

SCOPE & APPLICABILITY

Section 5 covers most commercial entities.

Industry carve-outs (not covered by FTC Act):

- financial institutions
- airlines
- telecommunications carriers



Non-profit institutions aren't covered.

FTC ACT SECTION 5

Prohibits "unfair or deceptive acts or practices in or affecting commerce."
15 U.S.C. § 45(a)(1).

Deception



A material representation, omission or practice that is likely to mislead reasonable consumers to their detriment.

Unfairness



Causes or is likely to cause substantial injury to consumers which they can't reasonably avoid and is not outweighed by countervailing benefits to consumers or competition.

ENFORCEMENT POWERS

Enforced by the Federal Trade Commission (FTC).



No private right of action.



No fines for Section 5 violations.

Can issue fines for violating consent decrees.



FTC can obtain injunctive remedies.

FTC SECTION 5

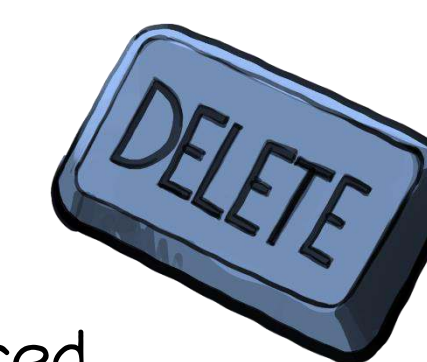


COMMON ELEMENTS OF FTC CONSENT DECREES

20-Year Duration



Delete Ill-Gotten Data



Delete Algorithms Based on Ill-Gotten Data

Assessments by Independent Professionals



Disgorgement of Profits (partially restricted by the U.S. Supreme Court)



Prohibitions on Wrongful Activities



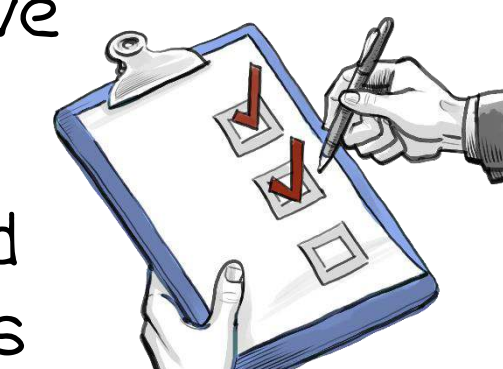
Consumer Notification and Remediation

Making Changes in Privacy Policies



Establishing Comprehensive Programs

Recordkeeping and Compliance Reports



Monetary Penalties (if violating other laws beyond Section 5 or if violating a consent decree)

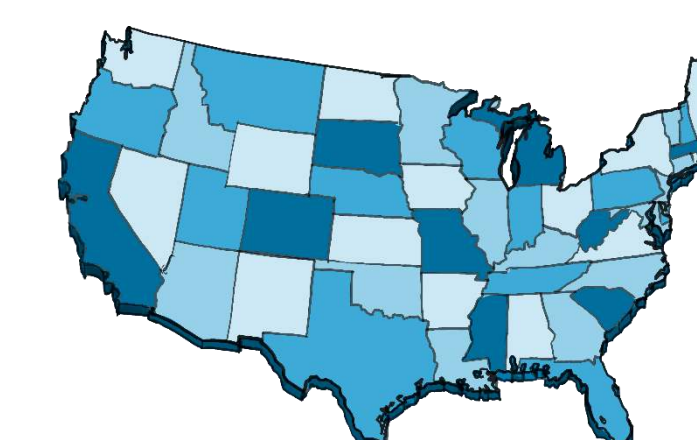
Notification of Material Changes Affecting Compliance

Patch Software



STATE UDAP LAWS

States have their own unfair and deceptive acts and practices (UDAP) laws. These are often called "little FTC Acts."



COMMON TYPES OF SECTION 5 VIOLATIONS

Broken Promises



Deceptive Data Collection



Inadequate Security



Deceptive Design



Inadequate Vendor Management



Retroactive Privacy Policy Changes



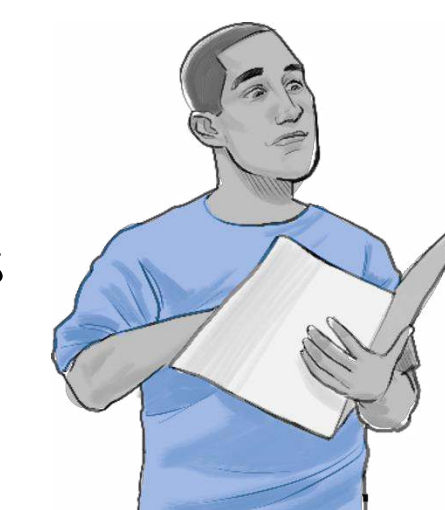
Security Gaffes and Failure to Train



Inadequate Notice (not sufficiently conspicuous)



Violating the Privacy Policies of Others



Providing Means and Instrumentalities for Unfair or Deceptive Practices by Others

Circumvention of Privacy or Security Safeguards of Others

Transfer of Data in Bankruptcy Violating Promises in Privacy Notice



Lack of Data Minimization

