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Office of the Director
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Believing in the FTC

Remarks of Samuel Levine, Director, Bureau of Consumer Protection

Beyond the FTC: The Future of Privacy Enforcement

Harvard Law School
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Good morning, everyone. I know you're nearing the end of this important symposium, and just when you thought you were finally *Beyond the FTC*, I show up.¹ I'm sorry to disappoint you. But it won't disappoint you to hear that I share the view that the federal government does not and should not enjoy a monopoly when it comes to protecting our privacy. It was wonderful hearing from so many esteemed scholars at this symposium about new approaches to advancing this work.

I also picked up on some frustration with the federal government, and in particular frustration that Congress has yet to pass comprehensive legislation to protect kids and teens, to strengthen privacy, or to promote competition among major tech firms.

This sense of frustration is not new to me. In the depths of the Great Recession, I worked across the street at the Harvard Legal Aid Bureau, where we were trying to help Boston residents facing eviction and foreclosure. At the time, we saw the federal government sitting on the sidelines, failing to provide meaningful help for homeowners, just as it had failed to prevent the predatory lending that led to catastrophe. Our strategy in those dark days – not unlike yours today – was to seek out other avenues for change.²

But there is a key difference between then and now. The FTC is hardly sitting on the sidelines when it comes to checking harmful commercial surveillance. In fact, we are taking critical steps to strengthen data safeguards, protect kids and teens, and hold violators accountable. So today, I'll make the case that rather than looking beyond the FTC, those who care about privacy should be working *with* the FTC to make our work better and more impactful.

¹ This is an opportune time to note that the views expressed here are mine alone, and not that of the Commission or any Commissioner. I am grateful to Barbara Chun for her substantial assistance in preparing these remarks.

² I will be forever indebted to my late teacher and mentor, Professor David Grossman, who led efforts at this law school and around the country to fight mass displacement by leveraging the law, community mobilization, and a deep commitment to *tikkun olam* – repairing our broken world. *The Legacy of the Late Professor David Grossman: 'Helping to Fix a Broken World,'* HARVARD LAW TODAY, Sept. 16, 2016, <https://hls.harvard.edu/today/funding-legacy-david-grossman-helping-fix-broken-world>. Dave's legacy lives on through the countless students, including me, who were inspired by his example to pursue a career in public interest law.

I'll start by describing what makes the FTC a truly special agency, one that's uniquely suited to taking on contemporary privacy challenges. I'll then talk about how under the leadership of Chair Lina Khan, we are pressing those advantages to deliver stronger privacy protections for the American public.

I. Institutional advantages

The FTC is unique. We are more than a century old, yet our core authority and mission have hardly changed – to protect fair markets by combatting unfair methods of competition and unfair or deceptive practices.

Our remit is broad, covering both antitrust and consumer protection. And our consumer protection mission alone covers almost the entire economy. But when it comes to protecting consumers' privacy, I consider our expertise across markets to be a feature, not a bug.

For example, fraud has been a mainstay of the FTC's enforcement program for decades. But today, we are increasingly seeing fraudulent actors exploit consumers' data as an additional source of revenue, conduct we are uniquely suited to spot and stop.³ Likewise, last year we issued a report on how companies are deploying dark patterns to manipulate consumers through sophisticated design techniques⁴ – a trend we are seeing both in our financial enforcement work⁵ and our privacy work.⁶

The fact that our agency also has a competition mission further enhances our work. For example, we recently issued a Request for Information seeking comment about cloud computing business practices from both a competition and consumer protection perspective, with questions on issues including firms' reliance on a small number of service providers, and how the responsibility for those risks is shared between cloud customers and cloud service providers.⁷ The FTC's recently

³ See, e.g., Press Release, *FTC Halts Operation That Unlawfully Shared and Sold Consumers' Sensitive Data*, (July 5, 2017), <https://www.ftc.gov/news-events/news/press-releases/2017/07/ftc-halts-operation-unlawfully-shared-sold-consumers-sensitive-data> (holding lead generator Blue Global LLC liable for tricking millions of consumers into filling out “loan applications,” then selling info collected to very few lenders, and instead to anyone willing to pay for it).

⁴ FTC, *BRINGING DARK PATTERNS TO LIGHT* (2021).

