



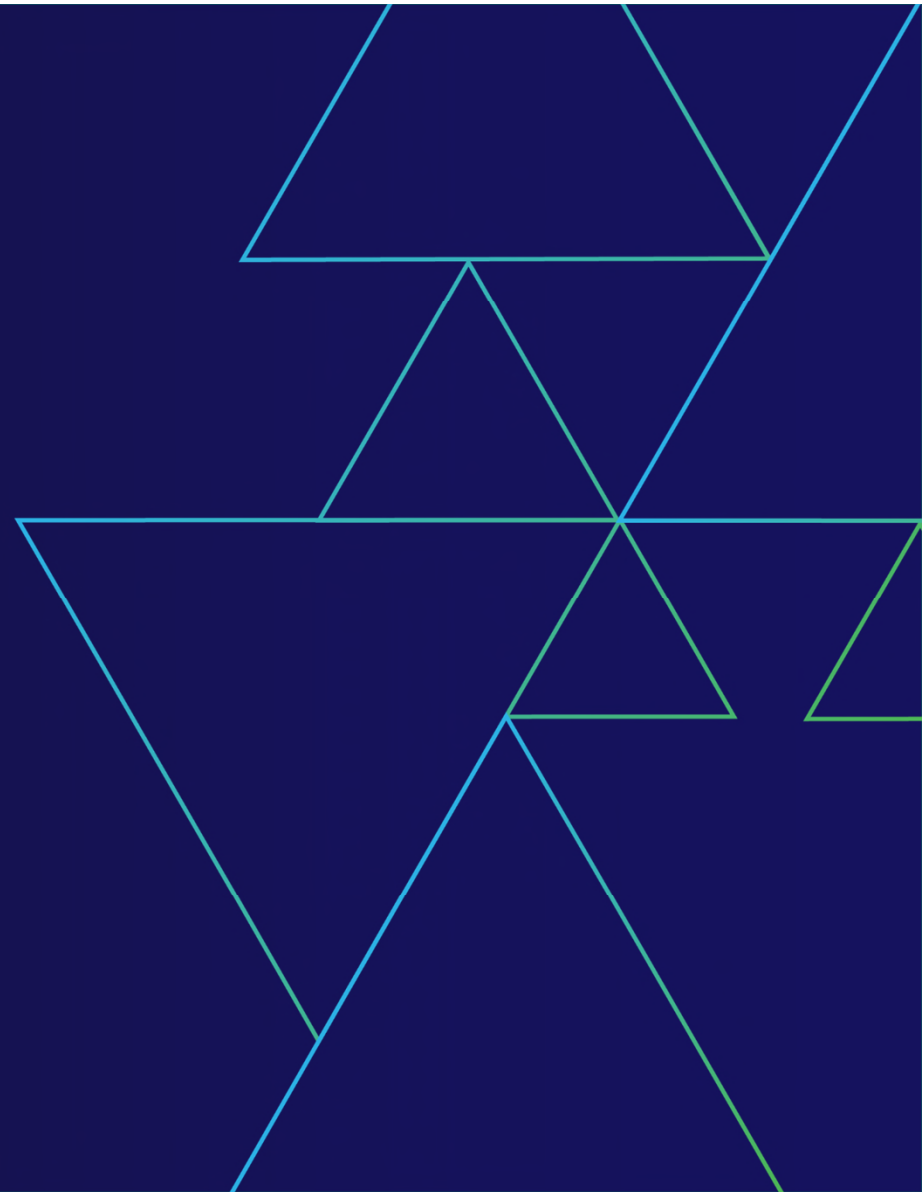
Privacy and AI in the Trump 2.0 Era

November 13, 2024

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Partner





Agenda

Processes 101

FTC Privacy Rulemaking

Enforcement Priorities

Section 6(b)

Practical Recap



Change at the FTC



“This country’s going to the cats.”

“If you want to make enemies, try to change something.”

- *President Woodrow Wilson*
(1916)

Sen. Cruz Requests FTC Address Only “Uncontroversial Matters”

