“So look. I mean, you know, the FTC is this remarkable agency, but we are small. We’re around 1,200 people. We’re smaller today than we were at various points in the 1970s, even as the economy has continued to expand significantly.”1 Lina Kahn, Chair of the Federal Trade Commission (“FTC”), is under no illusions about the mismatch between the FTC’s mandate and its resources. She might have continued her remarks by noting that the FTC’s budget for 2023 was $430 million,2 making it one of the least resourced of all federal agencies.3 The Department of Justice’s budget is one hundred times larger; even the Small Business Administration’s budget is three times larger.4

Since the FTC is the only federal agency protecting consumer privacy, Chair Kahn’s observation is the starting premise of this symposium on privacy law and technology. It gets worse. Privacy is just one sliver at the periphery of the FTC’s responsibilities. The agency must divide its resources between two major mandates: preventing unfair competition and protecting consumers.5 Though the scope of the consumer protection mandate can be summed up in just six words — “unfair or deceptive acts or practices”6 — it is a gargantuan task. In 2021 alone, the FTC received more than 3.3 million complaints through its Consumer Sentinel Network.7 If every member of the FTC’s staff (including Chair Kahn herself) dedicated every workday solely to reviewing complaints, they would each be responsible for a steady pace of about 1.3 an hour.

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4. Id.
By the FTC’s own reckoning, the consumer protection mandate covers a varied terrain. In its 2023 Congressional Budget Justification, the agency lists forty-four consumer protection initiatives, from student loans to robocalls, from the right to repair to hidden fees. Four of the forty-four initiatives relate specifically to data privacy: one for children, one for consumers, and one for social media, as well as an annual research conference. To sum up the enforcement side of the data privacy ledger, the FTC is a small agency with a small budget for whom data privacy represents a small slice of its strategic playbook.

On the other side of the ledger is the vast expanse of the U.S. consumer economy and many of the world’s largest companies. Chair Kahn continued her remarks above: “We are also outgunned oftentimes. You know, at base, when the FTC it’s [sic] doing its job, . . . that’s pitting the agency against some of the most powerful and well-resourced companies in our entire economy.”

Google’s advertising revenue alone — which is fueled by consumer data — exceeds the FTC’s entire budget by 520 times. Despite tech companies’ enormous size, their data collection, processing, and transfer are largely hidden from view, operating behind the scenes and under encryption. Rather than looking for a privacy violation needle in a consumer data haystack, it is more like the FTC lost its contact lens in a hayfield.

For the Harvard JOLT-Utah IBL Symposium: Beyond the FTC, two dozen of the world’s leading privacy scholars met at Harvard Law School in Spring 2023 to address the resource gulf between the FTC and the massive data ecosystem it polices. The symposium gathered computer scientists and lawyers in the same room, fostering the kind of cross-disciplinary exchange from which any meaningful privacy protection must emerge. While most prior privacy research has addressed the substance of consumer data rights and the technologies that

8. FED. TRADE COMM’N, STRATEGIC PLAN FOR FISCAL YEARS 2022-2026, at 5 [https://perma.cc/X6Q3-ZHP4] (“The FTC has jurisdiction over a wide range of consumer protection issues.”).

9. FISCAL YEAR 2023 CONGRESSIONAL BUDGET JUSTIFICATION, supra note 7, at 17–30 (listing the following initiatives: “Children’s Online Privacy Protection Act,” “Consumer Privacy,” “Privacy Conference,” and “Orders to Social Media and Video Streaming Companies”).

10. Id. at 23–25.


12. Tiago Bianchi, Advertising Revenue of Google from 2001 to 2022, STATISTA (Sept. 20, 2023), [https://perma.cc/Q95H-EJDM].

13. Abbas Razaghpanah, Rishab Nithyanand, Narseo Vallina-Rodriguez, Srikanth Sundaresan, Mark Allman, Christian Kreibich et al., Apps, Trackers, Privacy, and Regulators: A Global Study of the Mobile Tracking Ecosystem, NETWORK & DISTRIBUTED SYM. SYMPOSIUM, 2018, Feb. 2018, at 1, 12 (“Due to the opacity of the tracking ecosystem, it is difficult to uncover and track how organizations collect personal data from end users, and how they store and share it with each other.”).
undermine them, symposiasts surfaced privacy enforcement as a distinct concern. Their task was to propose a range of enforcement strategies, devices, and resources to supplement and support the FTC’s privacy work.

