

November 26, 2018

The Honorable Jerry Moran, Chairman  
The Honorable Richard Blumenthal, Ranking Member  
U.S. Senate Committee on Commerce, Science, and Transportation  
Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security  
512 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Moran and Ranking Member Blumenthal:

We write to you in advance of the hearing “Oversight of the Federal Trade Commission.”<sup>1</sup> We appreciate your interest in the role of the FTC and consumer protection. We look forward to working with the Commerce Committee in the next Congress. Your oversight of the Federal Trade Commission is critical to safeguard the interests of American consumers and businesses.

From EPIC’s perspective, the FTC must do more far more to address the growing threats to consumer privacy and to assure our trading partners as to the adequacy of data protection in the United States. Consumers today face unprecedented risks of identity theft, financial fraud, and data breaches. And because so many U.S. firms collect personal data of European consumers, the FTC’s failure to enforce consent orders also risks continued trade relations with the country’s largest trading partners. Before giving the FTC more authority, the Senate Commerce Committee should review the FTC’s use of its current authority and ask specific questions about commitments made regarding the enforcement of consent orders and merger review. In February, the new Commissioners said there would be vigorous enforcement. That simply has not happened.

For many years, EPIC has worked with the Senate Commerce Committee to help protect the privacy rights of Americans.<sup>2</sup> EPIC has also played a leading role at the FTC, helping to establish the Commission’s authority to bring privacy investigations and to protect the personal data of American consumers.<sup>3</sup> EPIC is the group that filed the comprehensive complaint against Facebook

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<sup>1</sup> *Oversight of the Federal Trade Commission*, 115<sup>th</sup> Cong. (2018), Senate Comm. on Commerce, Sci., and Trans., Subcomm. on Consumer Protection, Product Safety, Insurance, and Data Security (Nov. 27, 2018), <https://www.commerce.senate.gov/public/index.cfm/2018/11/oversight-of-the-federal-trade-commission>.

<sup>2</sup> See, e.g., *Impact and Policy Implications of Spyware on Consumers and Businesses Before S. Comm. on Commerce, Sci., and Transp.*, 110<sup>th</sup> Cong. (2008) (statement of Marc Rotenberg, Executive Director, EPIC), [https://epic.org/privacy/dv/Spyware\\_Test061108.pdf](https://epic.org/privacy/dv/Spyware_Test061108.pdf); *Protecting Consumers’ Phone Records Before the S. Comm. On Commerce, Sci., and Transp.*, 109<sup>th</sup> Cong. (2006) (statement of Marc Rotenberg, Executive Director, EPIC), <https://epic.org/privacy/iei/testimony2806.pdf>.

<sup>3</sup> Letter from EPIC Executive Director Marc Rotenberg to FTC Commissioner Christine Varney (Dec. 14, 1995), [http://epic.org/privacy/internet/ftc/ftc\\_letter.html](http://epic.org/privacy/internet/ftc/ftc_letter.html) (urging the FTC to investigate the misuse of personal information by the direct marketing industry); See also EPIC, *In the Matter of DoubleClick, Complaint and Request for Injunction, Request for Investigation and for Other Relief, before the Federal Trade Commission* (Feb. 10, 2000), [http://epic.org/privacy/internet/ftc/DCLK\\_complaint.pdf](http://epic.org/privacy/internet/ftc/DCLK_complaint.pdf); EPIC, *In the Matter of Microsoft Corporation, Complaint and Request for Injunction, Request for Investigation and for Other Relief* (July 26, 2001), [http://epic.org/privacy/consumer/MS\\_complaint.pdf](http://epic.org/privacy/consumer/MS_complaint.pdf), *In the Matter of Choicepoint, (Complaint,*

with the FTC in 2009, resulting in the Commission’s 2011 Consent Order with Facebook,<sup>4</sup> and is the group that sued the FTC for the Commission’s failure to enforce a similar order against Google.<sup>5</sup>

Below, EPIC raises five critical points for committee consideration: 1) The FTC fails to enforce its own consent orders; 2) Even when the FTC finds violations, it does not sanction companies; 3) The FTC failed to stop mergers that threaten consumer privacy; 4) The FTC lacks transparency; and 5) The United States needs a data protection agency.

