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## Now You See It, Now You Don't . . . Or Do You?: Snapchat's Deceptive Promotion Of Vanishing Messages Violates Federal Trade Commission Regulations, 30 J. Marshall J. Info. Tech. & Privacy L. 827 (2014)

Danielle Young

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# NOW YOU SEE IT, NOW YOU DON'T . . . OR DO YOU?: SNAPCHAT'S DECEPTIVE PROMOTION OF VANISHING MESSAGES VIOLATES FEDERAL TRADE COMMISSION REGULATIONS

DANIELLE YOUNG\*

## I. INTRODUCTION

Jessica Logan's ex-boyfriend circulated a nude photo of Jessica that she had sent to him to other students at the high school both teenagers attended, destroying Jessica's reputation.<sup>1</sup> A private college in Franklin, Massachusetts, Dean College, suspended nine students following the release of a video of a fight on campus that went viral on the

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\* Danielle Young was born and raised in New York, and is a 2015 J.D. candidate at The John Marshall Law School in Chicago, Illinois. She graduated in 2012 from the University of Florida in Gainesville, Florida with a Bachelor of Arts in Criminology. During her law school career, Danielle has served as Managing Business Editor of *The Journal of Information Technology & Privacy Law*, Secretary of the Black Law Students Association, Trial Advocacy & Dispute Resolution Honors Council Member, and ADR Team Member. She would like to thank her family and friends for their unconditional love and support, the JITPL staff for their editing guidance, and Dunkin' Donuts for being open twenty-four hours.

1. Katy Hastings, *Teenager Commits Suicide after 'Sexting' a Nude Photo to her Boyfriend Made her Life a Misery*, DAILY MAIL (Mar. 10, 2009), <http://www.dailymail.co.uk/tvshowbiz/article-1161112/Teenager-commits-suicide-sexting-nude-photo-boyfriend-life-misery.html> (discussing the unfortunate event of an 18-year-old student, Jessica Logan, who committed suicide after she appeared on television to share her experience of being a victim of bullying at the high school she attended). In 2008, the National Campaign to Prevent Teen and Unplanned Pregnancy surveyed teens and young adults about sexting or posting such materials online; thirty-nine percent of U.S. teenagers admitted to having sent or posted "sexually suggestive messages" and forty-eight percent stated that they had received similar messages. *Id.*

Internet.<sup>2</sup> Ashley Payne, a high school English teacher, was fired from her teaching job for posting a picture on her private Facebook account which showed her holding a glass of wine.<sup>3</sup> In a society where privacy is determined by the settings on an individual's social media account, instances such as those above leave many social media users on pins and needles.

So what happens when a new social media application is created? For example, Snapchat is a new application which targets users between the ages of thirteen and twenty-four, claiming to delete photos and videos sent from one app user's cell phone to another app user's cell phone once the recipient of the photo or video views it.<sup>4</sup> What does a typical adolescent do when he comes across such an application? Does he read its lengthy privacy policy and compare it to regulations enforced by the Federal Trade Commission (FTC) to ensure that the app complies? Or, does he immediately download the application and begin sending photos to his friends? The likely scenario is that the adolescent downloads the app to his cell phone without any consideration of these issues.

In an era where phone calls have been replaced by text messaging and Skype is the new conference call, it is almost inevitable for individuals to use these technologies to keep up with the fast paced world around them. It is even more common that people using these technologies have sent or received risqué, embarrassing, or self-incriminating data to a friend or significant other. Prior to hitting "send," individuals falsely believe that the insertion of a phrase such as "delete after you see this" will protect them from liability. However, this belief is proven wrong when social media outlets ruin another individual's reputation.

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2. Allie Grasgreen, *Caught on Camera*, INSIDE HIGHER ED. (Dec. 7, 2011), <http://www.insidehighered.com/news/2011/12/07/dean-college-uses-video-identify-expel-students-fight>. In December 2011 a group of students violently bullied and attacked another student on the Dean College campus in the middle of the day. The attack was over a pair of allegedly stolen sneakers. A video captured the entire incident and went viral. Not only were the attackers punished, but so were the witnesses who did not step in to help the victim. *Id.*

3. Erin Moriarty, *Did the Internet Kill Privacy*, CBS (Jan. 6, 2011), [http://www.cbsnews.com/8301-3445\\_162-7323148.html](http://www.cbsnews.com/8301-3445_162-7323148.html). When the school principal confronted Payne, he asked, "Do you have a Facebook page?" Payne responded in the affirmative, adding "I'm confused as to why I am being asked this." The principal then brought up the photos depicting her with alcohol. Payne was given two options: resignation or suspension. Payne ultimately resigned and filed suit against the school district. *Id.*

4. *New Snapchat App Worrying Parents*, NBC (Dec. 4, 2012), <http://www.nbc-2.com/story/20259970/new-snapchat-app-worrying-parents>. "With most users between the ages of 13 to 24 and Snapchat's cartoon ghost logo and self-described 'juvenile' interface, expert Liz Gumbinner cautions that kids could be using the app in a much more adult way." *Id.*

It was only a matter of time before an app would be created in order to delete these sensitive texts independent of the recipient's actions with the texts after they have been received. The solution? "Snapchat"—the mobile messaging application allowing users to send pictures or videos, referred to as "snaps," that disappear upon retrieval.<sup>5</sup> This application, which promises to delete the snaps upon retrieval, not only appeals to high school teenagers, but according to a recent study, 8 million of the application's users are adults.<sup>6</sup> However, there is just one problem—Snapchat does not entirely live up to its promise of having photos and videos vanish forever.

This Comment will explore the recently popular application Snapchat, and discuss the ways in which the app's privacy policy has violated FTC regulations, responding to a recent complaint filed by The Electronic Privacy Center.<sup>7</sup> Particularly, this Comment will focus on Snapchat's deceptive promotion of "disappearing" photographs and videos. Section II will illustrate the basic structure of Snapchat, detailing various illustrations of its use. Section II will also examine the regulations set forth by the FTC that Snapchat is required to follow. Section III will discuss possible methods that the average user can do in order

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5. Larry Magid, *What Is Snapchat and Why Do Kids Love It and Parents Fear It? (Updated)*, FORBES (May 1, 2013), <http://www.forbes.com/sites/larrymagid/2013/05/01/what-is-snapchat-and-why-do-kids-love-it-and-parents-fear-it/> (predicting that parents may have issues which their children using the app, Snapchat utilized an outside safety expert to assist the company in creating a Snapchat Guide for Parents; the guide's purpose is "to provide parents with detailed information about our product, as well as suggestions for how to handle issues and concerns that may arise"). The guide explains that although the application prohibits children under the age of thirteen it does not request age upon sign up, so it is the responsibility of the parents to supervise their children and report underage use. In addition, the guide explains that messages can only be sent to individuals that the sender knows personally, and has added to their friends list. The guide assures parents that in the event of a more serious situation, users have the option of blocking individuals from sending them any media. *Id.*

6. Jennifer Van Grove, *Snapchat Snapshot: App Counts 8M Adult Users in U.S.*, CNET (June 25, 2013), [http://news.cnet.com/8301-1023\\_3-57590968-93/snapchat-snapshot-app-counts-8m-adult-users-in-u.s/](http://news.cnet.com/8301-1023_3-57590968-93/snapchat-snapshot-app-counts-8m-adult-users-in-u.s/) (discussing Nielsen's study of 5,000 U.S. adults who have smartphones, it was found that Snapchat had 8 million users in May 2013 and adults accessed the app approximately thirty-four times a day).

