



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

Office of the Chair

Remarks of Chair Khan at the
May Open Commission Meeting

May 18, 2023

cases makes companies aware that, regardless of what they disclose, they cannot engage in certain practices period.

In each settlement order, the Commission has banned the company from transferring information is especially sensitive, these bright line bans are designed to maximally protect it.

We are continuing to seriously evaluate the problem of companies conditioning access to their services on the collection of more information than is reasonably necessary for a privacy policy.

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The Biometric Policy Statement is another crucial addition to our privacy agenda. The growth of biometric information technologies puts consumers at risk in several ways. Companies can use biometric data to persistently identify and track consumers. Biometric information can be misused to permit unauthorized access to devices secured with biometric information. Biometric information technologies are also less reliable across gender and race, paving the way for potentially discriminatory effects.

One of the key lessons about artificial intelligence, is that the flexible nature of the FTC Act positions the Commission well to protect consumers regardless of changing technologies. In this case, the Biometric Policy Statement sets forth how the framework of the Commission's privacy and data security, maps onto the consumer protection risks implicated by biometric information technologies.

Especially significant in this statement is the need to assess and address risks proactively. These obligations exist both for the developers and for the users of the technologies. Analogously, the Commission has brought actions against developers of network equipment that fail to issue patches for vulnerabilities, but also has brought actions against companies that use that equipment and fail to implement patches. Precautions both from the developers and end users of these technologies are necessary to protect consumers from harms.

It is critical that companies take these actions proactively, rather than wait for consumers to be harmed. Similarly, the Commission should not have to wait for consumers to be injured before bringing an action. Notably, the prohibition against unfairness in the FTC Act only requires the *likelihood* of harm. The Commission will be taking a hard look at companies developing or using biometric technologies to determine whether they are taking the steps necessary to avoid consumer harm.

Thank you to the team that worked on this statement, including Robin Wetherill, Amanda Koulousias, and Tiffany George in DP, Josephine Liu in OG, Mike LeGower and Devesh Raval in BE, and Alejandro Rosenberg in the BCP front office.

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At the Commission, we are constantly assessing how we can activate the full set of authorities that Congress gave us to protect Americans. The proposals in the Notice of Proposed Rulemaking for the Health Breach Notification Rule fall squarely in that category. Although we need more authorities in privacy and data security, and we continue to need a fix for Section 13(b), the Commission must use the authorities it currently has to vindicate State R Sovereignty V rights.

The HBNR, which has laid dormant for years, implements a statute that plainly requires FR PSDQLHV WR QRWLI\ FRQVXPHUV ZKHQ WKH\ GLVFORVH F authorization. In September 2021, the Commission issued a policy statement articulating its intention to enforce this rule, consistent with its plain meaning. In both GoodRx and Premom, the Commission has delivered on that promise.

Today, the Commission proposes changes to the rule to make the requirements of the rule explicit, and to clarify certain provisions based on feedback received during the rule review. We look forward to hearing from the public on these proposed changes.

Two related items on which I am particularly interested in hearing from the public are (a) what types of disclosures require authorization and (b) the trio of health app cases discussed earlier, the Commission charged that it was an unfair practice to transfer to third SDUWLHV FRQVXPHUV¶ KHDOWK LQIRUPDWLRQ IRU H[SUHV V FRQVHQW \$OWKRXJK ZH GR QRW SURSRVH WR GH the original rule makes clear that authorization is implied for discloses of information in order ³WR HQKDQFH WKH LQGLYLGXDOV¶ H[SHULHQFH ´ SURYLGHC UHDVRQDEOH H[SHFWDWLRQV 7UDQVIHUV IRU DQ\ RWKHU S meaningful choice in consenting to XFK VKDULQJ ´ , DP LQWHUHVWHG LQ K about whether the Commission has provided enough information about what types of disclosures require consent, as well as whether we should be more explicit about the need for the consent to be affi UPDWLYH DQG H[SUHV V LQ RUGHU WR EH ³PHDQLQJIXO ´

Thank you to the team that worked on this rule, including Tiffany George, Ryan Mehm, Ronnie Solomon, and Elisa Jillson in DPIP; Maggie Cole in DLTA; Beth Freeborn in BE; Josephine Liu, Rich Gold, and Anziska Schroder in OGC; and Alejandro Rosenberg in the BCP front office. I also want to extend a special thank you to my former advisor, Rashida Richardson, for her critical support of this project.
