



UNITED STATES OF AMERICA
Federal Trade Commission

I am gravely concerned about the potential harms stemming

questions about the necessity and efficacy of the injunctive provisions found in Sections VI, VII, and IX,¹⁸ which first appeared in the X-Mode Social matter before my arrival at the Commission.¹⁹ As we turn the page on the last four years, the Commission should comprehensively examine the utility of the type of injunctive relief found in today's Proposed Order in the future and implement changes where warranted.²⁰

A. Proposed Order

While today's settlement is not perfect by any measure, several provisions in the Proposed Order will mitigate the harms resulting from Respondents' allegedly unlawful practices—i.e., the disclosure of consumers' political, religious, and medical activities. Critically, the Proposed Order will prohibit the unauthorized

I support Sections I, III, IV, and XI of the Proposed Order since they directly tied to Respondents' alleged conduct help mitigate the specific harms from disclosing consumers' political, religious, and medical activities, and properly balance the costs and benefits, as required by Section 5 of the FTC Act. Today's settlement also has important limits, particularly with the sale and use of "Sensitive Location Data". In my view, the Proposed Order is a

as endorsing the Complaint's theory about secondary harm to consumers.³⁰ As I have explained before, we must "tease out the complexity of the privacy debate" and "press for more empirical research to ground our unfairness analysis."³¹ Our complaints cannot simply rely on politically charged buzzwords. For example, the Complaint here expresses concern with Gravy's practice of creating general "audience segments for targeted advertising" e.g., "Sports Betting Enthusiast[s]," "Early Risers," "Healthy Dad[s]," "New Parents", or "Parents with Young Kids"³² But the Complaint fails to confront how these audience segments create a "significant risk of concrete harm" and ignores the potential benefits to consumers and competition. Behaviorally targeted advertising may produce more relevant ads for consumers, reducing their search costs and allowing small businesses and new market entrants to connect with a broader consumer base.³³

Moreover, my vote should not be construed as support for deeming the use of sensitive data or the categorization of sensitive data unlawful in every circumstance. Consumers may be deceived or harmed where their sensitive data is used without their knowledge or consent, contrary to their reasonable expectations. But context matters. For example, if a consumer searches on for nearby pediatricians close to their home then serving ads in other contexts for pediatrician offices and groups based on the consumer's location may be a reasonable and desirable feature. If a consumer subscribes to a podcast on a certain type of politics, advertisements for other political podcasts may be of interest to that consumer.

We also need to disentangle any objections to the content of an advertisement from the practices of categorization and targeting. Generally Take, for example, the practice of categorizing consumers into the ad segment "women over 50 suffering from breast cancer." An advertiser may use that segment to target ads for validated treatments, potentially connecting women with life-saving care. Or, an advertiser could use that segment to target ads for bogus treatments. We should not conflate our concern about deceptive advertising (the bogus treatment) with the lawful act of categorizing and targeting based on sensitive data, lest we undermine the ability to connect women with lifesaving care. This is just one example of the potentially beneficial or harmful content served to audience segments. Certain types of categorization and targeting may offer similar benefits to consumers and competition, if used properly and in a lawful manner.³⁴

As we consider