



Office of Commissioner
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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

STATEMENT OF COMMISSIONER ROHIT CHOPRA

*In the Matter of Everalbum and Paravision
Commission File No. 1923172
January 8, 2021*

Today's facial recognition technology is fundamentally flawed and reinforces harmful biases. I support efforts to enact moratoria or otherwise severely restrict its use. Until such time, it is critical that the FTC meaningfully enforce existing law to deprive wrongdoers of technologies they build through unlawful collection of Americans' facial images and likenesses.

The case of Everalbum is a troubling illustration of just some of the problems with facial recognition. Everalbum operates a business line called Paravision, which developed and marketed facial recognition technology, including to clients in the security and air travel industries.¹ The company enhanced their facial recognition technology by allegedly baiting consumers into using Ever, a "free" app that allowed users to store and modify photos.²

As outlined in the complaint, Everalbum made promises that users could choose not to have facial recognition technology applied to their images, and that users could delete the images and their account. In addition to those promises, Everalbum had clear evidence that many of the photo app's users did not want to be roped into facial recognition. The company broke its promises, which constitutes illegal deception according to the FTC's complaint. This matter and the FTC's proposed resolution are noteworthy for several reasons.

First, the FTC's proposed order requires Everalbum to forfeit the fruits of its deception. Specifically, the company must delete the facial recognition technologies enhanced by any improperly obtained photos. Commissioners have previously voted to allow data protection law violators to retain algorithms and technologies that derive much of their value from ill-gotten data.³ This is an important course correction.

¹ PARAVISION, <https://www.paravision.ai/> (last visited on Jan. 4, 2020).

² Compl., In the Matter of Everalbum, Inc. et al., Docket No. 1923172. This is not the only photo-sharing application that has drawn scrutiny for its ties to facial recognition and surveillance technology. Kashmir Hill & Aaron Krolik, *How Photos of Your Kids Are Powering Surveillance Technology*, N.Y. TIMES (Oct. 11, 2019), <https://www.nytimes.com/interactive/2019/10/11/technology/flickr-facial-recognition.html>.

³ The Commission voted 3-2 on a settlement with Google and YouTube that allowed the companies to retain algorithms and other technologies enhanced by illegally obtained data on children. Based on my analysis, the Commission also allowed Google and YouTube to profit from its conduct, even after paying a civil penalty. See Dissenting Statement of Commissioner Rohit Chopra In the Matter of Google LLC and Youtube, LLC, Comm'n File No. 1723083 (Sep. 4, 2019), <https://www.ftc.gov/public-statements/2019/09/statement-commissioner-rohit-chopra-regarding-youtube>. The Commission voted 3-2 on a settlement with Facebook to address unlawful facial recognition practices that violated a 2012 Commission order. Like the Google/YouTube settlement, Facebook was not required to forfeit any facial recognition or other related technologies. The settlement also provided an unusual

Second, the settlement does not require the defendant to pay any penalty. This is unfortunate. To avoid this in the future, the FTC needs to take further steps to trigger penalties, damages, and other relief for facial recognition and data protection abuses. Commissioners have voted to enter into scores of settlements that address deceptive practices regarding the collection, use, and sharing of personal data. There does not appear to be any meaningful dispute that these practices are illegal. However, since Commissioners have not restated this precedent into a rule under Section 18 of the FTC Act, we are unable to seek penalties and other relief for even the most egregious offenses when we first discover them.⁴

Finally, the Everalbum matter makes it clear why it is important to maintain states' authority to protect personal data. Because the people of Illinois, Washington, and Texas passed laws related to facial recognition and biometric identifiers, Everalbum took greater care when it came to these individuals in these states.⁵ The company's deception targeted Americans who live in states with no specific state law protections.

With the tsunami of data being collected on individuals, we need all hands on deck to keep these companies in check. State and local governments have rightfully taken steps to enact bans, moratoria, and other restrictions on the use of these technologies. While special interests are actively lobbying for federal legislation to delete state data protection laws, it will be important for Congress to resist these efforts. Broad federal preemption would severely undercut this multi-front approach and leave more consumers less protected.

It will be critical for the Commission, the states, and regulators around the globe to pursue additional enforcement actions to hold accountable providers of facial recognition technology who make false accuracy claims and engage in unfair, discriminatory conduct.⁶

immunity clause for senior executives, including Mark Zuckerberg and Sheryl Sandberg. *See also* Dissenting Statement of Commissioner Rohit Chopra In re Facebook, Inc., Comm'n File No. 1823109 (Jul. 24, 2019), <https://www.ftc.gov/public-statements/2019/07/dissenting-statement-commissioner-rohit-chopra-regarding-matter-facebook>.

⁴ Statement of Commissioner Rohit Chopra Regarding the Report to Congress on Protecting Older Adults, Comm'n File No. P144400 (Oct. 19, 2020), <https://www.ftc.gov/public-statements/2020/10/statement-commissioner-rohit-chopra-regarding-report-congress-protecting>; Rohit Chopra & Samuel A.A. Levine, The Case for Resurrecting the FTC Act's Penalty Offense Authority (Oct. 29, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256

⁵ Compl., *supra* note 2.

⁶ Prepared Remarks of Commissioner Rohit Chopra at Asia Pacific Privacy Authorities 54th APPA Forum (Dec. 7, 2020), <https://www.ftc.gov/public-statements/2020/12/prepared-remarks-commissioner-rohit-chopra-asia-pacific-privacy>.