

Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580

Proposed Consent Agreement)
In the Matter Google, Inc.) File No. 102 3136
(Google Buzz))
)

COMMENTS OF
The Center for Digital Democracy

2 May 2011

The Center for Digital Democracy supports the FTC's settlement requirements—that Google refrain from future privacy misrepresentations, that it implement a “comprehensive privacy program,” and that it submit to regular, independent privacy audits for the next 20 years. But for this settlement to effectively protect consumers who use Google's far-reaching services, the company must be required under its new *comprehensive* plan to implement safeguards addressing essential Google holdings, including the Google Content Network, DoubleClick, DoubleClick Ad Exchange, Admob and its related mobile ad services, Invite Media, and Teracent. The success of this proposed settlement to protect consumers who were misled by Google's Buzz product will be determined by whether transparency, candor, and user control becomes the central feature across all of Google's digital data collection practices.¹

Google must identify to each user of its Google Content Network the third party or parties that are involved in a transaction, especially for data-related activities. As the commission knows, Google opened up its “Content Network” to third-party data brokers in 2008. Its goal was to “empower advertisers to work with approved third parties to serve and track display ads, including rich media ads, across the Google content network through AdWords, giving them more options, flexibility and control over their campaigns.”² Since that time, Google has “certified” scores of data-targeting and data-mining companies so they can utilize its networks. As Google recently explained in *Advertising Age* to potential clients, its Display Network enables “agencies and marketers that want a media solution to... find the ideal combination of audience and context for each campaign. Use built-in audience sets or your own remarketing data across a huge pool of high-quality inventory with real-time bidding and optimization under the hood.”³

The commission should examine each “certified” partner that Google permits to operate on its Content Network—and then order those companies to provide their users with both accurate information and control over what and how their data are collected and used. Google enables more than two-dozen rich-media vendors to serve “3rd-party ads on the Google Display Network.” Google users should be informed prior to interacting with any ad or ad-related copy provided via Tumri, for example (one of Google's certified vendors), that their data could be used to retarget

¹ Federal Trade Commission, “In the Matter of Google Inc., a corporation,” FTC File No. 102 3136, <http://www.ftc.gov/os/caselist/1023136/index.shtm> (viewed 30 Apr. 2011).

² Rajas Moonka, “Opening Our Content Network to Third Parties,” The Official Google Blog,” 19 May 2008, <http://googleblog.blogspot.com/2008/05/opening-our-content-network-to-third.html> (viewed 28 Apr. 2011).

³ “Google,” Advertising Age Audience Buying Guide 2011,” <http://brandedcontent.adage.com/audiencebuyingguide2011/network.php?id=12>. See also, Google AdWords, “What are Tags and How are They Used for Remarketing?” <http://adwords.google.com/support/aw/bin/answer.py?hl=en&answer=176446> (both viewed 29 Apr. 2011).

them. Or that their information may be used to optimize “landing page content (or any other type of post-click response) in conjunction with media selection and dynamic messaging... [providing] detailed real time information regarding not just *which* offers are performing best, but also *why* consumers prefer certain offers & messages and *how* they are interacting with each creative....”⁴ Google users should be informed as well of the tracking activities of EyeWonder (another certified vendor), which captures a user’s rich-media use, including “video interactions, rich media interactions, brand interactions and time, and more.”⁵ Users should also know and approve whether one of Google’s “Research” vendors is engaged in data collection and analysis. Among these certified research companies is Coremetrics, which captures “granular visitor activities... [tracking] how display ad click-through and view-through drive website conversions... [generating] sophisticated data segments to capture detailed behaviors down to the specific event type level.”⁶ And Google users should know and approve whether they wish to be a part of the Coremetrics “Lifetime Individual Visitor Experience (LIVE) Profile,” which tracks and stores “a customer’s complete behavior ...over the long term.”⁷

Google, moreover, has certified dozens of data-mining companies engaged in real-time ad exchange sales of users, social media surveillance, and behavioral targeting and retargeting. Many of these companies have far-reaching data sharing and integration partnerships of their own. Google-approved vendors include DataXU, an “automated media decision platform” that analyzes “data created by your consumers post-ad exposure... to predict your consumers’ behavior [and] to create customized algorithms....”⁸ MediaMath targets users by relying on “Depth of insights powered by financial services grade technology... [using] leading sources of in-market consumer and demographic data, or bring[ing] outside data partnerships [to] develop custom audience segments for targeting and optimization.”⁹ MediaMath, another certified Google vendor, partners with data targeting companies BlueKai, Exelate, Acxiom, TARGUSinfo, DataLogix, and Bizo. Social media mining company Media6Degrees, also Google certified, “analyzes the pattern” of

⁴ Tumri, “Advertisers & Agencies,” <http://www.tumri.com/advertisers-agencies/overview> (viewed 28 Apr. 2011).