7. Jessica Guynn, *Privacy Watchdog EPIC files Complaint against Snapchat with FTC*, L.A. TIMES (May 17, 2013), <http://articles.latimes.com/2013/may/17/business/la-fi-tn-privacy-watchdog-epic-files-complaint-against-snapchat-with-ftc-20130517>. The Electronic Privacy Information Center (EPIC), a "privacy watchdog group," has filed a complaint with the FTC for allegations that Snapchat's messages do not actually self-destruct from a user's device and for the FTC to require the company to "improve its data security practices, and specifically to ensure that photos and videos are in fact deleted such that they cannot subsequently be obtained by others." *Id.*

to bypass the very thing Snapchat claims to prevent: the permanence of photos and videos. Section III will also demonstrate the application's shortcomings in deleting the photograph and video files. Subsequently, this Comment will identify how these specific shortcomings violate FTC regulations. Finally in section IV, a legally focused proposal for Snapchat creators will be presented in order for Snapchat to realign itself and abide by the FTC's proposed regulations, specifically through its privacy policy. The proposal addresses users' privacy concerns while still maintaining the FTC's regulations and taking into consideration Snapchat's desire to prosper as a business entity.

## II. BACKGROUND

### A. SNAP WHAT?

A mobile application, also referred to as a mobile app, is a type of application software designed to run on a mobile device such as a smartphone or tablet computer.<sup>8</sup> Apps are generally small, individual software units with limited function.<sup>9</sup> More often than not apps are available to mobile device users for free. Developers often make money through selling advertising space within the app, charging for upgraded versions of the app, or charging for features within the app itself.<sup>10</sup> Snapchat is a mobile messaging application that since its conception has stirred up much controversy.<sup>11</sup>

Two Stanford fraternity brothers, Evan Spiegel and Bobby Murphy, released the infamous Snapchat application in September 2011.<sup>12</sup>

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8. Cory Janssen, *Mobile Application*, TECHOPEDIA, <http://www.techopedia.com/definition/2953/mobile-application-mobile-app> (last visited May 25, 2014).

9. *Id.*

10. *Understanding Mobile Apps*, On GUARD ONLINE, <http://www.onguardonline.gov/articles/0018-understanding-mobile-apps> (last visited May 25, 2014).

11. *Snapchat Rejected \$3 Billion Offer from Facebook: Report*, SYDNEY MORNING HERALD, <http://www.smh.com.au/it-pro/business-it/snapchat-rejected-3-billion-offer-from-facebook-report-20131113-hv2n7.html> (last visited May 30, 2014).

12. Alyson Shontell & Owen Thomas, *Snapchat Founders Sued by Fellow Stanford Student who says They Stole his Idea*, BUS. INSIDER (Feb. 27, 2013), <http://www.businessinsider.com/snapchat-founders-sued-by-fellow-stanford-student-brown-2013-2#ixzz2gEardnEc>. Fellow classmate Frank Reginald Brown IV has alleged that Snapchat was originally his idea and that his dormmate Spiegel stole his idea. Brown alleged that after hearing his idea, Spiegel called it a million-dollar idea. Brown, Spiegel, and Murphy worked together to name the app Picaboo, a ghost serving as the icon for the app. However, in August 2011, a dispute arose over the future of the app, Brown was ignored by the others, and the app was relaunched under the name Snapchat. *Id.*

Rapidly rising to Facebook's level of 350 million daily photo uploads, Snapchat users are now sharing over 100 million "snaps" daily.<sup>13</sup> What makes Snapchat different from every other photo sharing application? Snapchat is unique because once a photo or video, referred to as a "snap," is sent to someone, the recipient only has ten seconds to view the snap before it disappears forever, without giving the recipient the opportunity to save or forward it.<sup>14</sup> "The app is designed to capture a moment and share it in an impermanent way, like speech."<sup>15</sup>

Snapchat is fairly easy to use and there are two ways in which to connect to other Snapchat users. First, a fellow Snapchat user can be searched by their Snapchat username; this username is one in which the individual can create without tracing back to his actual identity.<sup>16</sup> The second way to connect is by allowing the app to match the contacts in one's address book or Facebook account with the users in its database.<sup>17</sup> After taking a picture or video, a pencil in the right-hand corner enables a user to draw on the image, and tapping the lower portion of the screen itself allows the addition of text.<sup>18</sup> The timer at the bottom left corner of the screen is the feature that sets Snapchat apart from other applications. A user has the option of determining how long the recipient can view the snap, ranging from one to ten seconds.<sup>19</sup>

Although saving is not an option for the recipient, the sender of the Snapchat can opt to save the picture or video to her device prior to sending it.<sup>20</sup> Snapchat also tracks to whom each user messages frequently, and publicly displays the top three in a category titled "best friends."<sup>21</sup> The founders of the application describe Snapchat as "a digital version of passing notes in class."<sup>22</sup> Although Spiegel claims the app to be

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13. Kashmir Hill, *Evan Spiegel & Bobby Murphy*, FORBES, [http://www.forbes.com/special-report/2013/disruptors/evan-spiegel\\_bobby-murphy.html](http://www.forbes.com/special-report/2013/disruptors/evan-spiegel_bobby-murphy.html) (last visited May 25, 2014).

14. Joseph Hanlon, *What is Snapchat?*, WHISTLE OUT (July 29, 2013), <http://www.whistleout.com/CellPhones/Guides/what-is-snapchat>.

15. *Id.*

16. Alyson Shontell & Megan Rose Dickey, *60 Million Photos are Disappearing on Snapchat, a \$70 Million App by Stanford Frat Brothers*, BUS. INSIDER (Feb. 9, 2013), <http://www.businessinsider.com/how-to-use-snapchat-2013-2?op=1>.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. Katie Notopoluos, *The Snapchat Feature that will Ruin Your Life*, BUZZFEED (Dec. 5, 2012), <http://www.buzzfeed.com/katienotopoulos/the-snapchat-feature-that-will-ruin-your-life> (discussing that a user's public web profile shows the user's top three most messaged friends and a user's profile is publicly viewable by searching the user's name).

