

US regulators under scrutiny as they look to punish Facebook

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This Jan. 28, 2015, file photo, shows the Federal Trade Commission building in Washington. Federal privacy regulators are under scrutiny in Congress as they negotiate a record fine with Facebook to punish the company for alleged violations of its users' privacy. (AP Photo/Alex Brandon, File)

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negotiate a record fine with Facebook to punish the company for alleged violations of its users' privacy.

The Federal Trade Commission is considering a rare action holding CEO Mark Zuckerberg personally accountable for Facebook's alleged failure to honor a 2011 agreement over privacy lapses. The agency also may limit how the giant social network targets advertising to its massive user base—potentially making the action far more than a regulatory slap on the wrist.

Beyond a fine expected to run as high as \$5 billion, comprehensive action by the FTC could mark a watershed in federal action against the [tech industry](#) in the name of consumer privacy.

FTC Chairman Joseph Simons and his four fellow commission members are coming before the House Energy and Commerce subcommittee on consumer protection at a hearing Wednesday. Simons, appointed by President Donald Trump in October 2017, is an expert in [antitrust law](#) who headed the FTC's competition division under President George W. Bush.

By usual practice, the FTC—an independent agency—is split 3-2 between Republican and Democratic members. Simons has advocated tougher enforcement action against [tech companies](#), and must obtain the agreement of at least two other commissioners for any action on Facebook.

Lawmakers have started work on a new national privacy law that could sharply curtail the ability of the biggest tech companies to collect and make money off people's [personal data](#). The role of the FTC as an enforcer of privacy protections is a key issue in the debate over legislation. Consumer privacy advocates and Democratic lawmakers, saying the agency lacks teeth, have pushed for changing the law to

expand its powers and funding to police privacy.

The FTC doesn't have the authority, for example, to levy civil money penalties for first violations for most unfair or deceptive practices. It can only issue orders halting the conduct, as it did with Facebook in 2011.

The agency would be expected to write new privacy rules should Congress pass a new law.

Behind the momentum for a new law is rising concern over a string of scandals and the compromise of private data held by Facebook, Google and other tech giants that have reaped riches by aggregating consumer information. The industry has traditionally been lightly regulated and has resisted closer oversight as a threat to its culture of free-wheeling innovation.

Republicans have generally opposed an expansion of federal authority, but in the wake of the Facebook and other privacy scandals, some have taken a more open view toward the FTC's powers and funding. Some [business groups](#) are also proposing an expanded role in privacy protection for the FTC.

The 2011 consent decree with the FTC bound Facebook to a 20-year privacy commitment. Violations could subject the company to fines of \$41,484 per violation per user per day. The agreement requires that Facebook users give "affirmative express consent" any time that data they haven't made public is shared with a third party.

The agency started investigating Facebook's [privacy](#) practices more than a year ago after reports surfaced that the British political consulting firm Cambridge Analytica had improperly accessed the data of as many as 87 million Facebook users without their consent.

Lawmakers of both parties are pressuring the FTC to act decisively against Facebook in light of alleged failure to live up to that commitment.

The agency should quickly complete its investigation and "compel sweeping changes to end the social network's pattern of misuse and abuse of personal data," Republican Sen. Josh Hawley of Missouri and Sen. Richard Blumenthal, a Connecticut Democrat, said in a letter Monday to Simons. Both are members of the Senate Judiciary Committee.

"The Facebook consent-decree violations have been blatant and brazen, an offensive defiance that adds insult to injury," they wrote. They called the \$3 billion to \$5 billion fine anticipated by Facebook "a bargain" for the company that would make the FTC look like "traffic police handing out speeding tickets to companies profiting off breaking the law."

"Fines alone are insufficient," Hawley and Blumenthal said. "Far-reaching reforms must finally hold Facebook accountable to consumers."

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