



Podcast Transcript

2025 DSIR Deeper Dive: FTC Update

Date: September 25, 2025

Guest: Daniel Kaufman, **Host:** Charles May

Run Time: 8:21

For questions and comments contact:



Daniel Kaufman

Partner
Washington, D.C.
T: +1.202.861.1523 | dkaufman@bakerlaw.com

May: On April 15th, 2025, BakerHostetler's Digital Assets and Data Management Practice Group, DADM, released its 11th annual Data Security and Incident Response Report, the DSIR. This one-of-a-kind report provides organizations around the globe with metrics to make data-driven decisions before, during, and after security incidents. I'm Charlie May, and you're listening to BakerHosts.

We're back with a deeper dive series covering key topics in this year's DSIR. On today's episode, we speak with Daniel Kaufman about the changes he is seeing at the FTC under its new leadership and how this impacts privacy law. Daniel is a partner on our Advertising, Marketing, and Digital Media team. He previously spent more than 23 years at the FTC's Bureau of Consumer Protection, including serving as acting director. Welcome to the show, Daniel.

Kaufman: Hey Charlie, thanks for having me. Really glad to join.

May: At a high level, what should we expect from the FTC with respect to privacy in the new administration?

Kaufman: What we're going to see with the new Federal Trade Commission is a continued focus on privacy issues, on concerns about security, and more broadly, a focus on tech companies and what they're doing. What we're not going to see with the new FTC, or not likely to see, is really broad interpretations of the agency's legal authority, particularly under the Federal Trade Commission Act. The new chairman of the FTC does not view the FTC Act as some sort of broad substitute for privacy legislation. The FTC Act covers deception, it covers unfairness, and there are limits to how far that can go. But I do think we will be seeing

enforcement actions, certainly in areas where there are more clear, alleged violations of the FTC Act.

May: Rulemaking was a hallmark of the prior FTC. Where does rulemaking fit into the new FTC?

Kaufman: At a high level, we are definitely not going to see a continuation of the commercial surveillance rulemaking, for example. That was a rulemaking that Chair Khan kicked off, a very broad rulemaking. I'm pretty sure we will not see anything relating to that for the next few years. However, this commission will absolutely exercise their rulemaking authority, certainly in areas where Congress clearly gives the agency that authority. Also, I think it is worth noting they are going to enforce existing rules. And likely that really will include rules that they may not have even agreed with when they were promulgated. And I think it is really notable that the COPPA amendments were published this year. They were voted out under Chair Khan and there were questions as to what the agency was going to do with them. But notably, they were published and they are in the process of becoming effective. A very important thing to note when it comes to rulemaking at the FTC.

May: Daniel, you mentioned COPPA and kids' privacy. What should we expect when it comes to kids and privacy in 2025?

Kaufman: Kids and teens and privacy are a really high priority for this agency. And I'm expecting to see a fair amount of activity focused on keeping kids and teens safe online. And it is really important to emphasize the teen aspect of this. We're not just looking at kids under 13 who are protected by COPPA, but also teens who are, of course, protected, as we all are, by aspects of the Federal Trade Commission Act. So, at a minimum, I'm sure we're going to be seeing some more COPPA enforcement in the near future. But I think it is also worth noting just a broader interest in tech companies and what they're doing.

The agency had a workshop earlier this year focused on what is called the attention economy. And the event really focused on issues such as perceived online addictive design features and raised a lot of questions about the role of parental authority and parental controls and circumstances where kids are exposed to harmful content online. So, the event really highlighted the FTC's continued focus on kids and teens, but it also raised some real questions about how far can the agency's authority go in this area to address some of the really broad issues that we're focused on at that event?

May: Chairman Ferguson recently sent a letter to a dozen technology companies warning them of privacy and data security obligations. What is underlying that letter?

Kaufman: It is a really interesting letter that Chair Ferguson sent a few weeks ago to more than a dozen tech companies. And the letter at its core really highlights some of the tension that exists between the United States law and foreign law, particularly laws such as the EU Digital Services Act and the UK Online Safety Act.

But at its core, the letter is framed as a reminder to these tech companies that the FTC Act requires them to protect American consumers' privacy and data security, even if foreign governments are pushing for increased censorship or weaker encryption. The letter also invites the tech companies to reach out to the chairman, come in for a meeting and talk through these issues. Now the letter is, look, the letter is framed with a lot of FTC precedent for the notion that if a company decides to loosen their data security controls in order to address the concerns of foreign regulators, that can absolutely create risk here in the U.S. for law enforcement. Although to be clear, we haven't really seen cases at the FTC directly addressing that tension that may exist between U.S. laws and foreign laws, but the letter certainly makes it clear that the chairman and the FTC are going to be looking at this issue. And it really does tee up this potential tension that may exist between obligations that the companies have here versus obligations they have abroad that certainly warrants a closer look at companies with these potentially conflicting obligations at times.

May: Daniel, can you tell us a little bit about the Take It Down Act?

Kaufman: Yeah, the Take It Down Act is really quite a big deal. It is a new legislation that was passed several months ago that requires platforms to establish a process to receive notice and take down non-consensual intimate images and deepfakes that may be on the platform. It was actually passed with quite a lot of hoopla, and it becomes effective in May 2026, and particularly important for the FTC because the FTC has enforcement authority under this new statute, and companies that violate this new statute can be subject to potential civil penalties of up to about \$52,000 per violation.

Chairman Ferguson did testify a couple months ago in Congress more broadly about the FTC and certainly highlighted the Take It Down Act as an area where he anticipates devoting substantial resources in order to make sure the FTC has the tools it needs in order to enforce what is a pretty complicated statute, but I think we can anticipate next year a lot of announcements and information from the FTC about companies' obligations under this new law. And I'm sure the agency will be ramping up enforcement to make sure that platforms are complying with the requirements of this statute. So, it is certainly really important that companies that can be in that universe of entities that may potentially be posting or hosting non-consensual intimate images have a process in place that is ready to go.

May: Daniel, thank you so much for joining the show. It is very appreciated.

Kaufman: Hey, Charlie, thanks a lot. Really appreciate you having me here.

May: If you have any questions for Daniel, his contact information is in the show notes. As always, thanks for listening to BakerHosts.

Comments heard on BakerHosts are for informational purposes and should not be construed as legal advice regarding any specific facts or circumstances. Listeners should not act upon the information provided on BakerHosts without

first consulting with a lawyer directly. The opinions expressed on BakerHosts are those of participants appearing in the program and do not necessarily reflect those of the firm. For more information about our practices and experience, please visit bakerlaw.com.