



Office of the Secretary

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

October 13, 2011

Mr. Marc Rotenberg  
President  
Ms. Sharon Goott Nissim  
Consumer Privacy Counsel  
Mr. Thomas H. Moore  
Of Counsel  
Electronic Privacy Information Center  
1718 Connecticut Ave., NW  
Suite 200  
Washington, DC 20009

*Re: In the Matter of Google Inc., File No. 1023136, Docket No. C-4336*

Dear Mr. Rotenberg, Ms. Nissim, and Mr. Moore:

Thank you for your comment on behalf of the Electronic Privacy Information Center (“EPIC”) on 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 of the consent order and commends the landmark nature of the agreement. Your comment also indicates your view that Google Inc. (“Google”) should be required to institute the following provisions as part of the comprehensive privacy program mandated by Part III of the consent order: implementation of a “Do Not Track” mechanism for Google’s Chrome browser, encryption of all cloud computing services, privacy protections for Google Books users, cessation of mobile phone tracking of location information, a general requirement of Fair Information Practices for all of Google’s products and services, giving user data to law enforcement only if it has a search warrant, fully deleting user search history after six months, keeping non-Gmail users’ emails fully private, and ending the collection of data transmitted by residential wireless routers. EPIC also recommends that the Commission make public the results of Google’s privacy assessments. Finally, EPIC urges the Commission to apply this consent order with Google to all other internet companies.

The Commission thanks EPIC for its initial petition about Google Buzz and appreciates your support. The Commission is committed to safeguarding consumer privacy and believes that the proposed order requires Google to build and maintain strong privacy protections for all its products and services. As you noted, the consent order mandates that Google establish and maintain a comprehensive privacy program that addresses privacy risks related to new and

existing products and services and that protects the privacy and confidentiality of “covered information,”<sup>1</sup> among other provisions. While the proposed order sets forth several elements that the privacy program must include, some flexibility is afforded with regard to its implementation. This approach allows innovation in the area of privacy-enhancing technologies and is designed to keep pace with a dynamic marketplace. In particular, the privacy program must contain controls and procedures appropriate to Google’s size and complexity that reflect the sensitivity of data handled, the scope and nature of Google’s business activities, and the types of risks the company faces. To the extent that reasonably foreseeable, material risks arise from the products, services, and business practices discussed in your comment, Google must use reasonable and appropriate procedures to address these risks or it could face substantial civil penalties.

Under the order, Google is prohibited from misrepresenting the privacy and confidentiality of any covered information, as well as the company’s adherence to any privacy, security, or other compliance program. The company also must give Google users notice and obtain express affirmative consent prior to sharing their identified information with any third party in connection with a change to any product or service, where such sharing is contrary to stated sharing practices in effect at the time of collection.

The order also requires Google to obtain an assessment and report from a qualified, independent third-party professional, certifying that Google has in place a privacy program that provides protections that meet or exceed the protections required by the order, every other year for twenty years. You ask the Commission to make public the assessments required by the order. To the extent permissible under law, the public may have access to the submissions required pursuant to the order. In some cases, these documents may contain trade secrets or other confidential commercial or financial information, or information about consumers or other third parties, that would be exempt from public disclosure. Accordingly, as provided by statute, companies may request confidential treatment for these documents or portions of these documents under Commission procedures. Upon receipt of such a request, the Commission conducts a review to determine whether confidential treatment is warranted.

The proposed settlement followed the staff’s thorough investigation of Google’s practices and representations at issue in the Commission’s complaint. While the Commission believes that the proposed settlement provides valuable guidance to industry about the importance of building privacy controls into the design and implementation of new products and services, a Commission consent order applies only to the settling party and does not bind unrelated entities. In addition, the Commission feels this consent order appropriately addresses the conduct at issue in this case, and that consumers will benefit from the provisions in this order well into the future.

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<sup>1</sup> “Covered Information” is defined in the order as “information respondent [Google] collects from or about an individual, including, but not limited to, an individual’s: (a) first and last name; (b) home or other physical address, including street name and city or town; (c) email address or other online contact information, such as a user identifier or screen name; (d) persistent identifier, such as IP address; (e) telephone number, including home telephone number and mobile telephone number; (f) list of contacts; (g) physical location; or any other information from or about an individual consumer that is combined with (a) through (g) above.”

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.

Donald S. Clark  
Secretary