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\* The views expressed in these remarks are my own and do not necessarily reflect the views of the Federal Trade Commission.

Thank you, Mary, for the introduction and for having me here to speak today about two topics of enormous significance: privacy and artificial intelligence. Before I begin, I will note that the views I express are my own and do not necessarily reflect those of the Federal Trade Commission.

A central question for a law enforcement agency is where to focus resources to achieve the agency's mission. Given the Commission's status as the nation's consumer protection agency—and the range of industries and business practices in the American economy—it is important at the outset of a change in administration to determine what set of issues and conduct to focus on to achieve the Commission's goals. Under Chairman Ferguson's leadership, that is precisely what we have done.

Before turning to a few of those goals, let me describe at a high level the agency's broad remit, which will help situate today's consumer protection discussion. As you know, the Commission enforces both competition and consumer protection laws. The primary goal of both competition and consumer protection law is to facilitate the market process.<sup>1</sup> Competition incentivizes sellers to offer lower prices and higher quality products to consumers. And competition motivates sellers to provide truthful and useful information about their products and services. Indeed, robust competition is itself a form of consumer protection.

Consumer protection, meanwhile, ensures that consumers can make well-informed choices,<sup>2</sup> that the information provided to consumers is in fact truthful and not misleading, and that sellers will fulfill their promises and not increase sales or revenue by engaging in conduct that reduces the welfare of consumers.<sup>3</sup> By focusing on impediments to the market

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<sup>1</sup> Oliver Williamson has argued that the proper focus of economics is evaluating how transactions play out in the real world. That is, focusing on the rules and institutional details that facilitate exchange, *i.e.*, the market process. Oliver E. Williamson, *Transaction Cost Economics: The Natural Progression*, 100 AM. ECON. REV. 673 (2010).

<sup>2</sup> *In re International Harvester Co.*, 104 F.T.C. 949, 1055-56 (1984). The Commission noted that "[t]he touchstone here is free consumer choice. We do not look for evidence that the product selected is actually inferior to its alternatives." *Id.* at 1056, n.16.

<sup>3</sup> Benjamin Klein, *Transaction Cost Determinants of "Unfair" Contractual Arrangements*, 70 AM. ECON. REV. 356, 362 (1980) ("If economists are to explain satisfactorily the form of particular complex contracts adopted in the marketplace, they must 'get their hands dirty' by closely investigating the facts and state of the law to determine hold-up possibilities and contract enforcement difficulties in particular cases."). For a comprehensive discussion on the origins of Section 5, see Robert H. Lande, *Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged*, 34 HASTINGS L.J. 65, 106-126 (1982); see also Neil W. Averitt & Robert H. Lande, *Using the "Consumer Choice" Approach to Antitrust Law*, 74 ANTITRUST L.J. 175, 181-82 (2007).

process, the FTC’s enforcement of competition and consumer protection laws reinforces—rather than supplants—our market economy.<sup>4</sup>

Against this backdrop, I want to touch briefly on the basic principles central to the Commission’s consumer protection enforcement under Chairman Ferguson. *First*, the Bureau of Consumer Protection recognizes that individuals and families, not government, understand what products or services are best for them.<sup>5</sup> *Second*, markets are complex systems that typically do not lend themselves to top-down solutions.<sup>6</sup> *Finally*, the Commission’s authorities are best administered when the Commission incorporates rigorous economic analysis. That is true when the Commission goes to court. And it is true when the Commission crafts a rule or policy. Regardless of the type of action contemplated, understanding the costs, benefits, and attendant consequences better promotes the welfare of consumers.<sup>7</sup>

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<sup>4</sup> See generally Timothy J. Muris, Chairman, FTC, Prepared Remarks at the Fordham Corporate Law Institute’s 29th Annual Conference on International Antitrust Law and Policy: The Interface of Competition & Consumer Protection (Oct. 31, 2002), [https://www.ftc.gov/sites/default/files/documents/public\\_statements/interface-competition-and-consumer-protection/021031fordham.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/interface-competition-and-consumer-protection/021031fordham.pdf); Todd J. Zywicki, *Market-Reinforcing versus Market-Replacing Consumer Finance Regulation* (George Mason L. & Econ. Rsch. Paper No. 17-07, 2016), <https://ssrn.com/abstract=2916204>.

<sup>5</sup> Chairman Ferguson has previously written on the importance of recognizing the limits of the Commission’s authority, including why treating consumer protection law as requiring businesses to treat consumers honestly and fairly is preferable to a consumer protection regime that seeks to be a panacea for every perceived problem. Andrew N. Ferguson, Comm’r, FTC, Prepared Remarks before 2024 Int’l Consumer Protection & Enforcement Network: Staying in Our Lane: Resisting the Temptation of Using Consumer Protection Law to Solve Other Problems (Sept. 27, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/9.27.2024-Ferguson-ICPEN-Remarks.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/9.27.2024-Ferguson-ICPEN-Remarks.pdf); cf. Calvin Coolidge, Vice Pres. of the United States, Address to the 45th Annual Meeting of the American Bar Association: The Limitations of the Law (August 10, 1922) (“But this has all been changed by embarking on a policy of a general exercise of police powers, by the public control of much private enterprise and private conduct, and of furnishing a public supply for much private need. Here are these enormous obligations which the people found they themselves were imperfectly discharging. They therefore undertook to lay their burdens on the National Government. Under this weight the former accuracy of administration breaks down. The government has not at its disposal a supply of ability, honesty, and character necessary for the solution of all these problems, or an executive capacity great enough for their perfect administration. Nor is it in the possession of a wisdom which enables it to take great enterprises and manage them with no ground for criticism. We cannot rid ourselves of the human element in our affairs by an act of legislation which places them under the jurisdiction of a public commission.”).

