



Interview Series:
Commissioners Around the World

Rohit Chopra
Commissioner, US Federal Trade Commission

41st International Conference of Data Protection and Privacy Commissioners (ICDPPC)
21 – 24 October 2019 | Albania

EDPL EUROPEAN DATA PROTECTION LAW REVIEW

US FTC Commissioner Chopra: More Than Fines Needed to Fight Data Abuses by Globe’s Biggest Firms

As privacy commissioners from around the globe are gathering in Tirana for the start of the 41st International Conference of Data Protection and Privacy Commissioners (ICDPPC) we hear from Commissioner Rohit Chopra of the US Federal Trade Commission (FTC) about the latest from the United States and international cooperation on data protection enforcement. This interview is conducted by Nelly Stratieva, executive editor of the European Data Protection Law Review (EDPL) – ICDPPC’s main media partner.

NS: Commissioner Chopra, could you tell our readers what are the most important privacy and data protection issues and initiatives on your table at the moment?

RC: Three privacy and data protection issues are particularly pressing for me: threats to civil rights, threats to children, and threats to competition.

Civil rights. When it comes to threats to our civil rights, facial recognition technology has the potential for major misuse and abuse. In the US, much of the controversies surrounding facial recognition relate to uses by law enforcement. But, I expect that commercial use of facial recognition will also attract major scrutiny. Because this technology can falsely match individuals, it can reinforce biases against racial and ethnic minorities in a way that harms individual rights and society. In 2012, the Federal Trade Commission issues a set of modest recommendations on facial recognition practices, but few have adopted these. This needs to be a major area of focus for policymakers and regulators.

[1] US Federal Trade Commission, 'Facing Facts: Best Practices For Common Uses of Facial Recognition Technologies'
<https://www.ftc.gov/reports/facing-facts-best-practices-common-uses-facial-recognition-technologies>

In addition, we are seeing other agencies in the US develop policies related to algorithmic discrimination. I recently raised concerns with the US Department of Housing and Urban Development's proposed rule regarding housing discrimination. We must remember that these black-box algorithms relying on personal data can reinforce societal biases, rather than eliminate them.

Children. For over 20 years, US law has sought to protect children from invasive data collection without parental consent. The Federal Trade Commission uncovered serious violations of the Children's Online Privacy Protection Act by YouTube and TikTok. Monetising children's data can be extremely lucrative, and many of us are concerned that behavioural advertising models can manipulate and harm young children. I am closely monitoring the FTC's review of children's privacy rules to find ways to strengthen these protections and hold accountable the companies and individuals that break the law.

Competition. Abuse and misuse of data also pose a serious threat to fair competition. The digital economy should not be dominated by a handful of incumbents – it must be open and competitive. State attorneys general in the US are investigating Google and Facebook for potential violations of antitrust law, and I am in constant communication with them. In testimony before Congress, the FTC's chairman and I acknowledged that the agency has also opened an antitrust investigation into Facebook. This is truly an 'all hands on deck' moment. Understanding the intersection between data protection and competition has never been more important.

NS: Do you think that the US and EU are heading in the direction of converging their data protection standards?

RC: Without question, GDPR is a major step forward, and it has heavily influenced data protection regimes around the world. Both developing and developed economies have adopted key aspects of GDPR on everything from data portability (Malaysia) to revenue-based fines (Korea). In a few months, additional provisions of the California Consumer Privacy Act of 2018 (CCPA) take effect, and I am already seeing how this is already having a ripple effect, as businesses around the world enhance their standards when it comes to serving Americans. While the GDPR and CCPA have some important similarities, there are also differences, and they will never completely converge.

As more Americans demand greater accountability when it comes to abuse and misuse of data, I do not think we should simply cut and paste the GDPR. I hope we build on some of the successes, while also considering competition, national security, and robust enforcement mechanisms.

NS: What major issues do you hope will be addressed at the 41st ICDDPC in Tirana? Which topics are of most importance for you?

RC: It's been an honour to work with the United Kingdom Information Commissioner's Office to co-lead the enforcement cooperation session at this year's ICDDPC.

Many data protection authorities around the world are realizing that monetary fines may not be adequate to remedy data abuses by the globe's biggest firms. In the US, the government reached a settlement with Facebook for massive failures to adhere to an existing privacy order. While I acknowledge that the fine of \$5 billion made for a terrific news headline, I did not vote in favour of it, because the investigation was incomplete and the fine will do little to fix Facebook's business incentives that heavily depend on invasive data collection. Enforcers from around the globe need to work collectively to pursue remedies that fix these fundamental flaws.

[2] US Federal Trade Commission, 'Comment of Commissioner Chopra on the Department of Housing and Urban Development's Proposed Rule Regarding the Fair Housing Act's Discriminatory Effects Standard' <https://www.ftc.gov/public-statements/2019/10/comment-commissioner-chopra-department-housing-urban-developments-proposed>

[3] US Federal Trade Commission, 'Dissenting Statement of Commissioner Rohit Chopra Regarding the Matter of Facebook, Inc.' <https://www.ftc.gov/public-statements/2019/07/dissenting-statement-commissioner-rohit-chopra-regarding-matter-facebook>

[4] Natasha Lomas, 'Libra, Facebook's global digital currency plan, is fuzzy on privacy, watchdogs warn' (TechCrunch, 5 August 2019) <https://techcrunch.com/2019/08/05/libra-facebooks-global-digital-currency-plan-is-fuzzy-on-privacy-watchdogs-warn/>

In addition to enforcement, data protection and privacy commissioners need to discuss how we will deal with data protection risks posed by Facebook's Libra and any other privatised global currency initiatives. I was pleased to join several colleagues from around the world to demand greater information about how Libra will protect personal data. While central bankers and finance ministers have raised many concerns about Libra, as data protection regulators, we also need a coherent approach to confront the many risks that proposals like Libra pose to privacy.

This interview is part of the series 'Commissioners around the World'. If you missed the previous interviews with the commissioners of Austria, Australia and Hong Kong you can access them for free [HERE](#).
