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Prepared Remarks of Chairman Joseph Simons¹
Introductory Keynote:
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I am delighted to be here today. As we all know, technology has changed the face of today's marketplace. From Instagram to YouTube, from text messages to tweets, and everything in between, this digital revolution has fundamentally altered how companies engage with consumers. Consumers have benefitted enormously from this explosive growth. But these changes also can render consumers vulnerable to exploitation and pose challenges for consumer protection. Data is constantly collected from and about consumers—through smartphones, tablets, and health trackers, and in their cars and homes. Marketing is ubiquitous. And fraudsters, of course, are always on the lookout to take advantage of technological innovations to consumers' detriment, and almost every new innovation seems to provide a new avenue for fraudsters to exploit.

As the nation's primary consumer protection agency, the FTC has a broad mandate to protect consumers from unfair, deceptive, or fraudulent practices in the marketplace. Today, I would like to talk about the FTC's consumer protection agenda, in particular how we are addressing the growth of new technologies across our privacy, advertising, financial, fraud, and robocall programs.

¹ These remarks reflect my own views. They do not necessarily reflect the views of the Commission or any other individual Commissioner.

A. **Protecting Consumer Privacy and Data Security**

Nowhere are the effects of technology more dramatic than on privacy. Year after year, privacy and data security top the list of consumer protection priorities at the Federal Trade Commission. These issues are critical to consumers and businesses alike. Press reports about privacy practices and data breaches are increasingly common—such as the reports about alleged missteps by Facebook and Equifax, both of which the FTC is currently investigating.

These incidents are not a new phenomenon. In fact, we have been hearing about data breaches for well over a decade. These incidents fuel the debate about both privacy and data security, and the best ways to ensure consumers are protected. The FTC has long used its broad authority under Section 5 of the FTC Act to prohibit unfair and deceptive practices and address consumer harms arising from new technologies and business practices.²

Section 5, however, is an imperfect tool. In my view, we need more authority—in particular on data security, which is why I support data security legislation that would give us three things: (1) the ability to seek civil penalties to effectively deter unlawful conduct; (2) jurisdiction over non-profits and common carriers; and (3) the authority to issue implementing rules under the Administrative Procedure Act. The Commission has also urged Congress to consider enacting privacy legislation that would be enforced by the FTC. If such legislation is passed, I have committed to enforcing it vigorously and enthusiastically.

Irrespective of any new legislation, privacy and data security will continue to be a top enforcement priority, and we will use every tool in our existing arsenal to redress consumer harm to the extent we can. To date, the Commission has brought more than 60 cases alleging that

² 15 U.S.C. § 45(a). The FTC also enforces sector-specific statutes that protect certain health, credit, financial, and children's information. See 16 C.F.R. Part 318 (Health Breach Notification Rule); 15 U.S.C. §§ 1681-1681x (Fair Credit Reporting Act); 16 C.F.R. Parts 313-314 (Gramm-Leach-Bliley Privacy and Safeguards Rules), implementing 15 U.S.C. §§ 6801-6809; 16 C.F.R. Part 312 (Children's Online Privacy Protection Rule), implementing 15 U.S.C. §§ 6501-6506.

companies failed to implement reasonable data security safeguards, as well as more than 60 general privacy cases.³

Since I became Chairman, we have announced eight new enforcement actions, seven policy initiatives, a notice of proposed rulemaking to give active duty military consumers free credit monitoring, and the launch of our small business cybereducation campaign. We have no intention of slowing down.

B. Truthfulness in National Advertising

Ensuring that advertising is truthful and not misleading has always been one of the FTC's core missions because it allows consumers to make well-informed decisions. The rise of mobile and other new platforms has provided a host of new ways to deliver advertising to consumers.

Given the prevalence of online marketplaces and infomercials, the inappropriate use of influencers, native advertising, and consumer reviews remain enforcement priorities. One case serves as an example for all of these. The FTC alleged public relations firm Creaxion Corporation and sports magazine publisher Inside Publications promoted a brand of insect repellent using endorsements by Olympic gymnasts and advertisements disguised as regular content.⁴ In addition, we alleged that the business relationship between the athletes and the manufacturer was not clearly disclosed. And we also alleged that Creaxion oversaw a consumer review program consisting of company insiders that positively reviewed the insect repellent without disclosing the reviewers' connections to the company—thus, a smorgasbord of problematic conduct.

³ See generally FTC, *Privacy & Data Security Update: 2017* (Jan. 2018), <https://www.ftc.gov/reports/privacy-data-security-update-2017-overview-commissions-enforcement-policy-initiatives>.

⁴ *Creaxion Corp.*, Matter No. 1723066 (Nov. 13, 2018) (proposed consent), <https://www.ftc.gov/enforcement/cases-proceedings/172-3066/creaxion-corp>; *Inside Publications, LLC*, Matter No. 1723067 (Nov. 13, 2018) (proposed consent), <https://www.ftc.gov/enforcement/cases-proceedings/172-3067/inside-publications-llc>.