⁵ *In re: Credit Karma, LLC*, No. C-4781, (FTC Jan. 23, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/2023138-credit-karma-combined-final-consent-without-signatures.pdf (final decision and order settling claims that Credit Karma misrepresented consumers were “pre-approved” for credit cards).

⁶ Our recent orders against GoodRx and BetterHelp include bans on the use of dark patterns to obtain consumer consent. *US v. GoodRx Holdings Inc.*, 23-cv-460, (N.D. Cal. 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/goodrx_stipulated_order_for_permanent_injunction_civil_penalty_judgment_and_other_relief.pdf (first-of-its-kind settlement against telehealth & prescription drug discount provider for unauthorized disclosure of sensitive, personal health info to advertising companies & platforms including Facebook & Google); *In re BetterHelp, Inc.*, No. C-XXXX, (FTC Mar. 2, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/202_3169-betterhelp-consent.pdf (settling claims that online counseling service shared consumers' sensitive health data, including mental health info, with third parties such as Facebook & Snapchat for advertising purposes & without authorization).

⁷ Press Release, *FTC Explores Rules Cracking Down on Commercial Surveillance & Lax Data Security Practices* (Aug. 11, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-explores-rules-cracking-down-commercial-surveillance-lax-data-security-practices>.

formed Office of Technology, which I will talk about more later, is leading this project with involvement from lawyers and economists throughout the agency.

The FTC also has a set of tools that are unique in the federal government. We are a vigorous law enforcer, and have been rightly called “the greatest public interest law firm in the country.”⁸ We have authority to write rules outlawing unfair methods of competition, and recently proposed a ban on noncompete agreements.⁹ We can also write rules on unfair or deceptive practices, and over the last year have launched rulemaking proceedings around commercial surveillance,¹⁰ junk fees,¹¹ fake reviews,¹² and subscription plans.¹³ We can conduct market-wide studies, such as the study we announced last month on the proliferation of fraud on social media,¹⁴ and we have statutory powers to cooperate with our foreign counterparts on enforcement.¹⁵ And with mini-FTC Acts in nearly every state, our work not only shapes the national agenda but can also echo across the work of state attorneys general and private plaintiffs in courts across the country.

Today, our agency stands on the front lines of some of the greatest challenges in our economy, from unchecked consolidation to pervasive commercial surveillance to racial discrimination. That is nothing new. In the 1930s, we were one of the first agencies to take on deceptive ads in a new medium – the radio.¹⁶ In the 1940s and 50s, we were one of the first agencies to challenge the marketing of tobacco.¹⁷ And in the 1990s, our investigation of KidCom helped lead to passage of the Children’s Online Privacy Protection Act, or COPPA.¹⁸ Across markets and across decades, our ability to continually adapt our tools and strategy to emerging threats is a core strength of the FTC, and is a vindication of Congress’s decision so many decades ago to give us broad, flexible authority.

⁸ Remembering Chairman Michael Pertschuk, <https://www.ftc.gov/business-guidance/blog/2022/11/remembering-chairman-michael-pertschuk> (Nov. 18, 2022).

⁹ Non-Compete Clause Rule, 16 C.F.R. pt. 910 (proposed Jan. 19, 2023).

¹⁰ Trade Regulation Rule on Commercial Surveillance and Data Security, 87 Fed. Reg. 51273 (proposed Aug. 22, 2022).

¹¹ Unfair or Deceptive Fees Trade Regulation Rule, 16 C.F.R. pt. 464 (proposed Nov. 8, 2022).

¹² Trade Regulation Rule on the Use of Reviews and Endorsements, 16 C.F.R. pt. 465 (proposed Nov. 8, 2022).

¹³ Negative Option Rule, 16 C.F.R. pt. 425 (proposed Mar. 23, 2023).

¹⁴ Press Release, *FTC Issues Orders to Social Media and Video Streaming Platforms Regarding Efforts to Address Surge in Advertising for Fraudulent Products and Scams* (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-issues-orders-social-media-video-streaming-platforms-regarding-efforts-address-surge-advertising>.

¹⁵ U.S. SAFE WEB Act, Pub. L. No. 109-455, 120 Stat. 3372, extended by Pub. L. No. 116-173, 134 Stat. 837, codified at 15 U.S.C. §§ 41 et seq.

