Remarks of Chair Lina M. Khan
FTC PrivacyCon 2024

March 6, 2024

Good morning! Welcome to the FTC's eighth annual PrivacyCon.

Thanks so much to all our panelists here today and to all the folks tuning in. The goal of this conference has always been to bring scholars, researchers, and other experts into policy conversations with the FTC on privacy and technology. Your expertise helps us spot challenges before they become crises, and we're so grateful to everyone who is taking the time to share their expertise with us today.

As you all know better than most, data abuses are not abstract. As firms deploy digital tools and automated decision-making technologies across sectors, how people's data is collected, used, and retained can have enormous consequences for people's lives. For instance, we've seen:

How a woman with 16 years of punctual rent payments was denied housing due to a tenant-screening algorithm.[1]

How a man was falsely accused of shoplifting and ended up spending ten days in jail and paying thousands of dollars to defend themself—all because the police had relied on error-ridden facial recognition software.[2]

How the algorithms that decide how much gig-platform drivers get paid can be so unpredictable and opaque that drivers equate the experience to gambling in a casino.[3]

How employers' surveillance of workers' every move—be it their trips to the restroom, their precise keyboard strokes, or their participation in efforts to organize their workplace—can chill workers from exercising other basic rights.[4]

And how, all too often, parents across the country must surrender to widespread data harvesting of their kids in order to let their kids learn and play online.

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[1] Khari Johnson, *Algorithms Allegedly Penalized Black Renters. The US Government Is Watching*, WIRED (Jan. 16, 2023), https://www.wired.com/story/algorithms-allegedly-penalized-black-renters-the-us-government-is-watching.
[2] Kashmir Hill, *Another Arrest, and Jail Time, Due to A Bad Facial Recognition Match*, N.Y. TIMES (Dec. 29, 2020), https://www.nytimes.com/2020/12/29/technology/facial-recognition-misidentify-jail.html.
[3] Veena Dubal, *On Algorithmic Wage Discrimination*, 123 COLUMBIA L. REV. 1929 (2023).
[4] Josh Dzieza, *How Hard Will the Robots Make Us Work?*, THE VERGE (Feb. 27, 2020), https://www.theverge.com/2020/2/27/21155254/automation-robots-unemployment-jobs-vs-human-google-amazon.

I could go on, and I'm sure many of the folks here today could too. As the proliferation of artificial intelligence and algorithmic decision-making can further incentivize businesses to endlessly vacuum up people's personal data, establishing clear rules of the road on data and privacy are more essential than ever.

This is a moment of opportunity, but it's also a moment of real risk. Now is the time to ensure that we don't promote race-to-the-bottom business models that automate discrimination, turbocharge fraud, or further entrench surveillance. As companies move at breakneck speed to deploy and monetize AI, we have a chance to make clear that firms can't use claims of technological innovation as cover for lawbreaking.

That's why it's so important that policymakers in government stay on the cutting edge as this technology develops. Working with and learning from technologists is a key part of how we do that. Thanks to the FTC's Office of Technology, we've been able to deepen expertise within the agency and deploy software and privacy engineers, user experience researchers, data scientists, and other experts across our technology-focused case work and policy initiatives.

Together, our teams are helping ensure that our enforcement approach is flexible and nimble enough to keep up with this moment of rapid technological change. I've been blown away by the work of our privacy attorneys. Their impact in this past year alone—where they've brought groundbreaking cases involving geolocation data, health data, and browsing data—is difficult to overstate.

I'd like to briefly share a few key principles that are driving our efforts.

First, our enforcement actions are designed to account for how business incentives drive unlawful conduct. Just as we've seen behavioral advertising fuel the vast collection of user data, AI model training and machine learning are emerging as other features that could further incentivize surveillance. In our case against Amazon's Alexa voice assistant, we made clear that business incentives to train AI models cannot override existing privacy obligations, and that firms cannot say they must hold onto data forever just in case it might be useful for some future AI need.[5] Our remedies are also focused on the various ways that lawbreaking can enrich firms, which is why we have demanded not only the deletion of illegally obtained data, but also the deletion of all models and algorithms that were informed by that data.[6]

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[5] Press Release, Fed. Trade Comm'n, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever.