22. Shontell & Dickey, *supra* note 16.

“wholesome” and encourages its use by the whole family, what it is actually often used for is far from family matters.<sup>23</sup> The promise of instant deletion has led today’s youth to using the application for “sexting” purposes.<sup>24</sup>

On its face, the exchange of risqué photos may seem harmless, but it has recently led to both violent and unlawful acts.<sup>25</sup> The use of this popular application has even led to a recent celebrity arrest.<sup>26</sup> A recent study shows that eighty percent of snaps are sent during the day, with a spike during school hours; this revelation has led many to believe that young users are using the app to cheat on school exams.<sup>27</sup>

Before parents begin searching through their children’s phones to delete the app, it is important to understand that Snapchat is not just an application with the potential of bringing one’s life into a downward spiral. Snapchat provides a personal connection with its audience that has led many companies to use the app as a marketing tool.<sup>28</sup> A popular yogurt chain with over fifty stores used the application to

23. Barbara E. Hernandez, *Snapchat isn’t about Teen Sexting, Founder Says*, NBC BAY AREA (Sept. 12, 2013), <http://www.nbcbayarea.com/blogs/press-here/Snapchat-Isnt-About-Just-Sexting-223076021.html>.

24. Nicole A. Poltash, *Snapchat and Sexting: A Snapshot of Bearing Your Bare Essentials*, 19 RICH. J.L. & TECH. 14, 21 (2013) (discussing a website that Snapchat is used for sexting and the website used to include pictures sent by women via Snapchat but has since been removed).

25. Helen A.S. Popkin, *Bloody Teen Fight over Sexting Won’t Help Snapchat’s Reputation*, NBC NEWS (Sept. 16, 2013), <http://www.nbcnews.com/technology/bloody-teen-fight-over-sexts-wont-help-snapchats-reputation-8C11167242> (describing a physical fight that broke out between two adolescent males at a convenience store when the one teenager found out that the other male had sent explicit snaps to his younger sister).

26. At the conclusion of his first hearing, Jason Miller was arrested with respect to a domestic violence case he had in Southern California. The victim revealed to the court a Snapchat video that Miller had sent to her of him saying “I love you.” The victim waited until the hearing to open the actual Snapchat so that the district attorney could attest to the accuracy of the video. Due to the provisions of Millers’ protective order, any communication between him and the victim were strictly prohibited. The Orange County Sherriff’s Department took Miller into custody, and the judge held that Miller was in violation of the protective order. While the district attorney requested a \$15,000 bond amount, Judge Manssourian made an example out of Miller and ordered the bail to be set at \$200,000. Brandon Stroud, *Mayhem Miller’s Latest Arrest Happened over Snapchat*, UPROXX (Sept. 12, 2013), <http://www.uproxx.com/sports/2013/09/mayhem-millers-latest-arrest-happened-snapchat/>.

27. Jordan Crook, *Inside Snapchat, The Little Photo-Sharing App that Launched a Sexting Scare*, TECHCRUNCH (Dec. 26, 2012), <http://techcrunch.com/2012/12/26/inside-snapchat-the-little-photo-sharing-app-that-launched-a-sexting-scare/>.

28. Andrew Solmssem, *Marketing with Snapchat: It’s not Just for the Kids*, CLICKZ (Jan. 31, 2013), <http://www.clickz.com/clickz/column/2240363/marketing-with-snapchat-its-not-just-for-the-kids>.

send coupons to any customers who added their user account through the application.<sup>29</sup> Through Snapchat, fashion designer Rebecca Minkoff released a preview of her latest fashion line prior to its debut on the New York Fashion Week runways.<sup>30</sup> Taco Bell even announced a new item via their Snapchat account.<sup>31</sup> However, the problem does not lie in the marketing use of the app, it lies in the daily use by average consumers. In less than two years, Snapchat has become an \$860 million company and is continuously growing, causing it to reach a wide range of users every day.<sup>32</sup>

Recently, Snapchat introduced a new feature with a little more permanence called “Stories.”<sup>33</sup> A Snapchat Story is a rolling compilation of snaps from the last twenty-four hours that an individual’s Snapchat friends can see.<sup>34</sup> “Stories fundamentally alters the nature of Snapchat, in three ways: messages now can live for up to twenty-four hours, rather than for ten seconds; they can be viewed repeatedly within that window, instead of just once; and they create within Snapchat

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29. In January 2013, the yogurt chain 16 Handles conducted a Snapchat promotion for its customers. Participating customers were asked to send the 16 Handles Snapchat account a snap of their yogurt purchase. In return, the company would send the customer a coupon through Snapchat, which had to be opened in the presence of the yogurt shop’s personnel. The coupons had a discount that ranged from fifteen percent to 100 percent of any purchase in the store. “The snap acted like a scratch-off ticket and held the twin benefits of immediacy and surprise.” *Id.*

30. Erin Griffith, *Previewing a Runway Show via Snapchat is Kinda Brilliant*, PANDO DAILY (Sept. 6, 2013), <http://pandodaily.com/2013/09/06/previewing-a-runway-show-via-snapchat-is-kinda-brilliant/> (Rebecca Minkoff has strayed from the norms of the fashion industry, which prides itself on keeping its collections a secret until the actual release (usually at a fashion show). She has given recipients an insight on her latest collection with a 10-second glimpse of her new looks. Typically designers only give buyers, the press, and industry influences first access to new collections.) *Id.*

31. *Id.*

32. J.J. Colao, *In Less than Two Years, Snapchat is an \$860 Million Company*, FORBES (June 24, 2013), <http://www.forbes.com/sites/jjcolao/2013/06/24/snapchat-raises-60-million-from-ivp-at-800-million-valuation/>.

33. Matt Buchanan, *The Long Snap*, NEW YORKER (Oct. 14, 2013), <http://www.newyorker.com/online/blogs/elements/2013/10/the-long-snap.html>.

34. *Id.* Snapchat consists of four different screens that a user has the ability to swipe through. “Starting with the left-most screen, they are arranged in this order: your inbox, the camera, your friends list, and a panel to add friends.” *Id.* “Stories lives in the same space as your friends list; while a new section at the top displays the most recent updates, you generally have to scroll through your friends to hunt down every single story.” By holding down the clip that an individual has designated as a story, users have access to view the compilation for a twenty-four hour time period. Snapchat users have the option of having their stories being viewed by only their Snapchat friends, or anyone with an account. *Id.*



what is effectively a stream of content and a semi-public persona.”<sup>35</sup> Luckily, the Stories feature is optional and users are still able to send time-designated snaps to specified individuals.<sup>36</sup> With millions of snaps being exchanged daily, it has become increasingly important for Snapchat to ensure that its application is not in violation of any FTC regulations.<sup>37</sup>

## B. FEDERAL TRADE COMMISSION

The FTC was created in 1914 and is an independent agency within the executive branch.<sup>38</sup> The FTC is responsible for fair competition among companies throughout the nation.<sup>39</sup> The FTC’s mission is “to prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity.”<sup>40</sup> The FTC is controlled by five Commissioners, nominated by the President and confirmed by Congress; each Commissioner serves a term of seven years.<sup>41</sup>

Within the FTC is the Bureau of Consumer Protection whose duty is to protect against unfair, deceptive, or false business practices in the marketplace.<sup>42</sup> This bureau makes sure that companies are abiding by laws in relation to advertising, fair financial and lending practices, telemarketing, the privacy of individuals’ personal information, and

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35. Matt Buchanan discusses the new Snapchat feature as follows:

Stories can be published (if one allows) so that they’re completely exposed to anyone on Snapchat, creating a de facto public profile. These profiles mutate every twenty-four hours, so that a static, digital profile never accumulates; every day on Snapchat, you effectively become a new person, which Spiegel believes is true in real life as well. But having a public profile, even an amorphous one, turns the insularity of Snapchat inside out. What had been a place to exclusively share the photos you deemed too weird or unattractive or disposable to plaster on Instagram or Facebook for a small eternity is now implicitly asking users to create public content for it, too. By going public, Snapchat risks no longer being the place for the private. *Id.*

36. *Id.*

37. *Id.*

38. *About the FTC*, FED. TRADE COMM., <http://www.ftc.gov/about-ftc> (last visited May 31, 2014).