### **Why Does the FTC Fail to Enforce Its Own Consent Orders?**

In 2011, the FTC entered into a Consent Order with Facebook, following an extensive investigation and complaint pursued by EPIC and several U.S. consumer privacy organizations. The Consent Order specifically prohibited Facebook from transferring personal data to third parties without user consent.<sup>6</sup> As EPIC told this Committee in April of this year, the transfer of personal data on 87 million Facebook users to Cambridge Analytica could have been prevented had the FTC enforced its 2011 Consent Order against Facebook.<sup>7</sup> *The obvious question now is “why did the FTC fail to act?”*

In 2011, EPIC also obtained a significant judgment at the FTC against Google after the disastrous roll-out of Google “Buzz.”<sup>8</sup> In that case, the FTC established a consent order after Google tried to enroll Gmail users into a social networking service without obtaining meaningful consent.<sup>9</sup> But a problem we did not anticipate became apparent almost immediately: *the FTC was unwilling to enforce its own consent orders.* Almost immediately after the settlements, both Facebook and Google began to test the Commission’s willingness to stand behind its judgments: Dramatic changes in the two companies’ advertising models led to more invasive tracking of Internet users, user behaviors both online and offline were tracked and merged, and Facebook used facial recognition tools on Internet users who were not even using their platform. Still the FTC did nothing.

In March 2018, after the Cambridge Analytica scandal became public, the FTC announced it would reopen the investigation of Facebook.<sup>10</sup> In a press release, the FTC stated that “[c]ompanies

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*Request for Investigation and for Other Relief*) (Dec. 16, 2004), <http://epic.org/privacy/choicepoint/fcraltr12.16.04.html>.

<sup>4</sup> *In the Matter of Facebook, Inc.* (EPIC, Complaint, Request for Investigation, Injunction, and Other Relief) before the Federal Trade Commission, Washington, D.C. (filed Dec. 17, 2009), <http://www.epic.org/privacy/inrefacebook/EPIC-FacebookComplaint.pdf>.

<sup>5</sup> *EPIC v. FTC*, 844 F. Supp. 2d 98 (D.D.C. 2012), <https://epic.org/privacy/ftc/google/EPICvFTCCtMemo.pdf>.

<sup>6</sup> Fed. Trade Comm’n., *In re Facebook*, Decision and Order, FTC File No. 092 3184 (July 27, 2012), <https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120810facebookdo.pdf>.

<sup>7</sup> See, Letter from EPIC to S. Comm. on the Judiciary and S. Comm on Commerce, Sci. and Trans. (Apr. 9, 2018), <https://epic.org/testimony/congress/EPIC-SJC-Facebook-Apr2018.pdf>.

<sup>8</sup> *In the Matter of Google, Inc.*, EPIC Complaint, Request for Investigation, Injunction, and Other Relief, before the Federal Trade Commission, Washington, D.C. (filed Feb. 16, 2010), [https://epic.org/privacy/ftc/googlebuzz/GoogleBuzz\\_Complaint.pdf](https://epic.org/privacy/ftc/googlebuzz/GoogleBuzz_Complaint.pdf).

<sup>9</sup> Press Release, Fed. Trade Comm’n., *FTC Charges Deceptive Privacy Practices in Googles Rollout of Its Buzz Social Network: Google Agrees to Implement Comprehensive Privacy Program to Protect Consumer Data* (Mar. 30, 2011), <https://www.ftc.gov/news-events/press-releases/2011/03/ftc-charges-deceptive-privacy-practices-googles-rollout-its-buzz>.