⁵ EyeWonder, “TECHNOLOGIES: AdWonder Reporting Platform,” http://www.eyewonder.com/technologies_adtracking.php (viewed 28 Apr. 2011).

⁶ Coremetrics, “Target Through Display Ads with Coremetrics AdTarget,” <http://www.coremetrics.com/solutions/display-ad-targeting.php> (viewed 28 Apr. 2011).

⁷ Coremetrics, “Optimize Your Entire Marketing Program through Coremetrics LIVE Profiles,” <http://www.coremetrics.com/solutions/customer-history-live-profiles.php> (viewed 28 Apr. 2011).

⁸ DataXu, “How We Are Different,” <http://www.dataxu.com/how/how-we-are-different/> (viewed 28 Apr. 2011).

⁹ MediaMath, “TerminalOne: The New Marketing OS,” <http://www.terminalone.com/> (viewed 28 Apr. 2011).

how “users cluster around the web” in order to engage in “social targeting.”¹⁰ Another partner is retargeting/behavioral tracking company Criteo, which promises marketers that it provides “the most sophisticated form of dynamic personalized retargeting.”¹¹ Finally, a user should be informed and give consent if they have been identified as a target of the “Google Display Network Reserve” system, including via retargeting.¹² Google should be required to identify to all users that they have been assigned a “remarketing tag” or cookie related to a “remarketing list.”¹³

For its Display and Content Networks, Google should be required to provide the same transparency, candor, and control it provides to its clients. As the company explained in a recent *Advertising Age* post,

With Google, you can combine interests, demographics, remarketing lists and Web sites to reach broad and narrow audiences with messaging that resonate.... Our clients can reach hundreds of millions of users classified into demographics and interests. Using our more than 1,000 interest categories, you can reach an audience with specificity or more broadly through high-level categories such as auto, sports, travel and finance. These interests are based on a rich classification system that looks at how often and how recently pages about a topic are visited, often with a threshold of five to 10, and up to many dozens of pages viewed in a month for a topic.¹⁴

¹⁰ Media6Degrees, “Media6Degrees Brings Social Targeting to Video,” 6 Dec. 2010, <http://media6degrees.com/2010/12/media6degrees-brings-social-targeting-to-video/>; Media6Degrees, “Socially Targeted Advertising,” <http://media6degrees.com/> (both viewed 28 Apr. 2011).

¹¹ Criteo, “What is Retargeting?” <http://www.criteo.com/us/retargeting> (viewed 28 Apr. 2011).

¹² Google, “Google Display Network,” <http://www.google.com/ads/displaynetwork/>; Google, “Connect When and Where It Counts,” <http://www.google.com/ads/displaynetwork/find-your-audience/index.html#tab0=2> (both viewed 29 Apr. 2011).

¹³ Google, “Re-engage Your Customers Across Our Network,” <http://www.google.com/ads/displaynetwork/find-your-audience/remarketing.html>; Google, “Remarketing on the Google Display Network: Reach Your Audience on a Broader Scale,” http://www.google.com/adwords/displaynetwork/pdfs/GDN_Remarketing.pdf; Google, “What is a Remarketing Tag versus a Remarketing List?” <http://adwords.google.com/support/aw/bin/answer.py?hl=en&answer=176453>. On YouTube, Google must also identify and seek user control over any data collection, including analytics and tracking. See Google, “What is YouTube Insight?” <http://www.google.com/support/youtube/bin/answer.py?hl=en&answer=94079>; YouTube, “Insight,” http://www.youtube.com/t/advertising_insight; YouTube, “Video Targeting Tool,” http://www.youtube.com/t/advertising_video_targeting (all viewed 30 Apr. 2011).

¹⁴ “Google,” *Advertising Age Audience Buying Guide 2011*.

