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Protecting Consumer Privacy in a Time of Crisis
Remarks of Acting Chairwoman Rebecca Kelly Slaughter
As Prepared for Delivery

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Thank you for inviting me to speak with you all today. The President named me as
Acting Chair

A good example of effective notice is the Commission's recent fem-tech case involving the Flo menstruation and fertility app. We alleged that Flo violated its promises not to share consumers' sensitive information to third parties by sharing the information with Facebook, Google, and others.⁷ An important remedy the Commission achieved in this case was to require the company to notify consumers of its false promises.

Notice lets consumers "vote with their feet" and helps them better decide whether to recommend the service to others. Finally, and crucially, notice accords consumers the dignity of knowing what happened. There's a fundamental equity issue here: many people—including those who most need to know—won't hear about the FTC's action against a company they deal with unless the company tells them. So, I'll be pushing staff to include provisions requiring notice in privacy and data security orders as a matter of course.

The other lesson we can take from Flo is the need to fully plead all law violations. As I mentioned in my joint statement with Commissioner Chopra on that case,⁸ I believe we also should have applied the Health Breach Notification Rule to those facts and I'm glad we are conducting a review of this Rule,⁹ which requires that vendors of personal health records notify consumers of breaches. In other cases, I have argued that we should have included unfairness counts.¹⁰ In all of our cases, I want to make sure that we are analyzing all of the relevant laws and pleading all the violations that are applicable.

Finally, I think we need to think carefully about the overlap between our work in data

our cases. We welcome your insights as researchers, including feedback as to which remedies best address particular types of harm and feedback on the effectiveness of our existing orders. To gather this feedback, I've asked the staff to plan a workshop aimed at increasing our understanding of the incentives in the marketplace and how best to ensure market players do a better job of protecting privacy and securing consumer data.

II. Protecting Privacy During the Pandemic

In addition to ensuring we are being as effective and efficient as possible across the board, I want to highlight two substantive areas of priority for me.

The first priority is the pandemic. It's been almost a year since many of us stopped commuting to work, going to restaurants, traveling, or seeing loved ones in person. Some 27 million Americans have been diagnosed with COVID, and more than 450,000 have died, even as the roll-out of effective vaccines gives us new hope for the future.

Responding to COVID requires an all-hands approach nationally, and the FTC has several important roles to play as part of the solution. Obviously, health concerns are paramount, but the pandemic is also fundamentally tied to a host of other challenges Americans are facing, ranging from COVID-related scams to privacy and security issues to an economic crisis. Let me identify a few areas that I am working closely with staff to pursue related to the pandemic.

The first is ed-tech. With the ubiquity of distance learning during the pandemic, the ed-tech industry has exploded. In 2020, U.S. ed-tech startups raised over \$2.2 billion in venture and private equity capital—a nearly 30 percent increase from 2019.¹¹ Speaking from experience—I've got two kids in “Zoom school” downstairs—parents and children are relying on ed-tech more than ever. So, what can the FTC do in this space?

We've put out guidance for parents, schools, and ed-tech providers on protecting privacy. We're conducting an industry-wide study of social media and video streaming platforms in which we've asked recipients questions about ed-tech services they provide. And we're currently in the process of reviewing the COPPA Rule, where we received numerous public comments asking us to clarify how COPPA applies in the ed-tech space. We don't need to complete our rulemaking to say that COPPA absolutely applies to ed-tech, and companies collecting information from children need to abide by it. Finally, we have to remember that there is an important equity angle to ed-tech too, exacerbated by the pandemic, which I will discuss in more detail in a bit.

Second, I'd like staff to take a close look at health apps, including telehealth and contact tracing apps. As in-person doctor visits have become rarer during the pandemic, more consumers

¹¹ Tony Wan, “A Record Year Amid a Pandemic: US Edtech Raises \$2.2 Billion in 2020,” *EdSurge* (Jan. 13, 2021), <https://www.edsurge.com/news/2021-01-13-a-record-year-amid-a-pandemic-us-edtech-raises-2-2-billion-in-2020#:~:text=%E2%80%9CEdtech%20investing%20exploded%20in%202020.&text=A%20report%20from%20CB%20Insights.up%2014%20percent%20from%202019>.

are turning to telehealth apps and other apps to help them manage their health issues. A recent U.K. survey found that usage of health apps has increased by 37% since the pandemic began.¹² I already mentioned Flo, which happens to be our first health app case, but I'd like to see the FTC pursue more of these types of cases.

Finally, in 2019, we embarked on an industry-wide study of broadband privacy practices. As businesses, schools, governments, and communities have struggled to find new models for staying open, providing critical services, and keeping in touch, the importance of reliable Internet has grown. The largest ISPs added over 1.5 million customers in the third quarter of 2020, the last quarter for which statistics are available.¹³ Given the urgent need to provide the public with some transparency regarding the privacy practices of these companies, I'd like the Commission to issue a report on this subject this year.

III. Racial Equity

The second—and related—priority issue I want to emphasize is racial equity; how can we at the FTC engage in the ongoing nationwide work of righting the wrongs of four hundred years of racial injustice. I have been speaking frequently about ways to attack systemic racism through antitrust law, but of course there is a lot we can do on the consumer protection side as well.

There is an overlap between racial equity and the COVID-related privacy issues I

about the ways in which lower-income communities are asked to pay with their data for expensive services they cannot afford.

There are also several other ways we can focus on closing the equity gap. One is algorithmic discrimination. Kate Crawford at Microsoft Research wrote an article a few years back with the memorable title, “Artificial Intelligence’s White Guy Problem,” in which she wrote: “Histories of discrimination can live on in digital platforms, and if they go unquestioned, they become part of the logic of everyday algorithmic systems.”¹⁸ And research published in *Science* in 2019 demonstrated that an algorithm used with good intentions

Algorithmic Discrimination

