

March 20, 2018

Acting Chairman Maureen Ohlhausen
Commissioner Terrell McSweeney
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Acting Chairman Ohlhausen and Commissioner McSweeney:

On behalf of leading consumer privacy organizations in the United States, we urge you to immediately investigate whether Facebook’s alleged disclosure of the personal data of 50 million Americans to the data mining firm Cambridge Analytica violated the FTC Consent Order with Facebook we helped obtain.

As the Facebook Order makes clear, Facebook must “get consumers’ approval before it changes the way it shares their data,” and must “obtain consumers’ affirmative express consent before enacting changes that override their privacy preferences.”¹ The FTC also barred Facebook from “making misrepresentations about the privacy or security of consumers’ personal information.”²

Yet Facebook reportedly disclosed consumers’ “names, education, work histories, birthdays, likes, locations, photos, relationship statuses, and religious and political affiliations” to Cambridge Analytica without their knowledge or consent.³ In 2014, Facebook acknowledged that it allowed app developers to access profile information on an app users’ friends without the friends’ knowledge or consent, stating that consumers “are often surprised when a friend shares their information with an app.”⁴ Facebook’s admission that it disclosed data to third parties without users’ consent suggests a clear violation of the 2011 Facebook Order.

The 2011 Facebook Order was the result of an extensive complaint filed by EPIC and a coalition of consumer organizations in 2009, following Facebook’s repeated changes to the privacy settings of Facebook users that allowed the company to transfer user data without the knowledge or consent of the user.⁵ We documented this practice, noted the views of many users, and established the FTC’s authority to act as we had in other similar matters.⁶

¹ Fed. Trade Comm’n, *Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises*, Press Release, (Nov. 29, 2011), <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>.

² *Id.*

³ Craig Timberg, Tony Romm, and Elizabeth Dwoskin, *U.S. and European Officials Question Facebook’s Protection of Personal Data*, Washington Post, (Mar. 18, 2018), <https://www.washingtonpost.com/business/economy/us-and-european-officials-question-facebooks-protection-of-personal-data/2018/03/18/>.

⁴ *Id.*

⁵ EPIC, et al, *In the Matter of Facebook, Inc. (Complaint, Request for Investigation, Injunction, and Other Relief)* (Dec. 17, 2009), <https://epic.org/privacy/infacebook/EPIC-FacebookComplaint.pdf>

⁶ See Complaint and Request for Injunction, Request for Investigation and for Other Relief, *In the Matter of Microsoft Corporation*, (July 26, 2001), https://www.epic.org/privacy/consumer/MS_complaint.pdf

The FTC agreed with us, charging that “Facebook changed its website so certain information that users may have designated as private – such as their Friends List – was made public. They didn’t warn users that this change was coming, or get their approval in advance.”⁷ The FTC also found that, “Facebook represented that third-party apps that users installed would have access only to user information that they needed to operate. In fact, the apps could access nearly all of users’ personal data – data the apps didn't need.”⁸

Facebook’s transfer of personal data to Cambridge Analytica was prohibited by the 2011 Facebook Order. The FTC’s failure to enforce its order has resulted in the unlawful transfer of 50 million user records to a controversial data mining firm to influence a presidential election.

The FTC has an obligation to the American public to ensure that companies comply with existing Consent Orders. It is unconscionable that the FTC allowed this unprecedented disclosure of Americans’ personal data to occur. The FTC’s failure to act imperils not only privacy but democracy as well.

We have also repeatedly warned the FTC that it has an affirmative duty to undertake a review of substantial changes in business practices of a company subject to a consent order that implicates the privacy of Internet users.⁹ The FTC’s apparent failure to pursue such review has led to a downward spiral in the protection for American consumers.

The Commission must immediately undertake an investigation and issue a public report as to whether Facebook complied with the 2011 Order.

Sincerely,

Electronic Privacy Information Center
Center for Digital Democracy
Constitutional Alliance
Consumer Action
Consumer Federation of America
Consumer Watchdog
Privacy Times
Public Citizen
U.S. PIRG
World Privacy Forum

Cc: Congressional Oversight Committees

⁷ FTC Press Release.

⁸ *Id.*

⁹ Letter to Acting FTC Chair Maureen Ohlhausen, “FTC 2017: 10 Steps for Protecting Consumers, Promoting Competition and Innovation” (Feb. 15, 2017) (“*I. The FTC Must Enforce Existing Consent Orders*”), <https://epic.org/privacy/internet/ftc/EPIC-et-al-ltr-FTC-02-15-2017.pdf>