



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

**Prepared Opening Remarks of Chairman Joseph Simons¹
Hearings on Competition and Consumer Protection in the 21st Century
The FTC's Approach to Consumer Privacy
April 9, 2019**

Good morning, and welcome to our two-day hearing on the FTC's Approach to Consumer Privacy. Over the past few years, we have seen technology develop that was nearly unimaginable only a few decades ago. Tiny computers sit in our pockets and funnel news, messages, and more our way. Smart speakers do our bidding. Other smart devices unlock our doors, set our thermostats, and turn on the lights. Robots powered by artificial intelligence are becoming commonplace on factory floors. And self-driving cars are on the streets of Pittsburgh, Boston, Las Vegas, and San Francisco.

What unifies these remarkable inventions is what fuels them: data. We live in an age of truly amazing technological changes powered by data. But along with the enormous benefits of data-driven innovations comes a certain degree of risk. News stories highlight troubling privacy practices on a regular basis – whether it is allegations of surreptitious recording by IoT devices,²

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

² Hamza Shaban, *Amazon Alexa user receives 1,700 audio recordings of a stranger through 'human error'*, Washington Post (Dec. 20, 2018), <https://www.washingtonpost.com/technology/2018/12/20/amazon-alexa-user-receives-audio-recordings-stranger-through-human-error>.

inadvertent exposure of health information,³ or the sharing of personal data beyond consumers' authorization.⁴

Have we become inured to these privacy incidents? Not at all. In the face of these disclosures, consumers report that they do care about their privacy, and that they value the ability to control what information is collected about them and who can get that data.⁵ These concerns arise from the recognition that privacy violations can cause a range of real harms, including fraudulent charges on credit cards,⁶ safety risks,⁷ reputational injury,⁸ and unwarranted intrusions into people's homes and the intimate details of their lives.⁹

Ultimately, that is why we are here today. Together with the public comment process we started last summer, this hearing marks one of the Commission's most extensive efforts to engage the public on data privacy issues since the Commission issued its comprehensive privacy

³ Natasha Singer, *Grindr Sets Off Privacy Firestorm After Sharing Users' H.I.V.-Status Data*, N.Y. Times (Apr. 3, 2018), <https://www.nytimes.com/2018/04/03/technology/grindr-sets-off-privacy-firestorm-after-sharing-users-hiv-status-data.html>.

⁴ Nick Statt, *App makers are sharing sensitive personal information with Facebook but not telling users*, The Verge (Feb. 22, 2019), <https://www.theverge.com/2019/2/22/18236398/facebook-mobile-apps-data-sharing-ads-health-fitness-privacy-violation>.

⁵ *Janrain Survey: Cambridge Analytica Breach Draws Shift in Consumer Attitudes Toward Data Privacy*, PR Newswire (May 7, 2018), <https://www.prnewswire.com/news-releases/janrain-survey-cambridge-analytica-breach-draws-shift-in-consumer-attitudes-toward-data-privacy-300642518.html>; Mary Madden & Lee Rainie, *Americans' Attitudes About Privacy, Security, and Surveillance*, Pew Research Ctr. (May 20, 2015), <https://www.pewinternet.org/2015/05/20/americans-attitudes-about-privacy-security-and-surveillance>.

⁶ Al Pascaul, et al., *2018 Identity Fraud: Fraud Enters a New Era of Complexity*, Javelin (Feb. 6, 2018), <https://www.javelinstrategy.com/coverage-area/2018-identity-fraud-fraud-enters-new-era-complexity>.

⁷ *FTC v. Accusearch, Inc.*, No. 06-CV-0105 (D. Wyo. May 3, 2006), <https://www.ftc.gov/enforcement/cases-proceedings/052-3126/accusearch-inc-dba-abikacom-jay-patel> (alleging that telephone records pretexting endangered consumers' health and safety); *FTC v. EMP Media, Inc. also d/b/a Myex.com*, No. 2:18-CV-00035 (D. Nev. Jan. 9, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3052/emp-media-inc-myexcom> (alleging revenge porn website led to threats and harassment against individuals depicted).

