



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Commissioner
Alvaro M. Bedoya

STATEMENT OF COMMISSIONER ALVARO M. BEDOYA

Regarding the Commercial Surveillance Data Security Advance Notice of Proposed Rulemaking

August 11, 2022

Our nation is the world’s unquestioned leader on technology. We are the world’s unquestioned leader in the data economy. And yet we are almost alone in our lack of meaningful protections for consumers from unfair or deceptive commercial surveillance and data security practices. This baseline landscape ripe for abuse.

Now it is time to act. Today, we are beginning the hard work of considering new rules to protect people from unfair or deceptive commercial surveillance and data security practices.

My friend Commissioner Phillips argues that this Advance Notice of Proposed Rulemaking (ANPR) is a step, breadth is a feature, not a bug. We encourage public comments to help us discern whether and how to proceed with proposed Rulemaking. There is much more process to come.

Congress passed the Magnuson-Moss Warranty-Federal Trade Commission Act (the “Magnuson-Moss Act”).

³ That Act made explicit the Commission’s authority to prescribe rules prohibiting unfair or deceptive trade practices and also set steps for doing so, including providing informal hearings with a limited right of cross-examination, which were consistent with best practices of that time.⁴ In the decade following its passage, the Magnuson-Moss Act was viewed as “substantially increasing the agency’s rulemaking powers.”

¹ Dissenting Statement of Commissioner Noah Joshua Phillips, Commercial Surveillance and Data Security Advance Notice of Proposed Rulemaking (Aug. 11, 2022).

² Federal Trade Commission Improvements Act of 1980, Pub. L. No. 96-252, 94 Stat. 374.

³ Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, Pub. L. No. 93-337, 88 Stat. 2183 (1975).

⁴ Id. at sec. 202 (adding § 18(c) of the FTC Act).

⁵ Kurt Walters, Reassessing the Mythology of Magnuson-Moss: A Call to Revive Section 18 Rulemaking at the FTC, 16 Harvard L & Pol’y Rev. (forthcoming 2022) (manuscript at 13), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3875970.

Together with Congress's modest amendments to this process in 1980⁶ and 1994,⁷ federal law now gives us a clear roadmap for this work.⁸ We will follow it to the letter.

The bipartisan American Data Privacy and Protection Act (ADPPA) is the strongest privacy bill that has ever been this close to passing. I hope it does pass. I hope it passes soon. What Chairman Frank Pallone, Ranking Member Cathy McMorris Rodgers, Senator Roger Wicker and their colleagues have accomplished is formidable and promising.

This ANPR will not interfere with that effort. I want to be clear: Should the ADPPA pass, I will not vote for any rule that overlaps with it. There are no grounds to point to this process as reason to delay passage of that legislation.

Turning finally to the substance of the ANPR itself: It is a priority for me that the Commission, throughout this rulemaking process, stays t

people's civil rights.

2. The mental health of kids and teens (Question 17), especially from youth development experts and psychologists. A growing body of evidence suggests that teenagers, particularly teenage girls, who spend more than two or three hours daily on social media, suffer from increased rates of depression, anxiety, and thoughts of suicide and self-harm.¹³ This is a nuanced issue, and peer-reviewed research is still developing.¹⁴ But this nuance does not diminish the urgency of this work, and in fact heightens our need for comments on it. I appreciate especially the partnership of Commissioner Wilson in this area.
3. How to protect non-English speaking communities from fraud and other abusive data practices (Question 58), especially from affinity groups, internet platforms, and experts in fraud prevention practices. We know that many non-English language communities are disproportionately targeted in the offline world, and I am worried the story is even worse online. I'd like to hear more about how new rules might encourage more effective enforcement by both the Commission and private firms against scams and fraud.
4. How to protect against unfair or deceptive practices related to biometrics (Questions 37–38). A new generation of remote biometric technology is transforming our ability to move in public with some semblance of privacy. I'd welcome proposals for how rules may address and prevent abuse and harmful invasions of privacy.

I want to recognize Commissioner Slaughter for her early vision on this rulemaking process,¹⁵ Chair Khan for her leadership in moving this effort forward, and all the agency staff who worked on it. Although my Republican colleagues are voting against this ANPR, I want them and the public to know I'll still seek their input throughout the process that follows.

I am most grateful to the members of the public, civil society, and small businesses community who will take the time to comment on this ANPR. We need your input. We will read it carefully and with interest.

¹³ Jean M. Twenge et al., *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time*, 6 *Clinical Psychological Science* 1, 3, 10 (Jan. 2018), <https://doi.org/10.1177/2167702617723376>; Hugues Sampasa-Kanyiga & Rosamund Lewis, *Frequent use of social networking sites is associated with poor psychological functioning among children and adolescents*, 18(7) *Cyberpsychology, Behavior, and Social Networking* 380 (Jul. 2015), https://www.researchgate.net/publication/280059931_Frequent_Use_of_Social_Networking_Sites_Is_Associated_with_Poor_Psychological_Functioning_Among_Children_and_Adolescents.

¹⁴ See, e.g., Amy Orban & Andrew K. Przybylski, *The association between adolescent well-being and digital technology use*, 3 *Nature Human Behaviour* 173 (Feb. 2019), <https://www.nature.com/articles/s41562-018-0506-1> (criticizing Twenge et al. at *supra* note 13).

¹⁵ See, e.g., Rebecca Kelly Slaughter, *The Near Future of U.S. Privacy Law*, Silicon Flatirons-University of Colorado Law School (Sept. 6, 2019), https://www.ftc.gov/system/files/documents/public_statements/1543396/slaughter_silicon_flatirons_remarks_9-6-19.pdf (“I believe the time has come to consider a Mag-Moss data-protection rule.”).