

a mother considering her pregnancy may experience significant benefits if data analysis and categorization mean she ultimately receives tailored advertisements from crisis pregnancy centers offering prenatal and postnatal care for her and her child.¹⁷ And a significant benefit would accrue to the unborn child: her survival.¹⁸ Put simply, categorization does not automatically violate section 5. But today's case sends the opposite message.¹⁹

Count V, for "Unfair Retention of Consumer Location Information," also falls short of what Section 5 requires. The Complaint alleges that Mobilewalla "indefinitely retains detailed, sensitive information about consumers' movements, including consumers' location information."²⁰ But there is minimal analysis as to how the practice of indefinite retention lacks potential countervailing benefits.²¹ For example, as the Complaint makes clear, Mobilewalla facilitates advertising and data analytics.²² To the extent Mobilewalla's information enables building and optimizing predictive models, or better tailoring advertisements over time to particular consumers, it seems likely Mobilewalla's indefinite retention of data may mean consumers correspondingly experience higher benefits. We will never know whether the practice has net benefits or not, since the Majority simply ignores that step and summarily condemns the practice.

A final point today, about how my approach in this case relates to my support for *Kochava*, where I concurred in filing a second amended complaint. It is one thing to use our unfairness authority to directly address specific acts or practices of "disclos[ure]" or "the revelation of sensitive locations

implicating political, medical, and religious activities," where there is an appropriate "focus [] on sales of precise geolocation data and related sensitive information,"²³ and where there has been a lack of consumer consent.²⁴ The facts pled in *Kochava* relating to disclosure and sale in that case led me to believe that the particular "act or practice" of selling precise geolocation data had a direct connection—caused or was likely to cause—substantial injury to consumers.²⁵

In contrast, and in focusing on other types of acts or practices—such as the relevant data's collection, its use for categorization, or its indefinite retention—that are analytically removed from and did not themselves necessarily cause any alleged injury based on the facts pled, today's complaint fails to show how these acts or practices themselves satisfy what section 5 requires.²⁶ On their own, the categorization, collection, or indefinite retention could certainly be factual predicates that precede substantial injury. But, at least as pled in this case, such practices themselves lack the causal connection to substantial injury. And, stepping back, there are certainly innocuous or beneficial instances of related data collection, its categorization, and its indefinite retention. Thus, this case's theories go far beyond the rationale that led me to support amending the complaint in *Kochava*.²⁷ In fact, the claims in this case seem designed to lead directly to minimizing access to data, limiting the practice of drawing inferences from it, and setting particular boundaries around data retention. This case's regulatory implications are therefore far broader than those in *Kochava*.

²³ See Concurring Statement, *Kochava*, *supra* note 1, at 2–3.

²⁴ *Id.* at 3.

²⁵ See 15 U.S.C. 45(n); see also Compl., *Fed. Trade Comm'n v. Kochava, Inc.*, *supra* note 16, ¶ 132 (bringing a single count for "Unfair Use and Sale of Sensitive Data," and alleging that Defendants "used and disclosed data" from consumers (emphasis added)). The framing of *Kochava*'s unfairness count resembles the framing of the first count in this Complaint against Mobilewalla, for "unfair sale of sensitive location information," related to how Mobilewalla "sells, licenses, or otherwise transfers precise location information . . . that reveal[s] consumers' visits to sensitive locations." See Compl. ¶¶ 66–67. But this Complaint's misguided use of the Commission's unfairness authority goes well beyond *Kochava*'s sole count.

²⁶ See 15 U.S.C. 45(n).

²⁷ Again, I "support[ed] filing the second amended complaint in *Kochava* . . . because I agree[d] that the complaint adequately alleg[d] a likelihood of substantial injury in the revelation of sensitive locations implicating political, medical, and religious activities" Concurring Statement, *Kochava*, *supra* note 1, at 2.

Privacy is a vital policy topic. But unless and until the Commission receives new authorities, we must follow the law as Congress actually wrote it, not as some Commissioners or the Bureau Director might amend it if they were elected legislators.²⁸ Robust enforcement consistent with our statutory authorities can have salutary deterrent effects. But robust enforcement that is inconsistent with our statutory authorities can also have profound ramifications on how markets function, and how market actors proceed—including in ways that harm the American people. And it can undermine our legitimacy in the eyes of not just Congress, but the public.²⁹ Privacy's tradeoffs should be resolved by Congress, not unelected Commissioners. I do not believe section 5, as drafted, authorizes us to act as a roving legislator, writing law through complaints and settlement orders drafted to suit our purposes or political expediency. I dissent.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007; Docket No. 2024–0053; Sequence No. 19]

Information Collection; Subcontracting Plans

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and

²⁸ See Concurring Statement, *In re Gravy Analytics*, *supra* note 1, at 6 ("As we consider these type of difficult privacy questions in the future, it is of paramount importance that we challenge only unfair or deceptive conduct, supported by specific facts and empirical research, rather than demonizing the entire digital advertising industry. And until Congress acts to address privacy directly through legislation, it is vital we recognize and abide by the limited remit of the Commission's statutory authority.")