Another big part of the FTC's advertising program focuses on deceptive health and safety claims. This includes claims that products are effective against diseases (such as diabetes)⁵ or treat particular medical conditions (such as opioid addiction),⁶ claims that target older Americans (such as treating Alzheimer's and arthritis),⁷ or miraculous weight loss claims.⁸

We are rethinking the remedies that we employ when companies have violated the FTC Act. In a particular, I have asked staff to consider the possibility that the Commission should broaden the remedies it seeks in future advertising cases involving, for example, Made in the USA claims. Notice to consumers may be warranted in some circumstances, with the benefit being that notified consumers might be able to avoid injury by seeking refunds or stopping their use of the product. And we are also looking at monetary relief where consumers pay a premium, or the company has significantly increased sales due to the deception.

While the Commission remains committed to its own national advertising enforcement efforts, I also believe that effective self-regulation is important. I support advertising self-regulation by programs like the NAD and other Council of Better Business Bureaus programs. We very much appreciate the NAD's referrals and we thoroughly review them.

⁵ See, e.g., *FTC v. Nobetes Corp.*, No. 2:18-cv-10068 (C.D. Cal. Dec. 13, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3119/nobetes-corp>.

⁶ See, e.g., *FTC v. Catlin Enters., Inc.*, No. 1:17-cv-403 (W.D. Tex. May 17, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/1623204/catlin-enterprises-inc>. In addition, in conjunction with the FDA, the FTC issued letters to companies that appeared to be making questionable claims in order to sell addiction or withdrawal remedies. See Press Release, *FTC, FDA Warn Companies about Marketing and Selling Opioid Cessation Products* (Jan. 24, 2018), <https://www.ftc.gov/news-events/press-releases/2018/01/ftc-fda-warn-companies-about-marketing-selling-opioid-cessation>.

⁷ See, e.g., *FTC v. Global Concepts Ltd., Inc.*, No. 0:18-cv-60990 (S.D. Fla. May 2, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3225/msa-30x-sound-amplifier>.

⁸ See, e.g., *FTC v. NextGen Nutritionals, LLC, Anna McLean, and Robert McLean*, No. 8:17-cv-2807-T-36AEP (M.D. Fla. Jan. 9, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3176/nextgen-nutritionals-llc-anna-mclean-robert-mclean>; *FTC v. Health Research Labs., LLC*, No. 2:17-cv-00467-JDL (D. Me. Nov. 30, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/152-3021/health-research-laboratories-llc>.

C. Policing the Financial Marketplace

The FTC also protects consumers from illegal practices in the financial area. Developments in financial technology have the potential to help consumers get a better deal when borrowing, but only if companies honor established consumer protection principles. For example, the FTC’s pending action against Lending Club, an online lender, alleges that its marketing was deceptive because it claimed its loans had “no hidden fees,” when in fact consumers later learned they were charged hundreds, and even thousands, of dollars in origination fees.⁹ In a proposed settlement with online student loan refinancer Social Finance, the FTC alleged the company made deceptive claims about the average savings members could achieve by refinancing—sometimes doubling the average savings.¹⁰ Our action against Venmo alleged among other things that the peer-to-peer payment service failed to disclose material information about the availability of consumers’ funds.¹¹

D. Protecting Consumers from Fraud

Fighting fraud is a major focus of the FTC’s law enforcement efforts. The Commission’s anti-fraud program tracks down and stops some of the most egregious scams that prey on U.S. consumers—often, the most vulnerable consumers who can least afford to lose money. We fight all sorts of fraud—but for now let me focus on how fraudsters are using developments in technology to trick consumers.

Reports about imposter scams have been on the rise over the past few years, and many of these scams target older Americans. One such example is tech support scams where the

⁹ *FTC v. Lending Club Corp.*, No. 3:18-cv-02454 (N.D. Cal. Apr. 25, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3088/federal-trade-commission-v-lendingclub-corporation>.

¹⁰ *Soc. Fin., Inc. & Sofi Lending Corp.*, Matter No. 1623197 (Oct. 29, 2018) (proposed consent), <https://www.ftc.gov/enforcement/cases-proceedings/162-3197/social-finance-inc-sofi-lending-corp-matter>.

¹¹ *PayPal, Inc.*, No. C-4651 (May 24, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3102/paypal-inc-matter>.

operators pretend to be affiliated with well-known technology companies, such as Microsoft or Apple. These fraudsters dupe consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs. The FTC has brought actions to shut down these deceptive operations¹² and also developed consumer education materials to help consumers avoid falling victim to them in the first place.¹³

The FTC also continues to monitor the lead generation industry. In September, the Commission brought an action against Sunkey Publishing, alleging that the online lead generation operation claimed falsely to be affiliated with the military—using websites like *army.com*—and promised to use consumers’ information only for military recruitment purposes.¹⁴ Instead, the FTC alleged that Sunkey used the information it collected to make millions of illegal telemarketing calls, and also sold the information to post-secondary schools under misleading circumstances.

