SmartSuite

Framework / Privacy / Global Privacy Regulations

FTC Act (15 U.S.C. §45 — Section 5)

Section 5 of the FTC Act (15 U.S.C. 45) bars unfair or deceptive acts or practices and is the Federal Trade Commission's main authority for data security and privacy enforcement.



What it is

Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is the U.S. federal law that declares unfair or deceptive acts or practices in or affecting commerce unlawful and lets the Federal Trade Commission stop them. It is the FTC's main tool for data security and privacy enforcement and reaches almost every company doing business in the United States, since Congress enacted the Act on September 26, 1914 and added the words unfair or deceptive acts or practices through the Wheeler-Lea amendment of March 21, 1938.

Congress is the publisher and the FTC the enforcer. Section 5(a)(2) gives the Commission power over persons, partnerships and corporations except banks, savings and loan institutions, federal credit unions, common carriers subject to the Acts to regulate commerce, air carriers and persons subject to the Packers and Stockyards Act, whose own regulators handle them.

At a glance

PUBLISHER United States Congress (enacted); enforced by the Federal Trade Commission (FTC)	TYPE Regulation	VERSION 15 U.S.C. 45 (Section 5), as amended; unfairness standard in Section 5(n) added 1994
EFFECTIVE September 26, 1914 (enacted); unfair or deceptive acts or practices added March 21, 1938	DOMAIN Privacy	FAMILY Global Privacy Regulations
REGION United States	ADOPTION MODEL Regulatory Compliance	IMPLEMENTATION COMPLEXITY Medium

Source: govinfo.gov/app/details/USCODE-2024-title15/USCODE-2024-title15-chap2-subchapI-sec45

Why it matters

- **One statute, almost every company** Section 5(a)(2) covers persons, partnerships and corporations in or affecting commerce, with the exclusions listed in the statute handled by other regulators.
- **A clear deception standard** A statement about security or privacy that is material and likely to mislead a reasonable consumer is deceptive, whether it appears in a privacy policy, an ad or a seal.
- **A statutory unfairness test** Section 5(n) requires substantial injury that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits; public policy may be evidence but not the primary basis.
- **Enforceable orders** A consent order binds the company for its term, and each violation of a final order can draw the Section 5(l) civil penalty, adjusted for inflation each year in 16 CFR 1.98.

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How SmartSuite supports FTC Act (Section 5)

Public Claims Register

Record each privacy policy statement, marketing claim and seal with the control and evidence that supports it, and route changes for review before publication.

Reasonable Security Assessment

Rate the security measures around each data set against the sensitivity and volume of the data and the substantial-injury test of Section 5(n), with owners and remediation dates.

Consent Order Obligations Tracker

Hold each obligation from an FTC order, the assessment and reporting deadlines and the evidence submitted, so nothing lapses during the order's term.

Incident and Vulnerability Log

Capture reported vulnerabilities, incidents, decisions and fixes with dates, the record the Commission reviews when it asks whether a company acted on what it knew.

Vendor Data Sharing Oversight

Track which third parties receive personal data, the contractual limits on their use and the monitoring that confirms them.

Leadership Reporting

Report open claims reviews, unresolved risks and order deadlines to leadership through dashboards built from the same records.

Common framework mappings

APEC PF | CCPA/CPRA | GDPR | HIPAA | ISO 27701 | NIST Privacy Framework v1.0

Official resources

Federal Trade Commission Act

Defines the FTC's authority in consumer protection and data security enforcement.

ftc.gov/enforcement/statutes/federal-trade-commission-act

FTC Privacy and Data Security Update

Provides an overview of the FTC's privacy and data security work.

ftc.gov/news-events/topics/protecting-consumer-privacy-security

FTC Business Guidance

Outlines compliance resources and best practices for businesses under the FTC Act.

ftc.gov/business-guidance

FTC Enforcement Policy

Describes the enforcement approach for privacy and data security regulations.

ftc.gov/news-events/topics/protecting-consumer-privacy-security

Frequently asked questions

What does Section 5 of the FTC Act prohibit?

Section 5(a)(1) declares unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce unlawful. For data, a deceptive practice is a material claim about privacy or security that is likely to mislead a reasonable consumer; an unfair practice is one that meets the Section 5(n) test of substantial, unavoidable injury not outweighed by benefits.

Who is outside the FTC's Section 5 authority?

Section 5(a)(2) excludes banks, savings and loan institutions, federal credit unions, common carriers subject to the Acts to regulate commerce, air carriers and persons subject to the Packers and Stockyards Act. Their own regulators handle unfair or deceptive conduct. Everyone else in or affecting commerce is covered.

Does the FTC Act say what reasonable security is?

No. The statute names no controls. The Commission judges security against the data a company holds and the claims it made, and publishes its reasoning in complaints and orders. Its Start with Security guide draws ten lessons from those settlements, such as controlling access to data sensibly and requiring secure passwords and authentication.

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What happens when a company violates an FTC order?

Section 5(l) allows a civil penalty for each violation of a final order, with each day of a continuing violation counted separately. The amount is adjusted for inflation in 16 CFR 1.98; the 2025 adjustment set it at $53,088 per violation, and the Commission's 2026 notice kept the 2025 levels. The Attorney General or the Commission sues in federal district court to recover it.

How does Section 5 relate to the GLBA Safeguards Rule, COPPA and state privacy laws?

The FTC enforces the Safeguards Rule, COPPA, the Fair Credit Reporting Act and the Health Breach Notification Rule alongside Section 5, and uses Section 5 where no sector rule applies. State unfair and deceptive practices statutes mirror Section 5 and are enforced by state attorneys general, and laws such as the CCPA add consumer rights the federal Act does not contain.

License included / downloadable: Yes The FTC Act is U.S. federal law published in the United States Code and available free from the Government Publishing Office and the FTC; the platform links to the official text.

Full framework page and mappings: smartsuite.com/frameworks/ftc-act-federal-trade-commission-act-data-security-privacy-enforcement

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