

July 15, 2019

The Honorable Michael Crapo, Chairman
The Honorable Sherrod Brown, Ranking Member
Senate Committee on Banking, Housing, & Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

We write to you regarding your hearing on “Examining Facebook’s Proposed Digital Currency and Data Privacy Considerations.”¹ EPIC appreciates your timely attention to the consumer impacts of Facebook’s entry into the financial services market.

EPIC is a public-interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.² EPIC is a leading advocate for consumer privacy and has appeared before this Committee on several occasions.³

Facebook/WhatsApp: A History of Broken Privacy Promises

To fully understand why Facebook cannot be trusted to launch its own currency, we must look to promises Facebook has made in the past. In 2014, Facebook purchased WhatsApp, a text-messaging service that attracted users specifically because of strong commitments to privacy.⁴ WhatsApp’s founder stated in 2012 that, “[w]e have not, we do not and we will not ever sell your personal information to anyone.”⁵ EPIC and the Center for Digital Democracy urged the Federal Trade Commission to block the deal.⁶ As we explained at the time:

¹ *Examining Facebook’s Proposed Digital Currency and Data Privacy Considerations*, 116th Cong. (2019), S. Comm. on Banking, Housing, and Urban Affairs (Jul. 16, 2019), <https://www.banking.senate.gov/hearings/examining-facebooks-proposed-digital-currency-and-data-privacy-considerations>.

² EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

³ See, e.g., *Consumer Data Security and the Credit Bureaus: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 115th Cong. (2017) (testimony of Marc Rotenberg, Exec. Dir., EPIC), <https://epic.org/testimony/congress/EPIC-Testimony-SBC-10-17.pdf>; *Cybersecurity and Data Protection in the Financial Sector: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 112th Cong. (2011) (testimony of Marc Rotenberg, Exec. Dir., EPIC), https://epic.org/privacy/testimony/EPIC_Senate_Banking_Testimony%20_6_21_11.pdf.

⁴ EPIC, *In re: WhatsApp*, <https://epic.org/privacy/internet/ftc/whatsapp/>.

⁵ WhatsApp, *Why We Don’t Sell Ads* (June 18, 2012), <https://blog.whatsapp.com/245/Why-we-dont-sell-ads>.

⁶ EPIC and Center for Digital Democracy, *Complaint, Request for Investigation, Injunction, and Other Relief In the Matter of WhatsApp, Inc.*, (Mar. 6, 2014), <https://epic.org/privacy/ftc/whatsapp/WhatsApp-Complaint.pdf>.

WhatsApp built a user base based on its commitment not to collect user data for advertising revenue. Acting in reliance on WhatsApp representations, internet users provided detailed personal information to the company including private text to close friends. Facebook routinely makes use of user information for advertising purposes and has made clear that it intends to incorporate the data of WhatsApp users into the user profiling business model. The proposed acquisition will therefore violate WhatsApp users' understanding of their exposure to online advertising and constitutes an unfair and deceptive trade practice, subject to investigation by the Federal Trade Commission.⁷

The FTC ultimately approved the merger after Facebook and WhatsApp promised not to make any changes to WhatsApp users' privacy settings.⁸ However Facebook announced in 2016 that it would begin acquiring the personal information of WhatsApp users, including phone numbers, directly contradicting their previous promises to honor user privacy.⁹ Following this, EPIC and CDD filed another complaint with the FTC in 2016, but the Commission has taken no further action.¹⁰

Facebook also said recently it would target WhatsApp users with ads, despite earlier statements to the contrary and opposition from WhatsApp's founders.¹¹ The disclosure is particularly troubling following recent reporting that Facebook relies on users' phone numbers for targeting.¹²

Facebook's Failures to Protect User Data

Facebook has a long history of failing to protect user data. In April 2018, Facebook admitted the unlawful transfer of 87 million user profiles to the data mining firm Cambridge Analytica, which harvested the data obtained without consent to influence the 2016 U.S. presidential election.¹³ That

⁷ *Id.* at 1.

⁸ See, Letter from Jessica L. Rich, Dir., Bureau of Consumer Prot., Fed. Trade Comm'n, to Facebook and WhatsApp (Apr. 10, 2014), <https://epic.org/privacy/internet/ftc/whatsapp/FTC-facebook-whatsapp-ltr.pdf> (concerning the companies' pledge to honor WhatsApp's privacy promises).

⁹ WhatsApp, *Looking Ahead for WhatsApp* (Aug. 25, 2016), <https://blog.whatsapp.com/10000627/Looking-ahead-for-WhatsApp>.