<sup>6</sup> See, e.g., F.A. Hayek, *The Use of Knowledge in Society*, 35 AM. ECON. REV. 519 (1945); see also Christopher Mufarrige & Todd J. Zywicki, *Simple Rules for a Complex Regulatory World: The Case of Financial Regulation*, 52 EUR. J. OF L. & ECON. 285 (2021); Melissa Holyoak & Christopher Mufarrige, *Rediscovering Adam Smith: An Inquiry in the Rule of Law, Competition, and the Future of the Federal Trade Commission*, 14 AM. UNIV. BUS. L. REV. 325 (2024).

<sup>7</sup> Any responsible steward of an agency’s resources must consider whether the proposed action will create real world benefits as compared to the but-for world. See Thomas W. Hazlett, David Porter & Vernon Smith, *Radio Spectrum and the Disruptive Clarity of Ronald Coase*, 54 J.L. & ECON. S125, S156 (2011) (“What Coase fundamentally contributed was a symmetric analysis of property regime choices, explaining how the costs of

With these general principles in mind, I will turn to two topics I was asked to address today: privacy and artificial intelligence.

### *Privacy Agenda of the Trump-Vance FTC*

I will begin with privacy. As everyone here has experienced, at times during our careers we seek out new opportunities. When seeking a new opportunity, you most likely did not want to inform your current employer and generally did not want anyone to know. But when you found your next job, you likely told many people or even posted the new job on social networks or shared the news on other platforms.

Lately, I have been thinking about that experience in the context of privacy law. In my view, any approach to privacy must grapple with the fact that information can be highly private, or not, depending on the context and, importantly, each individual's preference for privacy. Perhaps that is why any approach to privacy must also contend with the fact that privacy is not only hard to define, but difficult to induce abstract rules to apply for all circumstances.<sup>8</sup> Privacy can refer to the sort of information that leads one to first keep your

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the 'price system' were real, but that so were the costs of any alternative. . . . Coase argued for analytical symmetry on logical grounds, . . ."), discussing R. H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960), and R. H. Coase, *The Federal Communications Commission*, 2 J.L. & ECON. 1 (1959).

<sup>8</sup> The difficulty of generating abstract principles in privacy is equally difficult when attempting to define the phrase "sensitive data." See, e.g., Concurring and Dissenting Statement of Comm'r Andrew N. Ferguson, *Regarding the Social Media and Video Streaming Services Report*, File No. P205402, at 4-5 (Sept. 19, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/ferguson-statement-social-media-6b.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-statement-social-media-6b.pdf) (hereinafter, "Ferguson Social Media Statement"); Concurring and Dissenting Statement of Comm'r Andrew N. Ferguson, *In re Gravy Analytics, Inc. & In re Mobilewalla, Inc.*, Matter Nos. 2123035 & 2023196, at 4-5 (Dec. 3, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/gravy\\_-mobilewalla-ferguson-concurrence.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/gravy_-mobilewalla-ferguson-concurrence.pdf) (noting that "...if we did a full accounting of characteristics that someone, somewhere might consider sensitive, no useful categorizations would remain"). Prior to the Biden-Harris FTC, the Commission was careful not to aggressively characterize most data as sensitive. For example, a previous Commission report identified specific types of information that the Commission considered sensitive, specifically information about children, financial and health information, Social Security numbers, and precise geolocation data. FTC, *Protecting Consumer Privacy in an Era of Rapid Change, Recommendations for Businesses and Policymakers* 59 (Mar. 2012), <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf>. For a discussion on the problems of anchoring enforcement to sensitive data alone, see Daniel J. Solove, *Data is what Data Does: Regulating Based on Harm and Risk Instead of Sensitive Data*, 118 Nw. L. Rev. 1081 (2024). Put differently, a significant hurdle the Commission faces is that it lacks a comprehensive privacy legislation against which to anchor its enforcement agenda. Because of the lack of comprehensive legislation, the Commission has—particularly over the last four years—been unable to anchor its discussion of consumers' privacy rights and attendant legal entitlements in a clear and precise manner. The Biden-Harris Commission therefore committed two categorical errors in its approach to privacy: it first asserted legal entitlements, at times, where no such entitlements existed; and, in its overzealous use of Section 5's prohibition on unfair acts or practices, routinely truncated the unfairness analysis once the legal entitlement was asserted to exist. To put it mildly, that is not how the law works. See e.g., Guido Calabresi and Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089, 1090-1092 (1972) (A critical role the law serves is to resolve conflicting interests of two or more groups. While identifying an entitlement is an important first

job search secret, and then trumpet it. Or, harkening back to an early description of privacy, it can mean “the right to be let alone.”<sup>9</sup> We could wish to be left alone from other people, invasive telemarketing calls,<sup>10</sup> unwanted emails,<sup>11</sup> or other invasions into private life.<sup>12</sup> Privacy can also sound in tort, as with the torts of intrusion upon seclusion<sup>13</sup> or the public disclosure of private fact. To some stakeholders, privacy may also sound in property, related to the ability to control information about oneself.<sup>14</sup>