¹⁶ See, e.g., Ewin L. Davis, *Regulation of Radio Advertising*, 177 ANNALS OF AM. ACAD. OF POLITICAL & SOC. SCI. 154, 156-58 (1935), available at https://www.ftc.gov/system/files/documents/public_statements/673801/193501_davis_regulation_of_radio_advertising.pdf (discussion by FTC chair of FTC’s review of radio ads for truthfulness and honesty).

¹⁷ John E. Calfee, *Cigarette Advertising, Health Information & Regulation Before 1970* at 15-16, 26-28 (FTC, Paper No. 134, 1985), available at <https://www.ftc.gov/sites/default/files/documents/reports/cigarette-advertising-health-information-and-regulation-1970/wp134.pdf> (noting FTC brought series of cigarette advertising cases in 1942-43, & issued Cigarette Advertising Guides in 1955); Mad Men: Smoke Gets In Your Eyes (AMC television broadcast July 19, 2007).

¹⁸ Joshua Warmund, *Can COPPA Work? An Analysis of the Parental Consent Measures in the Children’s Online Privacy Protection Act*, 11 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 189, 192-94 (2000).

Today, we are leveraging that strength to champion privacy and check harmful commercial surveillance.¹⁹ That work will be the focus of my remarks.

II. FTC’s Strategy to Limit Unlawful Commercial Surveillance

As you know, the FTC has been doing important work on data protection for decades. But today, FTC leadership is stating plainly what so many of you have argued for so long: the “notice-and-choice” privacy regime is failing the American people.²⁰ I needn’t recite in full all the problems with this regime – the fantasy that consumers can read hundreds of pages of dense policy; the fiction that consumers have real choices; the delusion that we can somehow opt out of the digital economy.²¹ But the FTC is not just sitting idly by. We are taking concrete steps to establish substantive protections for people’s data – protections that don’t rely on fantasy or fictions and that recognize the systemic nature of the problem.

First, for the first time in our history, we recently launched a rulemaking proceeding around commercial surveillance and lax data security.²² We are currently reviewing the more than 11,000 comments we received as well as the many comments stakeholders made at our public hearing, reflecting Americans’ interest in this issue.

Importantly, our surveillance rulemaking is not the only market-wide rule we are proceeding on. The FTC continues its ongoing review of the COPPA Rule, where we are taking a careful look at some of the provisions of COPPA that go beyond notice-and-choice. We are also undertaking a review of the Health Breach Notification Rule, which requires certain firms that handle health data, including mobile health apps, to notify consumers if they experience a breach. In both reviews, we are going back to the authorizing statutes to ensure we are using every tool Congress gave us to protect the privacy of consumers’ information.

¹⁹ The term “commercial surveillance” is intended to convey the reality of contemporary data collection, which involves the pervasive and comprehensive tracking of consumers’ movements and behaviors across virtually every aspect of our daily lives. This is a concept that retired Harvard Business School Professor Shoshana Zuboff helped popularize in her 2019 book, *THE AGE OF SURVEILLANCE CAPITALISM: THE FIGHT FOR A HUMAN FUTURE AT THE NEW FRONTIER OF POWER*.

²⁰ For example, Chair Lina Khan has suggested the paradigm is “outdated and insufficient,” and Commissioner Rebecca Kelly Slaughter has argued that “when it comes to our digital lives, neither notice nor consent is meaningful.” Lina M. Khan, Remarks of Chair Lina M. Khan as Prepared for Delivery at IAPP Global Privacy Summit 2022 at 6 (Apr. 11, 2022), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/Remarks%20of%20Chair%20Lina%20M.%20Khan%20at%20IAPP%20Global%20Privacy%20Summit%202022%20-%20Final%20Version.pdf; Rebecca Kelly Slaughter, Remarks of Commissioner Rebecca Kelly Slaughter at FTC Hearing #12: The FTC’s Approach to Consumer Privacy at 1 (April 10, 2019), https://www.ftc.gov/system/files/documents/public_statements/1513009/slaughter_remarks_at_ftc_approach_to_consumer_privacy_hearing_4-10-19.pdf.

²¹ Last year, I discussed in some depth the problems we are seeing with this regime. Samuel Levine, Keynote Remarks of Samuel Levine, Director, Bureau of Consumer Protection, FTC, *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/Remarks-Samuel-Levine-Cleveland-Marshall-College-of-Law.pdf (May 19, 2022).