39. *Our History*, FED. TRADE COMM., <http://www.ftc.gov/about-ftc/our-history> (last visited May 31, 2014).

40. *Id.*

41. *Commissioners*, FED. TRADE COMM., <http://www.ftc.gov/about-ftc/commissioners> (last visited May 31, 2014).

42. *What We Do*, FED. TRADE COMM., <http://www.ftc.gov/about-ftc/what-we-do> (last visited May 31, 2014).

fraud.<sup>43</sup> More specifically, the Federal Trade Commission Act prohibits unfair and deceptive acts and practices, and authorizes the FTC to administer the Act's prohibitions.<sup>44</sup>

A trade practice is unfair if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."<sup>45</sup> In addition, an act or practice is deceptive if it "involves a representation, omission, or practice that is likely to mislead the consumer acting reasonably under the circumstances, to the consumer's detriment."<sup>46</sup>

There are three elements in the aforementioned deception test: (i) a practice likely to mislead the consumer; (ii) Reasonableness from the perspective of the mislead group; and (iii) the practice must be material.<sup>47</sup> The first element in this three-prong deception test is that there must be a representation, omission, or practice that is likely to mislead the consumer.<sup>48</sup> One is not required to prove that the act or practice actually misled the consumer, but that it is likely to mislead the consumer.<sup>49</sup> Second, the FTC will consider claims or omissions material if they significantly involve health, safety, or other areas with which a reasonable consumer would be concerned.<sup>50</sup> In determining this second element, the FTC will ask questions such as: "How clear is the representation? How conspicuous is any qualifying information? How important is the omitted information? Do other sources for the omitted information exist? How familiar is the public with the product or service?"<sup>51</sup> The third element of deception is materiality.<sup>52</sup> The representation, omission, or practice is considered material if it is one which is likely to affect a consumer's choice of or conduct regarding a product.<sup>53</sup> Typically the question asked in this instance is "whether consumers would have

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43. *Id.*

44. 15 U.S.C. § 45 (2010).

45. Complaint at 4, *In re Snapchat, Inc.* (F.T.C. May 16, 2013), available at <http://epic.org/privacy/ftc/EPIC-Snapchat-Complaint.pdf> [hereinafter *In re Snapchat Complaint*].

46. *Id.* at 5.

47. *Id.*

48. *Id.*

49. *Id.* at 5-6.

50. *FTC Policy Statement on Deception*, FED. TRADE COMM. (Oct. 14, 1983), available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>.

51. *In re Snapchat Complaint*, *supra* note 45, at 6.

52. *FTC Policy Statement on Deception*, FED. TRADE COMM., <http://www.ftc.gov/bcp/policystmt/ad-decept.htm> (last visited May 10, 2014).

53. *The Representation, Omission, or Practice Must be Material*, FED. TRADE COMM.,

chosen another product if the deception had not occurred.”<sup>54</sup>

From business owners to teenage girls, Snapchat is attracting more and more users daily. But do users really know what they are signing up for when they download this application? Can they honestly say that they know exactly where their photos and videos are going after pressing send? The following section will analyze the shortcomings of the Snapchat application that most users are unaware of and ultimately present a legal proposal for its creators.

### III. ANALYSIS

First, this analysis will address the internal defects of the Snapchat application, and then discuss a possible way for users to extract data from the application. After a discussion of Snapchat’s shortcomings, the potential issues that arise due to Snapchat’s privacy policy and its violations of FTC regulations will be discussed.

#### A. THINK AGAIN BEFORE YOU HIT SEND

A “screen shot” is the action of capturing the present image on your computer desktop, cell phone, or tablet and saving it as a static image file.<sup>55</sup> In other words, a screen shot is a way of taking a picture of your computer screen or other electronic device.<sup>56</sup> Many mobile devices and tablets currently have screen capture capabilities built into the actual device.<sup>57</sup> This is one of the major hurdles Snapchat faces in providing users with an application that performs to the extent promised. If one opens the photo in Snapchat before it expires while keeping a finger on the screen, one can easily take a screen shot of the image.<sup>58</sup> If the recipient attempts to take a screenshot, the app will alert the sender;

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54. *Id.*

55. Sue Chastain, *What is a Screen Shot*, ABOUT.COM, <http://graphicssoft.about.com/od/glossary/ff/screenshot.htm> (last visited May 10, 2014). Screenshots are helpful in situations where it may be difficult to articulate in words something you are trying to explain. In software reviews, a screenshot can be used to display what the software actually looks like. In tutorials, it can help illustrate how to perform a function. In technical support troubleshooting a screenshot will display the actual error message or software issue that a consumer might be presented with. Screenshots are also helpful if there is something displayed on your computer screen that you want a copy of but are unable to print right away. *Id.*

56. *Id.*

57. *Id.*

58. Jesus Diaz, *How to Easily Capture Images in Snapchat without the Other Person Noticing*, GIZMODO (Jan. 22, 2013), <http://gizmodo.com/5978053/how-to-easily-capture-images-in-snapchat-without-the-other-person-noticing>.

however, there is nothing designed in the application that prevents a user from taking screen shots of the images she receives.<sup>59</sup> In addition, the individual can use a separate device to take a photo of her screen.<sup>60</sup>

Besides screenshots, Snapchat creators have met another hurdle—other mobile applications. Recently a significant number of mobile applications have been created and designed to save photos received through Snapchat.<sup>61</sup> A new app, Snap Save, not only makes saving Snapchat photos and videos easier than ever, it also saves the snaps without letting the sender know.<sup>62</sup> After downloading the Snap Save app and logging into a Snapchat account, Snap Save allows a user to see all the snaps he has previously received.<sup>63</sup> Though these expired snaps cannot be reopened and viewed, any new incoming snaps will be kept in Snap Save for repeated viewing.<sup>64</sup>

Soon after Snap Save was created, another application by the name of SnapHack was released.<sup>65</sup> Similar to Snap Save, SnapHack saves photos and videos without alerting the sender.<sup>66</sup> Any time a user receives a notification of an incoming snap, he simply has to open the SnapHack app and refresh it to retrieve the pictures and/or videos.<sup>67</sup> He can then open each snap individually and tell the app to save the file onto his device.<sup>68</sup> Neither Snap Save nor SnapHack have any affiliation with Snapchat.<sup>69</sup> When asked about the new apps, Snapchat

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59. *Id.*

60. Adrian Covert, *Snapchat Automatically Sets Your Sexts to Self-Destruct in 10 Seconds or Less*, GIZMODO (May 7, 2012), <http://gizmodo.com/5908200/snapchat-automatically-sets-your-sexts-to-self+destruct-in-10-seconds-for-less> (discussing that someone may take a picture of his screen using another device).