As Congress and state legislatures evaluate privacy legislation, I recognize these varying approaches to privacy animate heated debates about the goals, scope, and particular provisions of proposed privacy legislation. But no omnibus privacy legislation currently exists—much to the chagrin of the Biden-Harris Commission, which behaved as if it were a roving legislature and that the FTC Act was a comprehensive privacy law proscribing

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step toward resolving conflicts, it is only the first step. The law must next decide “the manner in which entitlements are protected and to whether an individual is allowed to sell or trade the entitlement.”).

<sup>9</sup> Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

<sup>10</sup> Cf. Press Release, FTC, *FTC, State of Nevada Take Action Against IM Mastery Academy for Deceiving Consumers* (May 1, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-state-nevada-take-action-against-im-mastery-academy-deceiving-consumers> (alleging that operators of an investment scheme violated the Telemarketing Sales Rule by making deceptive earnings claims on telemarketing calls); Press Release, FTC, *FTC Takes Action against the Operators of Copycat Military Websites* (Sept. 6, 2018), <https://www.ftc.gov/news-events/news/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites> (alleging that operators of fake military sites violated the Telemarketing and Consumer Fraud and Abuse Prevention Act and the Telemarketing Sales Rule by tricking consumers interested in enlisting in the military into submitting their personal information and by placing hundreds of thousands of illegal telemarketing calls to phone numbers on the National Do Not Call Registry).

<sup>11</sup> 15 U.S.C. § 7701-7713 (Controlling the Assault of Non-Solicited Pornography & Marketing Act of 2003 (“CAN-SPAM Act”)); 16 C.F.R. Part 316 (FTC CAN-SPAM Rule).

<sup>12</sup> Cf. Press Release, FTC, *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> (alleging that unfair and deceptive privacy and data security practices enabled employees and hackers (separately) to access stored videos and live feeds from security cameras installed in consumers’ bedrooms, bathrooms, and nurseries).

<sup>13</sup> Cf. *id.*

<sup>14</sup> For a short summary of differing theories of privacy, see generally Avi Goldfarb & Verina F. Que, *The Economics of Digital Privacy*, at 2-3 (Nat’l Bureau of Econ. Rsch., Working Paper No. 30943, 2023) [https://www.nber.org/system/files/working\\_papers/w30943/w30943.pdf](https://www.nber.org/system/files/working_papers/w30943/w30943.pdf) (summarizing theories of privacy). Any definition should also grapple with the “practical compromises between privacy and other desirable goals” as well. See Howard Beales, Director, FTC Bureau of Consumer Protection, Remarks before the IAPP: The FTC and Consumer Privacy: An Accomplished Agenda, at 4 (June 2004), [https://www.ftc.gov/sites/default/files/documents/public\\_statements/federal-trade-commission-and-consumer-privacy-accomplished-agenda/0406conprivacyaccomplished.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/federal-trade-commission-and-consumer-privacy-accomplished-agenda/0406conprivacyaccomplished.pdf).

a panoply of data uses<sup>15</sup> and prescribing specific data handling practices.<sup>16</sup> In contrast to the Biden-Harris approach of pretending that Section 5 is a broad delegation of authority to refashion the economy,<sup>17</sup> the Trump-Vance Commission’s privacy priorities center on what Congress has authorized us to do—enforce specific laws such as the Children’s Online Privacy Protection Act (“COPPA”) and the COPPA Rule,<sup>18</sup> the Fair Credit Reporting Act (“FCRA”),<sup>19</sup> and the Protecting Americans’ Data from Foreign Adversaries Act (“PADFAA”),<sup>20</sup> among a few other statutes. Accordingly, we should use Section 5 only where consumer choice is undermined, or empirical evidence enables us to satisfy the balancing test in Section 5(n) of the FTC Act.

In vigorously enforcing laws authorized by Congress, we facilitate technological innovation and economic growth by providing legal certainty and respecting consumer sovereignty. We provide legal certainty, first and foremost, by staying in our lane, as Chairman Ferguson has put it.<sup>21</sup> We enforce the law as Congress directed—and no more—

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<sup>15</sup> See Ferguson Social Media Statement, *supra* note 8, at 13-14. The Biden-Harris Commission’s tool of choice for its legislation-via-settlement was “unfairness.”

<sup>16</sup> The Biden-Harris Commission’s Advance Notice of Proposed Rulemaking on Commercial Surveillance and Data Security embodied this approach. See 87 Fed. Reg. 51273, 51283 (Aug. 22, 2022) (seeking input, for example, on whether a rule should restrict the length of time data may be retained). See also Ferguson Social Media Statement, *supra* note 8, at 13-14.