MARIA CANTRELL, WASHINGTON, CHAIR
TED CRUZ, TEXAS, RANKING MEMBER

| | |
|---------------------------------|------------------------------------|
| AMY KLOBUCHAR, MINNESOTA | JOHN THUNE, SOUTH DAKOTA |
| BRIAN SCHULTZ, ILLINOIS | ROBERT F. BINDER, MISSISSIPPI |
| EDWARD J. MARKEY, MASSACHUSETTS | DEB FISCHER, NEBRASKA |
| DAVE C. PERDUE, MICHIGAN | JERRY MORAN, KANSAS |
| TAMMY BALOWS, WISCONSIN | DAN BULLOCK, ALABAMA |
| TAMMY DUCKWORTH, ILLINOIS | MARSHA BLACKBURN, TENNESSEE |
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| BEN RAY, ILLINOIS, NEW SENATOR | J.D. GANZ, OHIO |
| JOHN W. HICKENLOPER, COLORADO | SHERRY BODDE CARTER, WEST VIRGINIA |
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LILA HARPER HELMS, MAJORITY STAFF DIRECTOR
BRAD GRANITZ, REPUBLICAN STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510-6125
WEBSITE: <https://commerce.senate.gov>

November 7, 2024

The Honorable Lina Khan
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chairwoman Khan:

The results of the 2024 presidential election are apparent and the American people have spoken definitively for a new administration. As a result, leadership of the Federal Trade Commission (FTC) will soon change.

To honor the will of the American people and the policy mandate given to the incoming administration, I request the FTC immediately stop all work on outstanding rules, regulations, and guidance and focus only on matters that are uncontroversial and would be approved unanimously by all Commissioners. This course will follow the norms set during past transfers of power.

Although a new administration is forthcoming, congressional oversight of the FTC does not end. Any controversial FTC action taken up or continued after November 5th will receive particular scrutiny.

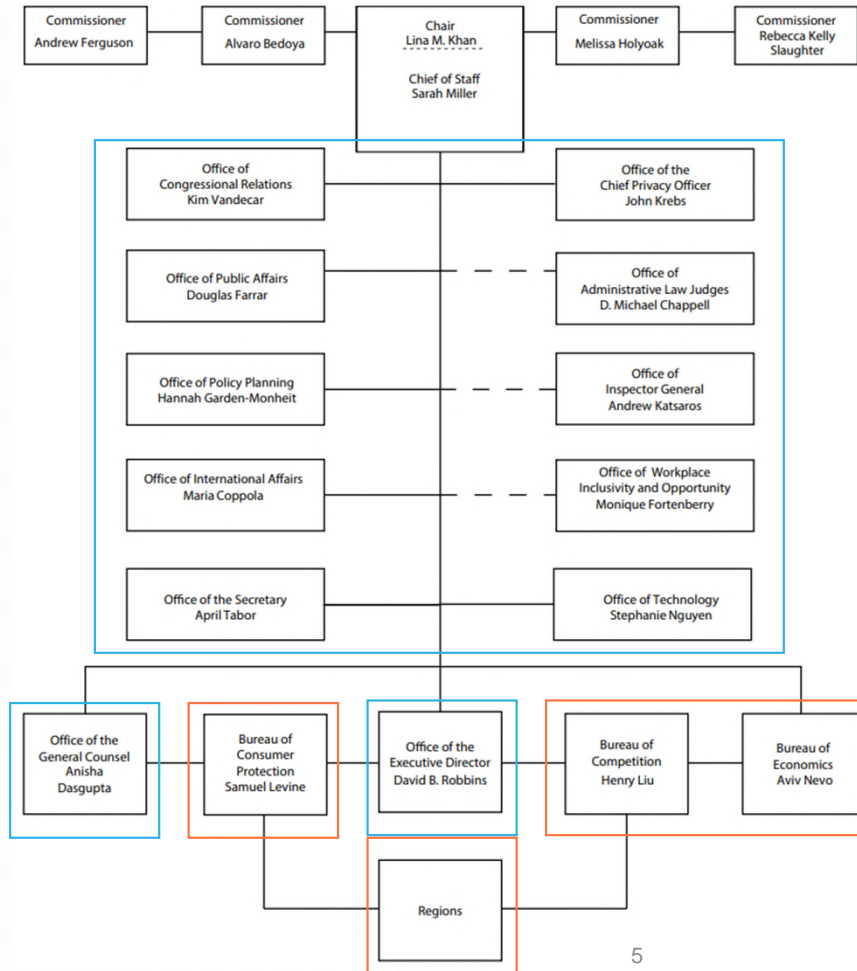
Many federal agencies traditionally end action on partisan or divisive matters during a presidential transition. I ask that you respect this time-honored tradition now.

