



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Privacy and Identity Protection
Bureau of Consumer Protection

September 29, 2016

Via Federal Express

Seventeen Consumer Privacy Groups
c/o Claire Gartland, Consumer Protection Counsel, EPIC
1718 Connecticut Ave, N.W. Suite 200
Washington, D.C. 20009

Dear Seventeen Consumer Privacy Groups¹:

I am writing to acknowledge your recent letter to the Federal Trade Commission in support of the Electronic Privacy Information Center and Center for Digital Democracy's complaint regarding the proposed transfer of certain WhatsApp user data to Facebook ("WhatsApp Complaint"). Thank you for raising this issue with us.

As you know, the FTC enforces Section 5 of the FTC Act, which prohibits companies from engaging in unfair and deceptive acts or practices in or affecting commerce, and an Order requiring Facebook to comply with certain injunctive provisions. Your letter reiterates FTC staff's position that companies must obtain affirmative express (opt-in) consent before making material, retroactive changes to privacy promises.² Your letter also contains allegations that WhatsApp plans to make material, retroactive changes to its privacy promises without first obtaining users' affirmative express consent – i.e., opt-in consent. Commission staff will carefully review the WhatsApp Complaint and your letter.

Please be advised that any Commission investigation is non-public until the Commission decides to issue a formal complaint or close the investigation. As a result, we can neither confirm nor deny that we are conducting an investigation of the issues raised by your complaint. If you have any additional information you wish to provide about this matter, please contact me at (202) 326-2463 or via e-mail at jho@ftc.gov.

Sincerely,

Jah-Juin "Jared" Ho

Division of Privacy and Identity Protection

¹ On September 22, 2016 the following 17 consumer privacy groups submitted a letter in support of EPIC and CDD's complaint against Facebook and WhatsApp: Bill of Rights Defense Committee & Defending Dissent Foundation; Center for Digital Democracy; Center for Financial Privacy and Human Rights; Common Sense Kids Action; Constitutional Alliance; Consumer Action; Consumer Federation of America; Consumer Watchdog; Cyber Privacy Project; Demand Progress; Electronic Privacy Information Center; The FoolProof Foundation; Patient Privacy Rights; Privacy Rights Clearinghouse; Privacy Rights Now Coalition; Privacy Times; and U.S. PIRG.

² See FED. TRADE COMM'N, PROTECTING CONSUMER PRIVACY IN AN ERA OF RAPID CHANGE, 57-58 (Mar. 2012), available at <https://www.ftc.gov/reports/protecting-consumer-privacy-era-rapid-change-recommendations-businesses-policymakers>.