FTC Proposes Rule Addressing Use of AI To Impersonate Individuals
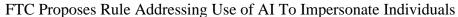

The Federal Trade Commission (FTC) issued a supplemental notice of proposed rulemaking (SNPRM) on February 15, 2024, in which it recommended a trade regulation rule that would (1) impose liability on businesses who provide goods or services (including artificial intelligence (AI) technology) with knowledge or reason to know they will be used to engage in unlawful impersonation of individuals, government, or businesses; and (2) prohibit impersonation of individuals. If adopted, these prohibitions would expand a new trade regulation rule prohibiting the impersonation of government and businesses (16 C.F.R. §§ 461.1 - 461.3) which was finalized on February 15, 2024 (Impersonation Rule).

In her statement, FTC Chair Lina Khan, who was joined by both of the other current commissioners, emphasized the role of generative AI technology in facilitating impersonation schemes. The statement highlighted that the proposed amendments would apply liability to AI developers who "knew or should have known" that scammers would use their AI software tools to deceive consumers, in order to "help align responsibility with capability and control" by "[e]nsur[ing] that the upstream actors best positioned to halt unlawful use of their tools are not shielded from liability."

SNPRM To Prohibit Impersonating Individuals and Potential Platform Liability

The SNPRM proposes two amendments to the new Impersonation Rule: (1) expanding the rule to prohibit impersonating an individual, defined as "a person, entity, or party, whether real or fictitious, other than those that constitute a business or government," and (2) expanding liability to reach businesses who aid or facilitate violations of the Impersonation Rule by providing goods or services to a party "with knowledge or reason to know that those goods or services will be used to" violate the Impersonation Rule. Notable issues raised by the SNPRM include:

- The Commission expressly invites comments on the proposed prohibition against providing goods or services "with knowledge or reason to know" they will be used to harm consumers through unlawful impersonation. The [press release](#) announcing the SNPRM identifies "an AI platform that creates images, video, or text," as an example of a business to which the new rule could apply, if all the elements were met. Precisely what information constitutes a sufficient "reason to know" that an AI platform or tool will be used to commit unlawful impersonation is not addressed in the SNPRM.
- Chair Khan's [statement](#) suggests that generative AI technology products (including AI chatbots and voice cloning tools) are a motivation for the rule because, the statement explains, such technology risks "turbocharging" scammers' ability to engage in impersonation fraud schemes and "enabl[ing] more sophisticated and innovative forms of fraud." The statement also highlights the role of AI developers in particular in "halt[ing] unlawful use of their tools."

The FTC will accept comments from the public on the SNPRM for 60 days after its publication in the *Federal Register* (which is likely to occur in the coming weeks).

Final Trade Regulation Rule on Impersonation of Government and Businesses

The Impersonation Rule, which will become effective 30 days after its publication in the *Federal Register*, provides that it is "an unfair or deceptive act or practice" to (1) "materially and falsely pose as" a government entity, government officer, business, or business officer "directly or by implication"; or (2) "materially misrepresent...affiliation with, including endorsement or sponsorship by" a government entity, government officer, business, or business officer "directly or by implication." Noteworthy aspects of the new final rule include:

- This is the first fully new trade regulation rule prohibiting an unfair or deceptive practice under Section 18 of the FTC Act (Magnuson-Moss) to be finalized since 1980. The rule codifies the FTC's longstanding view that impersonation fraud violates Section 5 of the FTC Act.
- The FTC can seek both restitution and civil penalties for violations of Magnuson-Moss rules. *See* 15 U.S.C. §§ 57b(b); 45(m)(1)(A). This authority is particularly important to the FTC following *AMG Cap. Mgmt., LLC v. FTC*, in which the U.S. Supreme Court [held](#) that the FTC cannot obtain equitable monetary relief under Section 13(b) of the FTC Act for violations of Section 5 of the FTC Act.
- The FTC declined to include in the final rule a provision that would prohibit providing the means or instrumentalities for government or business impersonation pending further analysis, including through the SNPRM discussed above.

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