Just one symposiast, Alicia Solow-Niederman, was optimistic about the present state of the FTC’s power. The remaining contributions cluster around three agents of change. Several contributors identified underutilized potential for consumer action. Stacy-Ann Elvy, for example, argued that the implied warranty of merchantability in the Uniform Commercial Code can help consumers resist surveillance in the internet-of-things ecosystem. Ignacio Cofone showed how courts can pave a path for privacy class actions by recognizing commonalities among several types of privacy losses. James Cooper and Kirsten Martin both believed market forces can discipline privacy violators, but only if the FTC holds firms to their public privacy commitments and antitrust enforcers promote healthy competition between platforms, respectively.

A second group of symposiasts was more skeptical about the existing legal landscape and advocated for legislative or regulatory intervention. Christo Wilson proposed mandating new technological standards to address difficulties enforcers have monitoring digital advertisements. Neil Richards, Woodrow Hartzog, and Jordan Francis advocated for legislation that would allow suits against firms that use data in a disloyal manner. Helen Nissenbaum, Katherine Strandburg, and Salomé Viljoen offered a contextually sensitive approach to privacy that would close the gaps firms have exploited in recent years to dodge enforcement. Brett Frischmann and Paul Ohm recommended a new regulatory framework requiring firms to create “governance seams” that could serve as leverage points for enforcers. Serge Egelman advanced a framework that would shift liability to the hubs of the

data ecosystem — platforms and data brokers — thereby allowing the FTC to pursue a more focused enforcement strategy.22

A final group of symposiasts saw the computer science research community as a ready and waiting partner in protecting consumer privacy. Nataliia Bielova, Cristiana Santos, and Colin M. Gray offered a case study on consent banners and showed how regulators who are not in conversation with researchers can devise misguided rules.23 In line with the interdisciplinarity of their author team, David Choffnes, Woodrow Hartzog, Scott Jordan, Athina Markopoulou, and Zubair Shafiq described the many promises of long-term collaboration between researchers and enforcers.24 We, along with Maaz Bin Musa and Lucas Ausberger, uncovered a major obstacle to that collaboration — the capricious landscape of privacy policy language that evades systematic audit — and proposed a regime of uniform privacy disclosures.25

The capstone of the symposium were keynote addresses from three leaders in privacy policy. From the nonprofit world, Cindy Cohn, Executive Director of the Electronic Frontier Foundation, noted that none of the symposiasts’ proposals are mutually exclusive.26 Privacy violations vary widely, and so must the sources of enforcement. From the FTC itself, Sam Levine, Director of the Bureau of Consumer Protection, reviewed some of the outstanding work the FTC has done to protect consumer privacy and expressed optimism about its future path.27 “[R]ather than looking beyond the FTC, those who care about privacy should be working with the FTC to make our work better and more impactful.”28 From the U.S. legislature, Massachusetts Congresswoman Lori Trahan laid out the desperate need for new federal privacy statutes that protect sensitive data.29 Transcriptions of all three

28. Id. at 1.
keynotes have been published online in the Harvard Journal of Law and Technology Digest.

*Beyond the FTC* was a collaborative effort. We are fortunate to have worked with exceptional partners from start to finish. The University of Iowa’s Innovation, Business, and Law Center provided generous funding. Leslie Gannon, the Center’s Administrator, held the far-flung logistics of the symposium together with patience and calm that defy understanding. Fabulously competent editors from not one but two *JOLT* Mastheads brought the symposium to life. Aris Hadjipanteli and Anne Kim took an early gamble on restarting *JOLT*’s symposium series with *Beyond the FTC*. Andy Gu and Katie Gu executed a seamless program on symposium day, rolling gracefully with all the inevitable hiccups that accompany an undertaking this size. Dina Rabinovitz tirelessly coordinated the massive effort of editing a volume with thirteen essays (unprecedented in *JOLT*’s history). A team of University of Iowa law students dedicated their keen eyes and research chops to help ensure a high-quality symposium volume. JP Beaty, Collin Beavan, Miranda Dam, Jessica Davis, Matt Richards, Jacob Schiller, and Max Warshawsky, thank you for your superb summer work. Last, and far from least, we owe a debt of gratitude to four moderators who expertly guided our in-person panel discussions: Joe Calandrino, Susan McGregor, Olivier Sylvain, and Jonathan Zittrain.