Sincerely,

Ted Cruz
Ranking Member

FEDERAL TRADE COMMISSION

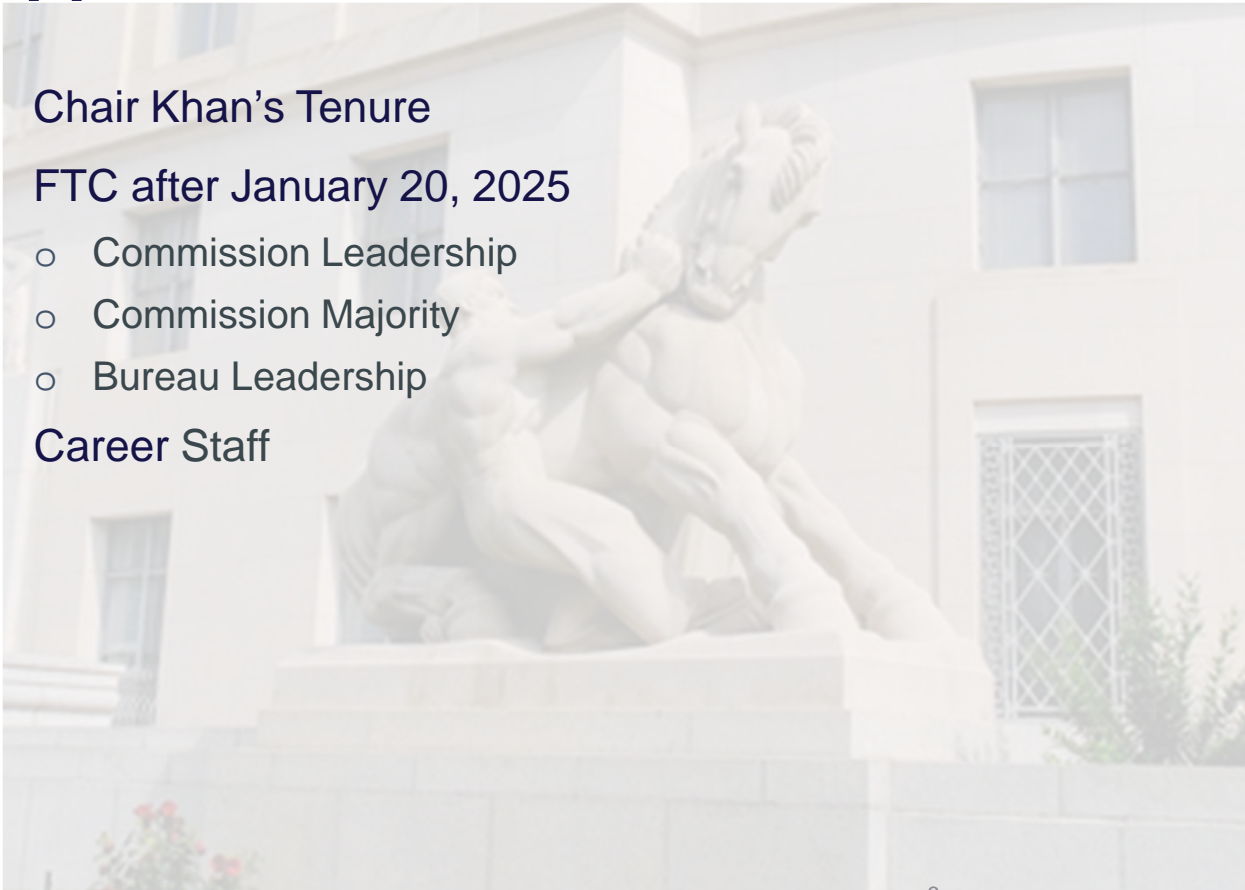
Organization Chart



FTC Organizational Structure

Appointments at FTC

- Chair Khan's Tenure
- FTC after January 20, 2025
 - Commission Leadership
 - Commission Majority
 - Bureau Leadership
- Career Staff



“The horse, representing big business, with its dynamic energy suggests that it could easily go on a rampage and leave a path of destruction behind it, oblivious to its own actions. The muscular man stripped to the waist standing beside the horse and gripping its reins symbolizes the federal government, which through intelligence and restraint forces the horse to submit its power to a useful purpose.”

-Historian Marc Eric McClure (2003)

FTC Approaches to Changing Guidance and Rulemaking

- Expect multiple processes
 - Review/withdrawal of formal and informal guidance
 - Formal amendment or repeal of current rules
 - Cessation of current rule development
 - Potential for new guidance and rules
 - Congress could influence FTC's agenda and priorities
- Effect of FTC's unique statutory authority
- Final rule case study: Health Breach Notification Rule
- Other privacy and data security rulemakings
 - Commercial Surveillance ANPR
 - COPPA NPRM
 - GLBA Safeguards

“Enforce the law to protect all segments of the population from fraud, deception, and unfair business practices by safeguarding consumer privacy, monitoring national advertising and new technologies, and suing entities that violate federal court and administrative orders obtained by the FTC.”

