we buy. Research suggests that many Americans have limited insight into what information is being collected about them and how it is being used, sold, or stored—and that even when people *do* know, they may find themselves with no real options but to submit to these practices. As more sectors of the economy continue to become digitized, these practices are touching more and more of our daily lives—be it in healthcare and housing or in education and employment. The huge amounts of data that are being collected and stored has coincided with a growing number of data leaks and hacks—security vulnerabilities that can leave people's sensitive information exposed, leading them to lose money, have their identity stolen, or face discrimination or other types of harm.

The stakes with these business practices are high, and the FTC has a long record of using its law enforcement tools to combat commercial surveillance and lax data security practices in instances where they are illegal.

With this rulemaking proceeding, we are seeking to determine whether certain unfair or deceptive data practices may now be so prevalent that we need to move beyond case-by-case adjudication and instead have market-wide rules.

In order for the FTC to be able to issue rules in this area, there are certain legal tests that we must be able to meet in order to show that a particular data practice is “unfair” or “deceptive” and that it is “prevalent.” The public record that we build—both through the comments that we receive in our public docket, as well as through the discussion and comments we hear today at this forum—will be critical for informing our assessment of whether we have a basis for proceeding with any particular rule.

So: it’s difficult to overstate the importance of public participation in this process, as what we hear and learn as part of this process informs our assessment of what we are able to do—or not able to do.

When we launched this rulemaking proceeding last month, we issued an ANPR—an Advance Notice of Proposed Rulemaking—which lays out scores of questions on which we are particularly eager to receive feedback and input. Your comments can help us gain a deeper understanding of prevailing commercial surveillance and data security practices—and you can do this through sharing research or reporting that you’ve done or seen, but also through sharing your own personal experience and perspectives. Expertise comes in many forms, including through day-to-day experience living with a particular business practice, so please don’t be shy about sharing your views. We are so encouraged by the significant amount of public interest that we’ve already received as part of this proceeding, and I want to personally encourage anyone that we could not accommodate today or who is inspired by today’s discussions to submit written comments at [regulations.gov](https://www.regulations.gov) on or before October 21, 2022.

Democratizing this process and structuring it to enable broad and wide public participation is a key goal, and so we are hosting this virtual public forum that will be recorded and submitted as part of the official record for this rulemaking proceeding.

Today’s forum will start off with a brief presentation from our Office of General Counsel on the rulemaking process so that everyone is aware of what types of information and evidence the Commission is seeking at this stage of the rulemaking process.

We are also hosting two panels with consumer advocates and representatives from industry to explore a variety of issues covered in this ANPR, including the impact of commercial surveillance practices on consumers, any risks that these practices pose to specific groups, and the role of particular business models.

We will also hear from my colleagues Commissioner Slaughter and Commissioner Bedoya. Commissioner Slaughter has been a critical leader at the FTC for charting our path forward on this rulemaking proceeding, and Commissioner Bedoya, who joined us more recently, has long worked on and thought about these critical issues. I’m grateful for the expertise, experience, and leadership that they bring to this process.

Lastly, the forum will conclude with remarks from members of the public who signed up to provide public comments.

I am so grateful to our agency staff for the work they have already done on this ANPR, and to all our colleagues on the Commission for their input. I look forward to engaging with and

learning from the record that we develop on the wide range of issues covered. Working to protect Americans from unlawful commercial surveillance and data security practices is critical work, and I look forward to undertaking this effort with both the necessary urgency and rigor.

I'll now turn the floor over to Josephine Liu, Assistant General Counsel for Legal Counsel in the FTC's Office of General Counsel, who will provide a brief overview of the Mag-Moss rulemaking process and what the Commission is seeking at this stage of the process.
