

FTC Consumer Protection and Data Protection Insights for 2024

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On January 18, during a luncheon fireside chat at the California Lawyers Association's UCL Institute event in Los Angeles, Federal Trade Commission ("FTC") Bureau of Consumer Protection Director Samuel Levine shared his insights on what data practices are of concern to him and to the FTC. Companies should take heed of his comments, the highlights of which include:

- The #1 thing that keeps him up at night is AI, especially as it can be used to advance fraud or has [discriminatory impact](#);
- A top enforcement priority will be [dark patterns to drive sales and frustrate consumer choice](#) (e.g., terminations, opt-outs, etc.), particularly where driven by tracking and profiling data;
- Expect more rulemaking, including [advancement of rulemaking on surveillance capitalism](#) and likely new rulemaking on data security standards for general commercial enterprises;
- Look not just whether a practice is deceptive. Disclosures of practices may be insufficient if it is otherwise unfair, and unfairness authority will be a tool the FTC will not hesitate to use. Areas of potential concerns, where the harm may outweigh benefits to consumers or competition (the Section 5 unfairness standard), include [health-related](#), [location](#) and [other sensitive personal data collection and use](#), engagements with teenagers, junk fees and business models and algorithms designed to keep a consumer overly engaged.
- So-called ["negative option" subscriptions services](#) will be a focus (though no timeline was given for completion of rulemaking), as will be door-to-door sales, [robocalls](#) and privacy practices, including but not limited to practices of [data brokers](#).
- As the Green Guides rulemaking is advanced, the FTC will be working to develop standards that are consistent with [environmental claims rules in Europe and other advanced economies](#).

For FTC watchers, [none of this should come as any surprise](#). While the upcoming election could usher in a FTC with very different perspectives and priorities, it is a sure bet that the current FTC will look to advance its agenda this year. For more information contact the authors or your usual firm contact.

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