<sup>17</sup> See *supra* note 15. See also *In re Rytr, LLC*, FTC File No. 2323052 (Sept. 25, 2024) (A. Ferguson, dissenting) (Where the Commission treated a generative AI tool as “categorically illegal . . . merely because of the possibility that someone might use it for fraud is inconsistent with our precedents and common sense.”); *In re Exxon Mobil Corp.*, FTC File No. 2410004 (Jan. 17, 2025) (M. Holyoak and A. Ferguson, dissenting) (Commission’s complaint “does not provide even an ‘ephemeral possibilit[y]’ of harm, let alone a ‘reason to believe’ the law has been violated.”) (internal citations omitted).

<sup>18</sup> 15 U.S.C. §§ 6501-6506 (COPPA); 16 C.F.R. Part 312 (COPPA Rule).

<sup>19</sup> 15 U.S.C. §§ 1681–1681x (FCRA). See, e.g., Press Release, FTC, *Tenant Background Report Provider Settles FTC Allegations that it Failed to Follow Accuracy Requirements for Screening Reports* (Dec. 8, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/12/tenant-background-report-provider-settles-ftc-allegations-it-failed-follow-accuracy-requirements>; Press Release, FTC, *Mortgage Broker That Posted Personal Information about Consumers in Response to Negative Yelp Reviews Settles FTC Allegations* (Jan. 7, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/01/mortgage-broker-posted-personal-information-about-consumers-response-negative-yelp-reviews-settles> (complaint alleged that the defendants violated the FCRA by using consumer reports for an impermissible purpose, *i.e.*, by including information obtained from consumer reports in publicly-viewable responses that defendants left on negative Yelp reviews about their company); Press Release, FTC, *FTC Charges Recidivist Telemarketer for Millions of Illegal Calls Pitching Home Security Systems and Monitoring Services to Consumers* (Mar. 23, 2018), <https://www.ftc.gov/news-events/news/press-releases/2018/03/ftc-charges-recidivist-telemarketer-millions-illegal-calls-pitching-home-security-systems-monitoring> (complaint alleged that, among other law violations, the defendants violated the FCRA by obtaining consumer reports without a permissible purpose).

<sup>20</sup> 15 U.S.C. § 9901 (PADFAA).

<sup>21</sup> Andrew N. Ferguson, Comm’r, FTC, Prepared Remarks before 2024 Int’l Consumer Protection & Enforcement Network: Staying in Our Lane: Resisting the Temptation of Using Consumer Protection Law to Solve Other

no matter our policy preferences.<sup>22</sup> And we bring cases only where the evidence, developed through sound economic analysis, supports that action.

Indeed, a critical ingredient for prudent administration of an agency's resources is sound economic analysis. Under Chairman Ferguson's leadership, we are reinvigorating the Commission's economic rigor.<sup>23</sup> For example, the Commission is planning a workshop on Informational Injury—which will build on the work first begun under the first Trump administration<sup>24</sup>—to highlight and promote economic research on privacy as well as theories and evidence of informational injury. In my view, sound economics requires acknowledging and understanding the considerable benefits that have accrued to consumers from information sharing.<sup>25</sup> And understanding the economics of privacy is crucial to effective enforcement: Without that grounding in economics, we risk deterring pro-consumer innovation, and we risk misallocating limited Commission resources.<sup>26</sup> And we risk condemning conduct that is potentially beneficial to consumers or competition. Such economic analysis is critical in the context of privacy since the free services we receive on the internet—and its enormous benefit—is predicated on the free flow of consumers' data.<sup>27</sup>

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Problems (Sept. 27, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/9.27.2024-Ferguson-ICPEN-Remarks.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/9.27.2024-Ferguson-ICPEN-Remarks.pdf).

<sup>22</sup> Cf. Howard Beales, Director, FTC Bureau of Consumer Protection, *The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection* (May 30, 2003), <https://www.ftc.gov/news-events/news/speeches/ftcs-use-unfairness-authority-its-rise-fall-resurrection> (cautioning against the “danger of unfettered ‘public policy’ analysis,” which makes law violations a matter of political preference rather than legal analysis).

<sup>23</sup> In recent years, the Commission strayed from economic analysis. *E.g.*, Dissenting Statement of Comm'r Andrew N. Ferguson Joined by Comm'r Melissa Holyoak, *In the Matter of the Non-Compete Clause Rule*, File No. P201200, at 13 (June 28, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/ferguson-noncompete-dissent.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-noncompete-dissent.pdf) (explaining that “the Commission does not even try to quantify the costs of nullifying almost every single noncompete in force across the country”).

<sup>24</sup> Press Release, FTC, *Informational Injury Workshop* (Dec. 12, 2017), <https://www.ftc.gov/news-events/events/2017/12/informational-injury-workshop>.

<sup>25</sup> *E.g.*, Erik Brynjolfsson et al., *The Digital Welfare of Nations: New Measures of Welfare Gains and Inequality* (Nat'l Bureau of Econ. Rsch., Working Paper No. 31670, 2023), [https://www.nber.org/system/files/working\\_papers/w31670/w31670.pdf](https://www.nber.org/system/files/working_papers/w31670/w31670.pdf) (economic study that finds that ten digital services generate \$1.29 trillion in consumer welfare to US consumers annually).

<sup>26</sup> The Bureau of Consumer Protection is working with the Bureau of Economics to develop theories and evidence of concrete financial injury, while being open to a broader articulation of harm in appropriate cases where there is evidence of injury that relates to areas such as children's privacy, precise geolocation data relative to certain places or areas, or intimate imagery.