[6] *See, e.g.*, Press Release, Fed. Trade Comm'n, FTC Order Will Ban Avast from Selling Browsing Data for Advertising Purposes, Require It to Pay $16.5 Million Over Charges the Firm Sold Browsing Data After Claiming Its Products Would Block Online Tracking (Feb. 22, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/06/ftc-finalizes-order-avast-banning-it-selling-or-licensing-web-browsing-data-advertising-requiring-it; Press Release, Fed. Trade Comm'n, FTC Order Will Ban InMarket from Selling Precise Consumer Location Data (Jan. 18, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-will-ban-inmarket-selling-precise-consumer-location-data; Press Release, Fed. Trade Comm'n, FTC Order Prohibits Data Broker X-Mode Social and Outlogic from Selling Sensitive Location Data (Jan. 9, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-prohibits-data-broker-x-mode-social-outlogic-selling-sensitive-location-data; Press Release, Fed. Trade Comm'n, Rite Aid Banned from Using AI Facial Recognition After FTC

Second, our enforcement actions make clear that selling certain types of data is presumptively off-limits. That's especially true when that data can reveal intimate details about people's lives—including where they live, which doctors they visit, and the websites they browse. Through a series of groundbreaking cases, the FTC has made clear that there is a presumption against selling people's sensitive data—and selling or sharing this data without getting people's permission is an unfair practice that violates the FTC Act.[7]

And third, we're looking upstream to pinpoint the actors that drive or enable unlawful conduct. As with our actions against the data brokers that traffic in sensitive data, we are looking past the consumer-focused applications and zeroing in on the back-end infrastructure that is facilitating the commercial surveillance ecosystem. In addition to data brokers, we've also investigated and brought an action against an ad platform for its role in facilitating the mass collection of location data from children.[8] Our work will continue to examine these key intermediaries.

Says Retailer Deployed Technology Without Reasonable Safeguards (Dec. 19, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without; Press Release, Fed. Trade Comm'n, FTC Says Ring Employees Illegally Surveilled Customers, Failed to Stop Hackers from Taking Control of Users' Cameras (May 31, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ring-employees-illegally-surveilled-customers-failed-stop-hackers-taking-control-users; Press Release, Fed. Trade Comm'n, FTC Enforcement Action to Bar GoodRx from Sharing Consumers' Sensitive Health Info for Advertising (Feb. 1, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising; Press Release, Fed. Trade Comm'n, FTC to Ban BetterHelp from Revealing Consumers' Data, Including Sensitive Mental Health Information, to Facebook and Others for Targeted Advertising (Mar. 2, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers-data-including-sensitive-mental-health-information-facebook; Press Release, Fed. Trade Comm'n, Ovulation Tracking App Premom Will be Barred from Sharing Health Data for Advertising Under Proposed FTC Order (May 17, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ovulation-tracking-app-premom-will-be-barred-sharing-health-data-advertising-under-proposed-ftc.

[7] See Press Release, Fed. Trade Comm'n, FTC Order Will Ban Avast from Selling Browsing Data for Advertising Purposes, Require It to Pay $16.5 Million Over Charges the Firm Sold Browsing Data After Claiming Its Products Would Block Online Tracking (Feb. 22, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/06/ftc-finalizes-order-avast-banning-it-selling-or-licensing-web-browsing-data-advertising-requiring-it; Press Release, Fed. Trade Comm'n, FTC Order Will Ban InMarket from Selling Precise Consumer Location Data (Jan. 18, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-will-ban-inmarket-selling-precise-consumer-location-data; Press Release, Fed. Trade Comm'n, FTC Order Prohibits Data Broker X-Mode Social and Outlogic from Selling Sensitive Location Data (Jan. 9, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-prohibits-data-broker-x-mode-social-outlogic-selling-sensitive-location-data; Press Release, Fed. Trade Comm'n, FTC Enforcement Action to Bar GoodRx from Sharing Consumers' Sensitive Health Info for Advertising (Feb. 1, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising; Press Release, Fed. Trade Comm'n, FTC to Ban BetterHelp from Revealing Consumers' Data, Including Sensitive Mental Health Information, to Facebook and Others for Targeted Advertising (Mar. 2, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers-data-including-sensitive-mental-health-information-facebook; Press Release, Fed. Trade Comm'n, Ovulation Tracking App Premom Will be Barred from Sharing Health Data for Advertising Under Proposed FTC Order (May 17, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ovulation-tracking-app-premom-will-be-barred-sharing-health-data-advertising-under-proposed-ftc.

[8] See Press Release, Fed. Trade Comm'n, Advertising Platform OpenX Will Pay $2 Million for Collecting Personal Information from Children in Violation of Children's Privacy Law (Dec. 15, 2021), https://www.ftc.gov/news-

Informed by these core principles, the FTC's law enforcement efforts today reflect an agency that is focused on promoting deterrence, clarity, and efficient enforcement even amid a fast-moving technological landscape. At every turn, we will continue to rely on input from the academic community—including from the terrific panelists here today.

Many thanks to FTC staff in the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning for putting together such a timely, important event.

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events/news/press-releases/2021/12/advertising-platform-openx-will-pay-2-million-collecting-personal-information-children-violation.