⁸ *See, e.g., FTC v. Ruby Corp.*, No. 1:16-CV-02438 (D.D.C. Dec. 14, 2016), ¶ 40, <https://www.ftc.gov/system/files/documents/cases/161214ashleymadisoncmplt1.pdf> (Complaint) (alleging "substantial injury to consumers in the form of ... disclosure of sensitive, personal information" [membership in infidelity-enabling dating service]).

⁹ *See, e.g., Press Release, Aaron's Rent-to-Own Chain Settles FTC Charges That it Enabled Computer Spying by Franchisees* (Oct. 22, 2013), <https://www.ftc.gov/news-events/press-releases/2013/10/aarons-rent-own-chain-settles-ftc-charges-it-enabled-computer>; *Press Release, FTC Halts Computer Spying* (Sept. 25, 2012), <https://www.ftc.gov/news-events/press-releases/2012/09/ftc-halts-computer-spying>.

report in 2012.¹⁰ These hearings are part of a greater effort by the FTC to stay abreast of new and emerging technologies as they rapidly evolve.

The FTC has long been the cop on this particular beat: over the past two decades, we have brought hundreds of cases, conducted about 70 workshops, and issued about 50 reports to help protect consumer privacy.¹¹ Our work over the last year demonstrates the FTC's approach to consumer privacy: vigorous enforcement with every tool we have. For example, in February, we announced a settlement that includes the largest civil penalty the Commission has ever obtained under COPPA.¹² Last fall, we obtained a \$3 million civil penalty under the FCRA against a company whose automated decision-making tool provided inaccurate data to property managers, resulting in denial of housing.¹³ We have used our Section 5 authority to challenge false claims about compliance with the EU-U.S. Privacy Shield¹⁴ and to stop the purveyors of fake pay stubs that identity thieves use to get jobs and housing in other people's names.¹⁵ We have brought privacy cases against a revenge porn site,¹⁶ a mobile phone manufacturer,¹⁷ a peer-to-peer payment service,¹⁸ and an app-based ride service.¹⁹ We also filed two advocacy

¹⁰ FTC Report, *Protecting Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (Mar. 2012), <https://www.ftc.gov/reports/protecting-consumer-privacy-era-rapid-change-recommendations-businesses-policymakers>.

¹¹ FTC, *Privacy and Security Update for 2018* (Mar. 2019), <https://www.ftc.gov/reports/privacy-data-security-update-2018>.

¹² *United States v. Musical.ly, Inc.*, No. 2:19-CV-01439 (C.D. Cal. Feb. 27, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3004/musically-inc>.

¹³ *FTC v. Realpage, Inc.*, No. 3:18-CV-02737 (N.D. Tex. Oct. 16, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/152-3059/realpage-inc>.

¹⁴ Press Release, *FTC Gives Final Approval to Settlements with Four Companies Related to EU-U.S. Privacy Shield* (Nov. 19, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/ftc-gives-final-approval-settlements-four-companies-related-eu-us>.

¹⁵ Press Release, *FTC Shuts Down Purveyors of Fake Documents Used for Fraud, Identity Theft* (Sept. 18, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-shuts-down-purveyors-fake-documents-used-fraud-identity-theft>.

¹⁶ *FTC v. EMP Media, Inc. also d/b/a MyEx.com*, No. 2:18-CV-00035 (D. Nev. Jan. 9, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3052/emp-media-inc-myexcom>.

¹⁷ *BLU Products, Inc.*, No. C-4757 (Sept. 11, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3025/blu-products-samuel-ohav-zion-matter>.

¹⁸ *Pay Pal, Inc.*, No. C-4651 (May 24, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3102/paypal-inc-matter>.

comments,²⁰ announced five public events,²¹ issued a staff report on privacy injuries,²² and issued a notice of proposed rulemaking to help military personnel get free credit reports.²³

As this list of accomplishments demonstrates, the FTC has done a remarkable amount to protect consumers' privacy with the tools and resources at its disposal. But we must do more. We need to continue evaluating privacy risks as they evolve. What approach will protect consumers' privacy interests while fostering the innovation and competition that has brought us so many benefits? That brings us back to the agenda for this hearing.

