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Prepared Remarks of Commissioner Alvaro M. Bedoya
Federal Trade Commission

Future of Privacy Forum
13th Annual Privacy Papers for Policymakers Event[1]

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Good evening, friends. It is so wonderful to see all of you.

We are here to celebrate privacy. So, given what may be on a lot of people's minds, I'd like to start by discussing my work with Commissioner Wilson on privacy. Since my first day as a nominee, and then every week as a Commissioner, I have sought out Commissioner Wilson to work on privacy issues together. We've had something of an informal partnership on kids' privacy and mental health.

Commissioner Wilson voted with the majority on *Kochava*. She voted with the majority on *Fortnite*. I have seen personally how matters like these benefitted from her input. Her passion and expertise for privacy are real. I respect it. I've sought it out.

At the same time, I do not recognize the commission she has described. And I know that time will bear that out.

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Tonight, however, we are here for another purpose. We are here to highlight six important pieces of scholarship authored by some of the finest minds in our field, including my dear friend and colleague Commissioner Slaughter, along with others whom I have long followed and admired.

But before I tell you all more about these works, and why I think they are important, I want to talk about why this exchange, this event and events like this, are so important.

I spent five years working in this building, the Hart Senate Office Building. Most of that time was spent in Hart 216, which is one of the first offices you'll see on your left when you enter the Hart atrium from the north – it's right near the foot of the extraordinary Calder sculpture, "Mountains and Clouds."

[1] The views expressed here are my own and do not necessarily represent the views of the Federal Trade Commission or any other Commissioner.

When you work in the same room, day in and day out, you notice things. One thing I learned that way is that Mountains and Clouds was one of the last things Alexander Calder worked on before he passed. If I recall correctly, Calder came during the installation, made a few adjustments, went home, and passed away just one or two days later.

Another thing I *figured out* is that the vast majority of people do not see the sculpture the way Calder almost surely intended it to be seen. The vast majority of you likely entered this building from C Street, or Constitution Avenue, or from the passageway over from Dirksen. You walk in and you see the side of this dark mass, and it's disorienting. It takes a moment to figure out what you're looking at.

But if you look at the architectural plans for Hart, the principal entrance is actually on Second Street – that's the only entrance with a driveway.

If you are one of the few people who comes in *that* way, you see a very different "Mountains and Clouds." It rises before you in full, rises up the full nine stories of the building, and it hits you all at once. That's on purpose; Calder clearly positioned it so that you could see all of it the moment you pass through the entrance.

And by the way, I don't know this because I researched it, or read it. I learned it by doing the same thing over and over. Once you see it, it is quite obvious.

If you're sitting there wondering, "Why the heck is this guy talking to me about architecture?" It's because I want to underline that there are certain things that you only learn by doing them – over and over. And those are often the lessons that are not obvious and that are even counterintuitive.

One of those lessons I learned that way, sitting in my little office on the second floor of this building is that the line you always hear about Congress and technology is not true.

What's that line?

It's that Congress doesn't know anything about technology. According to this view, members and their staffs are either too old and unfamiliar with technology – or too young and inexperienced.

Not only is that line not true, but it also serves to *hide* a much more complicated tension that members of Congress and their staffs grapple with.

Exhibit A of this critique is, of course, the Stored Communications Act, which is part of the Electronic Communications and Privacy Act. In that law, passed in 1986, Congress sought to protect the privacy of a nascent technology – the email. At the time, we downloaded our emails onto our computers, and they were then erased from remote storage. And so, under that law, emails that lived on those remote servers for more than a given number of months were considered abandoned – and were subject to little or no privacy protection.

Of course, times have changed, and now the idea that emails that live on the cloud for longer than a few months are abandoned is *anachronistic*, to put it generously.

But I urge you to consider a different takeaway from that example. Because I strongly suspect that every current or former staffer in this room knows that this trite example hides a much bigger tension – a tension that you live every day as a staffer, and that you fully learn only through months and years of experience.