<sup>10</sup> Press Release, 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),

who have settled previous FTC actions must also comply with FTC order provisions imposing privacy and data security requirements. Accordingly, the FTC takes very seriously recent press reports raising substantial concerns about the privacy practices of Facebook.”<sup>11</sup> Chairman Simons also told this Committee in February, a “first priority for the Commission” will be “vigorous enforcement,”<sup>12</sup> and Commissioner Rohit Chopra stated in May that “FTC orders are not suggestions.”<sup>13</sup>

Despite strong words, eight months have passed since the FTC’s announcement of a new investigation, but still there is no judgment, no report, nor even a public statement about one of the most serious data breaches in U.S. history. 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.

***The Committee should ask the FTC Chairman and the Commissioners: When will there be a final determination in the Facebook investigation? What other steps can the FTC take to assure the American public that the Commission will enforce its legal orders?***

### **Even When the FTC Finds Violations, It Does Not Sanction Companies**

EPIC filed a complaint with the FTC in 2015 regarding Uber's egregious misuse of personal data.<sup>14</sup> That complaint led to an FTC settlement with Uber in August 2017.<sup>15</sup> But shortly after announcing that settlement, the FTC discovered that Uber had failed to disclose another massive data breach of its third-party cloud storage service.<sup>16</sup> The breach exposed unencrypted files containing more than 25 million names and email addresses, 22 million names and phone numbers, and 600,000 names and driver’s license numbers.<sup>17</sup> Uber became aware of this breach in November 2016 but waited a full *year* to notify its customers while secretly paying the hackers \$100,000 through its “bug bounty” program. Furthermore, Uber failed to notify the FTC of this breach despite the fact that it occurred during the FTC’s investigation into Uber’s failure to protect consumer data.

Last month, the FTC finalized a revised settlement with Uber.<sup>18</sup> The modified settlement requires Uber to submit all of its biennial privacy assessments to the FTC, rather than just the initial

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<https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection>.

<sup>11</sup> *Id.*

<sup>12</sup> *Nomination Hearing*, 115<sup>th</sup> 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>.

<sup>13</sup> 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](https://www.ftc.gov/system/files/documents/public_statements/1378225/chopra_repeat_offenders_memo_5-14-18.pdf).

<sup>14</sup> EPIC Complaint to the FTC, *In the Matter of Uber Technologies, Inc.* (June 22, 2015), <https://epic.org/privacy/internet/ftc/uber/Complaint.pdf>.

<sup>15</sup> Agreement Containing Consent Order FILE NO. 1523054, *In the Matter of Uber Technologies, Inc.*, [https://www.ftc.gov/system/files/documents/cases/1523054\\_uber\\_technologies\\_agreement.pdf](https://www.ftc.gov/system/files/documents/cases/1523054_uber_technologies_agreement.pdf).

<sup>16</sup> Press Release, Fed. Trade Comm’n., Uber Agrees to Expanded Settlement with FTC Related to Privacy, Security Claims (Apr. 12, 2018), <https://www.ftc.gov/news-events/press-releases/2018/04/uber-agrees-expanded-settlement-ftc-related-privacy-security>.

<sup>17</sup> *Id.*

<sup>18</sup> Press Release, Fed. Trade Comm’n., Federal Trade Commission Gives Final Approval to Settlement with Uber (Oct. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/federal-trade-commission-gives-final-approval-settlement-uber>.

assessment, but those assessments will not be made public. Despite Uber's repeated failures to protect consumer data, the proposed Order contains no mandatory provisions for how Uber will safeguard consumer data. The FTC imposed no fines.

It is the responsibility of the FTC to protect consumer privacy and prosecute companies that engage in unfair or deceptive trade practices. The Commission has failed to do so. This is even more troubling because the Commission claimed that its inability to impose fines hampers its enforcement powers.<sup>19</sup> But there is no such hurdle in cases involving companies like Uber that are already subject to FTC consent orders.

