

Early FTC Action in 2022 on Data Privacy, Facial Recognition and AI Less Likely Following Commissioner Remarks to U.S. Chamber of Commerce

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As CPW has previously covered, data privacy and cybersecurity [are priorities](#) of the Federal Trade Commission (“FTC”). And last December, the FTC [issued a notice](#) that it was “considering initiating a rulemaking under Section 18 of the FTC Act to curb lax security practices, limit privacy abuses, and ensure that algorithmic decision-making does not result in unlawful discrimination.” However, recent remarks by a FTC Commissioner to the U.S. Chamber of Commerce indicate an internal struggle at the agency over the direction it will take on data privacy, facial recognition and AI going forward. Read on to learn more.

On February 14, 2022, FTC Commissioner Christine Wilson spoke with Jordan Crenshaw, a representative of the U.S. Chamber of Commerce, about the future of privacy regulation at the federal level. Crenshaw opened the interview by inviting Commissioner Wilson to detail the FTC’s thoughts on the need for national privacy legislation. Commissioner Wilson immediately noted that she, personally and professionally, is opposed to increased regulation, as it has the potential to stifle free-market competition. National privacy regulation, however, would represent an exception this general rule.

Most markets, Commissioner Wilson explained, function best on their own when driven by the traditional forces of supply and demand. The market for consumer information cannot function in this way. According to Commissioner Wilson, consumers, who are the “sellers” of privacy data, typically have no information on how their data is collected or used, and so are not able to decide how and when to allow collection of their data. On the other side of the equation, sits businesses, the “buyers” of privacy information, who are bogged down with the cost and uncertainty that comes with trying to abide by a patchwork of inconsistent state-level privacy regulations. National privacy regulation, according to Commissioner Wilson, presents a solution to these problems by standardizing data collection, utilization and monetization policies.

One concern with a national privacy bill, Commissioner Wilson noted, is the question of whether it will

include a private right of action. Private rights of action, Wilson posited, are helpful mostly because they permit individuals to enforce privacy laws when underfunded and understaffed public agencies lack the resources to do so. That said, Commissioner Wilson pointed out that private rights of action allow for [potentially abusive class actions](#), which are costly to businesses while giving only marginal, if any, benefit to consumers. Thus, on the balance, Commissioner Wilson advocated for national legislation that **does not** include a private right of action, but which includes increased funding for governmental agencies so that they can ensure compliance with privacy regulations.

Later in the conversation, however, Commissioner Wilson returned to her free-market roots – rejecting the idea of creating a new privacy law bureau as well as rejecting the idea of regulating the AI and facial-recognition spheres. AI and facial-recognition, Commissioner Wilson reasoned, are new technologies that need room to innovate and grow without government interference. In the meantime, she suggested, agencies like the FTC can monitor abuses of AI and facial-recognition software through its limited Section 5 of the FTC Act enforcement authority.

Commissioner Wilson's comments are an additional layer on top of an active debate ongoing at the federal and state level regarding the future of data privacy in general and related areas. Not to worry, CPW will be there to keep you in the loop. Stay tuned.

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National Law Review, Volume XII, Number 56

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