



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Remarks of Chair Lina M. Khan
Regarding the 6(b) Study on the Privacy Practices of
Six Major Internet Service Providers
Commission File No. P195402**

October 21, 2021

As the internet has become increasingly essential for navigating modern life, scrutinizing the practices of the firms that provide these key services is critical. The staff study closely documents the data privacy practices of internet service providers, including their extensive collection, consolidation, and use of customer data.

The findings are striking, and the staff report is worth reading in full. In short, internet service providers are surveilling users across a broad swath of activities, enabling hyper-granular targeting in the serving of ads and other services.¹ In my view, this staff report should focus our attention on a few key issues.

First, these findings underscore deficiencies of the “notice-and-consent” framework for privacy, especially in markets where users face highly limited choices among service providers.² The report found that even in instances where internet service providers purported to offer customers some choice with respect to how their data was collected or used, in practice users were thwarted by design decisions that made it complicated, difficult, or near-impossible to actually escape persistent surveillance.³ The fact that several internet service providers made general privacy commitments that were belied by text buried in their fine print is emblematic of the broader ways in which users are often deprived of the conditions that would actually enable them to exercise meaningful choice, and the ways in which the current configuration of commercial data practices often fail to reflect actual user preference. A new paradigm that moves beyond procedural requirements and instead considers substantive limits increasingly seems worth considering.

Second, the expansion of internet service providers into vertically integrated entities that not only provide internet, voice, and cable services but also produce the content transmitted across these pipes and sell behavioral advertising has enabled these firms to consolidate and aggregate a staggering array of data.⁴ Internet service providers today have access to not only what websites you visit and your location at any given moment but also the content of the emails

¹ A LOOK AT WHAT ISPs KNOW ABOUT YOU: EXAMINING THE PRIVACY PRACTICES OF SIX MAJOR INTERNET SERV. PROVIDERS, AN FTC STAFF REPORT, FED. TRADE COMM’N, at i – iv (Oct. 21, 2021).

² See generally, *id.* at 25 – 32.

³ *Id.* at 26 – 29.

⁴ *Id.* at 32 – 33.

you write, the videos you stream, and the devices you wear.⁵ The ways in which expansion across markets enables firms to combine highly sensitive—and, often, highly valuable—commercial data underscores the need for us to consider in our merger review process how certain deals may enable degradation of user privacy.

Third, the individualized and hyper-granular dossiers that internet service providers are collating can enable troubling—and potentially unlawful—forms of discrimination.⁶ As the report notes, the collection and use by internet service providers of data on race and ethnicity raises the risk of digital redlining and other practices that undermine civil rights and perpetuate discrimination.⁷ Although enforcers must scrutinize these practices, there are serious questions around whether the type of persistent commercial surveillance we see employed by internet service providers and other market participants across the economy creates inherent risks. Moreover, the information asymmetries enforcers face when seeking to fully understand how firms are using this data also raises questions around whether we must target our efforts upstream, at the collection of particular forms of data, rather than just its use. Lastly, as the risks of persistent tracking come to light, we face more fundamental questions around what it means to condition the use of essential technologies on this type of user surveillance.

It's worth noting, of course, that the Federal Communications Commission has the clearest legal authority and expertise to fully oversee internet service providers. I support efforts to reassert that authority and once again put in place the nondiscrimination rules, privacy protections, and other basic requirements needed to create a healthier market.

We intend for this report to be the continuation of an ongoing conversation about commercial data practices, and I look forward to continuing to consider how we can incorporate these insights into our work. Thank you again to agency staff for their hard work in organizing and highlighting these important issues.

⁵ *Id.* at 35 n.123.

⁶ *Id.* at 36 – 37.

⁷ *Id.* at 37.