

March 29, 2021

President Joe Biden
The White House
1600 Pennsylvania Ave. NW
Washington, D.C. 20500

Vice President Kamala Harris
The White House
1600 Pennsylvania Ave. NW
Washington, D.C. 20500

The Honorable Chuck Schumer
Senate Majority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Senate Minority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Maria Cantwell
Senate Committee on Commerce, Science &
Transportation
512 Dirksen Senate Building
Washington, D.C. 20510

The Honorable Roger Wicker
Senate Committee on Commerce, Science &
Transportation
512 Dirksen Senate Building
Washington, D.C. 20510

Attn: White House Office of Science and Technology Policy

Dear President Biden, Vice President Harris, and Senators Schumer, McConnell, Cantwell, and Wicker:

We, the undersigned organizations, write to urge the speedy nomination and confirmation of a full complement of commissioners to the Federal Trade Commission (FTC).

As the Biden-Harris Administration has rightfully recognized, “affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government.”¹ Therefore, we urge any FTC nominees to commit the agency to addressing data abuses that disproportionately affect marginalized communities.

Many of us have been deeply involved in ensuring that civil rights, equity, and equal opportunity are bedrock principles for any data regulation regime. To further that effort many of us supported the Civil Rights Principles for the Era of Big Data in 2014² and their revision & reintroduction in 2020.³ We have

¹ United States, Executive Office of the President [Joseph R. Biden, Jr]. Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

² The Leadership Conference on Civil and Human Rights, Civil Rights Principles for the Era of Big Data (Feb. 27, 2014), <https://civilrights.org/civil-rights-principles-era-big-data/>.

³ The Leadership Conference on Civil and Human Rights, Civil Rights Principles for the Era of Big Data (Oct. 21, 2020), <https://www.civilrightstable.org/principles/>.

also advocated that these principles should guide the drafting of data privacy legislation that is currently being debated in Congress.⁴

There is now a historic opportunity for the FTC to realize many of these civil rights principles through its Section 5 unfair and deceptive practices authority, Magnuson–Moss and other rulemaking authorities, and antitrust enforcement. We ask you to ensure that your nominees support these efforts and that they are seated as soon as possible.

These principles speak directly to the FTC’s mission of “protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices...without unduly burdening legitimate business activity.”⁵ Communities of color, people of low income, the LGBTQIA+ community, the incarcerated, women, non-English speakers, people with disabilities, immigrants, and other historically marginalized groups all disproportionately bear the impact and harms of unregulated technologies and corporate misconduct. These communities suffer too from the idea that a corporation or anyone engaged in abusive data practices can simply pay fines without changing their underlying unjust and unfair behavior, as simply the cost of doing business.

These Civil Rights Principles for the Era of Big Data call for:

- **Ending High-Tech Profiling:** Surveillance technologies are empowering governments and companies to collect and analyze vast amounts of information about people. Too often, these tools are deployed without proper safeguards, or are themselves biased. In some cases, surveillance technologies should simply never be deployed. In other cases, clear limitations and robust auditing mechanisms are needed to ensure that these tools are used in a responsible and equitable way. Law should hold both the government and private actors accountable for abuses.
- **Ensuring Justice in Automated Decisions:** Statistical technologies, including machine learning, are informing important decisions in areas such as employment, health, education, lending, housing, immigration and the criminal legal system. Decisionmaking technologies too often replicate and amplify patterns of discrimination in society. These tools must be judged not only by their design but also, even primarily, by their impacts – especially on communities that have been historically marginalized. Transparency and oversight are imperative to ensuring that these systems promote just and equitable outcomes, and in many cases the best outcome is to not use automated tools in high-stakes decisions at all.
- **Preserving Constitutional Principles:** Enforcement of constitutional principles such as equal protection and due process must keep pace with government use of technology. Search warrant requirements and other limitations on surveillance and policing are critical to protecting fundamental civil rights and civil liberties, especially for communities who have been historically marginalized and subject to disproportionate government surveillance. Moreover, governments should not compel companies to build technologies that undermine basic rights, including freedom of expression, privacy and freedom of association.

⁴ The Leadership Conference on Civil and Human Rights, “Address Data-driven Discrimination, Protect Civil Rights,” (Feb. 13, 2019), <https://civilrights.org/resource/address-data-driven-discrimination-protect-civil-rights/>

⁵ Federal Trade Commission, About the FTC, www.ftc.gov/about-ftc.

- **Ensuring that Technology Serves People Historically Subject to Discrimination:** Technology should not merely avoid harm, but actively make people’s lives better. Governments, companies and individuals who design and deploy technology should strive to mitigate societal inequities. This includes improving access to the internet and addressing biases in data and decisionmaking. Technologies should be deployed in close consultation with the most affected communities, especially those who have historically suffered the harms of discrimination.
- **Defining Responsible Use of Personal Information and Enhancing Individual Rights:** Corporations have pervasive access to people's personal data, which can lead to discriminatory, predatory and unsafe practices. Personal data collected by companies also often end up in the hands of the government, either through the direct sale of personal data or through data-driven systems purpose-built for the government. Clear baseline protections for data collection, including both primary and secondary uses of data, should be enacted to help prevent these harms.
- **Making Systems Transparent and Accountable:** Governments and corporations must provide people with clear, concise and easily accessible information on what data they collect and how it is used. This information can help equip advocates and individuals with the information to ensure that technologies are used in equitable and just ways. Any technology that has a consequential impact on people’s lives should be deployed with a comprehensive, accessible and fair appeals process with robust mechanisms for enforcement, and governments and corporations must be accountable for any misuse of technology or data. When careful examination reveals that a new, invasive technology poses threats to civil rights and civil liberties, such technology should not be used under any circumstance.

As our country’s leading consumer protection agency, the FTC has both the authority and duty to realize many of these principles. The agency and its current and future leaders must ensure that technological progress promotes equity, justice, fairness, and economic opportunity for everyone.

Signatories

Access Now
 American Civil Liberties Union
 Asian Americans Advancing Justice | AAJC
 Benton Institute for Broadband & Society
 Campaign for a Commercial-Free Childhood
 Center for Digital Democracy
 Center for Democracy & Technology
 Center on Privacy & Technology at Georgetown Law
 Common Cause
 Common Sense Media
 Demand Progress Education Fund
 Electronic Privacy Information Center (EPIC)
 Free Press Action
 Joint Center for Political and Economic Studies

Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
NAACP Legal Defense and Educational Fund, Inc. (LDF)
National Hispanic Media Coalition
New America's Open Technology Institute
Open MIC (Open Media & Information Companies Initiative)
Public Citizen
Public Knowledge
United Church of Christ, OC Inc.
Upturn