

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter Chitika, Inc., File No. 1023087

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Chitika, Inc. (“Chitika”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

Chitika is a network advertiser that engages in online behavioral advertising, the practice of tracking consumers’ activities online in order to serve them targeted advertisements based upon their individual web browsing activity. Chitika offers an online behavioral advertising service in which it acts as an intermediary between website publishers and advertisers that wish to have their advertisements placed on websites. Chitika tracks the searches a consumer has conducted, the websites visited, and the content viewed in order to serve advertising targeted to the individual consumer’s interests. When a consumer visits a website within Chitika’s network of website publishers, Chitika sets a new cookie or automatically receives a cookie it has previously set in the consumer’s browser (the “Chitika tracking cookie”). Chitika uses cookies to serve advertisements to consumers that are targeted to their interests.

The Commission alleges that representations Chitika made in its privacy policy regarding consumers’ ability to opt out of receiving tracking cookies were false or misleading. Chitika’s privacy policy stated that consumers could opt out of receiving Chitika cookies. For those consumers who elected to opt out, Chitika set an “opt-out cookie” in the consumer’s browser so that no additional cookies would be set in the consumer’s browser, no additional information would be added to a previously set Chitika tracking cookie, and the data previously placed in the cookie would no longer be used to target advertisements to the consumer. From at least May 2008 to February 28, 2010, however, Chitika delivered opt-out cookies that were set to expire after ten (10) days. Accordingly, the complaint alleges that Chitika deceived consumers and violated Section 5 of the FTC Act by making an unqualified claim that consumers could opt out of targeted advertising when the opt out expired in ten (10) days.

Part I of the proposed order prohibits Chitika from misrepresenting (1) the extent of its data collection about consumers and (2) the extent to which consumers are able to control the collection, use, or sharing of their data.

Part II of the proposed order requires Chitika to take a number of steps to improve the transparency of, and consumers’ ability to control, its collection of consumer data for online behavioral advertising. First, within thirty (30) days after service of the proposed order, Chitika must place a clear and prominent notice with a hyperlink on the homepage of its website that states: “We collect information about your activities on certain websites to send you targeted advertisements. To opt out of Chitika’s targeted ads, click [here](#).” The mechanism that Chitika provides to allow consumers to prevent Chitika from collecting information about them must

remain in effect for a minimum of five (5) years. Within close proximity to the mechanism, Chitika must disclose: (1) that Chitika collects information about consumers' activities on certain websites to deliver targeted ads; (2) that by opting out, Chitika will not collect this information to deliver such ads; (3) consumers' current choice status (*i.e.*, whether opted in or opted out of tracking); and (4) that consumers' choice is specific to the browser they are using (*i.e.*, if they switch browsers or devices, they will have to opt out again).

Part II of the proposed order includes two additional provisions. First, for a period of one (1) year, near the notice and hyperlink discussed above, Chitika's homepage must state that: "If you opted out of our targeted ads before March 1, 2010, the opt-out has expired and you must opt out again to avoid targeted ads."

The final provision in Part II requires that within any behaviorally targeted advertisement that Chitika serves, it must include a hyperlink that takes consumers directly to the required choice mechanism. The hyperlink text must state: "Opt out?" When a consumer's cursor, or equivalent, is placed over the hyperlink, a box shall be visible that clearly and prominently states, "Opt out of Chitika's targeted ads."

Part III of the proposed order restricts Chitika's use of any data that it collected from consumers prior to March 1, 2010, the date on which Chitika extended the expiration date of its opt-out cookies from ten (10) days to ten (10) years. Specifically, the proposed order prevents Chitika from using, selling, or transferring "any information that can be associated with a Chitika user or a Chitika user's computer or device" that the company obtained prior to March 1, 2010. In addition to restricting the use of this data, within sixty (60) days after the service of the order, Chitika must delete any such information stored in Chitika users' cookies and any information retained in Chitika's files that would allow the information to be associated with a particular consumer or that consumer's computer or device.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires Chitika to retain documents relating to its compliance with the order. Part V requires dissemination of the order to all current and future principals, officers, directors, managers, employees, agents, and representatives having responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that Chitika submit a report to the Commission detailing its compliance with the order. Part VIII provides that the order expires after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.