<sup>27</sup> See, e.g., J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, at ii, PRIVACY FOR AMERICA, (Nov. 2022), <https://www.privacyforamerica.com/wp-content/uploads/2022/11/Study-221115-Beales-andStivers-Information-Economy-Without-Data-Nov22-final.pdf> (“Context alone is only about one third as effective as using context with user's data to predict behavior.”); Arslan Aziz & Rahul Telang, *What is a Digital Cookie Worth?* (2016), <http://dx.doi.org/10.2139/ssrn.2757325> (sales increase by 28.7%); J. Howard Beales & Jeffrey A Eisenach, *An*

Only by challenging conduct that pollutes the market can we enable consumers to trust in the products markets offer. Indeed, while the Commission is a *trust-buster* in the competition space, the Commission is a *trust-enforcer* when it comes to consumer protection.

Now, some observers have raised real concerns about the trust framework in the privacy context—specifically, about whether vague, absent, hidden, or overwhelming notice renders the “notice and choice” model invalid.<sup>28</sup> I share those concerns about *deceptive* privacy choices. Under Chairman Ferguson’s leadership, we will actively investigate companies that may have failed to disclose material privacy-related information, or otherwise provided notice of privacy practices in a manner that prevented the consumer from making a meaningful choice. These concerns are especially important when it comes to children and acts or practices that prevent a parent from controlling the destiny of their child’s online use.

But I stop well short of arguing that the law—or the model—are misguided, for two reasons. First, we enforce the laws on the books, not the laws as we might wish them to be.<sup>29</sup> No amount of social media posts or facile articles that attempt to recast FTC settlements concerning notice and choice as models of “substantive” privacy protection will transform Section 5 into an omnibus privacy law.<sup>30</sup>

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*Empirical Analysis of the Value of Information Sharing in the Market for Online Content*, DIGITAL ADVERTISING ALLIANCE (Jan. 2014), [https://digitaladvertisingalliance.org/sites/aboutads/files/files/DAA\\_images/fullvalueinfostudy%20-%20Navigant.pdf](https://digitaladvertisingalliance.org/sites/aboutads/files/files/DAA_images/fullvalueinfostudy%20-%20Navigant.pdf) (28 cents more); Ayman Farahat & Michael C Bailey, *How Effective is Targeted Advertising?*, WWW '12 PROCEEDINGS OF THE 21<sup>ST</sup> INTERNATIONAL CONFERENCE ON WORLD WIDE WEB 111-20 (Apr. 16, 2012), <http://dx.doi.org/10.2139/ssrn.2242311>; Avi Goldfarb & Catherine E. Tucker, *Privacy Regulation and Online Advertising*, 57 MGMT. SCI. 57 (2011); Avi Goldfarb & Catherine Tucker, *Shifts in Privacy Concerns*, 102 AM. ECON. REV. 349, 349-53 (2012) (limiting behavioral targeting decreased the effect of ads on stated purchase intent by 65%); Omid Rafieian & Hema Yogana, *The Value of Information in Mobile Ad Targeting* (2017), [https://www.ftc.gov/system/files/documents/public\\_events/966823/rafieianyoganasimhan\\_thevalueofinformationinmobileadtargeting\\_final\\_0.pdf](https://www.ftc.gov/system/files/documents/public_events/966823/rafieianyoganasimhan_thevalueofinformationinmobileadtargeting_final_0.pdf) (increases click-through-rates 15.2%). Some research, however, suggests that targeted ads are only 4% more effective in generating revenue than contextual ads. See Veronica Marotta, Vibhanshu Abhishek & Alessandro Acquisti, *Online Tracking and Publishers’ Revenues: An Empirical Analysis* (Preliminary Draft May 2019), [https://weis2019.econinfosec.org/wpcontent/uploads/sites/6/2019/05/WEIS\\_2019\\_paper\\_38.pdf](https://weis2019.econinfosec.org/wpcontent/uploads/sites/6/2019/05/WEIS_2019_paper_38.pdf).

<sup>28</sup> See, e.g., James C. Cooper, *Does Privacy Want to Unravel?*, 37 HARV. J.L. & TECH. 1039 (2023) (noting that “privacy law scholars have long viewed the notion of consent in the notice-and-choice model as fiction given the complexity and uncertainty surrounding the use of consumer information. There seems to be a view in ascendancy that the notice-and-choice framework is dead.”).

<sup>29</sup> *Cf. FTC v. Algoma Lumber Co.*, 291 U.S. 67, 78 (1934) (“ . . . the public is entitled to get what it *chooses*, though the choice may be dictated by caprice, or by fashion, or perhaps by ignorance.”) (emphasis added).