### **Why Has the FTC Failed to Stop Mergers that Threaten Consumer Privacy?**

The FTC must also address the serious threats to consumer privacy posed by increasing consolidation among the dominant technology firms in the United States. Facebook's strategic acquisitions of Instagram and WhatsApp, and their use of consumer data from both acquisitions, provide two examples. As Columbia professor Tim Wu writes in his new book *The Curse of Bigness: Antitrust in the New Gilded Age*, the failures of antitrust enforcement "sit right in front of our faces: the centralization of the once open and competitive tech industries into just a handful of giants . . ."<sup>20</sup> The FTC's failure to take these threats into account in its merger review process is one of the main reasons that consumer privacy has diminished and the secretive tracking and profiling of consumers has proliferated.

In 2007, EPIC warned the FTC that Google's acquisition of DoubleClick would lead to Google tracking consumers across the web, accelerating its dominance of the online advertising industry.<sup>21</sup> The FTC ultimately allowed the merger to go forward over the compelling dissent of Pamela Jones Harbour.<sup>22</sup> Not surprisingly, Google today accounts for 90 percent of all Internet searches and, together with Facebook, absorbs 73 percent of all digital advertising revenue in the United States.<sup>23</sup>

Despite the clear lessons from Google-DoubleClick, in 2014, the FTC failed to impose privacy safeguards for Facebook's acquisition of WhatsApp, a text-messaging service that attracted users specifically because of its strong privacy protections.<sup>24</sup> The FTC allowed the merger based on

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<sup>19</sup> *Oversight of the Federal Trade Commission Before the Subcomm. on Dig. Commerce and Consumer Prot. of the H. Comm. on Energy & Commerce*, 115th Cong. 6 (2018) (statement of Joseph J. Simons, Chairman, Fed. Trade Comm'n), [https://www.ftc.gov/system/files/documents/public\\_statements/1394526/p180101\\_ftc\\_testimony\\_re\\_oversight\\_house\\_07182018.pdf](https://www.ftc.gov/system/files/documents/public_statements/1394526/p180101_ftc_testimony_re_oversight_house_07182018.pdf).

<sup>20</sup> Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* 23 (2018).

<sup>21</sup> *In the Matter of Google Inc. and DoubleClick Inc.*, (EPIC Complaint, Request for Injunction, Investigation, and Other Relief), (Apr. 20, 2007), [https://epic.org/privacy/ftc/google/epic\\_complaint.pdf](https://epic.org/privacy/ftc/google/epic_complaint.pdf).

<sup>22</sup> *In the Matter of Google/DoubleClick*, FTC File No. 070-0170 (2007) (Harbor, C., dissenting), [https://www.ftc.gov/sites/default/files/documents/public\\_statements/statement-matter-google/doubleclick/071220harbour\\_0.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/statement-matter-google/doubleclick/071220harbour_0.pdf).

<sup>23</sup> Editorial, *Break Up Google*, Boston Globe (June 14, 2018), <https://apps.bostonglobe.com/opinion/graphics/2018/06/break-google/>.

<sup>24</sup> *In the Matter of WhatsApp, Inc.*, (EPIC and Center for Digital Democracy Complaint, Request for Investigation, Injunction, and Other Relief) (Mar. 6, 2014), <https://epic.org/privacy/ftc/whatsapp/WhatsApp-Complaint.pdf>.

assurances by both companies that they would honor WhatsApp users' privacy.<sup>25</sup> But in 2016, WhatsApp announced that it would begin disclosing its users' personal information to Facebook.<sup>26</sup> The UK Information Commissioner's Office blocked WhatsApp's transfer of data to Facebook,<sup>27</sup> and the European Commission fined Facebook \$122 million for misleading European authorities about the data transfer.<sup>28</sup> But the FTC again failed to take action.

