

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	<b>AGREEMENT CONTAINING</b>
	)	<b>CONSENT ORDER</b>
SCANSCOUT, INC.	)	
a corporation.	)	
	)	<b>FILE NO. 1023185</b>
	)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of ScanScout, Inc. (“ScanScout” or “proposed respondent”). Proposed respondent having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between proposed respondent, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. ScanScout is a Delaware corporation with its principal office or place of business at 295 Devonshire Street, Boston, MA 02110.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
  - A. Any further procedural steps;
  - B. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
  - C. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve

its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other means of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
7. By signing this agreement, proposed respondent represents and warrants that it can accomplish the full relief contemplated by this agreement, and that all parents, subsidiaries, and successors necessary to effectuate relief contemplated by this agreement are bound thereby as if they had signed this agreement and were made parties to this proceeding.
8. Proposed respondent has read the draft complaint and consent order. Proposed respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## **ORDER**

### **DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "respondent" shall mean ScanScout, Inc., a corporation, and its parent, Tremor Video, Inc., and each of their subsidiaries, successors or assigns.

2. “Clear(ly) and prominent(ly)” shall mean:
  - A. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer or device), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;
  - B. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
  - C. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication; and
  - D. In all instances, the required disclosures: (1) are presented in an understandable language and syntax; and (2) include nothing contrary to, inconsistent with, or in mitigation of any other statements or disclosures provided by respondent.
3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
4. “Computer” or “device” shall mean any desktop or laptop computer, handheld device, telephone, or other product or device, through which a consumer can access the Internet.
5. “Collection of data” or “collecting data” shall mean the practice of receiving any information or data from a computer or device, whether transmitted by a web browser or otherwise, and retaining that information, whether on the user’s computer or on a server. “Data collected” shall mean any information or data received from a computer or device, whether transmitted by a web browser or otherwise, and retained, whether on the user’s computer or respondent’s server(s).
6. “User” shall mean any consumer, computer, or device that respondent has uniquely identified.
7. “Online behavioral advertising” shall mean the practice of collecting data about a user’s online activities in order to deliver advertising targeted to the user’s interests.
8. “Permissible uses” shall mean uses of collected data that can be associated with a

particular user, or that contains any unique identifier, including user ID or Internet Protocol (IP) address, for the following purposes and no other, provided that such data shall be retained by respondent no longer than reasonably necessary for such purpose and is not used for online behavioral advertising: (a) determining the number of times a specific user has been served or has responded to a specific advertisement within a period of time; (b) fraud prevention; (c) providing a service requested by a user; or (d) verifying a user's age before serving an age-restricted advertisement. For purposes of (d), such data shall be retained by respondent no longer than the duration of the applicable browsing session, and in no instance no longer than twenty-four (24) hours.

I.

**IT IS ORDERED** that respondent and its officers, agents, representatives, and employees and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, in connection with the online advertising, marketing, promotion, offering for sale, sale, or dissemination of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication: (A) the extent to which data from or about a particular user or the user's online activities is collected, used, disclosed, or shared; or (B) the extent to which users may exercise control over the collection, use, disclosure, or sharing of data collected from or about them, their computers or devices, or their online activities.

II.

**IT IS FURTHER ORDERED** that, for so long as respondent engages in online behavioral advertising, respondent, directly or through any entity, in connection with the online advertising, marketing, promotion, offering for sale, sale, or dissemination of any product or service on websites other than respondent's, in or affecting commerce, shall:

- A. Within thirty (30) days after the date of service of this order, place a clear and prominent notice, including a hyperlink, on the homepage(s) of its website(s), which states, "We collect information about your activities on certain websites to send you targeted ads. To opt out of our targeted advertisements click [here](#)." When selected, the hyperlink shall take consumers directly to the mechanism required by Part II.B of the order;
- B. Within thirty (30) days after the date of service of this order, provide a clearly and prominently disclosed mechanism that enables users to prevent respondent: from collecting data that can be associated with a particular user, or that contains any unique identifier, including user ID or Internet Protocol (IP) address; from redirecting users' browsers to third parties that collect data, absent a click or other affirmative action by such user; and from associating any previously collected data with the user. *Provided, however*, respondent may collect data that can be

associated with a particular user, or that contains a unique identifier: (1) to implement the user's choice to prevent respondent from collecting such data; and (2) for permissible uses;

