

April 30, 2024

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue Northwest  
Mail Stop H-144 (Annex I)  
Washington, District of Columbia 20580

**RE: Comments of ACT | The App Association on the Federal Trade Commission’s Supplemental Notice of Proposed Rulemaking, Trade Regulation Rule on Impersonation of Government and Businesses [Docket No. 2024-03793; 89 FR 15072]**

ACT | The App Association (App Association) hereby provides comments to the Federal Trade Commission (FTC) on its proposal to amend the Rule on Impersonation of Government and Businesses (Rule) to revise the title of the Rule, add a prohibition on the impersonation of individuals, and extend liability for violations of the Rule to parties who provide goods and services with knowledge or reason to know that those goods or services will be used in impersonations of the kind that are themselves unlawful under the Rule.<sup>1</sup>

The App Association is a global policy trade association for the small business technology developer community. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology. The value of the ecosystem the App Association represents—which we call the app economy—is approximately \$1.8 trillion and is responsible for 6.1 million American jobs, while serving as a key driver of the \$8 trillion internet of things (IoT) revolution.<sup>2</sup> The App Association broadly supports FTC efforts to address impersonation of government officials or agencies as well as businesses. Across the digital economy, App Association members depend on building and maintaining end user trust to grow and compete.

The App Association’s comments are focused on the FTC’s proposal to broaden liability under the Rule to those providing goods and services with “knowledge or reason to know” that the good or service is being used unlawfully by an impersonator. We note that “reason to know,” without clarification, poses significant and infeasible burdens on App Association members to monitor uses and to differentiate between harmful uses and protected uses (e.g., expressive works that are constitutionally protected). The App Association therefore urges FTC to provide needed clarity to this definition by stating that parties *designing* goods and services intended to be used for unlawful impersonation clearly fall under this expanded approach, and to remove “or reason to know” from its proposed § 461.5. Should FTC nonetheless retain “or reason to know” in § 461.5, we request that FTC align with the Small Business Administration’s definition of

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<sup>1</sup> 89 FR 15072.

<sup>2</sup> ACT | The App Association, State of the App Economy (2022), <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL.pdf>.

“know or have reason to know” in addressing false statements and claims,<sup>3</sup> which would clarify that liability under the “Means and Instrumentalities Amendment” is extended to parties providing goods and services who (i) have actual knowledge that a good or service is being used to unlawfully by an impersonator; (ii) acts in deliberate ignorance of the truth that a good or service is being used to unlawfully by an impersonator; or (iii) acts in reckless disregard of the truth good or service is being used to unlawfully by an impersonator.

Further, in considering whether a party should face liability for a good or service being used to unlawfully by an impersonator, FTC should fully consider the efforts of the party to develop and operationalize policies to stop unlawful impersonations, including by adopting leading cybersecurity risk management best practices and standards (e.g., the National Institute of Standards and Technology’s Cybersecurity Framework<sup>4</sup> and the international standards referenced in it). We therefore urge FTC to state in its final rule that its “Means and Instrumentalities Amendment” to the Rule is not intended to place liability on parties acting in good faith. Consistent with the App Association’s proposed approach, the cases cited by the FTC in its supplemental proposed rule all include actors who actively participated in a fraud.

Finally, the App Association requests that FTC revisit its regulatory analysis in this matter before proceeding. Presently, FTC does not include substantiation for its claim that the benefits of its regulatory changes will outweigh its costs. Even with the changes requested above, the FTC’s new regulations are likely to give rise to substantial surveillance costs for App Association members.

The App Association appreciates the opportunity to provide comments to FTC on its proposed rule changes and welcomes the opportunity to engage further to support FTC’s mission.

Sincerely,



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<sup>3</sup> 13 C.F.R. § 142.6.

<sup>4</sup> <https://www.nist.gov/cyberframework>.