Over the next two days, you will hear from dozens of leading experts from government, academia, business, and policy shops who have thought deeply about these issues. Today, we begin with a conversation about the goals of privacy: What, exactly, are the harms that we are trying to address? And what are the countervailing considerations, like the effect on innovation and competition? We will then turn to the data risk spectrum. Panelists will evaluate what makes data sensitive, whether privacy protections should depend on such classifications, and

¹⁹ *Uber Techs., Inc.*, No. C-4662 (Oct. 29, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/152-3054/uber-technologies-inc>.

²⁰ FTC Staff Comment on Developing the Administration's Approach to Consumer Privacy, NTIA Docket No. 18021780—8780—01 (Nov. 9, 2018), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-ntia-developing-administrations-approach-consumer-privacy/p195400_ftc_comment_to_ntia_112018.pdf; FTC Bureau of Consumer Protection Staff Comments on the Internet of Things and Consumer Product Hazards, CPSC Docket No. CPSC-2018-007 (June 15, 2018), https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-federal-trade-commissions-bureau-consumer-protection-consumer-product-safety/p185404_ftc_staff_comment_to_the_consumer_product_safety_commission.pdf.

²¹ FTC Hearing on Data Security (Dec. 11-12, 2018), <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-competition-consumer-protection-21st-century-december-2018>; FTC Hearing on The Competition and Consumer Protection Issues of Algorithms, Artificial Intelligence, and Predictive Analytics (Nov. 13-14, 2018), <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-7-competition-consumer-protection-21st-century>; FTC Hearing on Privacy, Big Data, and Competition (Nov. 6-8, 2018), <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-6-competition-consumer-protection-21st-century>; FTC Workshop on Decrypting Cryptocurrency Scams (June 25, 2018), <https://www.ftc.gov/news-events/events-calendar/2018/06/decrypting-cryptocurrency-scams>; FTC PrivacyCon 2018 (Feb. 28, 2018), <https://www.ftc.gov/news-events/events-calendar/2018/02/privacycon-2018>.

²² FTC Staff Perspective, *Informational Injury Workshop* (Oct. 2018), <https://www.ftc.gov/reports/ftc-informational-injury-workshop-be-bcp-staff-perspective>.

²³ Press Release, *FTC Seeks Comment on Proposed Rule Implementing Law Providing Free Credit Monitoring for Active Duty Military Consumers* (Nov. 1, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/ftc-seeks-comment-proposed-rule-implementing-law-providing-free>.

how effective are techniques to de-identify that data. After we break for lunch, my colleague, Commissioner Noah Phillips, will share his thoughts about the Commission's privacy work. We will then discuss consumer demand and expectations for privacy, as well as whether and how companies respond (or should respond) to such demands. And we will round out today's session with a two-part discussion about current approaches to privacy. Panelists will discuss, compare, and contrast U.S. and international privacy laws and self-regulatory frameworks. And, as policymakers consider federal privacy legislation, the panelists will consider what such a law might look like.

Tomorrow, we will explore pros and cons of possible frameworks for protecting consumer privacy. The first panel will examine the role of notice and choice. Panelists will explore the various roles that notice and choice play in the current marketplace, as well as consider limitations on the effectiveness of notice and choice and offer ideas for addressing them. The second panel will analyze the role of access, deletion, and correction. Panelists will address the costs and benefits of providing these types of tools and will share their experiences of how consumers use them. Commissioner Rebecca Kelly Slaughter will provide her views about the FTC's privacy work. Then a panel will share views about what makes firms accountable for their privacy practices, and whether policymakers should attempt to improve accountability within organizations. Finally, two sets of panelists will discuss whether the FTC has an adequate toolkit for protecting consumers' privacy, covering topics such as the use of its existing authorities as well as the need for other new resources.

We are excited to get the discussion started. I want to conclude my remarks by thanking everyone who has made this hearing possible. First, I want to thank the more than 50 panelists for participating in this event. We greatly appreciate your willingness to share your insights and

your expertise. Thank you to Jim Trilling, Elisa Jillson, and Jared Ho for leading the planning of this hearing. And I also want to thank the many other FTC colleagues from the Division of Privacy and Identity Protection, Bureau of Consumer Protection, Bureau of Economics, Office of Policy Planning, Office of Public Affairs, and Office of the Executive Director who have worked together to produce this event. Finally, thank you to everyone who is attending in person or watching online via our live webcast. We appreciate the opportunity to engage the public on this important topic, and I hope you enjoy the hearing.