- C. The mechanism set forth in Part II.B shall require no more than one action by the user (*e.g.*, one click or one change to a browser setting) after the user is directed to such mechanism. The user's choice shall remain in effect for a minimum time period of five (5) years, unless the user disables the mechanism. Within close proximity to the mechanism, respondent shall clearly and prominently disclose: (1) that respondent collects information about users' activities on certain websites in order to deliver advertising targeted to users' interests; (2) that if the user implements the mechanism, respondent will not collect this information for the purpose of delivering advertising targeted to the user's interests; (3) the current status of the user's choice (*e.g.*, "not opted out" or "opted out"); and (4) any circumstances that, if initiated by the user, would disable the mechanism or require the user to implement the mechanism again in order to maintain the user's choice (*e.g.*, use of a different browser, use of a different device, or deletion of cookies);
- D. Within ninety (90) days after the date of service of the order, within or immediately adjacent to any display advertisement that respondent serves as part of online behavioral advertising, include a hyperlink that takes consumers directly to the mechanism required by Part II.B of this order. The hyperlink text shall clearly and prominently disclose to consumers that selecting the hyperlink will give them choices about receiving advertising targeted to their interests.
- E. Undertake reasonable efforts to develop and implement, within or immediately adjacent to any video advertisement that respondent serves as part of online behavioral advertising, a clear and prominent hyperlink that directs consumers to the mechanism required by Part II.B of this order, and discloses to consumers that they can opt out of receiving advertising targeted to their interests, and report on such efforts as set forth in Part VI of this order.

### III.

**IT IS FURTHER ORDERED** that respondent shall maintain, and upon request make available to the Federal Trade Commission for inspection and copying, unless respondent asserts a valid legal privilege, a print or electronic copy of:

- A. For a period of five (5) years from the entry of this order or from the date of preparation, whichever is later:
  - 1. Consumer complaints or inquiries directed to respondent or forwarded to

respondent by a third party concerning: (a) any collection of data by respondent; (b) the use, disclosure, or sharing of such data by respondent; or (c) opt-out practices or any other mechanism to limit or prevent such collection of data or the use, disclosure, or sharing of data collected by respondent, as well as any responses to such complaints or inquiries;

2. Documents that are sufficient to demonstrate compliance with each provision of this order, including, but not limited to, relevant policies and procedures, documents demonstrating respondent's efforts to develop and implement a clear and prominent hyperlink for video advertisements pursuant to Part II.E, and all reports submitted to the Commission pursuant to this order;
3. Documents that contradict, qualify, or call into question respondent's compliance with this order; and

- B. For a period of five (5) years after the last public dissemination thereof by respondent, respondent's terms of use, form end-user license agreements, frequently asked questions, privacy policies, and other documents publicly disseminated by respondent relating to: (a) collection of data by respondent; (b) the use, disclosure or sharing of such data by respondent; or (c) opt-out practices and other mechanisms to limit or prevent such collection of data or the use, disclosure, or sharing of data collected by respondent.

#### IV.

**IT IS FURTHER ORDERED** that respondent shall deliver a copy of this order to all principals, officers, directors, and managers, and to all employees, agents, and representatives having supervisory responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of the order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

#### V.

**IT IS FURTHER ORDERED** that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place,

respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this order shall be sent by hand delivery or overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line *In the Matter of ScanScout, Inc.* FTC File No. 1023185. *Provided, however,* that, in lieu of hand delivery or overnight courier, a notice may be sent by first-class mail, but only if an electronic version of such notice is contemporaneously sent to the Commission by e-mail to DEbrief@ftc.gov.

## VI.

**IT IS FURTHER ORDERED** that respondent shall, within ninety (90) days after service of the order, file with the Commission a true and accurate report, in writing, setting forth the manner and form in which respondent has complied with this order, including but not limited to compliance with the requirements of Part II.E of this order. Every six (6) months thereafter, and continuing until respondent reports it has implemented the hyperlink set forth in Part II.E of this order for every different format of video advertisement that respondent serves as part of online behavioral advertising, respondent shall submit an additional true and accurate report, in writing, setting forth the manner and form in which respondent has complied with the requirements of Part II.E of this order. Within ten (10) business days of receipt of written notice from a representative of the Federal Trade Commission at such other times as the Federal Trade Commission may require, respondent shall submit additional true and accurate written reports.

## VII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years; and
- B. This order if such complaint is filed after the order has terminated pursuant to this Part.

*Provided, further,* that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that this order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**SCANSCOUT, INC.**

By: \_\_\_\_\_  
ADAM LICHSTEIN  
Senior Vice President and General Counsel  
ScanScout, Inc. & Tremor Video, Inc.

By: \_\_\_\_\_  
M. HOWARD MORSE  
Cooley LLP  
Counsel for ScanScout, Inc.

**FEDERAL TRADE COMMISSION**

By: \_\_\_\_\_  
KANDI PARSONS  
Counsel for the Federal Trade Commission

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APPROVED:

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