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I. INTRODUCTION AND SUMMARY

We appreciate the opportunity to comment on the Federal Trade Commission's (FTC) advance notice of proposed rulemaking (ANPRM) regarding the Proposed Rule on Impersonation of Government and Businesses.[1] The notice identifies a serious consumer-protection problem. Americans lose billions of dollars to fraud each year, and a leading category is impersonation fraud, "where an imposter pretends to be a real business, government agency, family member, or other trusted source."[2] Many such scams, including those covered by the Impersonation Rule the FTC adopted in 2024,[3] may violate Section 5 of the Federal Trade Commission Act (FTC Act), which prohibits unfair or deceptive acts or practices in or affecting commerce (UDAPs).[4] We support investigations and enforcement actions that target these fraudsters, including those who use "digital marketplace platforms" to carry out their scams.[5]

The commission's question about the "need for new regulations to prevent Platform UDAPs" related to impersonation fraud is, however, premature.[6] Extending liability beyond third-party fraudsters to the operators of tools they use—tools designed and used chiefly to facilitate lawful, productive commerce—would fundamentally redesign the Impersonation Rule. Many approaches to third-party liability could stretch or exceed the commission's authority to issue UDAP rules under Section 18 of the FTC Act. Even within that authority, new requirements could reach much of the digital economy and diminish the benefits it provides to consumers. The FTC's enforcement experience, rulemaking record, and research give it too little basis to design such rules or even

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[1] Rule on Impersonation of Government and Businesses, 91 FED. REG. 62347 (Oct. 1, 2026) [hereinafter ANPRM].

[2] *Id.*

[3] Trade Regulation Rule on Impersonation of Government and Businesses, 89 FED. REG. 15017 (Mar. 1, 2024) (codified at 16 C.F.R. pt. 461).

[4] 15 U.S.C. § 45(a)(1).

[5] ANPRM, 91 FED. REG. at 62348. The ANPRM uses "platforms," "digital marketplace platforms," and longer phrases that describe search engines, social media, and other digital marketplaces as furthering impersonation scams or profiting from optimizing third-party ads while avoiding the costs of the scams that optimization helps facilitate. Footnote 14 comes closest to a general definition: "As used herein, Platforms are public-facing websites or apps on which third parties offer goods, services, or opportunities through paid advertisements or other listings. These Platforms typically integrate ads for third-party products and services into the platform user experience, such as through posts on social media feeds and search engine results, and often embed hyperlinks into the ads for the interested consumer to use to contact the third party. Examples of Platforms include Google.com, Facebook.com, Amazon.com, Apple App Store, and LinkedIn.com." *Id.* at 62348 n.14.

[6] ANPRM, 91 FED. REG. at 62355 (citing 15 U.S.C. § 57a(b)(3)).

estimate the tradeoffs for consumers and competition that new regulations would produce. Those gaps, together with the commission's limited staff resources, weigh against proceeding with rulemaking.

Well-designed, narrowly tailored rules can address persistent market failures that cause substantial consumer harm. As FTC Chairman Andrew Ferguson has observed, "[g]overnment regulation, and more precisely, government regulators, can also pose a formidable threat to an innovative, vibrant, and competitive economy. Even when well intentioned, regulations impose serious costs on economic productivity."[7] Ferguson was addressing *ex ante* competition regulations, but the same concerns apply to consumer-protection rules.[8] The risk of unforeseen harm to innovation and competition may be greater in markets that change as quickly as those the ANPRM addresses.

The commission should pursue regulation only when it is likely to do more good than harm. In a Section 18 rulemaking, that requires accounting for predictable compliance costs and for error costs: harm to consumers and competition produced by false positives (Type 1 errors) and false negatives (Type 2 errors) in determinations of Section 5 liability.[9] The commission must also consider how general rules would apply to diverse and evolving technologies and practices. A poor fit could hinder innovation and competition, harming consumers today and in the future.

In a typical impersonation scam, the product or service on offer is a sham. Curtailing the scam therefore costs consumers little or nothing in lost benefits. A penalty can deter an offense when the expected cost to the offender exceeds the expected gain. For some offenses, economic efficiency alone may offer no clear reason to cap that penalty.[10] There may therefore be little "concern about over-deterrence, provided there is sufficient clarity about the proscribed category of conduct and sufficient certainty (or a mechanism for establishing sufficient certainty) about whether a firm engaged in the proscribed conduct."[11]

But the ANPRM considers regulating products and services that typically benefit consumers by facilitating and subsidizing lawful commerce and the flow of information. Under such a rule, platforms could face statutory penalties when third-party scammers misuse their tools. Before proceeding, the FTC would need to examine how businesses and consumers use digital marketplace platforms in everyday commerce. That analysis would help the commission weigh how much fraud

[7] Andrew N. Ferguson, Chairman, Fed. Trade Comm'n, *Prepared Remarks at the 13th Seoul International Competition Forum* (Sept. 3, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/2025-09-03-Seoul-International-Competition-Forum-Remarks-Final.pdf.

[8] *See, e.g.*, Int'l Ctr. for L. & Econ., *Reforming the FTC: Comments to the House Committee on Energy and Commerce* (Sept. 28, 2026), https://laweconcenter.org/wp-content/uploads/2026/09/ICLE-FTC-Reform-RFI-Response-2026-09-28.pdf; Maureen K. Ohlhausen, *Weigh the Label, Not the Tractor: What Goes on the Scale in an FTC Unfairness Cost-Benefit Analysis?*, 83 GEO. WASH. L. REV. 1999, 2005 (2015) [hereinafter *Weigh the Label, Not the Tractor*]; J. Howard Beales III & Timothy J. Muris, *FTC Consumer Protection at 100: 1970s Redux or Protecting Markets to Protect Consumers?*, 83 GEO. WASH. L. REV. 2157 (2015); J. Howard Beales III, *Advertising to Kids and the FTC: A Regulatory Retrospective That Advises the Present*, 12 GEO. MASON L. REV. 873, 879 (2004) [hereinafter *Advertising to Kids and the FTC*].

[9] Both types of error can arise when the FTC enforces a statutory prohibition, such as Section 5's prohibition of unfair or deceptive acts or practices, or a rule adopted under Section 18. Courts reviewing enforcement actions can make both types of error as well.

[10] *See, e.g.*, Louis Kaplow, *The Optimal Probability and Magnitude of Fines for Acts That Are Definitely Undesirable*, 12 INT'L REV. L. & ECON. 3 (1992).

[11] Daniel J. Gilman & Liad Wagman, *The Law and Economics of Privacy*, 29 UCLA J.L. & TECH. 55, 116 (2024).

a rule could prevent against the benefits consumers might lose if it restricted lawful uses of those platforms and their tools.

A central obstacle to the contemplated Section 18 rulemaking is the commission's limited enforcement experience with the practices it seeks to regulate. The FTC and its staff deserve credit for actively enforcing the Impersonation Rule and bringing substantial consumer-protection cases.[12] Those cases, brought under the existing rule and other authorities, offer little guidance on whether digital marketplace platforms themselves engage in unfair or deceptive acts or practices that cause substantial consumer harm through third-party impersonation fraud. In most of those matters, the alleged fraudsters used other tools, including telemarketing and the U.S. mail, to reach their victims.[13] In one case, the FTC alleged that the defendants called numbers on the National Do Not Call Registry,[14] which the FTC itself operates.[15] None of the complaints alleged that a digital marketplace platform violated Section 5 or even acted negligently. The cases therefore established neither.