Chairman Joseph Simons said in February that "the FTC needs to devote substantial resources to determine whether its merger enforcement has been too lax, and if that is the case, the agency needs to determine the reason for such failure and to fix it."<sup>29</sup> More pointedly, Congress must ensure that the Commission uses its current authorities to the fullest extent possible. For example, as EPIC has argued elsewhere, the Commission could "unwind" the Facebook-WhatsApp deal because of Facebook's failure to uphold its commitments to users.<sup>30</sup> Even the founders of WhatsApp have acknowledged that Facebook broke its commitments. How can it be that the FTC does not act in such circumstances?

***The Committee should ask the FTC Chairman and the Commissioners: Will the FTC unwind the Facebook-WhatsApp deal? What further steps is the FTC going to take to protect consumer privacy in its merger review process?***

### **The FTC Lacks Transparency**

The FTC should be more transparent about its review of companies under consent orders. Earlier this year, EPIC filed a Freedom of Information Act lawsuit against the FTC to publicly release the biennial audits of Facebook's privacy practices and related records to understand why the FTC failed to bring any enforcement action against the company.<sup>31</sup> As a result of EPIC's lawsuit, the FTC released several communications between the FTC and Facebook that reveal the comfortable relationship between the Commission and Facebook.<sup>32</sup>

In the early years following the 2011 Consent Decree, a set of e-mails revealed disagreement between Facebook and the FTC over potential enforcement action on Facebook's proposed changes

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<sup>25</sup> See, See Letter from Jessica L. Rich, Director, Bureau of Consumer Prot., Fed. Trade Comm'n., to Facebook and WhatsApp (Apr. 10, 2014), <https://epic.org/privacy/internet/ftc/whatsapp/FTC-facebook-whatsapp-ltr.pdf> (concerning the companies' pledge to honor WhatsApp's privacy promises).

<sup>26</sup> WHATSAPP, *Looking Ahead for WhatsApp*, WhatsApp Blog, (Aug. 25, 2016), <https://blog.whatsapp.com/10000627/Looking-ahead-for-WhatsApp>.

<sup>27</sup> Information Commissioner's Office, *WhatsApp, Inc.* (Mar. 12, 2018), <https://ico.org.uk/media/action-weve-taken/undertakings/2258376/whatsapp-undertaking-20180312.pdf>.

<sup>28</sup> Press Release, European Commission, *Mergers: Commission Fines Facebook €110 Million for Providing Misleading Information About WhatsApp Takeover* (May 18, 2017), [http://europa.eu/rapid/press-release\\_IP-17-1369\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1369_en.htm).

<sup>29</sup> *Nomination Hearing Before the S. Comm. on Science, Commerce and Transportation*, 115th Cong. (2018) (testimony of Joseph Simons, Nominee to be Chairman, Fed. Trade Comm'n.), <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=EECF6964-F8DC-469E-AEB2-D7C16182A0E8>.

<sup>30</sup> Marc Rotenberg, *The Facebook-WhatsApp Lesson: Privacy Protection Necessary for Innovation*, Techonomy (May 4, 2018), <https://techonomy.com/2018/05/facebook-whatsapp-lesson-privacy-protection-necessary-innovation/>.

<sup>31</sup> See EPIC, *EPIC v. FTC*, <https://www.epic.org/foia/ftc/facebook/>.

<sup>32</sup> See EPIC, *EPIC v. FTC: FOIA Documents*, <https://www.epic.org/foia/ftc/facebook/#foia>.

to its Data Use Policy and Statement of Rights and Responsibility.<sup>33</sup> In a September 11, 2013 e-mail, the FTC counsel wrote that the agency is “greatly disappointed that [Facebook] did not provide [the FTC with] the information [the FTC] requested to assess Facebook’s compliance with the Commission’s orders.”<sup>34</sup> The e-mail alludes to an earlier phone call where Facebook would not answer the agency’s questions to eight specific issues, “essentially making the call a waste of time.”<sup>35</sup> Facebook responded to this e-mail by stating they were “surprised and concerned by the suggestion” that they did not address the FTC’s questions and stated that Facebook does not “believe there is any credible basis to assert that [the FTC’s] questions relate to Facebook’s obligation under the Consent Order.”<sup>36</sup> Following this exchange, Facebook cooperated with the FTC’s request for information, having stated that the provided information “reflects Facebook’s continued commitment to cooperation and collaboration with [the FTC].”<sup>37</sup>

