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October 20, 2010

Federal Trade Commission  
Office of the Secretary  
Room H-135  
600 Pennsylvania Avenue, NW  
Washington DC 20580

Re: Proposed Consent Agreement In the Matter of US Search, Inc., a corporation,  
and US Search, LLC, a limited liability company; FTC File No.1023131

These comments on the proposed consent decree, In the Matter of US Search, are filed on my own behalf. The consent decree appeared in the Federal Register on September 28, 2010, 75 FR 59718, at <http://www.gpo.gov/fdsys/pkg/FR-2010-09-28/pdf/2010-24224.pdf>.

US Search is an online data broker that compiles public records and sells data about consumers to the public. Its records may contain names, addresses and phone numbers as well as information such as aliases, marriages and divorces, bankruptcies, neighbors, associates, criminal records, and home values. Since June 2009, US Search offered a service that allows consumers to prevent their information from appearing on the company's website, its search results, or advertisements for a year.

The consent decree reflects the Commission's findings that the opt out service sold to consumers by US Search was falsely promoted. In short, a consumer who paid for an opt out did not receive what was promised. The consumer's information could still be reported to customers of US Search.

It is unobjectionable for the Commission to make the company deliver on the promise that it made. **However, the consent decree misses the elephant in the room.**

The problem is that a consumer must pay to stop the company from disseminating the consumer's information. The company's insistence on payment is very close to blackmail. Blackmail is the act of threatening to reveal substantially true information about a person to the public, a family member, or associates unless a demand is met. Essentially, the company says that it will sell consumer information to any purchasers unless the consumer pays off the company not to make the consumer's personal information available. Payment for an opt out is unfair.

Under FTC law, a practice is unfair and illegal if it 1) causes or is likely to cause substantial injury to consumers; 2) cannot be reasonably avoided by consumers; and 3) is not outweighed by any countervailing benefits to consumers or competition that the practice produces.

Any requirement that consumers must pay to opt out of having their information available for use or sale is unfair to consumers. There are already dozens or even hundreds of companies that collect, compile, use, and disclose consumer information. The information may come from a myriad of sources, some public, some proprietary, some hidden from consumers, and some more overt.

If the Commission allows companies to charge for exercising an opt out right, then a consumer concerned about protecting his or her personal information may have to pay huge sums to pursue that goal. A ten-dollar charge by one company may or may not be a reasonable amount. However, the total amount that a consumer may have to pay – even at ten dollars per company – could be hundreds or thousands of dollars a year.

Even for consumers willing and able to pay for an opt out, the time and difficulty of actually opting out would be considerable. Managing dozens or hundreds of annual opt outs would be a daunting task that few consumers could or would engage in. Even compiling a list of companies offering opt outs would be an impossibility for consumers. Just to underscore the point, the Consumer Data Industry Association, a trade association of representing some but not all consumer information companies, keeps its membership list secret. Even the industry will not reveal all of its consumer information sellers. It is unlikely that the Commission with all of its staff and resources has a complete list of companies selling consumer data.

If the Commission approves a charge to consumers for opting out, then consumers cannot avoid the charge. Consumers will have no alternative to paying the price demanded. Even if the Commission thinks that it can police the world by pressuring companies to keep charges to a low amount, Commission enforcement actions are rare and will never affect a largely unregulated marketplace. Rulemaking might provide an alternative, but the Commission has no effective rulemaking authority. Thus, consumers must pay the charges demanded.

There are no countervailing benefits to consumers from the charges. For the most part, companies engaged in collecting, using, and selling consumer information do so without any notice to or consent from consumers. These companies typically profit by selling consumer information to any and all who wish to buy. Purchasers may not have a motive that serves any consumer interest. Indeed, many purchasers may seek information to use it in ways that are detrimental to consumers.

The precedent established by this consent decree is even worse when considered in light of current discussions about behavioral targeting of advertising on the Internet. If the Commission approves charging a fee for opting out in this case, then it will be hard pressed to object to a charge to consumers for opting out of behavioral targeting or other Internet data collection activities. Each company that offers a behavioral targeting opt out could charge its own fee, giving consumers a choice that most could not afford.

**In short, allowing companies to charge consumers to opt out hands companies the ability to make opt outs impossible for consumers.** What if social networking or other websites read the consent decree and choose to implement a charge for using privacy controls? The proposed consent decree appears to say that the Commission does not object if a website charges consumers to exercise privacy rights.

As I read it, the point of the original complaint by the World Privacy Forum was to offer the Commission a chance in an enforcement case to tell the online industry that requiring consumers to opt out of an online service by snail mail was an unfair trade practice and to offer general guidance to all websites. Instead, the FTC turned the complaint into a standard and well-plowed "you didn't do what you promised to do" complaint. This consent decree accomplishes nothing new other than to stop one company from lying to consumers. **The Commission should use its limited resources in a way that will produce a bigger bang for its effort by establishing a more general guide for online consumer data companies.**

Overall, this consent decree harms consumers much more than it helps them. The Commission needs to rethink this consent decree. Requiring US Search to fulfill the promises it made to consumers is unobjectionable. However, any blessing by the Commission of a fee that consumers must pay to opt out of the sale of their personal information is **a terrible precedent and one that will return to haunt the Commission and consumers.**

Consumers should have the right to opt out of the sale of their personal information by commercial companies without paying any fee. If the Commission approves the US Search consent decree, it may fatally undermine consumers' rights and consumers' ability to protect their own privacy.

The Commission should withdraw this consent decree and find a way to stop companies from requiring a consumer to opt out of the sale of his or her personal information.

Sincerely,

Robert Gellman