²² Trade Regulation Rule on Commercial Surveillance and Data Security, 87 Fed. Reg. 51273 (proposed Aug. 22, 2022).

It should be apparent that rulemaking is a key plank of our overall strategy. But I want to draw your attention to our recent enforcement actions in this space. As I mentioned earlier, there is widespread agreement that the notice-and-choice regime is failing the public. The actions we've filed over the last eighteen months demonstrate significant progress in moving the market in another direction, one with actual restrictions on how consumer information is handled.

A. Restricting What Companies Can Collect and Retain

First, our actions are making clear that companies should be collecting less consumer data and deleting more. For nearly two decades, the FTC's orders have required firms to exercise greater care in handling data they've collected from consumers. But over the last two years, the FTC is going further – requiring companies to collect less data in the first place. In five actions²³ since 2021, we've secured requirements that firms minimize the data they collect and retain it no longer than is reasonably necessary. And notably, we are securing these remedies not only in our privacy actions²⁴ but also in our data security actions.²⁵ This stems from our recognition that data that isn't collected can't be compromised.

B. Limiting the Sharing of Sensitive Data

In addition to restricting collection and retention, our recent actions also demonstrate the Commission's commitment to sharply limiting the sharing of consumers' sensitive data. For example, we recently charged GoodRx²⁶ with sharing consumers' medication data without their authorization. The order we secured did not require GoodRx to obtain consumer consent before sharing their data to fuel advertising. Rather, it banned the practice altogether²⁷ – a remedy we

²³ *In re Drizly, LLC*, Case No. C-4780 (FTC Jan. 10, 2023), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023185-drizly-llc-matter> (final decision & order); *In re Chegg, Inc.*, Case No. C-4782 (FTC Jan. 26, 2023), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/chegg> (final decision & order); *US v. GoodRx Holdings Inc.*, 23-cv-460, (N.D. Cal. 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/goodrx_stipulated_order_for_permanent_injunction_civil_penalty_judgment_and_other_relief.pdf (stip. order for permanent inj.); *In re Residual Pumpkin Entity, LLC formerly d/b/a CafePress, et al.*, Case No. C-4768 (FTC Jun. 24, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1923209-cafepress-matter> (final decision & order); *In re BetterHelp, Inc.*, No. C-XXXX, (FTC Mar. 2, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/202_3169-betterhelp-consent.pdf (agreement containing consent order).

²⁴ *US v. GoodRx Holdings Inc.*, 23-cv-460, (N.D. Cal. 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/goodrx_stipulated_order_for_permanent_injunction_civil_penalty_judgment_and_other_relief.pdf (stip. order).

²⁵ *In re Drizly, LLC*, Case No. C-4780 (FTC Jan. 10, 2023), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023185-drizly-llc-matter> (final decision & order); *In re Chegg, Inc.*, Case No. C-4782 (FTC Jan. 26, 2023), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/chegg> (final decision & order); *In re Residual Pumpkin Entity, LLC formerly d/b/a CafePress, et al.*, Case No. C-4768 (FTC Jun. 24, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1923209-cafepress-matter> (final decision & order).

²⁶ *US v. GoodRx Holdings Inc.*, 23-cv-460, (N.D. Cal. 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/goodrx_complaint_for_permanent_injunction_civil_penalties_and_other_relief.pdf (complaint).

²⁷ *US v. GoodRx Holdings Inc.*, 23-cv-460, (N.D. Cal. 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/goodrx_stipulated_order_for_permanent_injunction_civil_penalty_judgment_and_other_relief.pdf (stip. order § I).

then secured a second time in our action against BetterHelp.²⁸ Through these actions, the FTC is making it clear that HIPAA is not the only statutory safeguard for consumers' sensitive health data. Companies that handle it should be exercising extreme care, or they can expect to hear from us.

Another category of sensitive information is geolocation data. In our pending action against Kochava,²⁹ we alleged that it was unfair for the firm to make freely available sensitive geolocation data that could reveal whether consumers were seeking abortions, visiting mosques, or checking into rehab centers. We are currently in federal court seeking an outright ban on such sharing, and data brokers that are engaging in similarly risky practices should be paying attention.

C. Deploying Every Tool

Our enforcement work is also reminding the marketplace that while there isn't comprehensive privacy legislation in the United States, there are numerous privacy and data security laws that firms should not be ignoring.