Surely, each Google user, under the Consent Decree, deserves to be informed that they may be identified as a target by “more than 1,000 interest categories” as well as through “rich classification system” data. The Consent Decree must be implemented both to ensure this aspect, but also to apprise consumers that they are confronting a Google system that, in its own words, engages in “optimizations that fuse audience and context.”¹⁵

Google must be required to revise its privacy policy statement, especially for its ad-related services. Google’s Ad Preference Manager claims that “No Personal Information” is used.¹⁶ But as Google undoubtedly knows, in today’s digital marketing ecosystem, one doesn’t have to know someone’s street address to identify his or her behavior (let alone location). For example, Google explains that it “... does not know Mary’s name or any other personal information about her. Google simply recognizes the number stored in Mary’s browser, and shows ads related to the interest and inferred demographic categories associated with her cookie.”¹⁷ But that cookie is tied to an actual consumer, and to her online behaviors and actions. In its privacy policy for ads, Google says it provides “Transparency—We provide detailed information about our advertising policies and practices.”¹⁸ That statement is not true, as this submission to the commission will show. Google users are not given sufficient, let alone accurate, information on how Google collects and uses data within and across key platforms, applications, and services. Google’s privacy policy claim that it provides a user “Choice”—“We offer innovative ways to view, manage and opt out of advertising cookies and other anonymous IDs”—is an unfair and deceptive statement.¹⁹ For example, in the same privacy statement for its ad services, Google provides this misleading statement: “When you are accessing the web through a web browser, Google uses cookies to improve your online experience, including the display of more relevant ads.”²⁰ Google uses cookies to target a user more precisely with digital marketing, in order, in its own words, to “convert” him or her to the goals of the marketer. Consequently, the commission should require Google to revise its policies to reflect the inherently personal nature of cookies and related data targeting and collection applications.²¹

¹⁵ “Google,” Advertising Age Audience Buying Guide 2011.”

¹⁶ Google Ad Preferences, “Interest-based Advertising: How it Works,” <http://www.google.com/ads/preferences/html/about.html> (viewed 28 Apr. 2011).

¹⁷ Google Ad Preferences, “Interest-based Advertising: How it Works.”

¹⁸ Google Privacy Center, “Advertising and Privacy,” <http://www.google.com/privacy/ads/> (viewed 28 Apr. 2011).

¹⁹ Google Privacy Center, “Advertising and Privacy.”

²⁰ Google Privacy Center, “Advertising and Privacy.”

²¹ See, for example, Article 29 Data Protection Working Party, “Opinion 2/2010 on Online Behavioural Advertising,” 22 June 2010, http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2010/wp171_en.pdf (viewed

Google's DoubleClick division must be required to proactively identify for all of its users both the techniques it uses to solicit data from them, as well as all of the third parties that may have access to user information. For example, Google/DoubleClick users should be notified, and asked for meaningful consent, whenever the company's Boomerang retargeting product is used. Users need to be told and approve the various tracking "tags"—such as DoubleClick's "Spotlight conversion tags or Floodlight advanced conversion tags." And they need to be informed about how their information is collected and measured by the various metrics tools, such as tracking pixels, enabled by DART for Publishers.²²

The commission must ensure through this settlement that Google implements a range of privacy and consumer protection policies for DoubleClick. Consumers should be informed, and have the power to determine, whether the "data transfers" process that DoubleClick enables other digital marketing companies to engage in is acceptable to their personal privacy preferences. DoubleClick, for example, "feeds" consumer data to the "powerful in-house digital marketing decision support and optimization" of Havas Digital—known as Artemis.²³ The Google/DoubleClick/Havas/Artemis partnership, explains a recent case study, transmits user information "insights into consumer behavior, such as website visits, search clicks, banner or video exposures."²⁴ Artemis integrates this Google/DoubleClick "digital exposure data with website sales and customer lifetime value metrics." DoubleClick's data, it explains, provide "marketers" with consumer analysis that "far outpace run-of-the-mill metrics like clickthrough and conversion rates." DoubleClick's "data transfer solution" makes available to clients "ad server log files" on a daily basis, which "contain the best data available to help analyze online consumer behavior, including detailed information on an advertiser's impressions, clicks or conversion (or Spotlight events)."²⁵

Mobile privacy is one of the most critical issues confronting consumers today. Google/DoubleClick has expanded its user tracking on mobile devices, including via Spotlight tags. As the company recently explained, "To enable conversion tracking for a mobile site you can use exactly the same Floodlight tags as regular DFA

28 Apr. 2011).

²² Google, "DoubleClick for Advertisers: The Foundation for Managing Online Ads," http://www.google.com/DoubleClick/pdfs/DoubleClick_for_advertisers.pdf (viewed 30 Apr. 2011).

