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# United States Senate

May 3, 2018

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The Honorable Joseph Simons  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable Maureen Ohlhausen  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable Noah Phillips  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
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The Honorable Rohit Chopra  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable Rebecca Slaughter  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Chairman Simons, Commissioner Ohlhausen, Commissioner Phillips, Commissioner Chopra, and Commissioner Slaughter:

In your leadership positions at the Federal Trade Commission (FTC), each of you has the significant responsibility of protecting American consumers from a vast set of threats, including privacy infringement online. Recent reporting regarding the social media platform Facebook points to a disturbing record of failure to protect users' privacy and misuse of Americans' personal data. These revelations strongly suggest that Facebook violated a 2011 settlement with the FTC. I support the FTC's decision to launch an investigation into Facebook's privacy policies and practices. I write to request information about your agency's role in ensuring the privacy of Facebook users and to suggest additional safeguards Facebook should be required to implement.

According to recent media coverage and Facebook CEO Mark Zuckerberg's testimony before the United States Senate, in 2013, Aleksandr Kogan, a Lecturer at Cambridge University,

developed an app that collected Facebook user data for psychological profiling.<sup>1</sup> The application, 'thisisyourdigitallife,' obtained information from tens of millions of Facebook users, while only 270,000 users installed the application themselves and explicitly consented to sharing their data. Kogan was able to collect this data after telling Facebook that information would be used for academic purposes. However, he later shared this private data with the political consulting firm Cambridge Analytica, which utilized the information without users' knowledge or consent to target political messages online.

Additionally, Facebook recently announced that "malicious actors" took advantage of Facebook's search function to amass information about and discover the identities of most of Facebook's two billion users. These hackers collected phone numbers and email addresses on the "Dark Web," a corner of the internet where criminals post illicit content, and used Facebook's system for recovering accounts to build comprehensive profiles of Facebook users.<sup>2</sup>

These invasions of privacy and breeches of user trust are unacceptable and amount to compelling evidence that Facebook violated the 2011 settlement with the FTC. The consent decree included in this settlement prohibited Facebook from misrepresenting privacy or security of consumers' personal information; required Facebook to obtain users' affirmative express consent prior to making changes that override user privacy preferences; required Facebook to prevent access to user data more than 30 days after the user has deleted her account; required Facebook to establish and maintain a comprehensive privacy program; and required Facebook to obtain independent audits confirming that its privacy protections comply with the FTC order.

I am concerned that Facebook failed to comply with this consent decree. I urge the FTC to use all necessary resources to investigate Facebook, demand that Facebook pay all monetary penalties it owes as a result of any transgressions of the 2011 order, and instruct Facebook to institute additional safeguards. They should include:

- Require Facebook to make future audits of Facebook's privacy practices, as required by the 2011 consent decree, readily available to the public upon request when possible;
- Require Facebook to cease all tracking of users across websites after users have logged out of their Facebook accounts;
- Require Facebook to suspend deployment of facial recognition tools pending completion of the FTC investigation;
- Prohibit Facebook from repealing or weakening its current policy prohibiting applications from collecting users' data based on their "friends'" permission;
- Take all necessary steps to ensure the independence of the entity or entities conducting required privacy audits under the 2011 order;

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<sup>1</sup> Matthew Rosenberg, Nicholas Confessore & Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. Times (Mar. 17, 2018), <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>.

<sup>2</sup> Craig Timberg, Tony Romm, and Elizabeth Dwoskin, *Facebook: 'Malicious actors' used its tools to discover identities and collect data on a massive global scale*, Washington Post (April 4, 2018), [https://www.washingtonpost.com/news/the-switch/wp/2018/04/04/facebook-said-the-personal-data-of-most-its-2-billion-users-has-been-collected-and-shared-with-outsiders/?noredirect=on&utm\\_term=.3ede52a719e7](https://www.washingtonpost.com/news/the-switch/wp/2018/04/04/facebook-said-the-personal-data-of-most-its-2-billion-users-has-been-collected-and-shared-with-outsiders/?noredirect=on&utm_term=.3ede52a719e7).


- Require Facebook to release publicly and automatically transmit to the FTC any consumer complaints or records that contradict, qualify, or call into question Facebook's compliance with the consent decree; and
- Require Facebook leadership to routinely brief its employees on the company's rights to review third party applications and its obligations to protect users' privacy under law and its own policies.

In addition, I request answers to the following questions by May 24, 2018:

- Has Facebook provided the FTC with all audits required by the 2011 consent order?
  - If yes, what entity or entities currently conduct these audits? Please provide all relevant information about this entity's independence and ability to conduct unbiased analyses. If no, why not?
  - Who at the FTC is currently responsible for reviewing these audits?
- What steps is the FTC taking as part of its current investigation to ensure Facebook's compliance with the 2011 order that the FTC was not taking before it initiated the current investigation?
- When will the findings of the FTC's investigation be made available to the public?

Thank you for your attention to these important matters.

Sincerely,



Edward J. Markey  
United States Senator