

# Congress of the United States

Washington, D.C. 20515

March 29, 2018

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

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

Dear Acting Chairman Ohlhausen and Commissioner McSweeney:

We were encouraged to learn that the Federal Trade Commission (FTC) has opened an investigation into whether Facebook failed to adequately protect the privacy of consumers.<sup>1</sup> Recent media accounts raise serious questions about whether Facebook violated a 2012 FTC consent order<sup>2</sup> or otherwise engaged in deceptive and unfair practices in violation of the FTC Act. Those reports make clear that Facebook failed to adequately protect the personal information of more than 50 million users from misuse by the political consulting firm Cambridge Analytica (CA) through an app developed by Aleksandr Kogan of Global Science Research (GSR).<sup>3</sup> It is possible that other third parties also improperly accessed Facebook users' data in the same manner at CA.

Facebook has acknowledged that it anticipates receiving a letter from the FTC shortly.<sup>4</sup> The scope of the breach and Facebook's failure to notify affected consumers or regulatory agencies for more than two years or to take any reasonable measures to ensure the disposal of the data calls for the strongest possible enforcement response. The Commission should also examine the role of all parties involved in this incident, including Kogan, GSR, and CA, which we understand to be a U.S. subsidiary of the British company SCL Group.

Based on Facebook's own statements about the matter and other widely reported details, the behavior that led to the misuse of millions of consumers' personal information appears strikingly reminiscent of conduct that was the focus of the FTC's 2012 complaint. As an example, the FTC charged Facebook in 2012 with misrepresenting that a "friends only" privacy setting would prevent collection of a user's information by apps that their friends downloaded.<sup>5</sup> Despite being on notice that such a practice was deceptive, Facebook allowed the app launched

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<sup>1</sup> FTC, *Statement by the Acting Director of FTC's Bureau of Consumer Protection Regarding Reported Concerns about Facebook Privacy Practices*, (Mar. 26, 2018) (press release).

<sup>2</sup> *In re Facebook, Inc.*, Decision and Order, No. C-4365 (2012).

<sup>3</sup> *Facebook's Role in Data Misuse Sets Off Storms on Two Continents*, New York Times (Mar. 18, 2018)

<sup>4</sup> *Id.*

<sup>5</sup> *In re Facebook, Inc.*, Complaint, No. C-4365 (2012).

by Kogan/GSR in 2013 to override “friends only” privacy settings and harvest data not just from the 270,000 users who downloaded the app but also from tens of millions of those users’ friends.<sup>6</sup>

Facebook’s conduct prior to and in response to the CA breach raises more fundamental questions about whether the company has complied with FTC order provisions that require it to implement a “comprehensive privacy program.” Media accounts from past security officers and contractors suggest that Facebook’s approach to data collection by apps was largely hands off.<sup>7</sup> The company opened its platform to app developers in 2007 and, until recently, continued to allow collection of user data with little or no oversight, relying on the developer’s word that it would not misuse the data.<sup>8</sup> Facebook even reportedly ignored internal warnings about vulnerabilities in the platform that may have allowed foreign states and data brokers to access user data.<sup>9</sup>

Moreover, when Facebook learned of the CA breach in 2015, its response was both slow and passive. For example, Facebook did not send a formal letter to Kogan asking him to destroy data collected by GSR until August 2016.<sup>10</sup> And the letter merely asked Kogan to self-certify that the data had been destroyed; Facebook did not take any steps to ensure the data was actually destroyed.<sup>11</sup> It now appears that hundreds of gigabytes of Facebook user information is still sitting on unencrypted files on CA servers.<sup>12</sup> For more than two years, Facebook did nothing to publicly acknowledge the breach or to notify affected users, and only now has Facebook committed to do a full forensic audit of the countless apps that have been collecting data from its site for years.<sup>13</sup>

If, after completing the investigation, the Commission determines that Facebook has violated the 2012 order, we hope that you will impose civil penalties commensurate with the scope and severity of the breach and sufficient to send a clear message to Facebook and other companies that they must take their consumer privacy responsibilities seriously. If the

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<sup>6</sup> See note 3.

<sup>7</sup> *Facebook’s Rules for Accessing User Data Lured More than Just Cambridge Analytica*, Washington Post (Mar. 19, 2018).

<sup>8</sup> *Id.*; *How Facebook’s Data Sharing Went from Feature to Bug*, New York Times (Mar. 19, 2018).

<sup>9</sup> *Former Facebook Insider Says Company Cannot be Trusted to Regulate Itself*, NPR (Mar. 20, 2018).

<sup>10</sup> *Revealed: 50 Million Facebook Profiles Harvested for Cambridge Analytica in Major Data Breach*, The Guardian (Mar. 17, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> *How Trump Consultants Exploited the Facebook Data of Millions*, New York Times (Mar. 17, 2018).

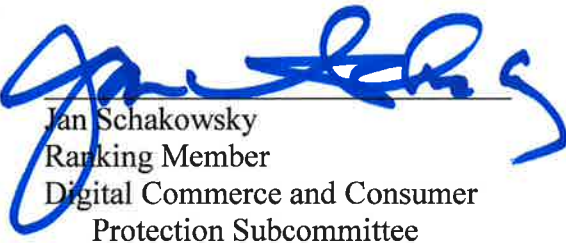
<sup>13</sup> Facebook, *Hard Questions: Update on Cambridge Analytica*, (Mar. 21, 2018) (press release).

Commission determines that Facebook has engaged in deceptive or unfair practices outside the scope of the order, we request that you make appropriate modifications to ensure that future misconduct will be subject to civil penalties or respond to such other unfair and deceptive practices using the fullest extent of your law enforcement tools.

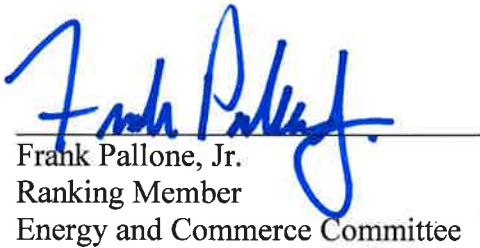
Finally, we are concerned that the consumer privacy vulnerabilities that have come to light are not isolated to Facebook and instead indicate broader problem across social media platforms. The FTC should assess more broadly whether other social media firms are vulnerable to similar exploitation of user data by unauthorized parties.

We appreciate that the FTC is at the beginning of its inquiry into this matter. We hope you will make it a priority of the agency and move expeditiously.

Sincerely,



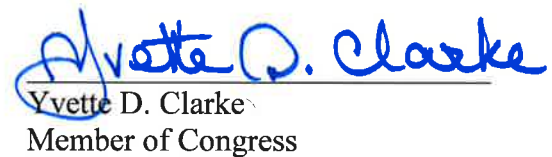
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Ranking Member  
Digital Commerce and Consumer  
Protection Subcommittee



Frank Pallone, Jr.  
Ranking Member  
Energy and Commerce Committee



Ben Ray Luján  
Member of Congress



Yvette D. Clarke  
Member of Congress



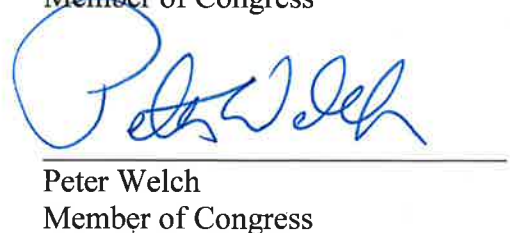
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