²³ DoubleClick, "Havas Digital Uses DoubleClick Data to Drive Better Results for Clients," http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.com/en/us/doubleclick/pdfs/cs_havasdigital_0610.pdf (viewed 30 Apr. 2011).

²⁴ DoubleClick, "Havas Digital Uses DoubleClick Data to Drive Better Results for Clients."

²⁵ DoubleClick, "Havas Digital Uses DoubleClick Data to Drive Better Results for Clients." See also Havas Digital, "Artemis," <http://www.havasdigital.com/artemis/> (viewed 30 Apr. 2011).

[DoubleClick for Advertisers] conversion tracking. We've optimized the system to handle the quirks of cookie handling and javascript support on different mobile devices so it now supports a huge range of mobile phones, from older generation phones to the latest model smart phones covering the vast majority of the mobile traffic that we see. In addition, because it uses Floodlight, mobile conversion tracking in DFA allows you to use conversion counters and even e-commerce tags with your mobile campaigns so that you can track not just visits and actions but value too."²⁶ No mobile consumer should be forced to accept such hidden tracking and profiling—and the commission must ensure that mobile consumers are protected under its agreement with Google.

Google/DoubleClick users must also be informed of the applications used to solicit data, such as “rich media” and its “data capture” feature. DoubleClick explains to marketers and publishers that “Advertisers use Data Capture to collect lead information right from within a rich media ad. Plus, this feature allows advertisers to send customer information directly to their own database.”²⁷ DoubleClick’s rich-media ads require transparency and consent because they incorporate, purposefully outside of a user’s awareness, such techniques as “calendar reminders, data capture, downloads, dynamic data feeds (RSS), IM/email to a friend, interactive elements, games, polls, SMS messaging and voicemail.”²⁸ Given that rich media is a powerful digital marketing tool found to deliver strong responses from consumers—including at an “immersive” level—both disclosure and consent is required.²⁹

All of the rich-media measurement functions of a user tracked by Google—including “interaction rate, expansion rate, video completion rate, average expansion time”—must be identified and approved.³⁰ As DoubleClick explains, such rich-media

²⁶ Alex Gawley, “Tracking Mobile Conversions in DFA,” DoubleClick Advertiser Blog, 18 Apr. 2011, <http://DoubleClickadvertisers.blogspot.com/2011/04/tracking-mobile-conversions-in-dfa.html> (viewed 29 Apr. 2011).

²⁷ DoubleClick, “Rich Media Gallery,” http://www.google.com/DoubleClick/gallery/features/data_capture.html (viewed 29 Apr. 2011).

²⁸ DoubleClick, “DoubleClick Rich Media and Video,” http://www.DoubleClick.com/insight/pdfs/DoubleClick_Rich_Media_Overview_Web_04-24-09.pdf (viewed 29 Apr. 2011).

²⁹ Dan M. Grigorovici and Corina D. Constantin, “Experiencing Interactive Advertising beyond Rich Media: Impacts of Ad Type and Presence on Brand Effectiveness in 3D Gaming Immersive Virtual Environments,” *Journal of Interactive Advertising* 5, n. 1 (Fall 2004), <http://jiad.org/article53> (viewed 29 Apr. 2011).

³⁰ Google, “2009 Year-in-Review Benchmarks: A DoubleClick Report,” http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.com/en/us/DoubleClick/pdfs/DoubleClick-07-2010-DoubleClick-Benchmarks-Report-2009-Year-in-Review-US.pdf (viewed 29 Apr. 2011).

targeting is used for sensitive consumer transactions involving financial and health services, as well as major purchases such as automobiles.³¹

