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# United States Senate

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AGING

March 11, 2019

Joseph J. Simons  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chairman Simons:

This week, the Senate Judiciary Committee will hold a hearing on the approaches to privacy that California and the European Union have taken in recent months and how those approaches have affected competition.

For too long our nation has put off accounting for the price we paid in return for the benefits of the online platforms that now dominate American culture and industry. These debates cross party lines, implicating election integrity, free speech, privacy, competition, and many other issues. But these debates include a central, shared concern that the new custodians of once-diffuse information have abused the power they amassed and neglected their responsibilities.

These companies have failed us. Washington has failed us. The FTC has a special role to play in protecting consumers, but it too has failed us. Any robust definition of consumer welfare must acknowledge that these companies have harmed consumers by conditioning participation in the modern public square on giving away enormous—and growing—amounts of personal information and by leveraging scale to cripple emerging competitors in their infancy. Yet the approach the FTC has taken to these issues has been toothless.

Even a brief snapshot of the track-record for Google and Facebook is alarming:

- According to a recent lawsuit based on 80,000 pages of internal Facebook records, Facebook appears to have fraudulently inflated—by as much as 900%—metrics about how much users were interacting with video ads, prompting widespread layoffs in the news media industry that harmed consumers. Until this controversy, the company had long resisted demands for third-party ad metric auditing.
- In 2011, Facebook entered into a settlement with the FTC after the FTC charged Facebook with massive deception about how it was collecting data. Substantial evidence indicates that Facebook breached this agreement.

- When Facebook acquired its competitor WhatsApp, it promised to maintain separation between the two platforms. It later broke that promise, prompting a \$122 million fine from the European Union.
- When Facebook purchased Onavo, it began to use the application to monitor how persons were using other apps, including Facebook's competitor Snapchat. Apple recently banned the app from its app store because Facebook's misuse of that application violated Apple's terms of service. Google recently disabled its similar Screenwise Meter app.
- Google has consistently misinformed users about its use of geolocation data, continuing to collect data even when users disabled location services and even when phones are turned off and lack SIM cards.
- Google adopts definitions contrary to what regular consumers would expect, enabling them to continue to collect personal information even when users tell Google not to. For example, Google continues to track geolocation information even when users disable "Location Services" and "Location History" because it chooses to define certain geolocation information under a different category—"Web and App Activity"—a title that includes no reference to geolocation.
- Google also uses misleading terms like "location" when it collects a much broader category of non-location data, including the type of motion (*e.g.*, walking, biking, or driving), barometric pressure, Wi-Fi connectivity, MAC addresses, and battery charge status.
- Google has misled consumers by selling products embedded with data-collection devices inessential to product functionality and never disclosed on product packaging, like the secret microphone Google installed in its Nest Guard home alarm system without alerting purchasers.
- Platforms have often allowed data to fall into the hands of unaccountable third parties, shattering the illusion of data anonymity. Third parties demonstrated that they could track staff members for President Trump based on their positions on the inaugural podium. And recent reports suggest that nearly anybody can purchase on the black market real-time location information with nothing more than a phone number.

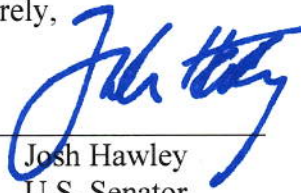
There is a common pattern to these discoveries: Big tech companies adopt an "ask forgiveness rather than seek permission" mentality to their repeated deceptions of consumers and encroachments on user privacy. A handful of their most egregious practices are discovered long after they are initiated—usually by the media—and the companies offer only half-hearted apologies. Occasionally, clear lines are breached, as with Facebook's violation of the FTC consent decree. Too often, though, public shaming is the only consequence.

This is not what Americans were promised. These companies provide benefits to consumers, but those benefits can be secured without so deep a cost.

I appreciate well the limits of the FTC, and Congress bears primary responsibility for this and other matters. But I am concerned that the FTC has not investigated these companies and enforced the law as vigorously as it should. I am cautiously optimistic about the creation of an FTC task force to address these issues, and I hope that this task force will have more substance than show.

I urge you to investigate and act to stop the abuses I have documented, and myriad others I have left unmentioned, with all appropriate speed. At the earliest possible date, alert Congress to all apparent gaps in your authority that stymie such work. There is no excuse for inaction, by the Commission or by Congress. I hope to work together with you to address these challenges.

Sincerely,



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Josh Hawley  
U.S. Senator