Communications since 2013 reflect a similar lack of commitment by the FTC to enforce the terms of the original consent order. For example, in a chain of e-mails, the FTC expressed concerns about the scope of Facebook’s 2015 assessment, stating “[the auditor’s] report does not demonstrate whether and how Facebook addressed the impact of the acquisitions on its Privacy Program.”<sup>38</sup> In another email, the FTC expressed similar concerns about the 2017 assessment and whether the audit evaluated the company’s acquisitions impact on Facebook’s privacy program.<sup>39</sup> The FTC accepted Facebook and its auditor’s response letters assuring the Commission that the auditor addressed the impact of acquisitions on Facebook’s privacy program at face value without additional inquiry.<sup>40</sup> The release of this information, as a result of EPIC’s lawsuit, provides insight into the FTC’s inability to make use of its current enforcement authorities.

### **The United States Needs a Data Protection Agency**

The Federal Trade Commission helps to safeguard consumers and to promote competition, but the FTC is not an effective data protection agency. The agency lacks authority to enforce basic data protection obligations and has failed to enforce the orders it has established. The FTC also lacks the ability, authority and expertise to engage the broad range of challenges we now confront— such as Internet of Things, Artificial Intelligence, connected vehicles, and more. This problem will not be solved by granting the FTC more authority: the agency has failed to use the authority it already has.

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<sup>33</sup> See E-mail from S. Ashlie Beringer, Partner, Gibson, Dunn & Crutcher, to Reenah Kim, et al., Attorney, Fed. Trade Comm’n 83–86, <https://epic.org/foia/ftc/facebook/EPIC-18-03-20-FTC-FOIA-20181019-FTC-FB-Addtl-Communications-2013.pdf>.

<sup>34</sup> *Id.* at 83–84.

<sup>35</sup> *Id.* at 84.

<sup>36</sup> *Id.* at 83.

<sup>37</sup> Letter from S. Ashlie Beringer, Partner, Gibson, Dunn & Crutcher, to Reenah Kim, et al., Attorney, Fed. Trade Comm’n 98 (Sept. 30, 2013), <https://epic.org/foia/ftc/facebook/EPIC-18-03-20-FTC-FOIA-20181019-FTC-FB-Addtl-Communications-2013.pdf>.

<sup>38</sup> Letter from Laura D. Koss, et al., Attorney, Fed. Trade Comm’n to Edward Palmieri, Assoc. General Counsel, Facebook 117–118 (June 4, 2015), <https://epic.org/foia/FTC/facebook/EPIC-18-03-20-FTC-FOIA-20181012-FTC-FB-Communications.pdf>.

<sup>39</sup> Letter from Reenah Kim, Attorney, Fed. Trade Comm’n to Edward Palmieri, Assoc. General Counsel, Facebook 134-136 (June 1, 2017), <https://epic.org/foia/FTC/facebook/EPIC-18-03-20-FTC-FOIA-20181012-FTC-FB-Communications.pdf>.

<sup>40</sup> See Response Letters from Facebook and PwC to Fed. Trade Comm’n 108–119, <https://epic.org/foia/ftc/facebook/EPIC-18-03-20-FTC-FOIA-20180910-FB-Assessment-Records-2013.pdf>.

Given the enormity of the challenge, the United States would be best served to do what other countries have done and create a dedicated data protection agency. An independent agency could more effectively utilize its resources to police the current widespread exploitation of consumers' personal information and would be staffed with personnel who possess the requisite expertise to regulate the field of data security.

