



Privacy Rights Clearinghouse

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October 22, 2010

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

Reference: **FTC File No. 1023131**
Proposed Consent Agreement in the Matter of US Search, Inc.
and US Search, LLC

Federal Register, September 28, 2010, 75 FR 59718, at
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-28/pdf/2010-24224.pdf>

Electronically filed at: <https://ftcpublic.commentworks.com/ftc/ussearch>

The Privacy Rights Clearinghouse (PRC) appreciates the opportunity to submit the following comments to the Federal Trade Commission (FTC or Commission) on the proposed consent decree In the Matter of US Search, Inc. and US Search, LLC (FTC File No. 102 3131).

The PRC is a nonprofit consumer advocacy organization based in San Diego, California, and established in 1992. We base our comments about the proposed consent agreement upon the many complaints we have received about the information broker industry, including, in particular, US Search. We receive complaints about information brokers from individuals on a near daily basis via our web-based contact form, email, and phone. Many of these complaints concern US Search, and their former practice of charging a \$10 fee to place a PrivacyLock on their personal information.

US Search operates an online data broker service and sells publicly available information about consumers through its website (www.ussearch.com). This information includes name, age, address, phone numbers, email addresses, aliases, maiden name, death records, address history, information about friends, associates, and relatives, marriage and divorce information, bankruptcies, tax liens, civil lawsuits, criminal records, and home values.

In conjunction with this service, US Search has offered and sold a PrivacyLock service, which purportedly allows consumers to “lock their records” on the US Search website and prevent their names from appearing on US Search’s website, in US Search’s advertisements, and in US Search’s search results. Until recently, US Search charged most consumers a \$10 fee to place a PrivacyLock, and almost 5,000 consumers paid to have their information removed from the US Search site.

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

While it is entirely appropriate for the Commission to require US Search deliver on the promise that it made to consumers, the consent decree misses the most critical issue in this proceeding. The underlying problem is that a consumer can be charged a fee in the first place to stop the company from disseminating the consumer's information.

Section 5 of the FTC Act prohibits, in part, "unfair ... acts or practices in or affecting commerce." This is commonly referred to as the Commission's consumer unfairness or unfair practices jurisdiction. A practice is generally deemed to be unfair and illegal if it causes or is likely to cause substantial injury to consumers; cannot be reasonably avoided by consumers; and 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 fundamentally unfair to consumers.

The PRC maintains a list of more than 100 information brokers that collect, compile, use, and disclose consumer information. These companies obtain the information which they compile and repackage primarily from public and publicly available sources. The PRC's list, which we know to be incomplete, can be viewed at <http://www.privacyrights.org/ar/infobrokers.htm>.

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, in the aggregate, have to pay huge sums to pursue that goal. Consumers who are intent on controlling the use of their personal information cannot avoid these charges and will have no alternative to paying the price demanded.

Under the FTC Act, this constitutes a substantial injury to consumers, and one that cannot be reasonably avoided by consumers. Moreover, there are no countervailing benefits to consumers or competition from this practice. Therefore, the criteria established by Section 5 of the Act have been met.

The proposed consent agreement also has broader implications for digital privacy rights. If the Commission approves fee-based opt outs, it sets the stage for allowing companies to impose fees on consumers for restricting access to their personal and private information in other online settings. We could see this extrapolated in the future to justify fees to opt out of behavioral targeting or to access privacy controls within a social network.

Allowing fee-based opt outs potentially would make them financially impossible for some consumers. The proposed consent decree implicitly states that the Commission does not object if a website charges consumers to exercise privacy rights.

In the absence of a comprehensive legal framework for privacy based on opt in, consumers have no choice but to opt out if they want to protect their personal information from being shared and used for purposes beyond those of the transactions they make. The burden would obviously be even greater if consumers could be charged for each opt out. With the ever-increasing collection of data on the Internet and via mobile devices, the potential cost of opting out would effectively negate the already-minimal privacy choices that consumers have.

Further, by sidestepping the critical issue in this proceeding, the Commission is providing companies with an incentive to utilize opt-out fees as a source of revenue. The consent decree could have the perverse effect of encouraging companies to charge for the “privilege” of opting out.

The precedent set by this consent agreement would harm consumers by turning a blind eye to the imposition of opt-out fees. The Commission should reevaluate its consent agreement, while still requiring US Search to fulfill the promises it made to consumers. Consumers should have the right to opt out of the sale of their personal information without paying a fee.

Approval of this consent agreement undermines consumers’ ability to protect their own privacy. The Commission should withdraw this consent decree and develop an appropriate mechanism that prevents companies from requiring consumers to pay a fee in order to opt out of the sale of their personal information.

Further, the bigger-picture issue here is the unregulated online information broker industry in general. We have raised this issue with the Commission in the Privacy Roundtable proceedings by submitting comments regarding not only the opt-out fee issue, but also by describing incidents in which individuals who have contacted the PRC, such as domestic violence and stalking victims, have been put in harm’s way because of the practices of certain information brokers. Our comments are available here, <http://www.privacyrights.org/online-information-brokers-and-consumer-privacy> and on the FTC website. We strongly recommend that the FTC investigate this industry more broadly than simply the opt-out fee issue.

Thank you for your consideration of our comments on the proposed consent agreement regarding US Search.

Sincerely,

Beth Givens
Director