61. Drew Guarini, *'Snap Save,' New iPhoneApp, Lets You Save Snapchats—Without Letting The Sender Know*, HUFFINGTON POST (Aug. 9, 2013), [http://www.huffingtonpost.com/2013/08/09/snapchat-snap-save\\_n\\_3732477.html](http://www.huffingtonpost.com/2013/08/09/snapchat-snap-save_n_3732477.html) (Snap Save removes any ads that appear in Snapchat but requires a user to log in and out of each app in order to use the apps simultaneously).

62. *Id.*

63. *Id.*

64. *Id.*

65. Salvador Rodriguez, *SnapHack App Lets Users Save Snapchat Photos without Notifying Sender*, L.A. TIMES (Oct. 14, 2013), <http://www.latimes.com/business/technology/la-fi-tn-snapchat-snaphack-save-photos-2013-10-14,0,7662933.story>.

66. *Id.*

67. Snapchat refuses to discuss SnapHack because it is not affiliated with the new application. When a Snapchat user receives a new snap, the user must open it in SnapHack in order to save the snap on his device. Once opened in Snapchat, the snap cannot be opened again in SnapHack. *Id.*

68. *Id.*

69. *Id.*

declined to comment.<sup>70</sup>

While some users may appreciate the fact that SnapHack lets them quickly and easily save snaps, others may not be too pleased that their snaps may be saved without their knowledge or consent.<sup>71</sup> Because snaps are believed to vanish within a matter of seconds, most individuals use the app to send silly or embarrassing pictures that they would not normally post on other social networks.<sup>72</sup> These new apps, such as Snap Save and SnapHack, are especially off-putting to those who use Snapchat to send particularly lewd content.<sup>73</sup>

As if users were not already skeptical of the ability to screen shot, and subsequent applications created to save images, they certainly were not expecting the news that the Snapchat application itself does not actually delete their images.<sup>74</sup> Decipher Forensics, a Utah-based data research center, recently announced that it found a way to recover Snapchats media and has begun offering its services to the public for monetary compensation.<sup>75</sup> Not only is this technique legitimate, but it is also provided on video.<sup>76</sup>

With respect to Android phones, the majority of Snapchat data is stored within the data/data/com.snapchat.android folder, which contains four folders.<sup>77</sup> Examination revealed that within one of the shared folders are several XML files linked to Snapchat.<sup>78</sup> This file is where the

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. Molly McHugh, *Yes, You Can Recover Dead Snapchats and Here's the Video Proof*, DIGITAL TRENDS (May 19, 2013), <http://www.digitaltrends.com/social-media/yes-you-can-recover-dead-snapchats-and-heres-the-video-proof/#ixzz2iPgE5Ydy> (“Unfortunately, as users become more savvy, ephemeral technologies like Snapchat will have to take more measures to make sure that curious consumers with a little know-how can recover this type of content.”). Young teens should be cautious when sending explicit messages to each other via Snapchat, because the recipients may save and republish the media. *Id.*

75. *Id.*

76. *Id.*

77. *Snapchat Unveiled: An Examination of Snapchat on Android Devices*, DECIPHER FORENSICS (Apr. 30, 2013), <http://decipherforensics.com/blog-landing-page> (evidenced by the app's home screen, the time stamps for the snaps, new or expired, are stored somewhere on the device).

78. In order to examine what was left behind on devices by Snapchat, they used two Android devices and created two different Snapchat accounts (rheckman1989 and DeciphForensics). *Id.* The pictures and videos were sent from rheckman1989 (on a Samsung Galaxy Note 2) to DeciphForensics (on a Samsung Galaxy S3). Subsequently, deciphorensics2 was created on the Samsung Galaxy Note 2 in order to send more pictures and videos to the second device. “This was to determine if there are identifiers for the sender ac-

majority of information stored by Snapchat is located, and within it is a listing of all the contacts stored on the device.<sup>79</sup> Below the list of contacts is a listing of Snapchat messages.<sup>80</sup> There is a set of fields stored for each message in Snapchat and there are also fields stored in this section of the XML file such as: snaps that been viewed, snaps that are still loading, and snaps that have been screenshot.<sup>81</sup> The received\_image\_snaps folder contains every image sent to the Snapchat account on the Android phone, including the images that had been viewed and were expired.<sup>82</sup> There are some duplicate images with different names as well, but the reason for this is still unknown.<sup>83</sup>

“Android developers created a way for media files such as graphics to be stored on the phone for application use and function without being put into the Gallery application as an image to be viewed.”<sup>84</sup> This was done using .nomedia files, essentially if a directory has a file named .nomedia, then the media store will not scan and record the metadata of files in that directory.<sup>85</sup> “Each of the images within the received\_image\_snaps folder has a .nomedia extension appended to the end of the file name.”<sup>86</sup> Researchers predict that this was likely done to prevent the images stored within this directory from being placed in the gallery or from being scanned by the media store.<sup>87</sup> AccessData’s Forensic Toolkit recognized the .nomedia extension that was attached to the end of the file name and ignored it, displaying the actual images instead.<sup>88</sup> This research was conducted in an attempt to answer several vital questions about the Snapchat application as it is stored and used on Android devices.<sup>89</sup> The researchers concluded that metadata is stored

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count of a ‘snap,’ and the same acquisition process was followed again after the second batch of ‘snaps’ were sent.” *Id.*

79. *Id.* “Examination revealed that within the shared *prefs* folder are several XML files: CameraPreviewActivity.xml, com.google.android.gcm.xml, com.snapchat.android\_preferences.xml, and SnapPreviewActivity.xml.” *Id.*

80. *Id.*

81. *Id.* (“There is a set of fields stored for each message in Snapchat and the following are the fields stored in this section of the XML file: type, mSender, mWasViewed, mCaptionPosition, mCaptionOrientation, mIsLoading, mIsTimerRunning, mIsBeingViewed, mWasOpened, mWasScreenotted, mDisplayTime, mId, mTimestamp, mStatus, mIcon, and mMediaType.”).