Future enforcement actions could fill that gap. We express no view on whether a platform has committed, or could commit, a Section 5 violation that furthers impersonation fraud. Future cases could identify such violations and, over time, help establish their prevalence as required under Section 18(b).[16] That *possibility* notwithstanding, the gap remains, and the commission's substantial experience enforcing existing laws and regulations against impersonation fraud provides too little basis for a fundamentally new Impersonation Rule.

The ANPRM acknowledges that platforms have taken steps to reduce third-party fraud. It asserts that those "voluntary measures are inadequate"[17] and that market outcomes are not "optimal."[18] Those assertions could be correct. But the notice leaves open which practices by platform operators or other firms a new rule would address, how those practices violate Section 5, and how widespread any violations are.

We recognize that an ANPRM is a preliminary step under Section 18. The statute requires the commission to state "with particularity the text of the rule" when it publishes a notice of proposed rulemaking (NPRM).[19] Even at this preliminary stage, however, the FTC lacks a sufficient basis to proceed. Continued investigation and enforcement under the 2024 Impersonation Rule, Section 5,

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[12] *See, e.g.*, Press Release, Fed. Trade Comm'n, *FTC Highlights Efforts to Combat Imposter Scams and Protect Consumers* (Oct. 29, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/10/ftc-highlights-efforts-combat-imposter-scams-protect-consumers (summarizing and linking to eight actions alleging violations of the Impersonation Rule); *see also* Complaint, *FTC v. Blackrock Servs., Inc.*, No. 8:25-cv-00363-HDV-ADS (C.D. Cal. Feb. 24, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/Blackstone-Complaint.pdf; Complaint, *FTC v. Click Profit, LLC*, No. 1:25-cv-20973-JB (S.D. Fla. Mar. 3, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/ClickProfit-20250303-Complaint.pdf; Complaint, *FTC v. Panda Benefit Servs., LLC*, No. 8:24-cv-01386-CAS-RAO (C.D. Cal. June 24, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/panda_prosperity_complaint.pdf; First Amended Complaint, *FTC v. Superior Servicing LLC*, No. 2:24-cv-02163-GMN-MDC (D. Nev. Mar. 26, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/superiorservicing_first_amedneded_complaint.pdf.

[13] *See infra* Section IV.C.

[14] Complaint, *FTC v. NERD Sols. Inc.*, No. 8:26-cv-00885-JVS-JDE (C.D. Cal. Apr. 13, 2026).

[15] *See, e.g.*, Fed. Trade Comm'n, *National Do Not Call Registry*, https://www.donotcall.gov (last visited Nov. 20, 2026).

[16] 15 U.S.C. § 57a(b)(3).

[17] ANPRM, 91 FED. REG. at 62353.

[18] *See id.* at 62351.

[19] 15 U.S.C. § 57a(b)(1)–(2).

and the other statutes and regulations the FTC enforces can combat fraud directly. That work can also develop the law and deepen the commission's experience and expertise.

We appreciate the commission's recognition that regulating platforms to reduce third-party fraud raises difficult questions. Indeed, Section VI of the ANPRM appears to pose well over 100 distinct questions. They range from whether the commission "should commence a rulemaking proceeding to amend the Rule, or to adopt some other measure"[20] to detailed questions about specific provisions and the tradeoffs among alternatives.[21] Many may warrant investigation. But a rulemaking notice serves a different purpose from a request for information, and the questions it poses are too numerous and complex for any single study that might be conducted under Section 6 of the FTC Act. The commission could use that research authority to have its economists and policy staff focus first on the questions most likely to clarify whether a new rule is warranted.

Such policy research and development[22] could build on the news reporting, limited survey evidence, and varied allegations the ANPRM cites as evidence of market failure. It could help the commission bring more effective enforcement actions, inform state and federal policymakers—a proper use of the FTC's Section 6 authority—and help responsible firms identify ways to reduce fraud. It could also help determine whether the commission should expand the Impersonation Rule.[23]

For these reasons, we recommend that the commission decline to pursue the broad revision contemplated in the ANPRM. The notice offers too little rationale for the proposed direction, and the commission's enforcement experience provides too little foundation for new regulation. Continued vigilance and enforcement should benefit consumers and, together with further research, may inform future rulemaking.

We also recommend improving consumer education about impersonation scams and guiding industry efforts to do the same. The FTC can help firms share information and develop voluntary standards in ways that benefit consumers, protect competition, and reduce the risk of violations of Section 5 or the antitrust laws. These measures offer practical, relatively low-cost ways to reduce the harm caused by impersonation scams.

II. THE ANPRM'S MARKET-FAILURE RATIONALE FALLS SHORT

The ANPRM states that various "digital marketplace platforms … profit from optimizing online ads for third parties, regardless of whether the third parties are legitimate, while avoiding the

[20] ANPRM, 91 FED. REG. at 62353.

[21] *Id.* at 62355–56.

[22] In a 2009 report, then-FTC Chairman William E. Kovacic described how the agency develops policy through enforcement, economic studies, policy reports, and workshops. The FTC and its staff also advise state and federal policymakers through testimony, regulatory comments, and correspondence, sometimes working with the Department of Justice's Antitrust Division. William E. Kovacic, Fed. Trade Comm'n, *The Federal Trade Commission at 100: Into Our 2nd Century—The Continuing Pursuit of Better Practices* 91–99 (Jan. 2009), https://www.ftc.gov/sites/default/files/documents/public_statements/federal-trade-commission-100-our-second-century/ftc100rpt.pdf.

[23] *See id.*; *see also, e.g.*, Maureen K. Ohlhausen, *Identifying, Challenging, and Assigning Political Responsibility for State Regulation Restricting Competition*, 2 COMPETITION POL'Y INT'L 151 (2006); Andrew I. Gavil, *The FTC's Study and Advocacy Authority in Its Second Century: A Look Ahead*, 83 GEO. WASH. L. REV. 1902 (2015); Arnold C. Celnicker, *The Federal Trade Commission's Competition and Consumer Advocacy Program*, 33 ST. LOUIS U. L.J. 379 (1989); Daniel J. Gilman, *Advocacy*, in THE SAGE ENCYCLOPEDIA OF POLITICAL BEHAVIOR 8 (Fathali M. Moghaddam ed., 2017).

social cost of the impersonation scams furthered by such ad optimization."[24] On the FTC's account, this is a failure in markets for consumer information.[25] Platforms' incentives diverge from consumers' interests, creating negative externalities, or costs that fall on others.[26] The notice explains:

> [B]ecause many consumers who fall victim to impersonation scams blame the impersonated business or scammer—not the digital platform furthering the impersonation—digital platforms face little to no market discipline to correct the problem and have even less incentive to internalize the cost of scams, leaving the social harm unaddressed.[27]

The commission reasons that regulation could address this market failure by forcing "such platforms to internalize the cost of optimizing fraudulent ads."[28]

That rationale is incomplete and risks overstating the role of platforms. First, digital marketplace platforms and their advertising tools serve a wide range of lawful, productive activities, including advertising, retail sales, and content distribution. Fraudsters exploit these services and may generate some revenue for platforms, chiefly through automated systems. But the vast majority of large platforms' revenue comes from other sources. Second, scammers are the principal beneficiaries of these schemes. The consumer losses the FTC describes estimate what victims paid fraudsters, not revenue to digital marketplace platforms. Third, consumers have good reason to blame scammers for the fraud they perpetrate.