The United States is one of the few advanced economies in the world that does not have a federal data protection agency, even though the original proposal for such an institution emerged from the United States in the 1970s.<sup>41</sup> The practical consequence is that the U.S. consumers experience the highest levels of data breach, financial fraud, and identity theft in the world. And U.S. businesses, with their vast collections of personal data, remain the target of cyber-attack by criminals and foreign adversaries. The Cambridge Analytica case is just one illustration of the ways in which that vulnerability threatens not only U.S. citizens, but also our democratic institutions. The longer the United States continues on this course, the greater will be the threats to consumer privacy, democratic institutions, and national security.

As the data breach epidemic reaches unprecedented levels, the need for an effective, independent data protection agency has never been greater.

## **Conclusion**

The FTC has failed to make use of its current legal authorities to enforce consent orders and unwind mergers that stifle innovation and competition. Seven years have passed since the FTC heralded the consent order with Facebook, and yet the Commission has not issued a single fine against the company that has been widely criticized for its business practices. It is unclear how additional regulatory authority will fix that problem.

EPIC appreciates the Committee's decision to convene this hearing and respects the FTC's role as the lead consumer protection agency in the United States. But as for data protection in the United States, the FTC is not up to the task. It is time to establish an independent federal data protection agency.

We ask that this letter be entered in the hearing record. EPIC looks forward to working with the Committee on these issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg  
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald  
EPIC Policy Director

/s/ Christine Bannan

Christine Bannan  
EPIC Consumer Privacy Counsel

/s/ Enid Zhou

Enid Zhou  
EPIC Open Government Counsel

/s/ Lorraine Kisselburgh

Lorraine Kisselburgh  
EPIC Scholar in Residence

/s/ Jeff Gary

Jeff Gary  
EPIC Legislative Fellow

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<sup>41</sup> See EPIC, *The Privacy Act of 1974*, <https://epic.org/privacy/1974act/#history>.

## Additional Resources

- *In the Matter of Facebook, Inc.* (EPIC, Complaint, Request for Investigation, Injunction, and Other Relief) before the Federal Trade Commission, Washington, D.C. (filed Dec. 17, 2009), <http://www.epic.org/privacy/inrefacebook/EPIC-FacebookComplaint.pdf>.
- *In the Matter of Facebook, Inc.* (EPIC, Supplemental Materials in Support of Pending Complaint and Request for Injunction, Request for Investigation and for Other Relief) before the Federal Trade Commission, Washington, D.C. (filed Jan. 14, 2010), <http://www.epic.org/privacy/inrefacebook/EPIC-FacebookComplaint.pdf>.
- Fed. Trade Comm'n., *Facebook Settles FTC Charges That It Deceived Consumers by Failing to Keep Privacy Promises*, Press Release, (Nov. 29, 2011), <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>.
- *EPIC v. FTC*, 844 F. Supp. 2d 98 (D.D.C. 2012), <https://epic.org/privacy/ftc/google/EPICvFTC-CtMemo.pdf>.
- EPIC, *In re Facebook and Facial Recognition (2018)*, <https://www.epic.org/privacy/ftc/facebook/facial-recognition2018>.
- Info. Comm'rs Office, *Findings Recommendations and Actions from ICO Investigation into Data Analytics in Political Campaigns* (2018), <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/07/findings-recommendations-and-actions-from-ico-investigation-into-data-analytics-in-political-campaigns>.
- EPIC Statement to Subcomm. on Antitrust, Competition Policy, and Consumer Rights of the S. Comm. on the Judiciary, 115th Cong. (2018), <https://epic.org/testimony/congress/EPIC-SJC-AntitrustOversight-Oct2018.pdf>.
- EPIC Statement to Subcomm. on Research and Tech. of the H. Comm. on Sci., Space, and Tech., 115th Cong. (2018), <https://epic.org/testimony/congress/EPIC-HSC-AI-June2018.pdf>.