One of the most important is COPPA. Today, when we investigate COPPA violations, we take a holistic look at other potential harm to children and teens. In our recent actions against Epic Games, for example, we not only required the company to come into compliance with COPPA, but also required Epic to change its default settings to better protect kids and teens.³⁰ On top of that, we required the company to stop using dark patterns to trick consumers into racking up unauthorized charges.³¹ – a great example of how our broad mandate enriches our work.

It's important to stress that COPPA is not just about parental consent. In a recent Policy Statement on Education Technology, the Commission made clear that companies cannot require children to provide more information than is reasonably needed for them to participate in the activity.³² We brought our first EdTech action last year,³³ and you can expect to hear on this in the coming months.

COPPA is not the only tool we are deploying in important new ways. In 2021, the Commission issued a Policy Statement making clear that we were prepared to vigorously enforce the Health Breach Notification Rule, including against health apps that may be inappropriately sharing

²⁸ *In re BetterHelp, Inc.*, No. C-XXXX, (FTC Mar. 2, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/2023169-betterhelp-consent.pdf (Decision & Order Provision I).

²⁹ *FTC v. Kochava, Inc.*, 2:22-cv-377 (D. ID.) (complaint filed Aug. 29, 2022), available at https://www.ftc.gov/system/files/ftc_gov/pdf/1.%20Complaint.pdf.

³⁰ *US v. Epic Games, Inc.*, 5:22-CV-00518-BO (E.D.N.C. Feb. 7, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/1923203epicgamesfedctorder.pdf (stip. order § III).

³¹ *In re Epic Games, Inc.*, C-4790 (FTC Mar. 13, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/1923203epicgamesfinalconsent.pdf (decision & order § I & "Express Informed Consent" definition).

³² FTC Policy Statement on Education Technology (May 19, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-crack-down-companies-illegally-surveil-children-learning-online>

³³ *In re Chegg, Inc.*, Case No. C-4782 (FTC Jan. 26, 2023), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/chegg> (final decision & order).

consumers' sensitive data.³⁴ We were not bluffing. Earlier this year, we brought our first action ever enforcing the Rule. It will not be our last.³⁵

We also continue to enforce one of the nation's first data protection laws, the Fair Credit Reporting Act. Last year, for example, we obtained an order against a lead generator limiting how the firm could handle consumer data and requiring it to pay a civil penalty.³⁶ And we recently announced a Request for Information with the Consumer Financial Protection Bureau around background screening in the rental market, which can implicate both the FCRA and the FTC Act.³⁷

D. Ensuring Accountability for Violators

The last point I want to make about our enforcement actions is that the marketplace should be paying attention. We are making clear that firms will face serious consequences for breaking the law.

First, in spite of the Supreme Court having taken away the agency's strongest tool to disgorge profits and recover funds for consumers,³⁸ we are breaking new ground when it comes to securing monetary relief in privacy actions. Over the last six months, we have obtained the largest COPPA penalty ever,³⁹ the first civil penalty for a violation of the HBNR,⁴⁰ and the first redress judgment for health privacy violations.⁴¹ Going forward, we are considering steps to further ensure that companies pay a price for violations. For example, if we undertake a rulemaking in this area, it would trigger stiff civil penalties of up to \$50,120 per violation.⁴²

³⁴ FTC Policy Statement on Breaches by Health Apps & Other Connected Devices (Sept. 15, 2021), *available at* https://www.ftc.gov/system/files/documents/rules/health-breach-notification-rule/statement_of_the_commission_on_breaches_by_health_apps_and_other_connected_devices.pdf.

³⁵ *US v. GoodRx Holdings Inc.*, 23-cv-460, (N.D. Cal. 2023), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/goodrx_stipulated_order_for_permanent_injunction_civil_penalty_judgment_and_other_relief.pdf.

³⁶ *FTC v. ITMedia Sols. LLC*, 2:22-cv-00073 DSF (C.D. Cal. Jan. 10, 2022), *available at* https://www.ftc.gov/system/files/documents/cases/ftcvitmedia_doc840561_stipulated_order_for_permanent_injunction.pdf (stip. order §§ II, V).