The FTC's own account of imperfect information helps explain why platforms have an incentive to curb fraud. The ANPRM observes that "Information asymmetries … can hinder consumer purchasing decisions that reflect what consumers value. In this way, economic theory explains, markets with imperfect information can harm both consumers and legitimate businesses."[29] These information gaps can lead consumers and businesses to make choices they would otherwise avoid.[30] Firms that offer legitimate products and services therefore have an incentive to close those gaps,[31] though the strength of that incentive varies with the circumstances.[32]

Widespread fraud that consumers associate with a platform can erode trust and reduce demand from shoppers, advertisers, and retailers. Platforms can lose business even when victims correctly blame the scammer or mistakenly blame the impersonated business. The ANPRM offers little basis for concluding that platforms and other intermediaries face "little to no market discipline."

The notice also leaves a gap between its diagnosis and its proposed direction. It states that "misaligned Platform incentives appear to drive the proliferation of impersonation scam ads."[33] It then

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[24] ANPRM, 91 FED. REG. at 62347.

[25] *See generally* Howard Beales, Richard Craswell & Steven C. Salop, *The Efficient Regulation of Consumer Information*, 24 J.L. & ECON. 491 (1981).

[26] ANPRM, 91 FED. REG. at 62347 n.6 (citing R. H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960)).

[27] *Id.*

[28] *Id.* at 62347.

[29] *Id.* at 62351 (citing George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q.J. ECON. 488 (1970)).

[30] *See id.*; *see also* Beales, Craswell & Salop, *supra* note 25.

[31] Beales, Craswell & Salop, *supra* note 25, at 502.

[32] *See id.* at 502–03.

[33] ANPRM, 91 FED. REG. at 62352.

reasons that a "rule could realign those incentives by subjecting Platforms to court-imposed monetary sanctions for their involvement in furthering those ads."[34] Citing a 1981 *Journal of Law & Economics* article by then-FTC economists Howard Beales, Richard Craswell, and Steven C. Salop, the notice asserts that "[s]uch a rule would effectively impose the social costs of Platform-optimized impersonation scams on the Platforms that are likely in the best position to reduce them."[35] No such inference is suggested by the article in question. The article examines information-market failures broadly. The commission still needs evidence that platforms are best positioned to reduce these scams and that monetary sanctions would do so effectively.

Beales, Craswell, and Salop contemplate interventions for market failures that "demonstrably lead to significant consumer injury *and which can be corrected in a cost-effective manner without creating serious distortions or side effects which lead to even greater injury*."[36] Their central concern is that "the law has yet to develop a satisfactory set of principles for determining when the government ought to respond to consumer information problems and how it ought to do so."[37] The article leaves the effectiveness of specific interventions open, and the ANPRM identifies no specific rule to evaluate.

The authors identify a ban on literally false claims as the most straightforward intervention: "Because literally false statements offer no benefits to consumers, there is no reason to allow them."[38] Section 5's prohibition on deception already reaches materially false claims,[39] though enforcing even that prohibition can be complicated.[40] For other remedies, the authors stress the need to weigh costs and benefits.

> In All Other Cases, the Costs and Benefits of the Remedy Are Crucial: The implication of this is that, except where literally false claims are being banned, the merits of any action depend crucially on the balance of costs and benefits of the remedy being considered.[41]

The authors also suggest that disclosures tend to be more efficient than outright bans, in part because authorities can provide or require disclosures tailored to the consumers most often or most seriously misled by material false or misleading information.[42]

The article and the broader literature leave room for other interventions and emphasize the complex tradeoffs they can entail. To estimate the costs and benefits of a Section 18 rule and its enforcement, the commission first needs to specify what the rule would require. At a minimum, the

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[34] *Id.*

[35] *Id.* (citing Beales, Craswell & Salop, *supra* note 25).

[36] Beales, Craswell & Salop, *supra* note 25, at 512 (emphasis added).

[37] *Id.* at 494.

[38] *Id.* at 532.

[39] Fed. Trade Comm'n, *FTC Policy Statement on Deception*, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (1984) [hereinafter FTC Deception Statement].

[40] *See, e.g.*, Beales, Craswell & Salop, *supra* note 25, at 516–21; Concurring Statement of Commissioner Maureen K. Ohlhausen, *In re POM Wonderful*, No. 9344 (F.T.C. Jan. 10, 2013), https://www.ftc.gov/system/files/documents/public_statements/295951/130116pomohlhausenstmt.pdf (discussing how the FTC identifies implied advertising claims and evaluates their substantiation).

[41] Beales, Craswell & Salop, *supra* note 25, at 533.

[42] *Id.* at 534–37.

analysis would need to account for the rule's likely effects on lawful, productive commerce and the consumer benefits that depend on it.

The ANPRM asks about "a range of measures" the commission might consider to address impersonation fraud[43] and invites stakeholders to suggest others.[44] It specifies no proposed rule. The approaches it explores would nevertheless amount to a fundamental redesign of the Impersonation Rule.

Two approaches are apparent. Both go beyond Section 5's existing prohibition of materially false or deceptive advertising claims[45] and the kinds of targeted, relatively low-cost disclosures the FTC can provide through consumer education or require by rule or consent order.

Under the first approach, the commission could impose a broad standard resembling tort liability. A platform could face liability when consumers suffer harm from an impersonation scam that exploits its services. That approach fits poorly with the FTC's authority to issue "rules which define with specificity acts or practices which are unfair or deceptive acts or practices" within the meaning of Section 5(a)(1).[46] Moreover, federal law and state statutory and common law already provide avenues for pursuing claims under standards of this kind.

Under the second approach, the commission could set technical requirements for the design of platforms or their tools. The Food and Drug Administration's current good manufacturing practice requirements for pharmaceutical drugs illustrate how an agency can set technical standards in a specific industry.[47] Such standards can make sense in limited settings, but they pose compliance challenges on firms, and they impose both design and oversight challenges on regulators. They can also hinder entry when smaller firms bear proportionally higher compliance costs than established firms, and they can impede innovation when technologies and methods vary widely or are still evolving. The FTC's limited resources, authority, expertise, and experience weigh against this approach. A rule with only a few basic requirements could impose lower compliance and enforcement costs, but it might prevent fewer scams.

The Commission is correct in suggesting that enforcing Section 18 rules can be more efficient in some respects—at least for the agency—than proceeding case by case under Section 5. Even so, regulatory enforcement and compliance programs require a sustained commitment of scarce staff resources.[48] That investment may nevertheless still fall short of the rule's goals. For example, the

[43] ANPRM, 91 FED. REG. at 62355–57.

[44] *Id.*

[45] 15 U.S.C. § 45(a)(1); *see also* FTC Deception Statement, *supra* note 39.

[46] 15 U.S.C. § 57a(a)(1)(B).

[47] Section 501 of the Federal Food, Drug, and Cosmetic Act treats a drug as adulterated if the methods, facilities, or controls for manufacturing, processing, packing, or holding it fail to meet current good manufacturing practice (CGMP) requirements. 21 U.S.C. § 351(a)(2)(B). The implementing regulations set general requirements in 21 C.F.R. pts. 210–11 (2025) and separate requirements for positron emission tomography (PET) drugs in 21 C.F.R. pt. 212 (2025).

