

**PUBLIC VERSION**

**Before the  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580**

**COMMENTS OF EXPERIAN**

**FREE ANNUAL FILE DISCLOSURES RULEMAKING  
Rule No. R411005**

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## I. INTRODUCTION

Experian Information Solutions, Inc. and ConsumerInfo.com, Inc. (collectively “Experian”) submit these comments on the Federal Trade Commission’s (“Commission”) Notice of Proposed Rulemaking to implement Section 205 of the Credit CARD Act (“Act”) pertaining to disclosures in advertisements for free credit reports.<sup>1</sup> We look forward to working with the Commission as it explores these important issues.<sup>2</sup>

By adopting Section 205, Congress determined that commercial companies may lawfully offer free credit reports to consumers, pursuant to appropriate disclosures concerning the identity of the entity making the offer to prevent confusion between the commercial entity and AnnualCreditReport.com, the website from which consumers may obtain the free annual file disclosure to which they are entitled under Federal law. For free credit reports offered through radio and television advertising, Congress specified the disclosure to be made to consumers. For free credit reports offered through other media including Internet websites, the statute delegated narrow authority to the Commission to determine the precise terms of the disclosure and whether it should appear in an advertisement or on the website itself. Section 205 delegated to the Commission rulemaking authority only as to the appropriate disclosure provision to prevent consumer confusion between commercial websites and AnnualCreditReport.com. Other issues concerning Internet websites, such as their use of negative options, are not at issue in this rulemaking. Comments related to these other issues therefore are irrelevant to this proceeding.

Experian strongly supports the goal of Congress and the Commission that consumers be provided with truthful, non-misleading information about the availability of free credit reports in commercial advertisements. Some of the provisions of the Proposed Rule related to Internet websites, however, would disserve the public interest by restricting consumer access to truthful information that would help them make reasoned financial decisions, such as whether a free credit report offered by a commercial entity would help with credit management. The Proposed Rule is arbitrary and capricious in that it would create, and not dispel, consumer confusion; constitutes an unjustified departure from the Commission’s longstanding disclosure approach to preventing consumer deception; and is structured to implement the Commission’s policy preference that consumers should obtain free credit reports from AnnualCreditReport.com rather than commercial websites. In addition, Experian believes that these parts of the Proposed Rule would exceed the Commission’s limited statutory authority under Section 205 and violate the First and Fifth Amendments of the United States Constitution.

With respect to commercial websites, Experian submits that the public interest would be better served if the Commission did not adopt its proposed requirement of a

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<sup>1</sup> Free Annual File Disclosures Amendments to Rule to Prevent Deceptive Marketing of Credit Reports and to Ensure Access to Free Annual File Disclosures, 74 Fed. Reg. 52,915 (Oct. 15, 2009).

<sup>2</sup> Experian also adopts and joins in the separate comments submitted by the Consumer Data Industry Association.

separate intercept or landing page and followed instead its longstanding disclosure-focused approach of protecting consumers from deception, which is to require clear and conspicuous disclosures in a prominent position, and in the same place as and in close proximity to the potentially misleading representation. One example of such a traditional, disclosure-focused approach in the context of free credit reports is the disclosure regime applicable to ConsumerInfo.com's websites pursuant to the Order approved by the United States District Court for the Central District of California in FTC v. ConsumerInfo.com.<sup>3</sup>

As compared to the Commission's proposed approach, such a disclosure regime would avoid the consumer confusion that would be created by the landing page requirement; would be more closely tailored to the government's interest in preventing consumers from being deceived or misled; and would avoid suppression of protected commercial speech. In addition, it would be consistent with the narrow authority granted the Commission under Section 205 and constitutional requirements.

#### **A. Interest of Experian.**

Experian owns a family of online consumer credit reporting sites including FreeCreditReport.com. It is a leading provider of online consumer credit reports, credit scores, credit monitoring, and other credit-related information. Experian provides consumers with quick, easy, and continuing access to their credit histories. Experian currently provides credit monitoring to more than [ ] million consumers and has delivered many millions of credit reports through the Internet. Experian is committed to developing innovative products to help educate consumers about how the credit reporting system works and the benefits credit reports provide them.

#### **B. Summary of Argument.**

##### **1. Certain Provisions of the Proposed Rule Concerning Internet Websites Are Arbitrary and Capricious and Would Harm the Public Interest.**

Several provisions of the Proposed Rule concerning offers of free credit reports on Internet websites will harm the public interest by confusing consumers and restricting their ability to access valuable information on commercial websites. In addition to offering free credit reports, these websites educate consumers about the operation of the credit system and provide products and services that millions of consumers have found helpful in managing their finances. By depriving consumers of access to this truthful commercial speech, the Proposed Rule also would have significant adverse effects on the commercial websites themselves, their employees, and companies that offer Internet advertising links by which consumers access these websites.