³⁷ Press Release, *FTC and CFPB Seek Public Comment on How Background Screening May Shut Renters out of Housing* (Feb. 28, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-cfpb-seek-public-comment-how-background-screening-may-shut-renters-out-housing>. Separately, the CFPB recently announced a Request for Information concerning the business practices of data brokers, and whether the FCRA might be implicated. Press Release, *CFPB Launches Inquiry into the Business Practices of Data Brokers* (Mar. 15, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-inquiry-into-the-business-practices-of-data-brokers/>.

³⁸ *AMG Capital Mgmt., LLC v. FTC*, 141 S.Ct. 1341 (2021).

³⁹ *US v. Epic Games, Inc.*, 5:22-CV-00518-BO (E.D.N.C. Feb. 7, 2023), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/1923203epicgamesfedctorder.pdf (Stip. Order § VIII imposing largest civil penalty ever for rule violation of \$275 million).

⁴⁰ *US v. GoodRx Holdings Inc.*, 23-cv-460, (N.D. Cal. 2023), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/goodrx_stipulated_order_for_permanent_injunction_civil_penalty_judgment_and_other_relief.pdf.

⁴¹ *In re BetterHelp, Inc.*, No. C-XXXX, (FTC Mar. 2, 2023), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/202_3169-betterhelp-consent.pdf.

⁴² See 16 C.F.R. § 1.98 (adjusting civil penalty for rule violations under 15 U.S.C. § 45(m)(1)(A) to \$50,120).

Monetary relief is not the only consequence companies can face for violating the law. We are also requiring companies to delete ill-gotten data, and to alert other firms if they are in receipt of the same. In some instances, we are requiring firms to not only delete ill-gotten data but also delete any algorithmic work product trained on such data, a remedy we recently obtained – for the first time ever – against a company charged with violating COPPA.⁴³

Finally, we know that companies tend to underinvest in data protection, often because the costs of breaches are often borne by customers or third parties.⁴⁴ Recognizing this, we are making sure that key decisionmakers are being held accountable for privacy and data security failures. For example, our data security action against Drizly named the company’s CEO, and our order binds him for the next decade, even if he leaves Drizly and moves to a new company.⁴⁵ And for serious privacy abuses as we saw in our spyware case against Spyfone, our order included a total industry ban for the CEO.⁴⁶

It should be apparent that our enforcement work is focused not on notching easy wins, but rather on bringing important cases that advance the law and deter violations by other actors. But rulemaking and enforcement are not the only tools we have. The Commission’s broad mandate and deep expertise also position the agency as a thought leader on U.S. privacy policy.

III. FTC Thought Leadership

That brings me to the final point I want to make. I am especially proud of how the FTC is proving nimble and forward-leaning when it comes to confronting emerging technology.

For example, we are likely all following the rapid advances in artificial intelligence, and many are becoming newly aware both of the promise of this technology and of the potential harms. But this area is not new to the FTC. We have focused for quite a while on the potential harmful impacts of AI tools and algorithms. We’ve brought cases, issued reports, held workshops and hearings, and are currently engaged in relevant rulemaking and market studies.⁴⁷ Today, this experience, along with our flexible authority and deep bench of talent, are allowing us to deliver clear, timely warnings around the risks posed by this technology.

Just last week, we warned companies that they should not be rushing new AI products to market before taking steps to assess and mitigate risks, both around fraud and other harms.⁴⁸ And last year, we issued a major report warning that current approaches to mitigating AI risks are falling

⁴³ *US v. Kurbo*, 3:22-cv-946-TSH (2022), available at

https://www.ftc.gov/system/files/ftc_gov/pdf/wwkurbostipulatedorder.pdf (Stip. Order §II)

⁴⁴ See Emanuel Kopp, et al., *Cyber Risk, Market Failures, & Financial Stability* 17-22 (IMF Working Paper, Paper No. 17/185, 2017).

⁴⁵ *In re Drizly, LLC*, Case No. C-4780 (FTC Jan. 10, 2023), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023185-drizly-llc-matter> (Decision & Order Provision VII).

⁴⁶ *In re Support King, LLC also formerly d/b/a SpyFone.com*, C-4756 (2021), available at <https://www.ftc.gov/system/files/documents/cases/1923003c4756spyfoneorder.pdf> (Decision & Order § IV).

⁴⁷ *Combatting Online Harms Through Innovation* (2022), <https://www.ftc.gov/reports/combating-online-harms-through-innovation> (describing FTC’s work at 4).