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. “The author has concluded that metadata is stored for Snapchat images, as

for Snapchat images, as shown by the `com.snapchat.android_preferences.xml` file, and that it contains metadata about expired snaps, as well as unexpired snaps, and that images that are sent via Snapchat are indeed recoverable, and do not “disappear forever.”<sup>90</sup>

If iPhone users thought they were off the hook, they thought wrong. By using iFile, a program that is more or less an iPhone file and folder browser, one can look into the applications folder and discover the folder serving as home to expired Snapchats.<sup>91</sup> While searching through the directories, investigators were able to find .MOV files which turned out to be videos sent through Snapchat that had since expired.<sup>92</sup> There are also files named “filtered” and “output,” which are videos recorded on the local iPhone to be sent on Snapchat.<sup>93</sup> Those files seem to only be the most recent video recorded and will stay “sent” or “not sent” and will be overwritten as soon as another video is recorded.<sup>94</sup> The researcher using the iPhone claims that he did not do any of this to “defame” Snapchat and he was only motivated by user security and privacy concerns.<sup>95</sup>

Recently, iPhone users have discovered an additional way to capture these disappearing images, and BuzzFeed declares the process as being quite simple.<sup>96</sup> One must take the iPhone, plug it into his computer, and use a third-party file-browsing app like iFunBox to navigate its file system, heading straight for the Snapchat/tmp folder.<sup>97</sup> From there, one is able to re-watch all videos, copy them to his computer, and unlike taking a screenshot, the Snapchat user who sent the video will not be notified of the privacy intrusion.<sup>98</sup> “While the trick is a lot of work to go to for each and every video, it’s an obvious way to incriminate those who send the most inappropriate content.”<sup>99</sup> “Perhaps more importantly, though, the fact the videos are stored locally after they’re viewed in

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shown by the `com.snapchat.android_preferences.xml` file, and that it contains metadata about expired “snaps” as well as unexpired “snaps,” and that images that are sent via Snapchat are indeed recoverable, and do not “disappear forever.”

90. *Id.*

91. McHugh, *supra* note 74.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. Jamie Condliffe, *How You Can Save Snapchat Videos Forever after You’ve Watched Them*, GIZMODO (Dec. 28, 2012), <http://gizmodo.com/5971689/how-you-can-save-snapchat-videos-forever-after-youve-watched-them>.

97. *Id.*

98. *Id.*

99. *Id.*

Snapchat clearly runs counter to the whole point of the app.”<sup>100</sup> Snapchat co-founder Evan Spiegel told BuzzFeed, “people who most enjoy using Snapchat are those who embrace the spirit and intent of the service. There will always be ways to reverse engineer technology products—but that spoils the fun!”<sup>101</sup> However, many users’ definition of “fun” is having the ability to hold on to these snaps that senders believe are disappearing.

“The photos take about six hours to extract (mostly time spent imaging the data) from a folder that the .NOMEDIA images are stored in called RECEIVED\_IMAGES\_SNAPS.”<sup>102</sup> Once the images are extracted, the file extension can be changed and the images are made viewable once more.<sup>103</sup> The firm who discovered this is currently charging between \$300 and \$500 to forensically dig up hidden photos for interested parties, in addition to working with law enforcement and lawyers.<sup>104</sup> With this newfound ability to extract Snapchat data from both Android and iPhones, it has become evident that Snapchat needs to adjust its privacy policy.

#### B. SNAPCHAT’S PRIVACY POLICY

A privacy policy is a document that explains how an organization handles any customer, client or employee information gathered in its operations.<sup>105</sup> While Snapchat’s privacy policy is quite short and straightforward, it is also very discouraging.<sup>106</sup> Snapchat does not

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100. *Id.*

101. *Id.*

102. DL Clade, *Forensics Firm Discovers that Snapchat Photos don't Disappear After All*, PETA PIXEL (May 10, 2013), <http://petapixel.com/2013/05/10/forensics-firm-discovers-that-snapchat-photos-dont-disappear-after-all/>.

103. *Id.*

104. *Id.*

105. *Privacy Policy*, WHATIS, <http://whatis.techtarget.com/definition/privacy-policy> (last visited May 25, 2013) (discussing that typically, websites will allow visitors access to the company’s privacy policy). “A privacy page should specify any personally identifiable information that is gathered, such as name, address and credit card number, as well as other things like order history, browsing habits, uploads and downloads.” *Id.* Most policies will also disclose if data may be left on a user’s computer, and whether data may be shared with or sold to third parties and for what purpose. *Id.*

106. Andrew Counts, *Terms and Conditions: Snapchat’s Privacy Policy has Too Many Secrets*, DIGITAL TRENDS (Dec. 16, 2012), <http://www.digitaltrends.com/mobile/terms-conditions-snapchat/#ixzz2iPvufG19> (describing Snapchat’s policy, which provides that all users of the application agree to not hold the company accountable for any negative occurrence that may arise out of using the app). For example, a user may not sue Snapchat if any photo sent via Snapchat ends up posted on the Internet. If a user is able to find a cause of action against Snapchat, its policy includes a “limitation of liability” clause that



display a plethora of rules to follow, but it does list a few.<sup>107</sup> “Namely, don’t mess with the app in any technical way; don’t share copyrighted content; don’t use it to spam or harass anyone; and get permission to use it if you’re under the age of 13” (a stipulation that is explained in the privacy policy, not the terms of service, where it usually appears).<sup>108</sup>

Snapchat’s policy states, “We take reasonable measures to help protect information about you from loss, theft, misuse and unauthorized access, disclosure, alteration and destruction.”<sup>109</sup> It also states, “Once all recipients have viewed a Snap, our system is designed to automatically delete it from our servers. Opened Snaps typically cannot be retrieved from Snapchat’s servers by anyone, for any reason. Unopened Snaps are deleted after 30 days. If you feel that a crime has been committed, we encourage you to contact your local law enforcement.”<sup>110</sup> Snapchat’s “collection of information: information you provide to us” provision reads as follows:

When you send or receive Snaps, we also temporarily collect, process and store the contents of the Snaps (such as photos, videos and/or captions) on our servers. The contents of Snaps are also temporarily stored on the devices of recipients. Once all recipients have viewed a Snap, we automatically delete the Snap from our servers and the Snapchat mobile application is programmed to delete the Snap from the recipients’ devices. We cannot guarantee that deletion always occurs within a particular timeframe. We also cannot prevent others from making copies of your Snaps (e.g., by taking a screenshot). If we are able to detect that the recipient has captured a screenshot of a Snap that you send, we will attempt to notify you. In addition, as for any other digital information, there may be ways to access Snaps while still in temporary storage on recipients’ devices or, forensically, even after they are deleted. You should not use Snapchat to send messages if you want to be certain that the recipient cannot keep a copy.<sup>111</sup>

While Snapchat’s policy has identified that snaps are stored on recipients’ devices, it fails to provide even a general timeframe as to when the snap will actually be “deleted.” Additionally, the policy does not go into any detail as to how snaps can be extracted from devices. The language of the policy also denotes that Snapchat is not always able to detect screenshots. Moreover, although the application claims to take

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caps damages at \$1.00. However, some states do not allow limitations on liability. *Id.*

107. *Id.*

108. *Id.*

109. *Privacy Policy*, SNAPCHAT, <http://www.snapchat.com/privacy/> (last visited May 25, 2014).

110. *Id.*

111. *Id.*

reasonable measures to help protect users' information, it does not go into detail as to the measures in which it is willing to provide.

"With all the risks associated with the application's improper use, Snapchat has added limited liability and indemnification clauses."<sup>112</sup> Its limitation of liability states that the company will not be held liable for any damages resulting from "the conduct of other users of the application, even if Snapchat has been advised of the possibility of such damages."<sup>113</sup> An individual assumes total responsibility for his use of the application.<sup>114</sup> Overall, while the application has addressed *some* of the relevant issues, its internal flaws and privacy policy are still deceptive to the average consumer. This leads to the discussion of how Snapchat's privacy policy violates FTC regulations.

