

November 6, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

I write urging the expeditious release of the Federal Trade Commission's (FTC) 6(b) privacy report on social media and video streaming services, no later than November 14, 2022.

As you know, the FTC is conducting the investigation using its authority under Section 6(b) of the FTC Act. That provision enables the FTC to gather and compile information to help policymakers and legislators make informed decisions about key issues.

The social media and video streaming investigation was initiated in December 2020, when the FTC issued orders to Amazon.com, Inc., ByteDance Ltd. (operator of TikTok), Discord Inc., Facebook, Inc., Reddit, Inc., Snap Inc., Twitter, Inc., WhatsApp Inc., and YouTube LLC requesting the relevant information. Specifically, the FTC orders sought information related to:

- (i) how these companies collect, use, track, estimate, or derive personal and demographic information;
- (ii) how they determine which ads and other content are shown to consumers;
- (iii) whether they apply algorithms or data analytics to personal information;
- (iv) how they measure, promote, and research user engagement; and
- (v) how their practices affect children and teens.

The FTC has used this tool numerous times. For example, it has investigated and produced reports on the marketing of violent entertainment to children (1999-2000), the manipulation of gas prices following Hurricane Katrina (2005-2006), the marketing of food to children (2007-2008), and on non-HSR reported acquisitions by tech platforms (2020-2021) to help inform policy and legislation on these issues.

The FTC's social media investigation has now taken over 22 months, which should be more than enough time for the FTC to complete its work and publish a report on its findings. The four examples of prior 6(b) investigations cited above took less than 20 months to complete. In one case—the investigation of gas price manipulation—the FTC completed its investigation in under a year.

The findings from this investigation will be a critical input to moving forward with any regulatory activity as it relates to the collection, use, and sharing of personal information. Until the FTC completes its investigation and publishes a report on its findings, policymakers, legislators, and the public will have an incomplete picture of the privacy and data collection, use, and sharing landscape.

Currently, Big Tech's data practices are a black box. Users and policymakers have little to no insight into how these algorithms function, despite the fact that the vast majority of Americans regularly use and rely on these platforms. Companies like Google and TikTok collect sensitive data, including users' real-time location and facial expressions, and use that data to keep Americans perpetually consumed with, some may even say addicted to, their cellular devices. This is particularly true in the case of teenagers and young children.

The urgency of this release is more acute given the FTC's August 2022 Advance Notice of Proposed Rulemaking (ANPRM) on a wide range of privacy and data security issues for online businesses. Because the FTC has extended the comment deadline for its privacy rulemaking until November 21, 2022, I urge you to release this report by November 14, 2022. Unfortunately, even that timeline would give interested parties merely one week to review the FTC's report and tailor their comments accordingly.

Moreover, Congress and state legislatures have considered numerous bipartisan bills related to each of the five 6(b) orders. Certainly, the elected representatives of the people—and more importantly, the American people—would benefit from the findings of this investigation to craft sound public policy. Thus, it is imperative the report is released immediately to provide the public and interested parties alike an opportunity to comment on the ANPRM, and to supply members of Congress and state legislators with vital information in advance of the 118th Congress and upcoming state legislative sessions.

Finally, I request your response to the following questions:

1. Which companies responded to the orders within the 45-day window?
2. Did any company respond after the 45-day window? If so, please provide the name of the company and the reason provided for their untimely response.
3. Did any company fail to respond to any of the enumerated categories of information in the 6(b) orders? If so, please provide the name of the company and which of the enumerated categories of information they failed to respond to.
4. How long is the average 6(b) process from the initiation of an investigation to the publication of a report?
5. Has the FTC completed its investigation related to the December 2020 6(b) orders to social media and video streaming service providers?
6. When will the social media and video streaming services report be released?
7. The comment period for the ANPRM on privacy and data security issues for online businesses was extended until November 21, 2022. If the social media and video streaming services report will not be released before, will the ARNP comment deadline be extended?

8. Commissioner Phillips noted in his dissent to the 6(b) privacy report that the companies chosen are not clearly similar in terms of their business practices. At the same time, the order omits other, similarly situated companies like Apple, Gab, GroupMe, and WeChat. Notably, only nine companies were selected – one less than the amount which would trigger Paperwork Reduction Act review.
 - a. Please describe the process for selecting the companies chosen.
 - b. Please describe the reasoning for disincluding other similarly situated companies.
 - c. Did the Commission ever contemplate including other companies, including those listed? If so, why did the Commission not ultimately decide to include them? If not, why not?

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ted Cruz', with a stylized flourish at the end.

Ted Cruz
United States Senator