⁴⁸ *Chatbots, Deepfakes, & Voice Clones: AI Deception for Sale*, <https://www.ftc.gov/business-guidance/blog/2023/03/chatbots-deepfakes-voice-clones-ai-deception-sale>.

short or require close scrutiny.⁴⁹ We have also made clear that companies should not be making claims about AI unless they're prepared to back those claims up.⁵⁰ And in 2021, we warned that it may violate the FTC Act to use automated tools that have a discriminatory impact,⁵¹ a claim we laid the groundwork for last year, when we brought the first-ever action alleging that discriminatory practices are unfair under the FTC Act.⁵² The FTC welcomes innovation, but being innovative is not a license to be reckless. We are prepared to use all our tools, including enforcement, to challenge harmful practices in this area.

This is just one example of how the FTC can move quickly to respond to – and get ahead of – emerging threats.⁵³ And I am confident that in the coming months and years, our ability to do so will only strengthen.

First, to help us deepen and broaden our already formidable in-house tech talent, the Commission recently created the Office of Technology. We are currently recruiting top technologists from around the country with expertise in software engineering, human-computer interaction design, data science, and product management. As with the outstanding economists in our Bureau of Economics, these technologists will be able to advise FTC staff both in our law enforcement investigations and our ongoing policy and research initiatives. It's critical that the government stay abreast of the latest technological developments, and our growing bench of world class technologists will help ensure we remain on the leading edge.

Second, we are collaborating closely with our global peers. Consider our recently launched informal consumer dialogue between the FTC and the European Commission,⁵⁴ which is helping us identify common issues and discuss evolving policy responses, including on topics such as dark patterns and AI. In other venues, such as the G7 group on data protection and the International Consumer Protection and Enforcement Network, we are taking on leadership roles

⁴⁹ Combatting Online Harms Through Innovation (2022), <https://www.ftc.gov/reports/combating-online-harms-through-innovation>.

⁵⁰ Keep Your AI Claims in Check, <https://www.ftc.gov/business-guidance/blog/2023/02/keep-your-ai-claims-check>.

⁵¹ Aiming for Truth, Fairness, & Equity in Your Company's Use of AI, <https://www.ftc.gov/business-guidance/blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai>.

⁵² Press Release, *Federal Trade Commission Takes Action Against Passport Automotive Group for Illegally Charging Junk Fees and Discriminating Against Black and Latino Customers* (Oct. 18, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-takes-action-against-passport-automotive-group-illegally-charging-junk-fees>.

⁵³ In another recent example, the FTC has been particularly cleareyed about the threats to consumers posed by cryptocurrencies. The agency convened a workshop on crypto-related fraud nearly five years ago, and last year, we spotlighted a surge in complaints in this area. *Reports Show Scammers Cashing in on Crypto Craze*, <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze> (June 3, 2022). More than a year ago, I warned that regulators should not be ignoring serious red flags in this market, given the history of “innovative” financial products resulting in catastrophe for American families. Samuel Levine, Director, FTC Bureau of Consumer Prot., Remarks of Samuel Levine at the Fin. Literacy & Educ. Comm'n Pub. Meeting on Cryptocurrency Fraud & the Evolving Risks to Crypto Customers (Mar. 8, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/FLEC_Remarks_final_Sam_Levine_March_8_2022.pdf.

⁵⁴ See Joint Press Statement by Didier Reynders, Comm'r for Justice of the European Comm'n & Lina Khan, Chair of the U.S. FTC, https://www.ftc.gov/system/files/ftc_gov/pdf/Joint%20FTC-EC%20Statement%20informal%20dialogue%20consumer%20protection%20issues.pdf.

that allow us to share our decades of experience in enforcement cooperation to inform the development of suitable frameworks for cooperation.⁵⁵

Third, to keep up with emerging trends, staff in DPIP, the Office of Technology, and throughout the agency, meet regularly with technology and privacy researchers in the academic, consumer advocacy, industry, and government sectors. Indeed, two of our premier experts – Joe Calandrino and Olivier Sylvain – are attending this conference.

In addition, we regularly convene public events where experts present their latest research related to data collection and use issues. One important such event is the FTC’s annual PrivacyCon, which last year included panels on important topics including ad tech and automated decision-making systems, augmented reality and virtual reality, and children’s privacy.⁵⁶ PrivacyCon and our other opportunities to learn from expert researchers help shape our enforcement priorities, the remedies we seek in our cases, and our policy work related to the collection and use of consumer data.

