

REMARKS TO FTC
PUBLIC FORUM on “Commercial Surveillance and Data Security”
September 8, 2022

The Computer & Communications Industry Association has long supported comprehensive, nationally applied privacy rules for the Internet ecosystem. Digital publishers, advertisers, and consumers want to know what are the rights, obligations, and best practices for maintaining the online environment as a vibrant marketplace while protecting sensitive data that can be linked to individuals in a manner that would cause them harm.

Congress has revisited Privacy this year in H.R. 8152, the ADPPA. Several items in the Notice, such as biometric data, consumer consent, automated algorithmic decisionmaking, and data collection, use, and retention, are addressed in the ADPPA. The Commission might be served by relying on Congress to create a statutory framework to govern these matters rather than attempting to adopt rules out of whole cloth.

The term “Commercial Surveillance” misapprehends what digital services do. The aim for CCIA members is always to enhance the end user experience. Digital services companies rely on the data consumers give them in order make interactions and transactions more timely, seamless, and customized.

Concerns about Behavioral Advertising can obscure the pro-consumer and pro-ecosystem effects created by this highly evolved method of consumer outreach. As CCIA stated in [Comments](#) this past January, Behavioral Advertising saves time and increases value for both sides of the online marketplace. To presume that Behavioral Advertising is a dangerous practice, and adopt rules built on that presumption, threatens to upend consumer welfare and online business models.

Section 5 of the FTC Act is a powerful and flexible enforcement tool. The FTC has the authority, expertise, and resources to address harmful, deceptive, and reckless practices that improperly divulge sensitive consumer data. The Notice describes the Commission’s work in creating rules and policy guidance and describes 16 different enforcement actions, and that does not include the *Kochava* suit filed August 29 of this year.

Regarding enforcement after *AMG Capital Management*, if the Commission finds Section 19 of the Act an inadequate authoritative ground, it is, as Justice Breyer wrote for a unanimous Court, “free to ask Congress to grant it further remedial authority.” It is not clear that this new rulemaking would resolve the statutory issue.

CCIA agrees that bad actors must be dealt with. We are concerned that the rules as proposed would be too prescriptive. As the Notice acknowledges, there is a risk of obsolescence when rules embrace prescription over normative guidance. In addition, ex

ante rules often cannot avoid having a technological bias, rather than being technology-neutral.

Finally, new regulatory regimes can unintentionally create competitive effects. Overly prescriptive rules might inadvertently give advantage to firms by erecting barriers to entry. This risk should be factored into the balance between consumer benefit and marketplace competition.

CCIA looks forward to submitting comments next month in this proceeding.