<sup>30</sup> See, e.g., Lina M. Khan et al., *After Notice and Choice: Reinvigorating “Unfairness” to Rein In Data Abuses*, 77 STAN. L. REV. 1375 (2025). Of course, where consumers unambiguously agree to specific terms and conditions,



Second, as we evaluate practices within the confines of existing law, we must remember that not all privacy choices are the same. What is so often lost in the critique of opaque or obscure privacy choices is the critical concept of materiality. Would knowing the relevant information make a difference to the consumer's choice or conduct?<sup>31</sup> This is a critical question, both because it is the legal standard for deception under Section 5,<sup>32</sup> and because it is good policy—one that can help us, as enforcers, focus on opportunistic behavior by firms that may seek to take advantage of consumers' reasonable expectations to their detriment when a contract is silent or ambiguous.<sup>33</sup> We make choices all the time without complete information and that asymmetry can be perfectly reasonable.<sup>34</sup> I know a fair amount about cars. But I don't, for example, know the precise details about how the suspension on my car works. For most consumers, that ignorance is fine and in fact welfare-enhancing because information is costly for firms to disclose and for consumers to process. Knowing those granular details, as the car manufacturer does, would not affect whether I purchase or use the car.<sup>35</sup> But if there are flaws in the car's design or safety that would lead

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by definition there is no privacy harm (if the terms and conditions are employed consistent with the expectations of the consumer). But it does not follow that if consent has not been given or consent is ambiguous, that there must be a privacy harm.

<sup>31</sup> Cf. Press Release, FTC, *FTC Sues to Stop Mercury Marketing and Others from Deceptively Advertising Substance Use Disorder Treatment Clinics* (June 24, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/06/ftc-sues-stop-mercury-marketing-others-deceptively-advertising-substance-use-disorder-treatment> (alleging that defendants deceived consumers with deceptive leads for substance abuse treatment clinics, including alleging that, in recorded calls to defendants, consumers asked for confirmation that they were speaking to their sought-after clinic, to which defendants deceptively suggested that they were).

<sup>32</sup> FTC Policy Statement on Deception, 103 F.T.C. 174, 175 (1984) (appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)), <https://www.ftc.gov/publicstatements/1983/10/ftc-policy-statement-deception>.

<sup>33</sup> See generally Timothy J. Muris, *Opportunistic Behavior and the Law of Contracts*, 65 MINN. L. REV. 521 (1981). Of course, this approach as enforcers also requires that we “get [our] hands dirty” by closely investigating the facts and state of the law.” Benjamin Klein, *Transaction Cost Determinants of “Unfair” Contractual Arrangements*, *supra* note 3 at 362.

<sup>34</sup> Contract law scholars generally agree that contracts are never fully contingent. See, e.g., Charles J. Goetz & Robert E. Scott, *Principles of Relational Contracts*, 67 VA. L. REV. 1089, 1090-1091 (1981) (noting that “[p]arties frequently enter into continuing, highly interactive contractual agreements. For these parties, a completely contingent contract may not be a feasible contracting mechanism. Where the future contingencies are peculiarly intricate or uncertain, practical difficulties arise that impede the contracting parties’ efforts to allocate optimally all risks at the time of contracting.”). See also Scott Baker & Kimberley D. Krawiec, *Incomplete Contracts in a Complete Contract World*, 33 FLA. ST. U. L. REV. 725, 725 (2006) (noting that “[c]ontracts are never fully complete, because some contractual incompleteness is inevitable, given the costs of thinking about, bargaining over, and drafting for future contingencies”).

<sup>35</sup> See Bryan Caplan, *Rational Ignorance versus Rational Irrationality*, 54 KYKLOS 3 (2003).

me to buy a different car if I had known about them, obscuring those details would cause consumer harm.<sup>36</sup>

These are the principles that animate the Trump-Vance FTC approach to privacy. Our cases and activity in this space bear this out. To illustrate, consider the Commission’s work to protect kids online by enforcing COPPA and Section 5 of the FTC Act. In June, the Commission held a workshop on the Attention Economy, in which participants described the potential harms to children from predatory platforms that employ design features that they know are detrimental to young people. When a company’s practices cause significant harms to children that cannot be reasonably avoided and that are not outweighed by any benefits, there is a Section 5 problem. Over the past month, the Commission voted out a series of important matters on children’s and teens’ privacy—*Apitor*, *Disney* and *Aylo (Pornhub)*—and announced a market study related to child and teen use of Artificial Intelligence chatbots.<sup>37</sup>

Importantly, these principles animate all of our consumer protection work. A few weeks ago, the Commission settled two healthcare-related matters involving lead generators that misled consumers searching for health insurance.<sup>38</sup> There, the defendants convinced consumers that they were purchasing comprehensive insurance. In fact, consumers received products that fell well short of what we consider comprehensive insurance. The settlements in both matters reflect the Commission’s focus on ensuring consumers have access to affordable health care. And it also reflects our focus on ensuring

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<sup>36</sup> A related point worth emphasizing here is that firms have every incentive to compete on privacy terms. Firms have every incentive to compete on any margin where consumers are willing to pay (relative to the marginal cost of producing the underlying good or service). To the extent critics are unhappy with the menu of privacy options offered to consumers, the first question is to ask whether there is some market failure impeding a more salutary menu of privacy options. See, e.g., James C. Cooper, *Does Privacy Want to Unravel?*, 37 HARV. J.L. & TECH. 1039, 1042 (2023) (“This is because consumers are willing to pay for the additional information only if the value of the difference between the choices made with and without disclosure is greater than the cost of requiring that disclosure. If the choices are the same in both disclosure regimes, there can be no gain from disclosure. On the other hand, if research suggests that asymmetric information is the culprit, there is a more plausible case for some sort of consumer protection intervention to promote unraveling. For example, it might be that despite consumer demands for more privacy and firms’ willingness to supply it, firms cannot convince consumers that they will actually follow through on their promises.”).