[48] *See, e.g.*, Int'l Ctr. for L. & Econ., *supra* note 8, at 7–9; Daniel J. Gilman, *Fraud, Platforms, and the Art of Getting Ahead of Yourself*, TRUTH ON THE MKT. (Oct. 2, 2026), https://truthonthemarket.com/2026/10/02/fraud-platforms-and-the-art-of-getting-ahead-of-yourself [hereinafter *Fraud, Platforms*]; Daniel J. Gilman, *Some Ups and Downs in the Realm of Consumer Protection*, TRUTH ON THE MKT. (June 13, 2025), https://truthonthemarket.com/2025/06/13/some-ups-and-downs-in-the-realm-of-consumer-protection [hereinafter *Some Ups and Downs*].

FTC's experience with the Contact Lens Rule illustrates how a rule can yield little enforcement of a central requirement.[49]

III. LEGAL LIMITS AND ENFORCEMENT TRADEOFFS

Any rule addressing platforms' role in impersonation scams would have to meet the FTC Act's substantive and procedural requirements, including Section 18's requirements for specificity and evidence of prevalence. A rule could make consumer redress easier to obtain, but case-by-case enforcement gives the FTC more flexibility to address varied conduct, and statutory penalties can diverge widely from actual consumer losses. Section 230 also limits liability for distributing third-party ads through neutral tools.[50] The analysis changes when a platform materially contributes to the deception.

A. Statutory Limits on the FTC's Rulemaking Authority

Section 5 of the FTC Act prohibits "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."[51] Subject to significant statutory exceptions, Section 5 reaches most of the commercial economy.[52] The commission's UDAP authority extends to online platforms and other electronic media, subject to applicable limits. The commission correctly notes that, under Section 18 of the FTC Act, "Congress authorized the Commission to propose a rule defining unfair or deceptive acts or practices with specificity when the Commission 'has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.'"[53]

But the FTC Act also imposes substantive and procedural limits on Section 18 rulemaking in addition to the limits on the commission's enforcement authority and the requirements of the Administrative Procedure Act.[54]

First, Section 18 authorizes the FTC to adopt "rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce" within the meaning of Section 5(a)(1). Rules addressing unfairness must therefore satisfy Section 5(n). Under that provision, the FTC may deem a practice unfair under Section 5 or Section 18 only if it causes or is likely

[49] *See* Gilman, *Fraud, Platforms*, *supra* note 48; Gilman, *Some Ups and Downs*, *supra* note 48; *see also* Contact Lens Rule, 81 Fed. Reg. 88526, 88528–29 (proposed Dec. 7, 2016) (summarizing reports that prescribers still failed to release prescriptions more than a decade after the FTC adopted the rule).

[50] Section III.C draws heavily on Eric Fruits & Ben Sperry, *The FTC's Case of Mistaken Identity: Scammers, Platforms, and Everyone in Between*, Truth on the Mkt. (Nov. 13, 2026), https://truthonthemarket.com/2026/11/13/the-ftcs-case-of-mistaken-identity-scammers-platforms-and-everyone-in-between.

[51] 15 U.S.C. § 45(a)(1).

[52] Section 5(a)(2) of the FTC Act exempts banks, specified savings and loan institutions and federal credit unions, common carriers subject to federal commerce laws, and air carriers and foreign air carriers subject to federal aviation law. It also exempts firms to the extent the Packers and Stockyards Act of 1921 covers them, subject to that act's Section 406(b). 15 U.S.C. § 45(a)(2). Sections 5(a)(3) and (4) set separate conditions for applying the FTC Act to unfair methods of competition and unfair or deceptive acts or practices involving foreign commerce. *Id.* § 45(a)(3)–(4). The McCarran-Ferguson Act limits the FTC Act's application to the business of insurance to the extent state law regulates that business. 15 U.S.C. § 1012(b).

[53] ANPRM, 91 Fed. Reg. at 62355.

[54] 5 U.S.C. §§ 551–559.

to cause substantial consumer injury that consumers cannot reasonably avoid and that countervailing benefits to consumers or competition do not outweigh.[55]

For deception rules, the commission should apply at least the standards in its own deception policy statement. A representation, omission, or practice must be likely to mislead a consumer acting reasonably under the circumstances, and it must be material.[56] While many misrepresentations by impersonation scammers readily meet that test, applying the same test to the platform practices at issue may be considerably harder.

Second, the 1975 Magnuson-Moss amendments that granted the FTC its UDAP rulemaking authority also established procedural safeguards, including an opportunity for an informal hearing and a substantial-evidence standard for judicial review.[57] Congress tightened those safeguards as the commission's rulemaking agenda drew criticism during what J. Howard Beales III and Timothy J. Muris called "the disastrous decade of the 1970s."[58]

As Maureen K. Ohlhausen, a former FTC commissioner and acting chair, observed, "[t]he backlash against this sweeping regulatory agenda was fierce."[59] The *Washington Post* took aim at the FTC's proposed restrictions on television advertising to children in an editorial titled "The FTC as National Nanny."[60] The backlash reached Congress, which withheld funding and forced the agency to shut down briefly.[61]

Congress subsequently amended the FTC Act twice to impose further limits. The FTC Improvements Act of 1980 added procedural and oversight requirements in Sections 18 and 22.[62] The FTC Act Amendments of 1994 added the substantive limits on unfairness in Section 5(n).[63]

Federal courts continue to enforce those requirements. In *Custom Communications*, the 8th U.S. Circuit Court of Appeals vacated the amended negative-option rule because the commission failed to prepare the preliminary regulatory analysis that Section 22 requires when a rule has an estimated annual effect on the national economy of $100 million or more.[64] In *National Automobile Dealers Association*, the 5th U.S. Circuit Court of Appeals vacated the Combating Auto Retail Scams Trade Regulation Rule (CARS Rule) because the commission skipped the advance notice of proposed rulemaking that its own rules of practice required.[65]

The commission retains its Section 18 rulemaking authority, but its experience with past rules, the FTC Act's safeguards, and the recent court decisions all counsel caution as it considers new UDAP rules. Under *Loper Bright Enterprises v. Raimondo*, courts exercise independent judgment in

[55] 15 U.S.C. § 45(n).

[56] FTC Deception Statement, *supra* note 39.

[57] Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. No. 93-637, 88 Stat. 2183 (1975).

[58] Beales & Muris, *supra* note 8.

[59] Ohlhausen, *Weigh the Label, Not the Tractor*, *supra* note 8, at 2005.

[60] Editorial, *The FTC as National Nanny*, WASH. POST, Mar. 1, 1978, at A22.

[61] Ohlhausen, *Weigh the Label, Not the Tractor*, *supra* note 8, at 2005 n.35 (citing Beales, *Advertising to Kids and the FTC*, *supra* note 8, at 879).

[62] Federal Trade Commission Improvements Act of 1980, Pub. L. No. 96-252, 94 Stat. 374 (1980).

[63] Federal Trade Commission Act Amendments of 1994, Pub. L. No. 103-312, 108 Stat. 1691 (1994).

[64] *Custom Commc'ns, Inc. v. FTC*, 142 F.4th 1060, 1070–72, 1074–75 (8th Cir. 2025).

[65] *Nat'l Auto. Dealers Ass'n v. FTC*, 127 F.4th 549 (5th Cir. 2025).

interpreting statutes and deciding whether the commission acted within its authority.[66] They will have to assess the commission's factual findings under the applicable evidentiary standard.