### C. FEDERAL TRADE COMMISSION COMPLIANCE

The Electronic Privacy Information Center filed a complaint alleging that Snapchat's representations to users "that photos sent using its app would be deleted after a user-designated amount of time" are "likely to mislead the reasonable consumer" and that those representations are material.<sup>115</sup> In addition to asking the FTC to investigate Snapchat's claims that users' images are permanently deleted, the complaint asks that the FTC require Snapchat to make improvements to its security practices to successfully delete users' photos and to cure any deceptive statements about its services.<sup>116</sup>

Section 5 of the Federal Trade Commission Act prohibits unfair and deceptive acts and practices, and empowers the Commission to enforce the Act's prohibitions.<sup>117</sup> A trade practice is unfair if it "causes or is likely to cause substantial injury to consumers which is not reasonably available by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."<sup>118</sup> There are three elements that describe the level of injury to be proven.<sup>119</sup> The first is that the injury must be substantial. This typically involves monetary harm but can also include unwarranted health and safety risk; emotional

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112. Poltash, *supra* note 24, at 33.

113. *Id.*

114. *Id.*

115. Amie Medley & Roberta Horton, *Complaint to FTC: Snapchat's Vanishing Images are not Really Vanished*, SELLER BEWARE (June 16, 2013), <http://www.consumeradvertisinglawblog.com/2013/week25/>.

116. *Id.*

117. In re Snapchat Complaint, *supra* note 45, at 4.

118. *Id.*

119. *Id.*

harm and other subjective types *generally* do not make a practice unfair.<sup>120</sup> Second, the injury must not be outweighed by an offsetting consumer or competitive benefit that the sales practice also produces.<sup>121</sup> Finally, the injury must be one which consumers could not reasonably have avoided.<sup>122</sup>

With respect to Section 5, an act or practice is deceptive when it involves a representation, omission, or practice that is likely to mislead the consumer acting reasonably under the circumstances to the consumer's detriment.<sup>123</sup> There are three elements involved: (i) a representation, omission or practice likely to mislead the consumer; (ii) the act or practice must be considered from the perspective of a reasonable consumer; and (iii) the representation, omission, or practice must be material.<sup>124</sup>

#### D. SNAPCHAT'S VIOLATIONS

Snapchat has violated Section 5 of the Federal Trade Commission Act in many regards.<sup>125</sup> Among all apps for the iOS operating system, Snapchat has the fifth highest number of users, impacting millions of consumers.<sup>126</sup> Snapchat's practices are unfair because they are likely to cause substantial injury to consumers, and are not reasonably avoidable by consumers themselves. Any user of the application that sends media and believes it cannot be retrieved is most likely sending media they wish to not be viewed again. Furthermore, any injury caused by the use of this application is not outweighed by countervailing benefits to consumers or to any competitors.

Not only is the application unfair, but its program and privacy policy are both deceptive.<sup>127</sup> Snapchat has represented and omitted crucial information that would likely mislead any consumer using the application. First, Snapchat has represented to its users that photos sent using the app will be deleted after the designated amount of time.<sup>128</sup> With respect to this feature, the app fails to actually delete the user photo data. This representation is very likely to mislead the reasonable user of the

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120. *Id.*

121. *Id.* at 5.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* (alleging that the application has misled consumers into believing that any media sent via Snapchat would disappear from the device after the recipient viewed it).

126. *Id.* at 2.

127. *Id.*

128. *Id.* at 4.

application, and is more likely than not the sole purpose of the individual downloading the app. False representations regarding the deletion of user photos are in fact material, and a consumer's choice of use and conduct is very likely to be affected by this material fact. The application has omitted the distinct ways in which both opened and unopened photos can be extracted from devices. These misrepresentations and omissions need not actually mislead an actual consumer, but rather they must be *likely* to mislead.<sup>129</sup>

When looking at how important the omitted information is, the FTC is likely to conclude that Snapchat's failure to provide its users with the clear methods in which snaps can be retrieved is material. In addition, the public's unfamiliarity with the new application also plays a major role in the deceptive practices. The FTC presumes that an omission is material where "the seller knew, or should have known, that an ordinary consumer would need omitted information to evaluate the product or service, or that the claim was false, because the manufacture intended the information or omission to have an effect."<sup>130</sup> If consumers were privy to this information prior to downloading the application, they may have thought twice before engaging in its use. What can Snapchat do to retain its users, protect itself, and properly inform consumers? From a legal standpoint, Snapchat can start by altering its privacy policy.

#### E. THE TRUTH WILL SET YOU FREE

The proposed new approach to Snapchat's privacy policy is quite simple—Snapchat needs to provide users with the truth about what the app can and cannot do. The creators need to look at the application from the perspective of an average user and not that of an expert. The improved policy needs to distinguish between viewable and retrievable media. While the countdown feature prohibits a user from "viewing" the photo or video after the elapsed time (with the exception of the screenshot method), it does not prohibit the media from being retrieved through other means. This is a distinction that needs to be addressed early on in the policy.

After the discrepancy is discussed, the application creators should briefly explore the different methods in which exchanged data can be extracted from the app. First, the application needs to reveal that the photos sent will not in fact be deleted after the designated amount of time, and provide a general time frame as to how long the media exists

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129. *Id.* at 5.

130. *Id.* at 6.

on a user's device, as well as on the Snapchat servers. Snapchat should also describe the way in which photographs and videos are saved to the device using a .MOV attachment. Overall, the application must identify all the ways in which photos can be retrieved (from screenshots to extracting photos from a computer).

While it is acknowledged that an application like Snapchat may recruit a technological team to modify the program ensuring data deletion after a designated time that is not the motivation of this Comment. The concentration of this Comment focuses on the legal aspect of what can be done and the contractual obligation that a web application makes with its users. Even if Snapchat were to modify its program to actually delete data, there are still numerous ways that snap recipients can salvage photos that they obtain through the app as previously discussed in this Comment.<sup>131</sup> Even if modifications of the application are made, there are still issues that mobile applications simply cannot avoid, which is why their focus should be on informing users of the potential harms.

#### F. SNAPCHAT FOR DUMMIES

Not only should Snapchat disclose its shortcomings in its privacy policy, but it should also do so in a manner that is easily comprehensible. Snapchat needs to reform its privacy policy by understanding its target audience. The majority of its users are in high school and college. Snapchat must maintain its notion of providing a condensed policy, while still making sure it hits all major issues. The text of the policy should be clear enough so that the average user will understand its terms.

In addition, Snapchat needs to ensure that it gives proper notice to its users at any time that it makes any alterations to its policies. Whenever a change to the policy is made, a notification should be sent through the application. When a user opens the Snapchat application, a pop-up screen should launch which then notifies the user that the policy has changed, and bullet pointing the pertinent areas of change. This notification should present the user with a "learn more" option in the event that the user chooses to read the details of the revisions. Reiteration is key; therefore, once the policy is changed (no matter how minor) the notification should launch at least three times. Although the average user of the application may not fully comprehend the intricacies of the technological functions, it is better that he is fully informed rather

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131. This Comment has addressed ways in which users can retrieve snaps such as taking screen shots or photographing data using alternative devices.

than only partially informed. In the alternative, Snapchat should use its technological abilities to ensure that the photos and videos are actually deleted within a timely manner.