-FTC Strategic Plan FY 2022-2026

Shifting Enforcement Priorities

- Ongoing investigations
- Negotiations
- State Partnerships
- Looking ahead: New priorities
 - Targets
 - Section 6(b) studies

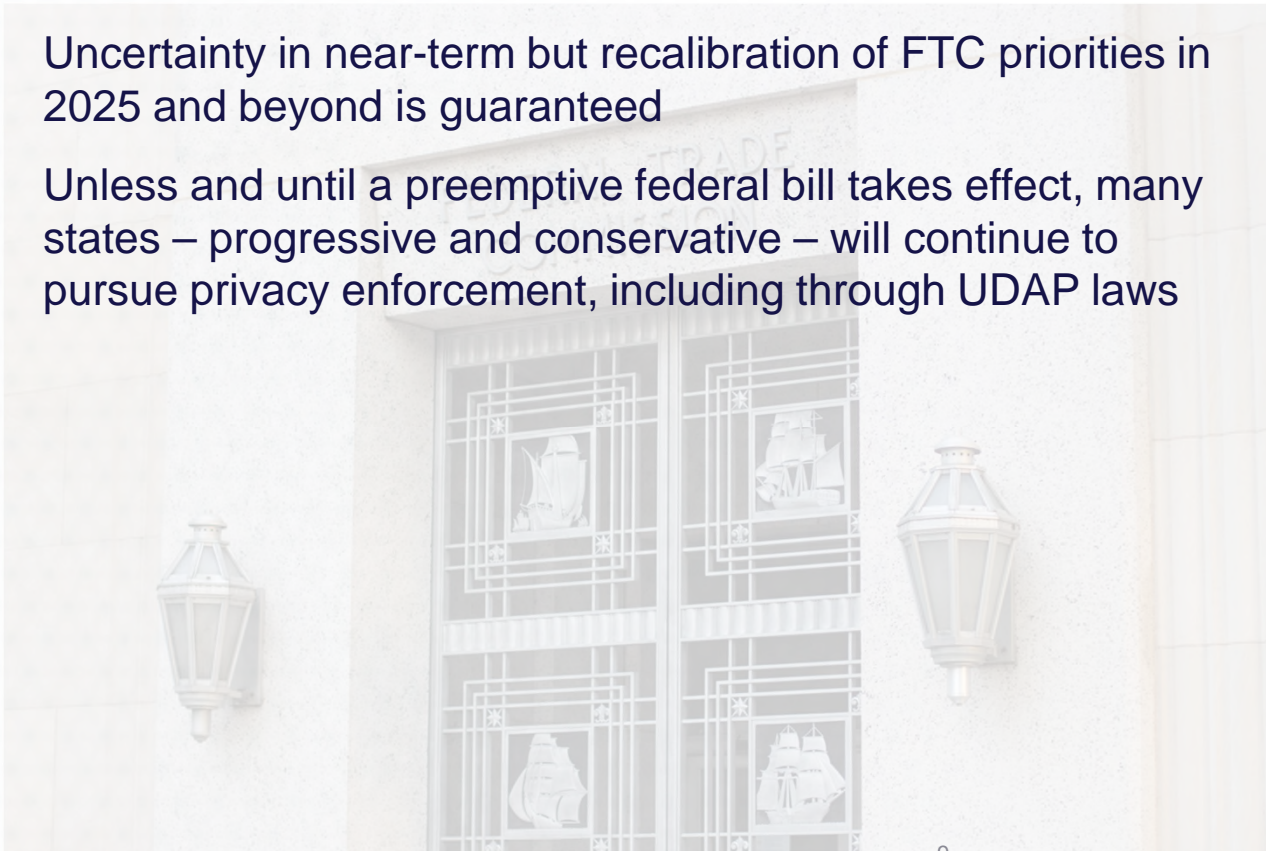


“[M]any consumers appear to enjoy the ‘free’ Internet largely powered by targeted ads, and most studies comparing behaviorally targeted ads with contextual ads have suggested that behaviorally targeted ads increase sales significantly more than contextual advertising.”

-FTC Commissioner Melissa Holyoak (Sep. 17, 2024)

Looking ahead: Practical Recap

- Uncertainty in near-term but recalibration of FTC priorities in 2025 and beyond is guaranteed
- Unless and until a preemptive federal bill takes effect, many states – progressive and conservative – will continue to pursue privacy enforcement, including through UDAP laws



“I think there is a great deal we can do under existing laws to protect consumer privacy. . . . We will enforce current laws vigorously, using more of the FTC's resources. We will stop those practices that are most harmful to consumers.”

-FTC Chair Tim Muris (2001)

Questions?



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