The Google/DoubleClick Ad Exchange must be required to adopt a range of additional privacy and consumer protection safeguards. The DoubleClick Ad Exchange “includes over 40 ad networks from the U.S. and Europe, including most of the 25 largest ad networks in the U.S.”³² As we explained in our 2010 complaint on real-time bidding and user auctions, few (if any) consumers know of—or have been asked to approve—the sale of their data and the subsequent use of that data, such as ad targeting.³³ Google’s Ad Exchange operates a far-reaching service where, as the company recently revealed, it is engaged in a data daisy chain of user-information collection, use, and sales. Any user who is to be subject to the DoubleClick Ad Exchange’s “Dynamic Bidding in Real-Time,” via Google or any of its partners or clients, must be proactively informed and allowed to give prior consent. For example, TellApart, “one of the top buyers of inventory on the Ad Exchange,” has developed a “cloud-based, customer database. Its unique predictive algorithms make smart calculations about which customers and prospects are high quality and which will most likely buy after clicking on a remarketing ad.”³⁴ TellApart has

³¹ Google explains that “Boomerang for Publishers allows you to better meet this challenge by extending your most valuable audiences across your website or network. By using Boomerang for Publishers, you can identify site visitors who have previously expressed interest in specific content areas and reach them elsewhere on your site.” DoubleClick, “Extend Your Most Valuable Audiences with Boomerang for Publishers,” <http://www.google.com/DoubleClick/publishers/bfp.html>. See also DoubleClick, “DoubleClick’s Audience Segmentation and Targeting Solution for Publishers,” http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.com/en/us/DoubleClick/pdfs/boomerang_for_publishers.pdf; DoubleClick, “DoubleClick Rich Media Overview,” http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.co.uk/en/uk/DoubleClick/pdfs/DoubleClick_rich_media_overview.pdf; and DoubleClick, “DoubleClick for Advertisers: The Foundation for Managing Online Ads” (all viewed 29 Apr. 2011).

³² Quoted in David Fidlin, “Google Gets into Ad Swapping,” Digital Media Buzz, 20 Oct. 2009, <http://www.digitalmediabuzz.com/2009/10/google-gets-into-ad-swapping/> (viewed 23 Oct. 2009)

³³ Center for Digital Democracy, U.S. PIRG, and World Privacy Forum, “In the Matter of Real-time Targeting and Auctioning, Data Profiling Optimization, and Economic Loss to Consumers and Privacy, Complaint, Request for Investigation, Injunction, and Other Relief: Google, Yahoo, PubMatic, TARGUSinfo, MediaMath, eXelate, Rubicon Project, AppNexus, Rocket Fuel, and Others Named Below,” Federal Trade Commission filing, 8 Apr. 2010, <http://www.democraticmedia.org/real-time-targeting> (viewed 29 Apr. 2011).

³⁴ DoubleClick, “TellApart Yields Tremendous Returns with DoubleClick Ad Exchange’s Real-time Bidding API,” http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.com/en/us/DoubleClick/pdfs/TellApart-and-DoubleClick-Ad-Exchange-Case-Study-4-19-2011.pdf (viewed 29 Apr. 2011).

“integrated its data platform” with the DoubleClick Ad Exchange to engage in real-time bidding of users. As DoubleClick recently explained in a case study, “TellApart builds a customer database in the cloud for each client, merging every piece of data the client has on its users and buyers. Then it applies its proprietary algorithms to derive a ‘Customer Quality Score’ for each visitor. It segments the window shoppers from the active shoppers, focusing on those who can be attracted back to complete a purchase through a display ad.... TellApart uses real-time bidding (RTB) to buy individual impressions targeted to each high-quality customer.”³⁵

Surely any user who may be subject to targeted tracking for real-time auction sales via the TellApart/Google DoubleClick Ad Exchange system should know that “deep customer data” have been used to individually “assess” their “potential to transact and/or become a high lifetime value customer.”³⁶ Any consumers interacting with the Google/DoubleClick Ad Exchange must be informed, and provide opt-in consent, for any use of its “yield management and optimization” technologies.³⁷

The privacy implications of the ad exchange are especially critical in the inherently sensitive areas of health and finances, two of the many areas in which Google’s DoubleClick Ad Exchange facilitates fine-grained ad targeting. Among the targeting categories for health are such concerns as arthritis, diabetes, GERD and digestive disorders, migraines, sleep disorders, pain management, as well as credit cards, loans, and insurance.³⁸

Invite Media (a June 2010 Google acquisition) must also be required to implement privacy safeguards under the decree, including those to ensure that a user is in control of the real-time bidding process. Invite Media, in its own words a “next generation platform for display media trading,” allows its clients to “[a]utomatically

³⁵ DoubleClick, “TellApart Yields Tremendous Returns with DoubleClick Ad Exchange’s Real-time Bidding API.”