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<sup>3</sup> Stipulated Final Judgment and Order for Permanent Injunction, Federal Trade Comm'n v. Consumerinfo.com, Inc., FTC File No. 022-3263, Civil Action No. CV - SACV05-801 AHS(MLGx) (C.D. Cal. Aug. 15, 2005) (Attachment 1).

The Proposed Rule constitutes a significant and wholly unjustified departure, in the context of Internet websites and in the specific context of free credit reports only, from longstanding principles the Commission has applied in regulating potential deception in advertising. To Experian's knowledge, the Commission has never previously required that a disclosure aimed at making an advertiser's representation not misleading must appear in a separate place from the advertiser's claim and must be presented to consumers before they even view the claim that the disclaimer is supposed to modify. The Proposed Rule goes far beyond what is necessary to prevent consumers from being misled and restricts far more truthful commercial speech than is necessary to serve that end.

The Proposed Rule is arbitrary and capricious because it is based on an unsubstantiated assumption that consumers seeking to obtain free credit reports online are actually looking for AnnualCreditReport.com, which the Commission characterizes as the only "authorized" site for provision of free credit reports, and are presumed to be misled if they access a commercial website offering free credit reports.<sup>4</sup> The Proposed Rule is structured to divert consumers from commercial websites. It mandates inclusion of a separate intercept or landing page between consumers and the commercial website they sought to visit, to communicate a required disclosure to consumers; requires a hyperlink to AnnualCreditReport.com in type that is twice as large as the hyperlink on the intercept page to the commercial website; and prohibits the website owner from including any information about its own products on the intercept page. In seeking to implement its policy preference that consumers utilize AnnualCreditReport.com rather than a commercial website, the Commission has pursued an objective that cannot justify a burden on commercial speech.

The Commission has pointed to no evidence to support its assertion that a consumer seeking a free credit report online is actually "seeking to exercise his federal right to obtain his free annual disclosure online" from AnnualCreditReport.com. 74 Fed. Reg. at 52,921. Experian's data, however, demonstrate that only 0.28% (twenty-eight hundredths of one percent) of consumers accessing its websites thought that the free credit report they had been offered was the free credit report available at AnnualCreditReport.com.

The arbitrary and capricious nature of the Proposed Rule is further demonstrated by data collected by ConsumerInfo.com which shows that the separate intercept page requirement would in fact confuse a substantial number of consumers. The data show that a significant percentage of consumers, confronted with the unexpected appearance of the unadorned intercept page required by the Proposed Rule, believe that they have been diverted to an unknown website that cannot be trusted with their personal data. Under these circumstances, many consumers will abandon their efforts to obtain information from the commercial website. This problem would not arise if the Commission adopted a disclosure approach consistent with its prior policy statements and agency and judicial precedent.

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<sup>4</sup> Press Release, FTC Releases Spoof Videos with a Serious Message: AnnualCreditReport.com is the Only Authorized Source for Free Annual Credit Reports (March 10, 2009) (Attachment 2).

The Commission has suggested no rational justification for its departure, in the context of website offers of free credit reports only, from its traditional disclosure-focused approach to the regulation of advertising. Under that approach, the potential for consumer deception is addressed through inclusion of a prominent disclaimer that appears at the same time as, and in a location proximate to, the advertising claim that it modifies. The Proposed Rule would establish a new, and dangerous, precedent for the extension of similar landing page requirements to many other areas of Internet advertising in which notices and disclaimers must appear.

The policy interests that Congress sought to promote in adopting Section 205 would be better served, and the potential adverse consequences avoided, by a disclosure regime consistent with the Order entered by the Court in ConsumerInfo. The Order requires that a commercial website must provide the consumer, at the same time and proximate to its offering of a free credit report, with a prominent and explicit notice of the existence of AnnualCreditReport.com, including a hyperlink directing consumers that they may go to that site to obtain the free file disclosure to which they are entitled under Federal law. Last year, more than [ ] million consumers accessed AnnualCreditReport.com by clicking through from Experian websites. This fact demonstrates that the disclosure regime in the Order has worked effectively to ensure consumers are aware of the identity of the entity whose website they are visiting.

The Commission has not pointed to any evidence that consumers actually have been deceived by the disclosure regime established by the ConsumerInfo Order, much less to any facts which suggest that there is no disclosure-based approach that would function effectively to prevent consumer deception in the context of offers of free credit reports through a commercial website. Thus, under the circumstances, there is no rational basis for discarding the Commission's longstanding disclosure approach and adopting a different approach that would restrict and suppress truthful commercial speech.