B. Enforcement Tradeoffs and Limits on Monetary Relief

The ANPRM correctly observes that "[e]nforcement actions are time- and resource-intensive" and that the commission can investigate and litigate only "a limited number of impersonation scams at a time."[67] The notice argues that a rule could help the FTC address "substantially more impersonation scams"[68] and give it "a more efficient means to recover money under Section 19 [of the FTC Act] for consumers injured by the prohibited conduct."[69] A Section 18 rule could thus give the FTC a route to consumer redress under Section 19. That route matters because the Supreme Court held in *AMG Capital Management, LLC v. FTC* that Section 13(b) only authorizes injunctions and that the FTC must look to other provisions of the FTC Act for monetary relief.[70]

Case-by-case investigations take time and resources, but they allow the FTC to account for facts and circumstances that a general *ex ante* rule may miss. That flexibility matters when practices have both benefits and costs for consumers and competition. Investigations also help the commission and its staff learn how firms operate. And when a case ends in a cease-and-desist order, that order can stop the conduct and help establish the prevalence that Section 18 requires for rulemaking.[71]

While statutory penalties for rule violations can be tailored to demonstrated consumer losses, in practice they can diverge substantially from those losses in individual cases. The FTC's then-record $5 billion penalty against Facebook in 2019, for example, lacked a demonstrated link to any credible estimate of consumer harm.[72] When penalties bear little relation to the harm firms cause, they provide a poor measure of the costs those firms impose on others.[73] Firms may pass some of those costs on to consumers without addressing the underlying harm. The penalties may also have adverse effects on competition.

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[66] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

[67] ANPRM, 91 Fed. Reg. at 62353.

[68] *Id.*

[69] *Id.*

[70] *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67, 70, 82 (2021).

[71] 15 U.S.C. § 57a(b)(3).

[72] *See, e.g.*, Dissenting Statement of Commissioner Rohit Chopra, *In re Facebook, Inc.*, Comm'n File No. 1823109 (F.T.C. July 24, 2019), https://www.ftc.gov/system/files/documents/public_statements/1536911/chopra_dissenting_statement_on_facebook_7-24-19.pdf; *see also* Daniel J. Gilman, *The New (Mexico) Math: Multiply the Violations and Never Mind the Harm*, Truth on the Mkt. (Oct. 29, 2026), https://truthonthemarket.com/2026/10/29/the-new-mexico-math-multiply-the-violations-and-never-mind-the-harm (discussing the FTC's $5 billion Facebook penalty and later state-law judgments against Meta Platforms, Inc.).

[73] The FTC's $2.5 billion settlement over Amazon's Prime enrollment and cancellation practices included $1.5 billion in consumer redress and a $1 billion civil penalty. Press Release, Fed. Trade Comm'n, *FTC Secures Historic $2.5 Billion Settlement Against Amazon* (Sept. 25, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-secures-historic-25-billion-settlement-against-amazon. Amazon challenged the methodology that FTC expert Neale Mahoney used to estimate consumer harm. *See* Expert Report of Neale Mahoney, *FTC v. Amazon.com, Inc.*, No. 2:23-cv-00932-JHC (W.D. Wash. filed May 29, 2025), ECF No. 336-12; Order Denying Defendants' Motion to Exclude Dr. Neale Mahoney's Testimony, *FTC v. Amazon.com, Inc.*, No. 2:23-cv-00932-JHC (W.D. Wash. Aug. 22, 2025), ECF No. 432. Recent state-law judgments against Meta illustrate how far statutory penalties can diverge from demonstrated consumer harm. *See* Gilman, *The New (Mexico) Math*, *supra* note 72.

We urge the commission to exercise caution when considering rulemaking to expand access to monetary relief. The unanimous decision in *AMG Capital* underscores that Congress placed limits on when the FTC can obtain redress or penalties for an initial violation. Those limits and Section 18's rulemaking safeguards reflect the breadth of the FTC's jurisdiction and Congress's response to the agency's regulatory record. Courts may scrutinize attempts to circumvent those limits, especially after *Loper Bright* reaffirmed their duty to exercise independent judgment about the scope of an agency's statutory authority.[74]

C. Section 230 Limits Platform Liability for Third-Party Ads

Section 230 of the Communications Decency Act generally bars courts from treating an online service—an "interactive computer service"—as the publisher or speaker of content another party provides.[75] That protection can limit the FTC's ability to hold platforms liable for third-party ads. A platform's use of neutral tools, such as recommendation algorithms that place or optimize ads, does not by itself make the platform responsible for the underlying content.[76]

Courts have generally applied that protection to claims over users' posts and advertisers' ads. Whether a platform helped create or develop the unlawful content can, however, change the analysis. The ANPRM relies on two decisions to suggest that ad targeting may fall outside Section 230's protection.

In *Moody v. NetChoice*,[77] the Supreme Court reviewed Florida and Texas laws that restricted how large social media platforms moderate posts. The Court explained that, in constructing certain feeds, "those platforms make choices about what third-party speech to display and how to display it."[78] In choosing what to "include and exclude, organize and prioritize," platforms "produce their own distinctive compilations of expression."[79] The First Amendment protects those editorial choices.

In *Anderson v. TikTok, Inc.,*[80] the 3rd U.S. Circuit Court of Appeals applied *Moody*'s reasoning to Section 230. TikTok's For You Page recommended a "blackout challenge" video to a 10-year-old who died attempting the challenge. The court treated the recommendation as TikTok's own speech and held that Section 230 did not bar the claims based on it.[81]

The 3rd Circuit's reasoning is unpersuasive.[82] Section 230(f) expressly includes "access software providers" in its definition of an "interactive computer service." It defines those providers to

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[74] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

[75] 47 U.S.C. § 230(c)(1).

[76] *Cf. Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1169 (9th Cir. 2008) (en banc) ("[P]roviding *neutral tools* to carry out what may be unlawful or illicit searches does not amount to 'development' for purposes of the immunity exception.").

[77] *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

[78] *Id.* at 716.

[79] *Id.*

[80] *Anderson v. TikTok, Inc.*, 116 F.4th 180 (3d Cir. 2024).

[81] *See id.* at 184 ("Given the Supreme Court's observations that platforms engage in protected first-party speech under the First Amendment when they curate compilations of others' content via their expressive algorithms, it follows that doing so amounts to first-party speech under § 230, too." (citation omitted)).

[82] *See* Ben Sperry, *Between a TikTok and a Hard Place: Products Liability, Section 230, and the First Amendment*, Truth on the Mkt. (Sept. 12, 2024), https://truthonthemarket.com/2024/09/12/between-a-tiktok-and-a-hard-place-products-liability-section-230-and-the-first-amendment.

include firms that supply tools that "filter, screen, allow, or disallow content," "pick, choose, analyze, or digest content," or "transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content."[83] A recommendation algorithm can perform those functions by filtering, selecting, organizing, and displaying content, including ads. When a platform uses an algorithm for those purposes alone, it supplies a neutral tool. The statute ties information-content-provider status to responsibility for creating or developing the content at issue.[84]

As the ANPRM recognizes, courts both before and after *Moody* have generally held that using algorithms to match users with third-party content, including false ads, does not by itself make a platform liable for that content. The FTC should account for those decisions in designing any rule.