<sup>37</sup> *United States v. Apitor Tech. Co., Ltd.*, No. 3:25-cv-07363, (N.D. Cal. 2025); *United States v. Disney Worldwide Servs., Inc. and Disney Ent. Options LLC*, No. 2:25-cv-08223, (C.D. Cal. 2025); *FTC and Utah Division of Consumer Protection v. Aylo Group Ltd. et al.*, No. 2:25-cv-00752-TS, (D. Utah 2025). Press Release, FTC, *FTC Launches Inquiry into AI Chatbots Acting as Companions* (Sept. 11, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-launches-inquiry-ai-chatbots-acting-companions>.

<sup>38</sup> Press Release, FTC, *Assurance IQ and MediaAlpha to Pay a Total of \$145 Million to Settle FTC Charges That They Misled Consumers Seeking Health Insurance* (Aug. 7, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/08/assurance-iq-mediaalpha-pay-total-145-million-settle-ftc-charges-they-misled-consumers-seeking>.

competitors win on the merits, rather than by using anticompetitive tactics to gain consumers and market share.

Under Chairman Ferguson, the Trump-Vance FTC has focused on enforcing the law as Congress directed, conducting rigorous economic analysis to support enforcement and inform the public, and “staying in our lane” so that we don’t impose unnecessary regulatory burdens on American businesses, which stifles growth and innovation. Nowhere is this approach more necessary than with respect to the burgeoning industry of artificial intelligence.

### *Promoting AI and Innovation*

Writing nearly a hundred years ago, Henry Luce famously declared the 20<sup>th</sup> century to be an American Century.<sup>39</sup> Arguably, our country’s capacity to make the 21<sup>st</sup> century an American Century will be largely influenced by our capacity to be the world leader in artificial intelligence. In July, the White House released America’s AI Action Plan—an approach to AI that will ensure the United States meets that goal.<sup>40</sup>

To be sure, there are some who would have other countries take the lead on AI. Anti-innovation critics of AI have proposed a suite of substantive AI intervention regulations—generally asserting that we need uniform, *ex ante* rules of the road<sup>41</sup>—a policy standard that effectively treats new technology as “guilty until proven innocent.”<sup>42</sup>

Such calls are misplaced. As Chairman Ferguson has noted, a top priority of the Trump-Vance Commission is promoting American AI.<sup>43</sup> AI represents a paradigm-shifting development—and America’s approach to public policy and enforcement in this area could make or break our nation’s trajectory relative to other countries.<sup>44</sup> Under Chairman Ferguson’s leadership, the Commission’s enforcement priorities are guided by two principles. *First*, the Commission is targeting bad actors who use the specter of AI to

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<sup>39</sup> Henry R. Luce, *The American Century*, LIFE MAGAZINE, Feb. 17, 1941, at 61.

<sup>40</sup> *Winning the Race: America’s AI Action Plan* (July 2025), available at <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf> (hereinafter “White House AI Action Plan”).

<sup>41</sup> See, e.g., Lina Khan, Chairman, FTC, Remarks at the FTC Tech Summit (Jan. 25, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2024.01.25-chair-khan-remarks-at-ot-tech-summit.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2024.01.25-chair-khan-remarks-at-ot-tech-summit.pdf).

<sup>42</sup> Adam Thierer, *Getting AI Innovation Culture Right*, R St. (Mar. 30, 2023), <https://www.rstreet.org/research/getting-ai-innovation-culture-right/>.

<sup>43</sup> Andrew N. Ferguson, Chairman, FTC, Prepared Remarks at the 2025 International Competition Network Annual Conference: Competition in the 21st Century: Heeding the Rallying Cry for Deregulation (May 7, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/chairman-ferguson-2025-icn-remarks.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/chairman-ferguson-2025-icn-remarks.pdf) (hereinafter “Heeding the Rallying Cry for Deregulation”).

<sup>44</sup> See J.D. Vance, Vice President of the U.S., Remarks by the Vice President at the Artificial Intelligence Action Summit in Paris, France (Feb. 11, 2025), <https://www.presidency.ucsb.edu/documents/remarks-the-vice-president-the-artificial-intelligence-action-summit-paris-france>.

facilitate frauds and scams. As I noted earlier, the Commission has a unique role in promoting our free market economy. Just like everyday products and services will have difficulty being adopted in the presence of fraud or other unfair methods of competition, AI cannot be broadly adopted in the market without trust in the marketplace. To reinforce that trust, the Commission is targeting fraudsters and other unscrupulous actors who make false and misleading claims related to their use of AI.<sup>45</sup> *Second*, consistent with the President’s AI Action Plan, we understand that “[t]o maintain global leadership in AI, America’s private sector must be unencumbered by bureaucratic red tape.”<sup>46</sup>

