

August 16, 2018

Joseph J. Simons, Chairman
Maureen K. Ohlhausen, Commissioner
Noah Joshua Phillips, Commissioner
Rohit Chopra, Commissioner
Rebecca Kelly Slaughter, Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons and FTC Commissioners,

On behalf of the leading consumer privacy and civil liberties organizations in the United States, we urge you to conclude the Facebook investigation and issue a judgment prior to September 1, 2018. The urgency of this matter cannot be overstated. The European Parliament recently passed a resolution calling for the suspension of the EU-US Privacy Shield agreement by September 1st if the United States does not fully comply.¹ The EU Parliament specifically expressed concern over the Facebook-Cambridge Analytica data breach and called on the FTC to swiftly conclude its investigation. The resolution stated:

In view of the recent revelations of misuse of personal data by companies certified under the Privacy Shield, such as Facebook and Cambridge Analytica, [European Parliament] calls on the US authorities responsible for enforcing the Privacy Shield to act upon such revelations without delay.²

The Privacy Shield permits the flow of data on European consumers to companies located in the United States that would otherwise be subject to European law. A lack of enforcement by the FTC would imperil both European and American consumers and undermine the digital economy.

A coalition of U.S. consumer organizations previously urged the Commission to open an investigation into Facebook following reports of the Cambridge Analytica breach.³ We emphasized that the disclosure of data on 87 million Facebook users to Cambridge Analytica could have been prevented had the FTC enforced its 2011 Consent Order with Facebook in the first place.⁴ On March 26, 2018, the Acting Director of the

¹ European Parliament, *Motion for Resolution*, B8-035/2018 (Jun. 26, 2018), available at, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B8-2018-0305+0+DOC+PDF+V0//EN>.

² *Id.*

³ Letter from EPIC, et. al to Maureen Ohlhausen, Acting Chairman, Fed. Trade Comm'n., (Mar. 20, 2018), <https://epic.org/privacy/facebook/EPIC-et-al-ltr-FTC-Cambridge-FB-03-20-18.pdf>.

⁴ *Id.*

Commission's Bureau of Consumer Protection finally announced that the FTC was investigating Facebook.⁵

Four months have now passed since the Commission announced it was reopening its investigation of Facebook, but still there is no judgment. It is critical that the FTC conclude the Facebook matter, issue a significant fine, and ensure that the company upholds its privacy commitments to users. As Chairman Simons has stated, a "first priority for the Commission" will be "vigorous enforcement."⁶ FTC Commissioner Rohit Chopra recently stated that, "FTC orders are not suggestions."⁷ There is no more urgent enforcement priority for the Commission than the Facebook matter.

Other consumer agencies, without the benefit of the 2011 FTC consent order, have already completed extensive investigations of the Facebook Cambridge Analytica matter and issued substantial fines. The U.K. Information Commissioner's Office has just fined Facebook the maximum allowable fine under U.K. law, charging the company with "failing to safeguard people's information [and] failing to be transparent about how people's data was harvested by others and why they might be targeted by a political party or campaign."⁸ The European Union Justice Commissioner Věra Jourová stated also that the European Commission is "impatiently waiting" for the FTC to conclude its investigation into the Facebook-Cambridge Analytica scandal.⁹

But most critically it is the protection of the data of American consumers that is central to the work of the FTC. We urge you not to delay. The lack of a prompt conclusion to the Facebook investigation will have devastating consequences for consumers on both sides of the Atlantic.

Sincerely,

Electronic Privacy Information Center
Campaign for a Commercial-Free Childhood

⁵ Fed. Trade Comm'n., *Statement by the Acting Director of FTC's Bureau of Consumer Protection Regarding Reported Concerns about Facebook Privacy Practices* (Mar. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection>.

⁶ *Nomination Hearing*, 115th Cong. (2018), S. Comm. on Science, Commerce and Transportation, (Feb. 14, 2018) (Joseph Simons, Chairman, Fed. Trade Comm'n. at 59:40), <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=EECF6964-F8DC-469E-AEB2-D7C16182A0E8>.

⁷ Memorandum from Commissioner Rohit Chopra to Commission Staff and Commissioners, Fed. Trade Comm'n, (May 14, 2018), https://www.ftc.gov/system/files/documents/public_statements/1378225/chopra_-_repeat_offenders_memo_5-14-18.pdf.

⁸ Information Commissioner's Office, *Investigation Into the Use of Data Analytics In Political Campaigns*, (Jul. 10, 2018), <https://ico.org.uk/media/action-weve-taken/2259371/investigation-into-data-analytics-for-political-purposes-update.pdf>.

⁹ Cristiano Lima, *EU Official Sizes Up U.S. Tech Oversight*, Politico, (Jul. 27, 2018), <https://www.politico.com/newsletters/morning-tech/2018/07/27/eu-official-sizes-up-us-tech-oversight-298695>.

Center for Digital Democracy
Common Sense Kids Action
Constitutional Alliance
Consumer Action
Consumer Federation of America
Consumer Watchdog
Defending Rights & Dissent
Patient Privacy Rights
Privacy Rights Clearinghouse
Privacy Times
Public Citizen
U.S. Public Interest Research Group