In *Force v. Facebook*, victims of Hamas attacks alleged that Facebook's recommendation algorithms helped Hamas reach supporters by suggesting its content to users.[85] The 2nd U.S. Circuit Court of Appeals held that using algorithms to recommend third-party content is a publishing function protected by Section 230.[86] The court described the "essential result of publishing" as creating "matches" among "speakers, content, and viewers of content."[87] Automating those editorial decisions did not diminish Section 230's protection.[88]

Courts have continued to take that approach after *Moody*. In *Doe 1 v. Meta Platforms*,[89] the 9th U.S. Circuit Court of Appeals declined to adopt *Anderson*'s reasoning, explaining that "our case law has taken another tack on whether algorithm design represents platforms' own content."[90] In *Computer & Communications Industry Association v. Paxton*,[91] a panel of the 5th U.S. Circuit Court of Appeals concluded that platforms' editorial choices could receive First Amendment protection while Section 230 still shielded them from liability for third-party content. As the panel put it, "[t]he argument that we must choose between them presents a false choice."[92] The 5th Circuit granted rehearing *en banc* in late October 2026 and vacated the panel opinion.

The FTC may be able to proceed under Section 5 when a platform materially contributes to what makes an ad unlawful—for example, by helping write a false claim. Two decisions from the U.S. District Court for the Northern District of California illustrate the distinction.

In *Bouck v. Meta Platforms*,[93] the plaintiffs alleged that Meta's tools generated images and text for fraudulent investment ads. The court declined to dismiss the surviving claims on Section 230

[83] 47 U.S.C. § 230(f)(2), (4).

[84] *Cf.* 47 U.S.C. § 230(f)(3) (defining "information content provider" as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service").

[85] *Force v. Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019).

[86] *Id.* at 66 ("We disagree with plaintiffs' contention that Facebook's use of algorithms renders it a non-publisher.").

[87] *Id.*

[88] *Id.* at 67.

[89] *Doe 1 v. Meta Platforms, Inc.*, 174 F.4th 1159 (9th Cir. 2026).

[90] *Id.* at 1169.

[91] *Comput. & Commc'ns Indus. Ass'n v. Paxton*, 184 F.4th 420 (5th Cir. 2026), *reh'g en banc granted, opinion vacated*, Nos. 24-50721 & 25-50096 (5th Cir. Oct. 28, 2026).

[92] *Comput. & Commc'ns Indus. Ass'n*, 184 F.4th at 443 (vacated panel opinion).

[93] *Bouck v. Meta Platforms, Inc.*, No. 25-cv-05194-RS, slip op. (N.D. Cal. Mar. 24, 2026), https://www.govinfo.gov/content/pkg/USCOURTS-cand-3_25-cv-05194/pdf/USCOURTS-cand-3_25-cv-05194-0.pdf.

grounds because the allegations raised a factual question about Meta's contribution. In explaining why, the court described a Reuters reporter's experiment with the same tool:

> Plaintiffs aver that the scammers used Meta's Advantage+ Creative tool which, as explained, uses artificial intelligence to enhance whatever message the user inputs… The reporter did not come up with that (patently fraudulent) language; it was all Meta. Because the complaint avers that the scam CLEU ads were created using these tools, it is at least plausible that some of the illegal content (i.e., the fraudulent statements in the ads) was created by Meta, not by the scammers.").[94]

In *Suddeth v. Meta Platforms*,[95] decided the same day as *Bouck*, the court held that Section 230 barred claims seeking to hold Meta liable for using its recommendation software to distribute fraudulent ads created by third parties. The court dismissed the complaint and gave the plaintiffs an opportunity to amend it. It explained that the plaintiffs' "theory of algorithmic amplification is nothing more than an averment of facilitation. The core illegality—the choice to use Plaintiffs' likeness and falsely represent that they endorsed certain investments—was exclusively undertaken by the scammers."[96]

Any FTC rule should preserve Section 230's protection for platforms that provide neutral ad-targeting tools. The commission should focus any liability for deceptive ad content on platforms that materially contribute to creating or developing the deception.

IV. THE SCOPE AND TRADEOFFS OF EXPANDING THE IMPERSONATION RULE

Before expanding the Impersonation Rule, the commission should identify which platforms and practices an amendment would cover, estimate how much harm it could prevent, and account for the benefits consumers derive from lawful uses of those platforms. Overall fraud losses give little indication of how much consumers lose to impersonation scams that use digital marketplace platforms. The FTC's own cases show that scammers reach consumers through many channels and rely primarily on those platforms in relatively few cases. That record supports continued case-by-case enforcement tailored to how each scam operates.

A. The Potential Reach of the Rule and the Consumer Benefits at Stake

The ANPRM leaves open which specific acts or practices the FTC would identify as unfair or deceptive in a proposed rule. The notice does, however, consider extending the Impersonation Rule to "the provision of the means and instrumentalities used in prohibited impersonations."[97] We understand that to mean holding certain platforms liable for third-party impersonation scams that

[94] *Id.* at 6–8. The district court later dismissed the case without prejudice for lack of jurisdiction. *Bouck v. Meta Platforms, Inc.*, No. 25-cv-05194-RS, slip op. at 2 (N.D. Cal. June 11, 2026), ECF No. 83.

[95] *Suddeth v. Meta Platforms, Inc.*, No. 25-cv-08581-RS, 2026 WL 810252 (N.D. Cal. Mar. 24, 2026).

[96] *Id.* at *3.

[97] ANPRM, 91 Fed. Reg. at 62348 & nn.11–12 (discussing the means-and-instrumentalities provisions in the 2022 proposal, 87 Fed. Reg. 62741 (Oct. 17, 2022), and the 2024 supplemental proposal, 89 Fed. Reg. 15072 (Mar. 1, 2024)).

use the platforms' ad-optimization tools. The notice refers to these firms as "platforms" and "digital marketplace platforms." It gives its most detailed description in footnote 14:[98]

> As used herein, Platforms are public-facing websites or apps on which third parties offer goods, services, or opportunities through paid advertisements or other listings. These Platforms typically integrate ads for third-party products and services into the platform user experience, such as through posts on social media feeds and search engine results, and often embed hyperlinks into the ads for the interested consumer to use to contact the third party.[99]

The footnote lists Google.com, Facebook.com, Amazon.com, Apple App Store, and LinkedIn.com as examples.[100] Even that list points to the scale of the commerce at stake. As the ANPRM observes:

> Digital marketplace platforms (''Platforms'') have become essential infrastructure of the U.S. economy. They have achieved near-universal adoption in the United States, serving as a primary gateway through which consumers discover products and services, interact with businesses, and gather information. Indeed, about 85% of U.S. consumers shop online, with e-commerce Platform Amazon.com leading in online retail sales.[101]

The U.S. Census Bureau estimates that retail e-commerce sales totaled $1,233.7 billion in 2025, up 5.4% (±1.2%) from 2024.[102] Sales in the third quarter of 2026 were 10.4% (±0.9%) higher than a year earlier.[103] U.S. digital advertising revenue reached an estimated $189.3 billion in 2021.[104] The scope of any amendment remains open, so it is too early to tell how much of this activity a rule would cover. The figures do, however, give a sense of the markets and consumer interests potentially at stake.

Subject to the statutory limits discussed above,[105] the FTC's description could reach well beyond the platforms it names. Potential examples include:

- Online newspapers run by major news organizations and news aggregators such as Apple News and Yahoo News
- Other online content providers, from Instagram and TikTok to *National Geographic*, *Sports Illustrated*, and *Garden & Gun*
- Retailers such as Walmart, Target, Costco, and CVS
- Grocery and other food delivery services such as Instacart and DoorDash
- Transportation services such as Uber and Lyft

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[98] *Id.* at 62348 n.14.

