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What's Next for Privacy at the FTC Following the Confirmation of Alvaro Bedoya



Alvaro Bedoya was sworn in as a commissioner of the U.S. Federal Trade Commission (FTC) on May 16, 2022. Bedoya is well known in privacy circles. He founded the Center on Privacy and Technology at Georgetown Law School, where he focused on issues concerning the intersection of civil rights and digital technology and was particularly recognized for a [report](#) on the use of facial recognition technology by law enforcement. He previously served as chief counsel to the U.S. Senate Judiciary Subcommittee on Privacy, Technology, and the Law, as well as a top aide to Senator Al Franken.

The long-awaited arrival of Commissioner Bedoya restores a Democratic majority that Chair Lina Khan lost in October 2021 when Commissioner Rohit Chopra left the FTC to lead the Consumer Financial Protection Bureau. With the support of Commissioner Bedoya and Democratic Commissioner Rebecca Kelly Slaughter, Chair Khan is expected to move forward now on an ambitious agenda. Areas in the privacy arena, where more activity is expected to be seen, include:

- **Privacy, a.k.a. "Commercial Surveillance," Rulemaking.** In December 2021, the FTC [reported](#) that it was considering initiating a trade regulation rulemaking on what it referred to as "commercial surveillance," under Section 18 of the FTC Act, in order to "curb lax security practices, limit privacy abuses, and ensure that algorithmic decision-making does not result in unlawful discrimination." This would be an unprecedented proceeding that could affect not only those in the technology sector, but all businesses subject to FTC authority. The FTC faces significant substantive and procedural hurdles in seeking to adopt and enforce a privacy rule under Section 18, but with the arrival of Commissioner Bedoya, it now is poised to give this effort a full court press.
- **Privacy/Competition Intersection.** Chair Khan has [stated publicly](#) that she would like to see the agency take an "interdisciplinary" approach to competition and privacy, i.e., focus on the impact of data practices engaged in by "dominant firms as well as intermediaries." While less is known about Commissioner Bedoya's views on competition than privacy issues, if he embraces this approach, it may be reflected in the agency's choice of enforcement actions.

- **Algorithmic Discrimination and Civil Rights Issues.** Chair Khan and Commissioner Slaughter recently issued a [statement](#) expressing their view that disparate impact discrimination can be an unfair practice in certain circumstances, and Commissioner Bedoya's academic work on the intersection of civil rights and digital technologies is well known. We may see even more resources devoted to these issues in the FTC's enforcement and policy work.
- **Health Information.** The FTC has long expressed concern about the proliferation of mobile health apps that are not subject to HIPAA. In September 2021, it sought to remedy that gap in the law through an expansive reading of its longstanding and little-used Health Breach Notification Rule in a [policy statement](#) adopted on 3-2 vote. With a Democratic majority, we may see attempts to enforce the new reading of the rule.

With the FTC restored to its full strength, we expect to see Commissioner Bedoya play a significant role in privacy at an increasingly active FTC.

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