³⁶ TellApart, “What We Do,” http://www.tellapart.com/what_we_do/retargeting/ (viewed 29 Apr. 2011).

³⁷ Google, “DoubleClick Ad Exchange’s Impact on Publisher Revenue,” 2011, http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.com/en/us/doubleclick/pdfs/DC_Ad_Exchange_WP_110117.pdf (viewed 30 Apr. 2011).

³⁸ DoubleClick, “Category Targeting Codes,” <http://www.google.com/support/adxbuyer/bin/answer.py?answer=156178> (viewed 1 Apr. 2010). Among the “certified” ad networks working with Google are Turn, X+1, DataXu, Datran Media, MediaMath, RocketFuel, and Appnexus. “Google’s Certified Ad Networks,” privacychoice, 18 Mar. 2010, <http://privacychoice.wordpress.com/googles-certified-ad-networks-as-of-31810/> (viewed 3 Apr. 2010). See also Google, “Five Trends in Digital Healthcare in 2010,” May 2010, <http://www.slideshare.net/juanpittau/five-trends-in-digital-healthcare-in-2010>; Google, “The Role of the Internet in Automotive Buying,” <http://www.google.co.uk/intl/en/advertisers/pdfs/automotive.pdf> (both viewed 13 Apr. 2011).

buy from multiple ad exchanges in real-time, all through the same interface... [using] Bid Manager's built-in real-time optimization system to maximize performance."³⁹ As elsewhere in the Google ad-serving universe, Invite Media's real-time bid-management platform is based on the acquisition and analysis of extensive amounts of consumer data, including "...the ability to access third party data providers directly through the same central interface, gain in-depth reporting and analytics on all metrics, and build an internal 'exchange practice' around a fully self-service and transparent platform."⁴⁰ Invite's "Bid Manager" directly impacts a user. As the company explains, "When ad space on a website is bought or sold, usually to an advertiser, ad agency or ad network by a publisher, the Bid Manager technology, as an agent for its clients, fulfills the transaction by delivering the ad to the Internet user who visits that site. Generally, an Internet user's computer comes into contact with Invite Media when a user visits a website, or views an ad, powered by the Bid Manager technology. The ads sent by the Bid Manager technology are sent from the domain [invitemedia.com](http://www.invitemedia.com), sometimes through client domains that forward ads and ad requests to and from [invitemedia.com](http://www.invitemedia.com)."⁴¹

The commission must ensure that all companies collecting and using data that access Google's Invite Media's platform, provide the same level of privacy controls and safeguards as required under the settlement. Among the data-mining and data broker companies that have partnered with Invite are TARGUSinfo, eXelate, and AlmondNet.⁴² All Google Invite Media users must be proactively informed if they have been profiled and then evaluated with various online credit-related ratings that may be used by one of its data partners.

³⁹ Invite Media, "Introducing Bid Manager," <http://www.invitemedia.com/index.shtml> (viewed 13 Apr. 2011).

⁴⁰ "Invite Media Launches Real-Time Bidding with Major Inventory Sources on Bid Manager Platform," 1 Feb. 2010, http://www.invitemedia.com/news/press_releases/2010/2.1.10.shtml (viewed 13 Apr. 2011).

⁴¹ Invite Media, "Privacy Policy," http://www.invitemedia.com/privacy_policy.shtml. See also Invite Media, "Careers: Open Positions," http://www.invitemedia.com/careers/open_positions.shtml#sa (both viewed 30 Apr. 2011).

⁴² TARGUSinfo, "Invite Media Partners with AdAdvisor from TARGUSinfo," Internet Ad Sales, 18 Nov. 2009, <http://www.internetadsales.com/invite-media-partners-with-adadvisor-from-targusinfo-0>; TARGUSinfo, "Industries: Online Marketing & Advertising: Advertisers," <http://www.targusinfo.com/industries/online/optimization/advertisers.aspx>; TARGUSinfo, "Our Solutions: On-Demand Scoring: Predictive Analytics," <http://www.targusinfo.com/solutions/scoring/analytics/default.aspx>; John Gaffney, "Exelate Partners With Invite Media," DIGIDAY:DAILY, 26 Jan. 2010, <http://www.digidaydaily.com/stories/exelate-partners-with-invite-media/>; Kristina Knight, "Invite Media, Almondnet Partner for Keyword, Segmented Data," AlmondNet, <http://almondnet.com/media-center/press-release-archive/invite-media-almondnet-partner-for-keyword> (all viewed 30 Apr. 2011).