This is the tension: Be specific, and you'll write an instantly outdated law. Go broader and future proof that law, and have it denounced as problematically vague.

I think that if the Congress that crafted the Stored Communications Act had written a much broader provision, if they had sought to *future proof* that law by eliminating some of its specifics, they would have heard a chorus of criticism: "Your proposal is unclear. Your proposal is vague. How do I enforce this proposal? How do I counsel my clients to follow it?"

And so it is easy to criticize the technology work Congress does, but that criticism too often hides the complexity of the tightrope that Congress is called on to walk: Be specific and break the Internet. Go broader and make a whole big mess.

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So – how do you thread that needle? How do we work out that tension?

Through events like this one; by ensuring that our brightest minds in technology are speaking to the brightest minds in the halls of Congress. And this exchange of expertise, of course, won't just help members of Congress and their staffs answer this question of breadth versus specificity. It'll answer so many other questions, as well: What problems should Congress focus on? What issues should it tackle? What products or technologies truly deserve special, sectoral treatment? The list goes on.

I've had the pleasure of reading or reviewing the six papers featured today. I say "read or review" because I think that the papers make up a combined 300 or 400 pages, and in addition to this job, I have two toddlers – and, unfortunately, am not a member of the Marvel superhero universe.

But I would like to identify a few of the contributions that I have seen.

Professor Eunice Park's paper points out that sensitive health data cannot be confined to a neat box and extends far beyond the data generated at your doctor's office. So much information – like geolocation, for example – can be just as revealing as that medical data, and we need to reckon with that.

Professor Kate Weisburd's paper answers a common fallacy that surveillance is passive, it is "just" data collection, "just" tracking – and not a physical, lived experience. Professor Weisburd argues that surveillance is increasingly a form of punishment, not a condition of it.

Professor Anita Allen is a luminary, someone who I have long wanted to meet. One of the transformations in our field in the last 15 years is a recognition that surveillance isn't just about data collection, it's also emphatically about *use*. Professor Allen's essay traces how Black Americans face not just *over*surveillance, but also differential use of that data – their data is more likely to be used to exclude them, rather than *in*clude them, and to take advantage of them, rather than benefit them. She presses for a recognition of this in privacy law.

Dr. Pawel Popiel and Laura Schwartz-Henderson's paper reminds us that while there may be roughly 700 million people in the U.S. and the E.U., there is double that number in Africa and South America – and that's not even mentioning the rest of the Global South. They grapple with the challenges facing data protection regulators in Africa and South America where, they contend, the basic notion of what privacy *is* and what it is *for* may differ from our own here in the U.S.

My friends Professor Anupam Chander and Paul Schwartz trace a divergence between international trade and privacy norms and propose a Global Privacy Agreement to address that divergence. The paper has my favorite sentence of all the papers, which is, and I quote: "Privacy is not bananas." This seemingly nonsensical but actually quite profound statement is used to explain that privacy is a fundamental aspect of our personality, and our dignity as humans – not something you buy, sell or trade. And for the record, I believe this was explained in a section entitled, quote: "Of Privacy and Bananas." I miss the academy.

I want to end on the paper from my dear friend and colleague, Commissioner Rebecca Slaughter, who offers us a framework to understand the harms of algorithmic bias. The paper comes with Commissioner Slaughter's trademark modesty for the extraordinary work she has done. Because in the paper, she lays out a vision for using the Commission's Magnusson-Moss authority to protect consumers from algorithmic harms.

Of course, this is only a nod to the fact that we owe the idea for the current commercial surveillance ANPR to Commissioner Slaughter. This is an idea taken up and embraced by Chair Khan and elaborated and worked on by Professor Olivier Sylvain and by the brilliant staff of the Division of Privacy and Identity Protection.

I feel lucky to call them friends and colleagues, and I feel honored to introduce these thinkers and their work to the people assembled here today.

Thank you. I wish I could stay here for the panel, but as a lawyer would say, see supra my comment about my toddlers.

Have a great evening.