We have seen an increase in frauds involving cryptocurrencies. The Commission has worked to educate consumers about cryptocurrencies and to hold fraudsters accountable.¹⁵ Last year, for example, the FTC halted the operations of Bitcoin Funding Team, which allegedly made

¹² See, e.g., Press Release, *FTC and Federal, State and International Partners Announce Major Crackdown on Tech Support Scams* (May 12, 2017), <https://www.ftc.gov/news-events/press-releases/2017/05/ftc-federal-state-international-partners-announce-major-crackdown>; *FTC v. Genius Techs.*, No. 3:18-cv-01096 (June 12, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3110/genius-technologies-llc>.

¹³ FTC Guidance, *Tech Support Scams* (July 2017), <https://www.consumer.ftc.gov/articles/0346-tech-support-scams#How>; FTC Consumer Blog, *Avoiding Tech Support Scams* (July 2018), <https://www.consumer.ftc.gov/blog/2018/07/avoiding-tech-support-scams>.

¹⁴ *U.S. v. Sunkey Publ'g Inc. et al.*, No. 3:18-cv-01444 (N.D. Ala. Sept. 6, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3211/sunkey-publishing-fanmailcom>.

¹⁵ See, e.g., FTC Business Blog, *Know the risks before investing in cryptocurrencies* (Feb. 2018), <https://www.ftc.gov/news-events/blogs/business-blog/2018/02/know-risks-investing-cryptocurrencies>; FTC Consumer Blog, *Protecting your devices from cryptojacking* (June 2018), <https://www.consumer.ftc.gov/blog/2018/06/protecting-your-devices-cryptojacking>.

false promises that participants could earn large returns by enrolling in moneymaking schemes and paying with cryptocurrency.¹⁶

In addition to targeting scammers, the FTC also brings actions against companies that facilitate fraud, often by ignoring red flags associated with fraudulent transactions. Money transfers are a preferred method of payment for fraudsters because money sent through money transfer systems can be retrieved quickly at locations all over the world, and once retrieved, the money is all but impossible to recover. Recently, MoneyGram agreed to pay \$125 million to settle allegations that the company failed to take steps required under an FTC order to prevent fraudulent money transfers costing U.S. consumers millions of dollars, and also to resolve allegations that the company violated a deferred prosecution agreement with the Department of Justice.¹⁷

E. Illegal Robocalls

Illegal robocalls also remain a significant consumer protection problem and consumers' top complaint to the FTC. In addition to being a huge annoyance, these calls frequently use fraud and deception to pitch goods and services, leading to significant economic harm. The FTC has used many methods to fight these illegal calls, including approximately 136 enforcement actions to date.¹⁸ Technological advances, however, have allowed bad actors to place millions or even billions of calls, often from abroad, at very low cost, and in ways that are difficult to trace. This

¹⁶ *FTC v. Thomas Dluca, et al. (Bitcoin Funding Team)*, No. 0:18-cv-60379-KMM (S.D.N.Y. Mar. 16, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3107/federal-trade-commission-v-thomas-dluca-et-al-bitcoin-funding>.

¹⁷ Press Release, FTC, *MoneyGram Agrees to Pay \$125 Million to Settle Allegations that the Company Violated the FTC's 2009 Order and Breached a 2012 DOJ Deferred Prosecution Agreement* (Nov. 8, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/moneygram-agrees-pay-125-million-settle-allegations-company>; see also *FTC v. The Western Union Co.*, No. 1:17-cv-00110 (M.D. Pa. Jan. 19, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/122-3208/western-union-company>.

¹⁸ See Enforcement of the Do Not Call Registry, <https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement>.

phenomenon continues to infuriate consumers and challenge enforcers. The Commission continues to work with the FCC on this problem and to call for the elimination of the common carrier exemption, which impedes our work tackling illegal robocalls and more broadly circumscribes other enforcement initiatives.

F. Policy Efforts

Finally, to complement our enforcement efforts, the FTC pursues a consumer protection and competition policy and research agenda to improve our decision-making, and assist our enforcement, advocacy, and education initiatives. This past September, the Commission initiated a series of *Hearings on Competition and Consumer Protection in the 21st Century*.¹⁹ These multi-day, multi-part public hearings are exploring whether broad-based changes in the economy, evolving business practices, new technologies, and international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policy. This project is ongoing, and the FTC will continue to hold public hearings through early 2019.

Conclusion

These are just some examples of how changes in technology are influencing our enforcement agenda. As you can see, despite the changing of the guard, our priority enforcement areas have not significantly changed. And under my leadership, you should expect the FTC to vigorously enforce consumer protection laws and broaden available remedies to address FTC Act violations. Thank you for having me, and I look forward to our discussion.

¹⁹*Hearings on Competition and Consumer Protection in the 21st Century*, <https://www.ftc.gov/policy/hearings-competition-consumer-protection>; see also Press Release, *FTC Announces Hearings On Competition and Consumer Protection in the 21st Century* (June 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>.