

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Myspace LLC, File No. 102 3058

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

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.

Myspace operates a social networking website, www.myspace.com, that, among other features, enables a consumer who uses the site to create and customize a personal online profile. These profiles contain content about users, such as their name, the names of other users who are their “friends” on the site, photos and videos they upload, messages and comments they post or receive from their friends, and other personal information. Myspace assigns a persistent unique numerical identifier, called a “Friend ID,” to each user profile created on Myspace. The Friend ID is a component of the URL for each user’s profile page. For example, inserting www.myspace.com/12345678 into the address bar of a web browser will bring up the Myspace profile page of the user who is assigned Friend ID 12345678. The Friend ID can be used to access information about the user, including the user’s profile picture, location, gender, age, display name (*e.g.*, a nickname or pseudonym displayed on the user’s profile), and, in many cases, the user’s full name.

Myspace obtains revenue by allowing third-party or affiliate advertising networks to serve advertisements directly on its site. The FTC complaint alleges that Myspace made numerous promises to its users regarding the extent to which it shared consumers’ personal information with third-party advertisers. The complaint alleges that Myspace promised that: (1) it would not use or share a user’s personally identifiable information, defined as full name, email address, mailing address, telephone number, or credit card number, without first giving notice to and receiving permission from users; (2) the means through which it customized ads did not allow advertisers to access personally identifiable information or individually identify users; (3) the information shared with advertisers regarding web browsing activity was anonymized; and (4) it complied with the U.S.-EU Safe Harbor Framework.

The Commission’s complaint alleges that Myspace violated Section 5(a) of the FTC Act, by misleading users about what information third-party advertisers received about them. According to the FTC complaint, from January 2009 through June 2010, and again from October 29, 2010 through October 28, 2011, when Myspace displayed advertisements on its website from certain unaffiliated third-party advertisers, Myspace and/or its affiliate provided those advertisers with the Friend ID of the user who was viewing the page. With this information, a third-party advertiser could take simple steps to get detailed information about individual users. For example, a third-party advertiser could use the Friend ID to visit the user’s personal profile

on the Myspace website to obtain personal information, including, for most users, their full name. A third-party advertiser could also combine the user's real name and other personal information with additional information contained in the advertiser's tracking cookie, a small text file placed on a user's browser that may include information about the user's online browsing history.

The proposed order contains provisions designed to prevent Myspace from engaging in future practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Myspace from misrepresenting the privacy and confidentiality of any "covered information," as well as the company's compliance with any privacy, security, or other compliance program, including but not limited to the U.S.-EU Safe Harbor Framework. "Covered information" is defined broadly to include an individual's: (a) first and last name; (b) home or other physical address, including street name and city or town; (c) email address or other online contact information, such as an instant messaging user identifier or screen name; (d) mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID, device ID, or other persistent identifier; (g) list of contacts; or (h) physical location.

Part II of the proposed order requires Myspace to establish and maintain a comprehensive privacy program that is reasonably designed to: (1) address privacy risks related to the development and management of new and existing products and services, and (2) protect the privacy and confidentiality of covered information. The privacy program must be documented in writing and must contain privacy controls and procedures appropriate to Myspace's size and complexity, the nature and scope of its activities, and the sensitivity of covered information. Specifically, the order requires Myspace to:

- designate an employee or employees to coordinate and be responsible for the privacy program;
- identify reasonably-foreseeable, material risks, both internal and external, that could result in the unauthorized collection, use, or disclosure of covered information and assess the sufficiency of any safeguards in place to control these risks;
- design and implement reasonable privacy controls and procedures to control the risks identified through the privacy risk assessment and regularly test or monitor the effectiveness of the safeguards' key controls and procedures;
- develop and use reasonable steps to select and retain service providers capable of appropriately protecting the privacy of covered information they receive from respondent, and require service providers by contract to implement and maintain appropriate privacy protections; and
- evaluate and adjust its privacy program in light of the results of the testing and

monitoring, any material changes to its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of its privacy program.

Part III of the proposed order requires that Myspace obtain within 180 days, and on a biennial basis thereafter for twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: it has in place a privacy program that provides protections that meet or exceed the protections required by Part II of the proposed order; and its privacy controls are operating with sufficient effectiveness to provide reasonable assurance that the privacy of covered information is protected.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires that Myspace retain for a period of five (5) years: (a) all “widely disseminated statements” that describe the extent to which respondent maintains and protects the privacy and confidentiality of any covered information, along with all materials relied upon in making or disseminating such statements; (b) all consumer complaints directed at Myspace, or forwarded to Myspace by a third party, that allege unauthorized collection, use, or disclosure of covered information and any responses to such complaints; (c) all subpoenas and other communications with law enforcement entities or personnel that relate to its compliance with the proposed order; (d) documents that contradict, qualify, or call into question its compliance with the proposed order. Part IV additionally requires that Myspace retain all materials relied upon to prepare the third-party assessments for a period of five (5) years after the date that each assessment is prepared.

Part V requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory 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 Myspace submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part VIII is a provision “sunsetting” the order 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.