And finally, we are doing important studies to better inform our work and Congress’s. For example, we recently issued a major report on internet service providers, where we spotlighted concerning practices about the quantity and nature of data ISPs are collecting about us.⁵⁷ And last month, we launched a major market study on the spread of fraud on social media⁵⁸ – another example of how we are marrying our traditional consumer protection work with the realities of our modern data-driven economy.

IV. Conclusion

I want to conclude by situating this moment in the FTC’s long history. Our agency stands today at an inflection point, and nowhere is that clearer than in our privacy work. Four decades ago, Commissioners declared in a Policy Statement that markets can largely correct themselves, and

⁵⁵ The FTC used its powers under the U.S. SAFE WEB Act referred to above, for example, to cooperate with the U.K. Information Commissioner’s Office in connection with its case against Cambridge Analytica. *See* Press Release, *FTC Sues Cambridge Analytica, Settles with Former CEO and App Developer* (July 14, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-sues-cambridge-analytica-settles-former-ceo-app-developer>. The FTC also used its SAFE WEB powers to cooperate with Canadian and Australian authorities on an extensive data breach affecting millions of users. *See* Press Release, *Operators of AshleyMadison.com Settle FTC, State Charges Resulting From 2015 Data Breach that Exposed 36 Million Users’ Profile Information* (Dec. 14, 2016), <https://www.ftc.gov/news-events/news/press-releases/2016/12/operators-ashleymadisoncom-settle-ftc-state-charges-resulting-2015-data-breach-exposed-36-million>.

⁵⁶ *See* Press Release, *FTC’s PrivacyCon 2022 Will Feature Research on Commercial Surveillance, Automated Decision Making* (Oct. 25, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftcs-privacycon-2022-will-feature-research-commercial-surveillance-automated-decision-making>.

⁵⁷ *A Look at What ISPs Know About You: Examining the Privacy Practices of Six Major Internet Service Providers* (2021), https://www.ftc.gov/system/files/documents/reports/look-what-isps-know-about-you-examining-privacy-practices-six-major-internet-service-providers/p195402_isp_6b_staff_report.pdf.

⁵⁸ Press Release, *FTC Issues Orders to Social Media and Video Streaming Platforms Regarding Efforts to Address Surge in Advertising for Fraudulent Products and Scams* (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-issues-orders-social-media-video-streaming-platforms-regarding-efforts-address-surge-advertising>.

that government oversight is not needed so long as consumers have “choices.”⁵⁹ This view aptly describes our country’s prevailing privacy regime of the last two decades, where firms have essentially put the onus on consumers to protect themselves. But today, change is in the air. Our agency is rejecting the fiction of notice and choice and is deploying every tool we have to actually limit harmful commercial surveillance.

We’ve accomplished a lot already, but there is so much more to be done. And to be successful, we need to hear from all of you. We want you to file comments in our ongoing rulemakings. We want you to report unlawful business practices to [ReportFraud.ftc.gov](https://www.ftc.gov/report-fraud). We want you to show up virtually at our Open Commission Meetings to speak to Commissioners directly about problems you are seeing, and how you want us to address them. We want you to submit your papers to PrivacyCon and urge your colleagues to do the same. We want you, in fact we need you, to contribute to our work.

So, with due respect to the title of this conference, let me conclude by saying that this is *not* the moment to look beyond the FTC. Instead, this is the moment – to borrow a favorite privacy concept – to opt in. I hope to hear from you soon.

⁵⁹ FTC Policy Statement on Unfairness (Dec. 17, 1980), appended to *International Harvester Co.*, 104 F.T.C. 949, 1070 (1984). I recently discussed how this faith in self-correcting markets proved disastrous in the real world, with lax government oversight contributing to a savings and loan crisis in the late 1980s and a full-blown financial crisis fifteen years ago. Samuel Levine, Remarks of Bureau of Consumer Protection Director Samuel Levine at BEUC: To Empower, Not to Weaken: Rethinking Consumer Protection in the Digital Age (Sept. 27, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/S.LevineBEUCspeech9272022FINAL.pdf. Recent bank failures offer further examples of how lax oversight can contribute to significant harm.