Our desire to promote AI development, along with our intent to act deliberately and with understanding, do not entail inaction. To the contrary, we remain a zealous law enforcement agency. Where a company breaks the law—such as by deceiving consumers about what their AI products or services can do or the sales they will generate—we will enforce the law. Our recent cases provide examples of our enforcement focus. In the Commission’s recent action in *Cleo AI*, the defendant used a number of tactics that misled consumers about how much money they could expect to get—and how fast they could get it.<sup>47</sup> In *Workado*, the defendant told consumers that its product could detect—with nearly 99% accuracy—whether AI was behind a particular piece of writing. In reality, the product’s accuracy was no better than a coin flip.<sup>48</sup> In *Air.AI*, the defendants advertised their flagship feature as “conversational AI,” claiming that their product could replace human customer service representatives and, in combination with other services, make business owners significant sums of money. However, our lawsuit alleges that despite these promises, consumers did not earn the promised profits or even recoup the money they paid to Air AI.<sup>49</sup>

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<sup>45</sup> Contrast this with the Biden-Harris Commission’s approach in the case against Rytr LLC, *supra* note 17.

<sup>46</sup> White House AI Action Plan, at 3. Additionally, the Commission has shuttered all AI-related rulemakings initiated during the Biden-Harris administration, such as the “Commercial Surveillance and Data Security Rulemaking.” See Trade Regulation Rule on Commercial Surveillance and Data Security, 87 Fed. Reg. 51273 (proposed August 22, 2022).

<sup>47</sup> Press Release, FTC, *Cash Advance Company Cleo AI Agrees to Pay \$17 Million As Result of FTC Lawsuit Charging It Deceives Consumers* (Mar. 27, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/03/cash-advance-company-cleo-ai-agrees-pay-17-million-result-ftc-lawsuit-charging-it-deceives-consumers>.

<sup>48</sup> Press Release, FTC, *FTC Order Requires Workado to Back Up Artificial Intelligence Detection Claims* (Apr. 28, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/04/ftc-order-requires-workado-back-artificial-intelligence-detection-claims>.

<sup>49</sup> Press Release, FTC, *FTC Sues to Stop Air AI from Using Deceptive Claims about Business Growth, Earnings Potential, and Refund Guarantees to Bilk Millions from Small Businesses* (Aug. 25, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/08/ftc-sues-stop-air-ai-using-deceptive-claims-about-business-growth-earnings-potential-refund>.

As these actions demonstrate, we will aggressively address AI-powered fraud and scams,<sup>50</sup> and stop companies from making false or unsubstantiated representations that harm consumers. But our law enforcement will be just that: enforcing existing law, not backdoor-legislating through settlement, blog post, or policy statement, as the Biden-Harris Commission preferred.<sup>51</sup> As Chairman Ferguson noted, we “prefer the scalpel of enforcement to the sledgehammer of regulation.”<sup>52</sup> By addressing deceptive conduct in the context of AI, the FTC will increase trust in this nascent industry. Moreover, our approach to AI is consistent with our larger objective of reinvigorating the fraud program and focusing on the bread-and-butter efforts to fight fraud that have historically characterized much of the Commission’s best and most important work.<sup>53</sup>

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I began by discussing proper deployment of an agency’s resources. As we have seen, that is not just a question of operations or budget. Proper deployment of resources is vital because *misguided* law enforcement will undermine the exceptional nature of the American economy. Nowhere is that more so than relative to privacy and artificial intelligence.

Thank you for the opportunity to speak today. I look forward to your questions.

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<sup>50</sup> Recent matters like IM Mastery, Mercury Marketing, and Paddle demonstrate the Commission’s tough stance on fraud and those who facilitate fraud. See IM Mastery Press Release, *supra* note 10; Press Release, FTC, *FTC Sues to Stop Mercury Marketing and Others from Deceptively Advertising Substance Use Disorder Treatment Clinics* (June 24, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/06/ftc-sues-stop-mercury-marketing-others-deceptively-advertising-substance-use-disorder-treatment>; Press Release, FTC, *Paddle Will Pay \$5 Million to Settle FTC Allegations of Unfair Payment-Processing Practices and Facilitation of Deceptive Tech-Support Schemes* (June 16, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/06/paddle-will-pay-5-million-settle-ftc-allegations-unfair-payment-processing-practices-facilitation>.

<sup>51</sup> See, e.g., *Rytr LLC*, *supra* note 17 (A. Ferguson, dissenting) (noting, among other things, that “[t]he Commission’s complaint is a dramatic extension of means-and-instrumentalities liability” because it “treats Rytr’s sale of a product with lawful and unlawful potential uses as a categorical Section 5 violation because someone *could* use it to write a statement that *could* violate Section 5”) (emphasis in original); *id.* (M. Holyoak, dissenting) (noting, among other things, that the complaint failed to meet the FTC Act’s unfairness test because the complaint alleges only speculative harm and failed to weigh the countervailing benefits Rytr’s service offered to consumers or competition).

<sup>52</sup> Heeding the Rallying Cry for Deregulation, *supra* note 43. Deirdre McCloskey has written a masterful trilogy documenting the economic reality that economic growth is a product of the *discovery* of new ideas, rather than more efficient use of known ideas and resources. Deirdre McCloskey, *The Bourgeois Era* (Univ. of Chi. Press 2006, 2010, 2016).

<sup>53</sup> See, e.g., IM Mastery Press Release, *supra* note 10; Assurance IQ & MediaAlpha Press Release, *supra* note 38.