AdMob, which Google acquired in 2009 for \$750 million, claims to “serve billions of targeted and personalized ads on the mobile web each month.” These ads are shaped by personal data to ensure their relevance to individual users. As AdMob assures its clients, they can “[g]ain insight into critical details about your visitors such as their location, their device, and their level of engagement with your mobile site.”⁴³ Those insights—unbeknownst to the users who are being profiled and targeted—are based on a range of personal data, according to AdMob: “As a mobile site owner, knowing who your visitors are and how they engage with your content is critical.

- Track the number of unique visitors, total visits and pages consumed on your site
- Monitor user engagement metrics such as length and depth of visit
- Identify the location of your visitors and the mobile operators and devices used to access your website.⁴⁴

As CDD and Consumer Watchdog cautioned the FTC in a December 2009 letter when Google proposed to acquire AdMob,

... the specter of a combined Google/AdMob raises substantial privacy concerns that must be addressed by the Commission. Both AdMob and Google gather tremendous amounts of data about consumers’ online behavior, including in the key mobile sector. AdMob, for example, targets consumers using a wide range of methods, including behavioral, demographic, geographical and contextual. Google’s mobile marketing services are part of its extensive ad serving and data analysis system. Google also provides extensive mobile advertising and data driven analytical services through its DoubleClick subsidiary. AdMob says it “stores and analyzes the data from every ad request, impression, and click and uses this to optimize ad matching in its network.” It targets users by ethnicity, age, gender and other targeting variables. Google offers a range of mobile targeting as part of the Google Content Network. Both companies engage in location based targeting. The consolidation of AdMob into Google would provide significant amounts of data for targeting advertising.⁴⁵

Admob must be required to provide consumers a range of privacy and consumer protection safeguards specifically related to the mobile device environment. Users

⁴³ AdMob, “Mobile Analytics,” <http://analytics.admob.com/home/> (viewed 13 Apr. 2011).

⁴⁴ AdMob, “Measure Your Mobile Performance,” <http://analytics.admob.com/features#understand> (viewed 13 Apr. 2011).

⁴⁵ Center for Digital Democracy and Consumer Watchdog, letter to Jon Leibowitz, chairman, Federal Trade Commission, 28 Dec. 2009, <http://www.consumerwatchdog.org/resources/LtrFTCFinal.pdf> (viewed 19 Apr. 2010).

should be informed if they are being targeted by Admob’s “Advanced creatives” approaches, including mobile applications relying on what it calls “rich, immersive... user experiences [that] ...may implement a variety of calls-to-action.”⁴⁶ They need to know as well whether they are being targeted through practices related to their location and other variables that Admob provides.

Safeguards under the decree must also apply to Teracent, “the leading ad optimization platform for advertisers and marketers” (which Google acquired in 2009). Teracent utilizes a broad array of consumer data to customize its advertising on the fly for *specific individuals*: “Unlike existing and outdated platforms, Teracent maximizes the impact of every impression by seamlessly optimizing performance across user and page data from all available sources (online & offline). Teracent deploys an unlimited number of ad creative combinations (using your catalogs, databases, images, and messages) through a single ad unit. Then, sophisticated machine learning algorithms instantly select the optimal creative elements for each ad impression—based upon a real-time analysis of which items will convert from impressions into sales.”⁴⁷ The commission and Google must address Teracent’s use of data and interaction with users with what the company terms “Intelligent Display Advertising.” While the Google subsidiary’s promise to marketers, that if they “have audience data of any kind, Teracent can monetize it for you,” may be a good practice for revenue generation, the privacy and consumer protection issues must be addressed. As Teracent explains, “Teracent designed its platform to effectively turn ANY data (online or offline) into relevant digital ads that could be monetized any number of ways. If you have data, we have a way to turn it into dollars.”⁴⁸ CDD urges the commission to ensure that Google users have meaningful knowledge and control over how Teracent may be tracking and analyzing their behaviors online, as the tests “various data sets against each other to determine relative value”; its ability to “Track and analyze the performance of different ad elements...”; and what it provides to its clients in terms of “rich reporting and analytics.”⁴⁹