[99] *Id.*

[100] *Id.*

[101] *Id.* at 62348 (internal citations omitted).

[102] Press Release, U.S. Census Bureau, *Quarterly Retail E-Commerce Sales: 4th Quarter 2025* (Mar. 10, 2026), https://www2.census.gov/retail/releases/historical/ecomm/25q4.pdf.

[103] Press Release, U.S. Census Bureau, No. CB26-183, *Quarterly Retail E-Commerce Sales: 3d Quarter 2026* (Nov. 19, 2026), https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

[104] Clare Y. Cho, Cong. Rsch. Serv., IF11448, *How Consumer Data Affects Competition Through Digital Advertising* fig. 1 (Jan. 26, 2023) (reporting 2021 revenue data from Interactive Advert. Bureau, *Internet Advertising Revenue Report: Full-Year 2021 Results* (Apr. 2022) (prepared by PwC)), https://www.congress.gov/crs_external_products/IF/PDF/IF11448/IF11448.3.pdf.

[105] *See supra* text accompanying note 52.

Third-party advertising is common across these platforms and funds much of the content consumers can access online, often without paying for it. Several studies offer a sense of what consumers stand to lose if a rule reduces access to that content:[106]

- In a large randomized study, Hunt Allcott and his co-authors estimated how much compensation Facebook users would accept to deactivate their accounts for four weeks. The median was $100, and the average was $180. The authors noted that, "[a]ggregated across an estimated 172 million US Facebook users, the mean valuation implies that four weeks of Facebook generates $31 billion in consumer surplus in the US alone." Other measures of how deactivation affected users showed a mix of benefits and costs.[107]
- Jay R. Corrigan and his co-authors ran three auctions in which they paid winners to deactivate their Facebook accounts for periods of up to a year. The samples differed across the experiments, but the estimates consistently suggested that the average user would require more than $1,000 to give up Facebook for a year.[108]
- Erik Brynjolfsson, Avinash Collis, and Felix Eggers used several survey methods to estimate the value of free online services. They found that the median consumer in 2016 valued access to search engines at $14,760 a year. Drawing on earlier research, Leonard Nakamura and his co-authors reported a separate median estimate of $10,937 a year for the rest of the internet. Extrapolating both figures across the U.S. population yielded a rough estimate of $8.3 trillion in consumer surplus.[109]
- In a 2018 Federal Reserve Bank of Philadelphia working paper, Nakamura and his co-authors used production costs to estimate the economic contribution of "free" content. They estimated that accounting for this content would add $294 billion to measured U.S. gross domestic product in 2015.[110]

The commission should account for any loss of these consumer benefits when evaluating a rule. The variety of platforms, advertising practices, and technologies makes it harder to tailor a general rule to the conduct at issue, assess tradeoffs for competition and consumer welfare, and resolve the legal and constitutional questions discussed above.

B. Measuring the Losses a Rule Could Address

Consumers lose tens of billions of dollars to fraud, and impersonation scams offer no offsetting benefits to competition. The commission can already pursue many of these scams under the FTC Act, the existing Impersonation Rule, and other statutes and regulations. Even at this early stage

[106] The bullet points draw on Gilman & Wagman, *supra* note 11, at 94–95.

[107] Hunt Allcott *et al.*, *The Welfare Effects of Social Media*, 110 Am. Econ. Rev. 629 (2020), https://doi.org/10.1257/aer.20190658.

[108] Jay R. Corrigan *et al.*, *How Much Is Social Media Worth? Estimating the Value of Facebook by Paying Users to Stop Using It*, 13 PLOS ONE e0207101 (2018), https://doi.org/10.1371/journal.pone.0207101.

[109] Leonard Nakamura *et al.*, *"Free" Internet Content: Web 1.0, Web 2.0, and the Sources of Economic Growth* 19 (Fed. Rsrv. Bank of Phila., Working Paper No. 18-17, May 18, 2018) (reporting the estimate for the rest of the internet and extrapolating both estimates across the U.S. population), https://doi.org/10.21799/frbp.wp.2018.17. *See also* Erik Brynjolfsson *et al.*, *Using Massive Online Choice Experiments to Measure Changes in Well-Being*, 116 Proc. Nat'l. Acad. Sci. U.S.A. 7250, 7252 tbl. 1 (2019) (reporting the search-engine estimate).

[110] Nakamura *et al.*, *supra* note 109, at 18.

of a Section 18 rulemaking, the commission should identify which scams an amendment could help prevent and estimate the losses they cause.

The ANPRM states that consumers reported losing approximately $16 billion to fraud in 2025, up 25% from 2024.[111] Citing its annual *Protecting Older Consumers* report, the commission estimates that total fraud losses in 2024 could have reached $195.9 billion after accounting for underreporting.[112] The report cautions that its estimates are "highly sensitive to assumptions about reporting rates for high-dollar loss frauds" because those cases account for most losses reported to Consumer Sentinel, the FTC's consumer reporting network.[113] The report also gives a conservative estimate of $31.3 billion in total fraud losses in 2024, including $10.1 billion among older adults.[114]

The figures narrow considerably when the ANPRM turns to impersonation. In 2025, the FTC received more than 1 million impersonation reports, with consumers reporting nearly $3.5 billion in losses. That figure covers all types of impersonation, including scams that impersonate family members or other trusted people. The ANPRM puts annual consumer losses from online impersonation scams in the hundreds of millions of dollars.[115] Those losses are substantial, and many of the scams may already be actionable under Section 5, the Impersonation Rule, or other federal and state laws and regulations. They are also far below the headline estimates for fraud overall.

The commission should consider the full range of estimated losses and the limitations of Sentinel data when assessing the case for a rule. The broad fraud estimates cover much more than impersonation, and the online impersonation estimate does not isolate scams that use digital marketplace platforms. A more targeted estimate—how much harm those scams cause and how much an amendment could prevent—would help the commission evaluate a rule and decide where to devote its limited enforcement resources.

C. What the FTC's Cases Show About How Scammers Reach Consumers

The FTC's enforcement experience under the Impersonation Rule helps distinguish among fraud generally, impersonation scams, and the subset of impersonation scams that use digital marketplace platforms. Even when a scammer uses a platform, a separate question remains whether the platform itself engaged in an unfair or deceptive act or practice. In the dozen enforcement matters we reviewed, relatively few complaints identified these platforms as the primary means by which scammers found and contacted victims.

[111] ANPRM, 91 Fed. Reg. at 62347.

[112] *Id.*

[113] Fed. Trade Comm'n, *Protecting Older Consumers 2024–2025: A Report of the Federal Trade Commission* 30 (Dec. 1, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/P144400-OlderAdultsReportDec2025.pdf.

[114] *Id.*

[115] ANPRM, 91 Fed. Reg. at 62347, 62351.