¹⁰ EPIC and Center for Digital Democracy, Complaint, Request for Investigation, Injunction, and Other Relief In the Matter of WhatsApp, Inc. (Aug. 29, 2016), <https://epic.org/privacy/ftc/whatsapp/EPIC-CDD-FTC-WhatsApp-Complaint-2016.pdf>; Marc Rotenberg, *The Facebook-WhatsApp Lesson: Privacy Protection Necessary for Innovation*, Techonomy (May 4, 2018), <https://techonomy.com/2018/05/facebook-whatsapp-lesson-privacy-protection-necessary-innovation>.

¹¹ Anthony Cuthbertson, *WhatsApp to Start Filling Up with Ads Just Like Facebook*, Independent (Oct. 1, 2018), <https://www.independent.co.uk/life-style/gadgets-and-tech/news/whatsapp-update-targeted-ads-status-facebook-brian-acton-a8563091.html>.

¹² Liam Tung, *Facebook Is Using Your 2FA Phone Number to Target Ads at You*, ZDNet (Oct. 1, 2018), <https://www.zdnet.com/article/facebook-is-using-your-2fa-phone-number-to-target-ads-at-you>.

¹³ Cecilia Kang and Sheera Frenkel, *Facebook Says Cambridge Analytica Harvested Data of Up to 87 Million Users*, N.Y. Times, (Apr. 4, 2018), <https://www.nytimes.com/2018/04/04/technology/mark-zuckerberg-testify-congress.html>.

breach of user privacy was considered one of the most significant in the history of Internet-based services, and led almost immediately to investigations around the world.¹⁴

Two months later, it was revealed that Facebook had disclosed user data to at least 60 device makers including Apple, Amazon, and Samsung over the last decade.¹⁵ That number was later revised to disclosures to over 150 companies, who were requesting “the data of hundreds of millions of people a month.”¹⁶

In October 2018, Facebook announced that about 30 million users had their highly sensitive data hacked, including location data, contacts, relationship status, and search queries.¹⁷ In December, Facebook revealed that a “software bug” allowed third-party apps to erroneously access the photos of up to 6.8 million users, including images that users began uploading to Facebook but then did not post publicly.¹⁸

Those are just the privacy breaches over the span of nine months in 2018.

Facebook clearly cannot be trusted with consumers’ financial data. The company has a long history of both failing to maintain adequate security safeguards and of lying to regulators.¹⁹ Congress should take action to stop Facebook’s cryptocurrency before it’s too late.

We ask that this letter be entered in the hearing record. EPIC looks forward to working with the Committee on these issues.

Sincerely,

Marc Rotenberg

Marc Rotenberg
EPIC President

Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

¹⁴ Lauren Feiner, *Mark Zuckerberg’s call for tougher Internet regulation won’t save Facebook from these investigations*, CNBC (Mar. 31, 2019), <https://www.cnbc.com/2019/03/31/facebook-federal-and-international-investigations-into-data-privacy.html>.

¹⁵ Gabriel J.X. Dance, Nicholas Confessore, and Michael LaForgia, *Facebook Gave Device Makers Deep Access to Data on Users and Friends* (Jun. 3, 2018), <https://www.nytimes.com/interactive/2018/06/03/technology/facebook-device-partners-users-friends-data.html>.

¹⁶ Gabriel J.X. Dance, Michael LaForgia, and Nicholas Confessore, *As Facebook Raised a Privacy Wall, It Carved an Opening for Tech Giants* (Dec. 18, 2018), <https://www.nytimes.com/2018/12/18/technology/facebook-privacy.html>.

¹⁷ Rob Price, *Hackers stole millions of Facebook users’ highly sensitive data — and the FBI has asked it not to say who might be behind it* (Oct. 12, 2018), <https://www.businessinsider.com/facebook-30-million-users-affected-hack-fbi-asked-not-to-reveal-source-2018-10>.

¹⁸ Tomer Bar, *Notifying our Developer Ecosystem about a Photo API Bug*, Facebook for Developers Blog (Dec. 14, 2018), <https://developers.facebook.com/blog/post/2018/12/14/notifying-our-developer-ecosystem-about-a-photo-api-bug/>.

¹⁹ Mark Scott, *E.U. Fines Facebook \$122 Million Over Disclosures in WhatsApp Deal*, N.Y. Times, May 18, 2017, <https://www.nytimes.com/2017/05/18/technology/facebook-european-union-fine-whatsapp.html>