²⁹ It is no coincidence that the number of constitutional challenges questioning our legitimacy has correlated with the Chair's general dismissal of the Commission's basic norms and integrity. See, e.g., Justin Wise, *FTC's Targets Take Cues From High Court in Tests of Agency Power*, Bloomberg Law (Sept. 26, 2024), <https://news.bloomberglaw.com/antitrust/ftcs-targets-take-cues-from-high-court-in-tests-of-agency-power>.

¹⁷ See Concurring Statement, *In re Gravy Analytics*, *supra* note 1, at 6 ("We also need to disentangle any objections to the content of an advertisement from the practices of categorization and targeting generally.")

¹⁸ This example illustrates the fraught nature of the Commission determining on its own—without Congressional authorization—what advertising content is harmful, discriminatory, and so on. Absent clear statutory authority, Commission enforcement on such matters becomes a tool driven by preferences of unelected officials.

¹⁹ Compl. ¶ 69 (alleging "categorization of consumers based on sensitive characteristics for marketing and other purposes is an unfair act or practice").

²⁰ *Id.* ¶ 74.

²¹ We should be considering such potential benefits, however. Cf. Melissa Holyoak, Remarks at National Advertising Division, *A Path Forward on Privacy, Advertising, and AI*, at 6–7, 9 (Sept. 17, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/Holyoak-NAD-Speech-09-17-2024.pdf.

²² Compl. ¶ 19.

the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning subcontracting plans. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through May 31, 2025. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by February 4, 2025.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through <https://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov.

Instructions: All items submitted must cite OMB Control No. 9000-0007, Subcontracting Plans. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202-969-7207, or zenaida.delgado@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000-0007, Subcontracting Plans.

B. Need and Uses

This clearance covers the information that offerors and contractors must submit to comply with the requirements in Federal Acquisition Regulation (FAR)

52.219-9, Small Business Subcontracting Plans, regarding subcontracting plans as follows:

1. Subcontracting plan. In accordance with section 8(d) of the Small Business Act (15 U.S.C. 637(d)), contractors receiving a contract that is expected to exceed, or a contract modification that causes a contract to exceed, \$750,000 (\$1.5 million for construction of a public facility) and has subcontracting possibilities, shall submit an acceptable subcontracting plan that provides maximum practicable opportunities for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR subpart 19.7 and the clause at FAR 52.219-9.

2. Summary Subcontract Report (SSR). In conjunction with the subcontracting plan requirements, contractors with subcontracting plans must submit an annual summary of subcontracts awarded as prime and subcontractors for each specific Federal Government agency. Contractors submit the information in an SSR through the Electronic Subcontracting Reporting System (eSRS). This is required for all contractors with subcontracting plans regardless of the type of plan (*i.e.*, commercial or individual).

3. Individual Subcontract Report (ISR). In conjunction with the subcontracting plan requirements, contractors with individual subcontracting plans must submit semi-annual reports of their small business subcontracting progress. Contractors submit the information through eSRS in an ISR, the electronic equivalent of the Standard Form (SF) 294, Subcontracting Report for Individual Contracts. Contracts that are not reported in the Federal Procurement Data System (FPDS) in accordance with FAR 4.606(c)(5) do not submit ISRs in eSRS; they will continue to use the SF 294 to submit the information to the agency.

4. Written explanation for not using a small business subcontractor as specified in the proposal or subcontracting plan. Section 1322 of the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111-240, amends the Small Business Act (15 U.S.C. 637(d)(6)) to require as part of a subcontracting plan that a prime contractor make good faith effort to utilize a small business subcontractor during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or

proposal. If a prime contractor does not utilize a small business subcontractor as described above, the prime contractor is required to explain, in writing, to the contracting officer the reasons why it is unable to do so.

C. Annual Burden

Respondents: 30,365.

Total Annual Responses: 49,296.

Total Burden Hours: 112,704.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202-501-4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control No. 9000-0007, Subcontracting Plans.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

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BILLING CODE 6820-EP-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, pursuant to Public Law 92-463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE25-028, Effectiveness Research to Prevent Polysubstance-Impaired Driving.

Dates: April 15-16, 2025.

Times: 10 a.m.-5 p.m., EDT.

Place: Web Conference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Carlisha Gentles, Pharm.D., B.C.P.S.,