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#SOTN2024

LIGHTNING TALK

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FTC Authority

- **Investigative Authority**
- **Enforcement Authority**
 - **Unfair methods of competition**
 - **Unfair or deceptive acts or practices**
- **Rulemaking Authority**

FTC Investigative Authority

- Sections 6, 9, and 20 of the FTC Act, 15 U.S.C. §§ 46, 49, 57b-1
 - Subpoenas, civil investigative demands (CIDs), **special reports**

FTC AI-Related Investigations

- **Inquiry into Generative AI Investments and Partnerships (2024)**
 - **Order to File a Special Report to Alphabet, Amazon, Anthropic, Microsoft, and OpenAI**
 - Investigating partnerships between AI companies and the impact on the **competitive** landscape
 - E.g., the Microsoft / OpenAI partnership and how it impacts competition “for AI inputs and resources”: how these companies share (or hoard?) data
- **(Leaked) Investigation of OpenAI Data Security and ChatGPT’s Inaccuracy (2023)**
 - **CID to OpenAI** investigating privacy and data security practices and potential harm to consumers

FTC Enforcement Authority

- “**Unfair methods of competition** in or affecting commerce, and **unfair or deceptive acts or practices** in or affecting commerce, are hereby declared unlawful.”
 - FTC Act Sec. 5(a)(1), 15 U.S.C. § 45(a)(1)
- Unfair methods of competition (UMC) = competition authority
- Unfair or deceptive acts or practices (UDAP) = consumer protection authority

Competition Authority Over AI

- **AI-related “unfair methods of competition”:**
 - **“luring and locking in customers based on false promises”**
 - **Appropriating the competitively significant information of business customers**
- **AI privacy and data practices** can raise both competition and consumer protection issues

Consumer Protection Authority Over AI (Unfairness)

- Unfair AI
 - FTC Act UDAP authority prohibits **sale or use of racially biased algorithms**
 - **In re Rite Aid Corporation (2023): Rite Aid Banned from Using AI Facial Recognition**
 - Fair Credit Reporting Act (FCRA), Equal Credit Opportunity Act (ECOA)
- Rule of thumb: AI should “**do more good than harm**”

Consumer Protection Authority Over AI (Deception)

- Deceptive AI: “Fake AI” and “AI Fakes”
- “Fake AI”: Overpromising what an AI-based tool can deliver
 - Does the product actually use AI at all?
- **“AI Fakes”:** AI-powered scams
 - AI “to generate spear-phishing emails, fake websites, fake posts, fake profiles, and fake consumer reviews, or to help create malware, ransomware, and prompt injection attacks”
 - AI “deepfakes and voice clones to facilitate imposter scams, extortion, and financial fraud”

Automators AI (2023)

- Enforcement action involving “fake AI” deception
- “Defendants have engaged and continue to engage in violations of Section 5(a) of the FTC Act in connection with the advertising, marketing, and sale of their business opportunities and training programs/services.”
- Deceptive ads claiming their ‘product’ used AI: “**Claimed to use artificial intelligence to ensure success and profitability for consumers** who agreed to invest with Automators.”

FTC Rulemaking Authority

- FTC may use rulemaking to address **unfair or deceptive practices** or **unfair methods of competition** that occur **commonly**, in lieu of relying on solely on enforcement actions against individual respondents
- “UMC rulemaking authority” = Section 6(g) of the FTC Act, 15 U.S.C. § 46
 - Debated!
- UDAP rulemaking authority = Section 18 of the FTC Act, 15 U.S.C. § 57a
 - Magnuson-Moss (“Mag-Moss”) Rulemaking; Trade Regulation Rules

FTC Rulemakings Related to AI

- Trade Regulation Rule on the Use of Consumer Reviews and Testimonials (2023)
- Trade Regulation Rule on Commercial Surveillance and Data Security (2022)

- Children's Online Privacy Protection Rule? (COPPA Rule) (2024)

Other FTC AI Activity

- Virtual Tech Summit on Artificial Intelligence (2024)
- Voice Cloning Challenge (2024)
- Comment to U.S. Copyright Office on Artificial Intelligence and Copyright (2023)
- Staff Report on Generative Artificial Intelligence and the Creative Economy (2023)
- Virtual Roundtable on Creative Economy and Generative AI (2023)
- More!

Conclusion

- There is no AI exemption from the laws on the books!
 - **FTC UMC and UDAP enforcement authorities apply to AI - period.**
- Flexible nature of the FTC Act allows the Commission to protect consumers regardless of changing tech
- But FTC is *not* the “Artificial Intelligence” Commission
- Will Congress create a new agency to regulate AI? The next big debate
- FTC has a great website!
 - <https://www.ftc.gov/>