



UNITED STATES  
**CONSUMER PRODUCT SAFETY COMMISSION**  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814  
COMMISSIONER PETER A. FELDMAN

September 7, 2022

The Honorable Lina M. Khan  
Chairwoman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chairwoman Khan:

As the Federal Trade Commission (FTC) considers comments regarding its Advance Notice of Proposed Rulemaking (ANPR) on commercial privacy and data security practices, I hope it will consider the impact of certain privacy provisions on the ability of retailers, manufacturers, and others to conduct efficient recalls of hazardous consumer products. I have expressed concerns previously about how the “Right to Delete” provision of the California Consumer Privacy Act (CCPA) limits the ability of firms to collect and use consumer data for direct notice recalls.<sup>1</sup> I am similarly concerned about the impact of the European Union’s General Data Protection Regulation and other state and international privacy laws referenced in FTC’s ANPR that threaten product recall effectiveness, and in turn, consumer safety.

The U.S. Consumer Product Safety Commission (CPSC) is an independent federal regulatory agency responsible for protecting the public from unreasonable risks of injury and death associated with consumer products. Because CPSC is not a privacy regulator, I take no official position on the merits of broader consumer privacy considerations. However, given CPSC’s extensive work on consumer product recalls, I would like to call your attention to the ways in which CPSC and recalling firms rely on industry-collected personally identifiable information (PII) of customers purchasing consumer products to advance safety, including PII that is aggregated through data brokers.

CPSC faces immense challenges to increase recall effectiveness, however, it relies on recalls as the primary means used to remove hazardous products from commerce. Our recalls are not nearly as effective as they should be. As the Government Accountability Office (GAO) noted recently, CPSC’s internal processes contribute to this problem.<sup>2</sup> Nevertheless, fixing the issues

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<sup>1</sup> Letter from Peter A. Feldman, Comm’r, U.S. Consumer Prod. Safety Comm’n, to Xavier Becerra, Att’y Gen., (Mar. 25, 2019), *available at* <http://www.cpsc.gov/s3fs-public/copf%20letter%20to%20becerra%final.pdf>.

<sup>2</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-21-56, CONSUMER PROD. SAFETY COMM’N: ACTIONS NEEDED TO IMPROVE PROCESSES FOR ADDRESSING PRODUCT DEFECT CASES (2021), *available at* <https://www.gao.gov/products/gao-21-56>.

GAO identified will not address the issue completely. As a small agency, with just over 500 employees, CPSC has oversight over thousands of consumer products ranging from inexpensive children's toys to expensive machines and tools. Unlike other agencies, such as the National Highway Traffic Safety Administration, CPSC faces significant challenges in achieving consumer outreach when a recall is necessary.

To improve recall effectiveness, CPSC compliance staff works with manufacturers, distributors, and retailers to develop mutually acceptable programs that include a variety of notification methods to alert affected consumers about product recalls. Research shows, and CPSC has long recognized, a powerful positive relationship between direct notification of consumers and recall success.<sup>3</sup> Direct notification is not possible without affected consumers' PII. Often, CPSC will encourage a recalling firm to use the information it collects through registration cards, sales records, catalog orders, retailer loyalty cards, or other means, to effect direct notification.<sup>4</sup> In other situations, companies may purchase commercially available mailing lists of consumers who are likely to use a particular product. Industry-collected consumer PII, and the direct notification it enables, is a critical tool to locate and remove hazardous products as quickly and effectively as possible.

Because overly broad privacy protections, including "right to delete" provisions, could result in the deletion of this critical consumer PII, it is my hope the Commission will consider the importance of preserving the ability of firms to conduct efficient transmission of recall notifications. To that end, FTC should exercise caution should it choose to advance a regulation. For example, it might consider language that provides a uniform federal framework that recognizes product recalls as a legitimate use of consumer PII, including exemptions for consumer safety and recall efficiency as appropriate.

Thank you for your attention to this matter. I am available to assist FTC in any way I can.

Sincerely,



Peter A. Feldman  
Commissioner

cc: The Honorable Noah Phillips, Commissioner  
The Honorable Rebecca Slaughter, Commissioner  
The Honorable Christine Wilson, Commissioner  
The Honorable Alvaro Bedoya, Commissioner

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<sup>3</sup> See e.g. Dennis R. Murphy & Paul H. Rubin, *Determinants of Recall Success Rates*, 11 J. OF PROD. LIAB. 17, 17-28 (1988); and see U.S. CONSUMER PROD. SAFETY COMM'N, RECALL EFFECTIVENESS WORKSHOP REPORT 5 (2018), available at [http://www.cpsc.gov/s3fs-public/Recall\\_Effectiveness\\_Workshop\\_Report-2018.pdf?R1VyLtrl8M\\_id.2vkAklHoUZjaSCab](http://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop_Report-2018.pdf?R1VyLtrl8M_id.2vkAklHoUZjaSCab) (CPSC staff finding that "[d]irect notice recalls have proven to be the most effective recalls").

<sup>4</sup> See U.S. CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 19 (2012), available at <http://www.cpsc.gov/s3fs-public/8002.pdf>.