This proposal works by putting the Snapchat user on some sort of notice, not once, but three times. This is crucial because in most circumstances an individual is not able to sue against terms that she has contractually agreed to. The repetitive nature of the notification will hopefully at some point gain enough attention for users to at least skim the policy adjustments. In the alternative, at least the user will have viewed a bulleted list of the relevant areas of the policy that have been modified. There is the possibility of individuals opting not to read the policy each of the three times they receive this notification. However, we are in a technological era, and there is only so much that can be done to inform users.

This proposal also works by protecting Snapchat from further investigations. For instance, according to Snapchat's policy, if law enforcement officials have a search warrant to see specific unopened snaps, the service is required by the federal Electronic Communications Privacy Act to hand them over.<sup>132</sup> Since May 2013, Snapchat has given approximately a dozen snaps to the authorities.<sup>133</sup> Recently this has begun to raise numerous legal and privacy issues, but luckily Snapchat warned users in its policy from the beginning of its launch.<sup>134</sup>

Furthermore, an application user needs to be more cognizant of what he is downloading to his devices. The FTC provides an "Understanding Mobile Apps" brochure for consumers that covers such important topics as how apps are paid for, what information they may gather from a device, or who gets that information<sup>135</sup> Consumers cannot rely solely on the Apple and Android application stores to provide them with the necessary privacy information and protection they seek.

One of the central underlying public policy issues at hand is consumer protection. The FTC's Bureau of Consumer Protection works for the benefit of the consumer to prevent fraud, deception, and unfair business practices in the marketplace.<sup>136</sup> Government officials want to

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132. Dara Kerr, *Snapchat's Unopened 'Snaps' Can be Seized by the Police*, CNET (Oct. 14, 2013), [http://news.cnet.com/8301-1023\\_3-57607495-93/snapchats-unopened-snaps-can-be-seized-by-the-police/](http://news.cnet.com/8301-1023_3-57607495-93/snapchats-unopened-snaps-can-be-seized-by-the-police/); see 18 U.S.C. § 2510.

133. Kerr, *supra* note 132.

134. *Id.* (describing that "Stories" is available for up to twenty-four hours and will remain on Snapchat servers for the duration of this time). "According to Schaffer, these snaps within Stories are subject to the same legal requirements as unopened snaps." *Id.*

135. *Understanding Mobile Apps*, FED. TRADE COMM. (Sept. 2011), <http://www.consumer.ftc.gov/articles/0018-understanding-mobile-apps>.

136. *Bureau of Consumer Protection*, FED. TRADE COMM., <http://www.ftc.gov/bcp/>

ensure consumer confidence by enforcing federal laws to protect them.<sup>137</sup> The Bureau empowers consumers with free information to help them exercise their rights and spot and avoid fraud and deception.<sup>138</sup>

If users feel slighted by Snapchat, they simply will not use the app anymore. This can have a more negative effect on the economy than one might think. Deceptive practices by applications like Snapchat will leave consumers weary of other applications and technological advances. Consumers like mobile applications apps because they are often free or available at a very low cost. When applications sell advertising space in the app, they can offer the app for a lower cost than if it did not have advertisements.<sup>139</sup> However, if consumers stop using apps as often as they do now, advertisers will seek other ways to promote their businesses. A decrease in advertisements within apps can lead to the rise of application prices. In the event that mobile application companies like Snapchat take responsibility and provide more straightforward and inclusive policies, it eventually may become a norm in the industry. Over time, these norms may transform into laws requiring all mobile applications to disclose all pertinent information to its users in a reader-friendly format. The ability for individuals to interact online without sacrificing their personal privacy is a vital part of the Internet's value, and is intimately related to its trustworthiness.<sup>140</sup> It is important for companies like Snapchat to be forthcoming with its users and let the users decide if the application is suitable for them or not.

#### IV. CONCLUSION

As users, we buy into the idea of privacy online or with social apps, but at the end of the day, it may seem as though we have no control over our data.<sup>141</sup> Even Snapchat, an application that boasts the ability to delete photos and videos forever, has not actually provided this feature. The Snapchat app makes many users feel comfortable to send photos that they believe will be deleted after just a few seconds.<sup>142</sup>

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(last visited May 25, 2014).

137. *Id.*

138. *Id.*

139. *Understanding Mobile Apps*, *supra* note 135.

140. *Privacy & Identity*, INTERNET SOC'Y, <http://www.internetsociety.org/what-we-do/internet-technology-matters/privacy-identity> (last visited May 25, 2014).

141. Ashley T. Powell, *Shorter Privacy Policies win-win for all*, DAILY WILDCAT (Oct. 28, 2013), <http://www.wildcat.arizona.edu/article/2013/10/shorter-privacy-policies-win-win-for-both-users-companies>.

142. *Id.*

Social media companies like Snapchat should provide users with condensed privacy policies so that individuals do not feel fooled and the companies do not lose users.<sup>143</sup>

Privacy policies need to be condensed so users will actually read the policies and know the truth behind whatever service they are about to use. “Very few people have the patience to actually read 5,000 word privacy policies and later feel betrayed by these services, which could cause a decline in the number of users.”<sup>144</sup> Snapchat’s current privacy policy is approximately 1,800 words, Instagram’s policy is roughly more than 2,000 words and Facebook’s policy is more than 5,000 words.<sup>145</sup> Snapchat needs to not only retain its condensed policy, it needs to better inform its users of the risks of using the application.

This Comment has presented that Snapchat has violated Section 5 of the Federal Trade Commission Act, which prohibits unfair and deceptive trade practices.<sup>146</sup> The internal defects of the application as well as its privacy policy shortcomings are addressed. While the possibility of a more technological solution is briefly presented, this Comment focuses on the legal remedy to the issue at hand. Proposed herein is a privacy policy revision that includes repetitive notifications to the consumer. This not only puts the user of the application on notice, but it does so on multiple occasions. Additionally, this Comment has addressed steps that consumers ought to take in a world of growing technological advances. Technology makes the world a better place. It has provided a unique platform for innovation, creativity, and economic opportunity<sup>147</sup> Technology has improved the quality of life for people in all parts of the world—and can continue to do so.<sup>148</sup>

Snapchat CEO Evan Spiegel claims that his company’s most important value is empathy.<sup>149</sup> When asked to give an example of a product designed without empathy, Spiegel immediately named Google Glass, claiming that it works in the world that Google has constructed for itself, but that in the real world it makes most people uncomfortable.<sup>150</sup> The question for Snapchat, as it grows beyond 350 million snaps a day, is who is it going to feel empathy for?<sup>151</sup>

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143. *Id.*

144. *Id.*

145. *Id.*

146. In re Snapchat Complaint, *supra* note 45, at 4-5.

147. *Privacy & Identity*, *supra* note 140.

148. *Id.*

149. Buchanan, *supra* note 33.

150. *Id.*

151. *Id.*



