



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

August 30, 2012

Mr. Marc Rotenberg
Executive Director
Mr. David Jacobs
Consumer Protection Fellow
Electronic Privacy Information Center
1718 Connecticut Ave., NW
Suite 200
Washington, DC 20009

Re: In the Matter of Myspace LLC, File No. 1023058, Docket No. C-4369

Dear Messrs. Rotenberg and Jacobs:

Thank you for your comment, on behalf of the Electronic Privacy Information Center (“EPIC”), regarding the Federal Trade Commission’s consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission’s Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment notes EPIC’s support for the settlement with Myspace LLC (“Myspace”) but recommends several changes to the proposed order. First, you urge the Commission to incorporate into the final order a number of provisions from the Commission’s consent order with Facebook, Inc. (“Facebook”).¹ Specifically, you request that the final order incorporate the consent provisions of Part II of the Facebook order, including that Myspace “clearly and prominently” disclose to consumers how and with whom covered information will be shared and obtain users’ affirmative express consent before sharing covered information. You also request that the order include a definition of “third party” and a provision ordering Myspace to delete data from its servers within 30 days from the time a user deletes his or her Myspace account.

The terms of the proposed order are intended to address the particular misrepresentations alleged in the Commission’s complaint. The alleged practices at issue here differ from those in the Facebook case, and, accordingly, the order provisions differ. For instance, the complaint

¹ Since your comment was filed, the Commission has approved the final settlement with Facebook. *In the Matter of Facebook, Inc.*, FTC Docket No. C-4365 (Aug. 10, 2012) (consent order), available at <http://www.ftc.gov/os/caselist/0923184/index.shtm>.

against Myspace does not include allegations that the company materially exceeded the privacy settings of users through a retroactive change to a privacy policy, as the Facebook case did. In addition, there is no allegation in this case involving ineffective deletion of user data.

The Commission is committed to safeguarding consumer privacy and believes the order provides strong protections for consumers. The proposed order requires Myspace to build and maintain strong privacy protections for all of its products and services. Under the order, Myspace is prohibited from misrepresenting the extent to which it maintains the privacy and confidentiality of any covered information, including the purposes for which it collects and discloses covered information, as well as the extent to which it makes or has made covered information accessible to third parties. Myspace also is prohibited from misrepresenting its adherence to any privacy, security, or other compliance program. The proposed order requires Myspace to establish and maintain a comprehensive privacy program for all its products and services and obtain biennial privacy assessments by an independent third-party professional for twenty (20) years. Should Myspace violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation, or up to \$16,000 per day in the case of continuing violations (as provided by Section 5(l) of the FTC Act). Accordingly, the Commission feels the proposed order appropriately addresses the conduct at issue in this case.

Further, your comment urges that the Commission require Myspace to conform to the substantive protections of the President's Consumer Privacy Bill of Rights ("CPBR"), including Individual Control, Respect for Context, Transparency, and Access and Control. The Commission fully supports the CPBR, and, as you point out, highlighted a number of these principles in our March 2012 Privacy Report, "Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers."² The Commission believes that the privacy program mandated under the consent order will require Myspace to address many of the consumer protections discussed in your comment. To the extent that reasonably foreseeable, material risks arise from certain practices, Myspace must use reasonable and appropriate procedures to address these risks or it could face substantial civil penalties. As noted above, however, the order is designed to address specific conduct as alleged in the complaint, not to impose obligations that may not be tied to such conduct.

Finally, you ask the Commission to make public the assessments required by the order to the greatest extent possible. The Commission recognizes the public interest in transparency regarding a company's compliance with an FTC order. The public may seek access to the third-party assessments required by the order by making a request under the Freedom of Information Act.³ However, the third-party assessments may contain trade secrets or other confidential commercial or financial information, or information about consumers or other third parties, that

² FTC, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (Mar. 2012), available at <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>.

³ 5 U.S.C. § 552 *et seq.*

the Commission may not publicly disclose.⁴ Upon receipt of a request for confidential treatment of all or part of the third-party assessments, the Commission will conduct a careful review to determine whether confidential treatment is warranted. We will make every effort to be transparent regarding these assessments, consistent with the applicable law. If the Commission determines that the assessments have been frequently requested or are likely to be frequently requested because of the their subject matter, the agency will post such portions as may be released to the public on the FTC's website.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and it thanks you again for your comment.

By direction of the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark
Secretary

⁴ See 15 U.S.C. § 46(f) ("the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential"); Commission Rule of Practice § 4.10.