



FOR IMMEDIATE RELEASE

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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

## WLF Urges FTC to Tread Carefully in New Data-Privacy Rulemaking

*(In re Trade Regulation Rule)*

**“The sweeping scope of the ANPR far exceeds the stringent statutory limits Congress has imposed on FTC rulemaking.”**

—Cory Andrews, WLF General Counsel and Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the Federal Trade Commission not to exceed its narrow rulemaking authority in promulgating a new federal data-privacy rule. In a formal comment to the FTC, WLF reminded the agency that it is not free to write its own law of consumer protection under Section 5 of the FTC Act. That is a job for Congress.

WLF’s comment responds to the Commission’s Advanced Notice of Proposed Rulemaking (ANPR) entitled “Trade Regulation Rule on Commercial Surveillance and Data Security.” Although Congress is considering legislation to address many of the same concerns cited by the ANPR, the FTC has made clear that it considers itself the “de facto law enforcer” on data-privacy issues. The ANPR is not only sweeping in scope but touches on major policy questions that are best left to Congress.

WLF’s comment emphasizes three main points. First, if the Commission’s final rule is to pass muster in federal court, it will need to closely adhere to the statutory limits Congress has imposed on the agency’s rulemaking. Second, the unprecedented breadth and depth of the ANPR suggest that the “major questions doctrine,” which presumes that Congress intends to make major policy decisions itself rather than leave those decisions to agencies, will likely pose a formidable obstacle to any final rule. And third, classifying targeted advertising as an unfair or deceptive practice would harm both consumers and competition.

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