In five matters—*Innovative Partners*,[116] *Global Circulation*,[117] *Accelerated Debt Settlement*,[118] *Nerd Solutions*,[119] and *Panda Benefit Services*[120]— the FTC alleged that scammers made contact by phone. In *Innovative Partners*, the defendants allegedly called consumers directly. In *Panda Benefit Services*, mailers prompted consumers to call and speak with a telemarketer. The FTC also alleged that the defendants in *Blackrock*,[121] *American Tax Service*,[122] and *Superior Servicing*[123] reached consumers through letters or mailers. In *Nerd Solutions*, the FTC alleged that the defendants or their agents called numbers on the National Do Not Call Registry.[124]

In *MediaAlpha*, the FTC alleged that the defendants ran dozens of their own websites that suggested a government affiliation and offered low-cost health coverage to collect consumers' personal information.[125] According to the complaint, the defendants auctioned that information to telemarketers and other lead generators, who used it to sell bogus health coverage. The defendants also allegedly promoted the products through robocalls.[126]

Some complaints do describe practices closer to those the ANPRM contemplates. In several matters, the FTC alleged that scammers used search keywords or ads on services such as Google Search and Google Ads as a primary way to reach consumers or as one of several channels.[127] Taken together, the cases brought in the relatively short time the rule has been in effect show how widely scammers' methods vary. Many of those methods fall outside the conduct the ANPRM is considering, and none of the complaints reviewed identifies an unfair or deceptive practice by a legitimate digital marketplace platform. The cases therefore offer little guidance on which platforms or practices a rule on the provision of "means and instrumentalities" should cover. They support continued case-by-case enforcement that can account for how each scam operates.

V. EDUCATION AND VOLUNTARY INDUSTRY EFFORTS

The ANPRM asks whether the commission should consider further consumer and business education as an alternative to regulation.[128] The commission should expand both efforts. Education can

[116] Complaint, *FTC v. Innovative Partners, LP*, No. 0:26-cv-60976 (S.D. Fla. Apr. 7, 2026).

[117] First Amended Complaint, *FTC v. Glob. Circulation, Inc.*, No. 1:24-cv-04927-TRJ (N.D. Ga. Apr. 30, 2025).

[118] Complaint, *FTC v. Accelerated Debt Settlement Inc.*, No. 2:25-cv-02443-SMB (D. Ariz. July 14, 2025).

[119] Complaint, *FTC v. NERD Sols. Inc.*, *supra* note 14.

[120] Complaint, *FTC v. Panda Benefit Servs., LLC*, *supra* note 12.

[121] Complaint, *FTC v. Blackrock Servs., Inc.*, *supra* note 12.

[122] Complaint, *FTC v. Am. Tax Serv. LLC*, No. 2:25-cv-01894-GMN-EJY (D. Nev. Oct. 6, 2025).

[123] First Amended Complaint, *FTC v. Superior Servicing LLC*, *supra* note 12.

[124] Complaint, *FTC v. NERD Sols. Inc.*, *supra* note 14, at 8. The complaint also alleges that the defendants called numbers on the National Do Not Call Registry without paying the annual access fee required by § 310.8(c) of the Telemarketing Sales Rule. *Id.* ¶ 18.

[125] Complaint, *FTC v. MediaAlpha, Inc.*, No. 2:25-cv-07263 (C.D. Cal. Aug. 6, 2025).

[126] *Id.* at 2–3.

[127] *See* Complaint, *FTC v. Click Profit, LLC*, *supra* note 12, ¶ 27 (alleging that the defendants used deceptive ads on search engines, social media, and third-party sites such as BizBuySell.com to draw consumers to their own websites); Complaint, *FTC v. Credit Glory LLC*, No. 2:26-cv-05387-SPL, ¶¶ 31, 34–38, 48–50 (D. Ariz. Aug. 3, 2026) (alleging that the defendants used Google Ads to divert consumers looking for debt collectors and made deceptive credit-repair claims on several websites).

[128] ANPRM, 91 FED. REG. at 62355.

help prevent scams now, inform any future rulemaking, and complement any rule the commission adopts.

Better-resourced consumer education could help people recognize and avoid impersonation scams. That matters under Section 5(n) of the FTC Act, which bars the commission from treating an act or practice as unfair under Sections 5 or 18 "unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoided by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."[129] The commission identifies information asymmetries—gaps between what sellers and consumers know—as a market failure that may justify intervention.[130] Targeted education can narrow those gaps by reaching consumers most susceptible to impersonation scams.[131] The FTC already publishes consumer advice on its website[132] and posts warnings on LinkedIn[133] and X.[134] Those materials can help, though their reach and effectiveness may be limited. The commission should invest in expanding and improving these efforts, which can protect consumers and benefit competition at relatively low cost.

The commission can also build on voluntary industry efforts. The ANPRM notes that platforms have adopted measures to reduce fraudulent ads.[135] A fuller account of what these measures achieve and what they cost would help the commission assess its options. The notice suggests building on existing practices through rulemaking to limit unnecessary compliance costs.[136] The commission can also support efforts by individual firms and voluntary collaborations such as the Tech Against Scams Coalition.[137] Industry guidance, staff review letters, and ongoing dialogue could help these initiatives complement enforcement while reducing the risk of anticompetitive information sharing or standard setting. Voluntary collaboration can draw on industry expertise, accommodate differences among platforms, and adapt as technology and markets change. Meanwhile, the commission can still bring enforcement actions when needed.

VI. CONCLUSION

We recommend that the commission decline to pursue the redesign of the Impersonation Rule contemplated in the ANPRM. Impersonation scams cause substantial consumer harm, and many already violate Section 5 of the FTC Act or the 2024 Impersonation Rule. The commission should continue to enforce both. Its cases show that scammers reach consumers through many channels, which supports case-by-case enforcement tailored to how each scam operates.

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[129] 15 U.S.C. § 45(n).

[130] ANPRM, 91 FED. REG. at 62351.

[131] Beales, Craswell & Salop, *supra* note 25.

[132] *See, e.g.*, Fed. Trade Comm'n, *The Latest in Consumer Advice*, https://consumer.ftc.gov (last visited Nov. 20, 2026).

[133] *See, e.g.*, Fed. Trade Comm'n, *Did Someone Claiming To Be an FTC Agent Tell You To Move Your Money To Protect It? Don't. That's a Scam.*, LINKEDIN (July 17, 2026), https://www.linkedin.com/posts/federal-trade-commission_stopgovimposters-activity-7483976102017798144-uzzK.

[134] *See, e.g.*, Fed. Trade Comm'n (@FTC), *Three New Tactics Scammers Use To Go After VA Benefits*, X (Nov. 16, 2026), https://x.com/FTC/status/2122351700119785822.

[135] ANPRM, 91 FED. REG. at 62353.

[136] *Id.*

[137] *Tech Against Scams Coalition*, https://www.techagainstscams.io (last visited Nov. 18, 2026).

Any rule extending liability to digital marketplace platforms would need to identify specific unfair or deceptive practices within the commission's Section 18 authority and account for Section 230's protections for publishing third-party content. The commission would also need evidence of how much fraud an amendment could prevent and what consumers and businesses might lose if it restricted lawful uses of those platforms. The current record gives the commission too little basis to make those judgments. Data and systematic research submitted in response to the ANPRM can inform enforcement and help the commission identify questions for focused study under Section 6 of the FTC Act.

In the meantime, the commission should expand consumer and business education, provide guidance to industry, and support voluntary efforts to combat impersonation fraud. These steps are not magic bullets, and we do not suggest that they will eliminate impersonation scams. They are, however, tractable and relatively low-cost interventions that can help reduce consumer harm, complement ongoing enforcement, and preserve the benefits that digital marketplace platforms provide to consumers and competition.