The settlement must also require that Google reveal to consumers, and to the commission, any use of neuromarketing or related biometric techniques or practices designed to measure or influence emotional behavior or brain functioning—including eye-tracking and fMRIs—in the construction of Google products. This

⁴⁶ Google, “Google AdMob Ads SDK,” <http://code.google.com/mobile/ads/> (viewed 30 Apr. 2011).

⁴⁷ Teracent, “Advertiser Solutions,” <http://www.teracent.com/advertiser-solutions/> (viewed 13 Apr. 2011).

⁴⁸ Teracent, “Data Providers,” <http://www.teracent.com/partner-solutions/solution-providers/> (viewed 30 Apr. 2011).

⁴⁹ Teracent, “Data Providers”; Teracent, “Agencies,” <http://www.teracent.com/partner-solutions/agencies/> (viewed 30 Apr. 2011).

disclosure should include as well any work done by research companies hired by Google.⁵⁰

The settlement must ensure that Google protects the privacy of multicultural consumers, including Spanish-speaking online consumers, who represent a growing market. Google has expanded its focus to target this population. In a recent Google-sponsored research report on Hispanics online, for example, the company found that “Hispanics are High Speed; Hispanics are Social Media Shoppers; Hispanics Maximize Mobile Media; Online is Hispanics' GPS to Store.”⁵¹ The FTC should ensure that all of the new privacy and consumer protection requirements are applied to Google services that specifically target Hispanics and other groups.⁵²

Finally, the settlement must protect adolescents, covering any data collection practices related to products linked to their health, such as foods and beverages tied to the youth obesity crisis. A range of Google products and services must be held accountable in this area, including YouTube and Latitude. No data-related targeting should be permitted for users 13-17 in the absence of age-appropriate fair information privacy and consumer policies.⁵³

⁵⁰ Mark Walsh, “Google: This Is Your Brain On Advertising,” *Online Media Daily*, 23 Oct. 2008, http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=93319; Anne Aula and Kerry Rodden, “Eye-tracking Studies: More than Meets the Eye,” *The Official Google Blog*, 6 Feb. 2009, <http://googleblog.blogspot.com/2009/02/eye-tracking-studies-more-than-meets.html>; Erik Sass, “GfK MRI Measures Place-Based Video,” *Digital Outsider*, 22 Oct. 2010, http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=138203 (all viewed 30 Apr. 2011).

⁵¹ “4 Truths About US Hispanics Online,” *Google Think Insights*, <http://www.google.com/think/insights/topics/connecting-to-us-hispanic-consumers.html> (viewed 30 Apr. 2011).

⁵² See, for example, “Google Hires Mark Lopez to Head U.S. Hispanic,” *Hispanic PR Blog*, 6 Nov. 2010, <http://www.hispanicprblog.com/hispanic-social-media-insights/google-hispanic.html>; Google, “Google Think 2011: Agenda,” <http://www.google.com/events/hispanics2011/agenda.html> (both viewed 30 Apr. 2011).

⁵³ See, for example, Douglas Gresham, “Check in, Gain Status, and Unlock Offers at More Places with Google Latitude,” *Google Lat Long Blog*, 7 Apr. 2011, <http://google-latlong.blogspot.com/2011/04/check-in-gain-status-and-unlock-offers.html>; Josh Dean, “Seth MacFarlane’s \$2 Billion Family Guy Empire,” *Fast Company*, 1 Nov. 2008, <http://www.fastcompany.com/magazine/130/family-values.html?page=0%2C0>; “Poptub: Google Tries Best-of-YouTube TV Show,” *C|Net*, 15 Oct. 2008, <http://digitalads.org/detail.php?id=138>; “Online Pizza Gets Faster, Easier with Widgets,” *PROMO Magazine*, 22 May 2008, <http://digitalads.org/detail.php?id=392>; “McDonald’s Marks Big Mac’s 40th With Jingle Contest,” *Marketing Daily*, 19 June 2008, <http://digitalads.org/detail.php?id=360> (all viewed 30 Apr. 2011).