## **2. The Proposed Rule Exceeds the Commission's Statutory Authority.**

With respect to Internet advertisements for free credit reports, Section 205(b)(2)(B) provides the Commission with narrow rulemaking authority – that is, to make the binary choice “whether the disclosure required under section 612(g)(1) . . . shall appear on the advertisement or the website on which the free credit report is made available.” (emphasis added) The Proposed Rule adopts neither of these two options. Rather, it violates the law by adopting a third option of the Commission's own invention – a requirement that disclosures must appear on a separate intercept or landing page to which consumers must first be directed before they can view the commercial website they intended to access.

The Proposed Rule also exceeds the scope of Section 205(a), which provides that any advertisement “shall prominently disclose” that the free credit report being offered is not the free credit report made available by Federal law. “Prominent” is a term of art in the Commission's regulation of advertising. It means that a disclosure necessary to make

a claim not misleading must appear in a form easily seen and read by consumers and in the same place as, and in proximity to, the claim that must be qualified to prevent deception. Under the Proposed Rule, however, the disclosure would not accompany the claim. Instead, it would appear on a separate intercept page and would appear before the consumer viewed the claim to which the disclaimer pertains.

### **3. The Proposed Rule Violates the First and Fifth Amendments.**

The Proposed Rule violates the First Amendment because it restricts an excessive amount of non-misleading commercial speech when substantially narrower restrictions would carry out the public interest and work effectively to protect consumers from being misled.<sup>5</sup> By interposing a mandatory landing page between consumers and the commercial website, the Proposed Rule would impermissibly delay the receipt of lawful speech by some consumers and permanently suppress or prohibit truthful commercial speech to many other willing consumers, whom the data show would abandon their intended visit to the commercial website at an alarming rate if the intercept landing page concept were adopted. The requirement that the landing page be devoid of any statement other than the required disclosure and the company's Internet address constitutes a complete ban on protected speech. In addition, the Proposed Rule is not "narrowly tailored" because traditional disclosure regimes, like the one established by the ConsumerInfo Order, would fully protect the government's interest in protecting consumers from being misled without suppressing commercial speech.

Further, even if the Proposed Rule were viewed as a disclosure requirement rather than a prohibition on speech, the landing page requirement would be unduly burdensome within the meaning of the First Amendment, because it would prevent an advertiser from including on that page truthful information about the value of its products above and beyond the limited file disclosure available from AnnualCreditReport.com. In addition, the requirement that the hyperlink to AnnualCreditReport.com must be set forth in type that is twice as large as the hyperlink to the advertiser's own site, constitutes an unconstitutional viewpoint-based discrimination against commercial speakers which is structured so that it will have the effect of diverting consumers from commercial websites to AnnualCreditReport.com.

Finally, the Proposed Rule also violates the Fifth Amendment of the Constitution by accomplishing an uncompensated taking of Experian's property as both a permanent physical invasion of its property and a regulatory taking.

### **4. Other Issues Presented by the Proposed Rule Must Be Addressed.**

Other provisions in the Proposed Rule exceed the Commission's authority, are unduly broad, or create ambiguities that should be addressed before a final rule is issued. In particular, the proposed definition of "free credit report" in Proposed Section 610.4(a) is improperly tied to the definition of a "consumer report" in the Fair Credit Reporting Act ("FCRA"). This term would sweep under this rule many types of information that

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<sup>5</sup> See e.g., Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n, 447 U.S. 557 (1980).

bear little resemblance to the free annual file disclosure provided under Federal law and for which there is no possibility of confusion because they are not available at AnnualCreditReport.com.

## II. THE PROPOSED RULE

The Proposed Rule would establish three requirements for Internet websites offering free credit reports. First, any website offering free credit reports must first display to a visitor a separate intercept landing page “not easily bypassed and containing no distracting text – directing consumers to AnnualCreditReport.com” (the “landing page requirement”).<sup>6</sup> The landing page must state: “This is not the free credit report provided for by Federal law. To get your free report, visit *www.AnnualCreditReport.com* or call 877-322-8228.”<sup>7</sup> The landing page must contain no other content provided by the advertiser whatsoever, but may include the statement “Go to [hyperlink to company’s website.]”<sup>8</sup>

Second, the consumer must be shown this separate landing page before obtaining access to any commercial communications by the advertiser (the “timing requirement”).

Third, the landing page must display the mandatory disclosure in type at least twice the size of the hyperlink to the company’s website and must include an operative hyperlink to AnnualCreditReport.com, which must appear before the hyperlink to the company’s website (the “font size requirement”).

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<sup>6</sup> 74 Fed. Reg. at 52,917.

<sup>7</sup> 74 Fed. Reg. at 52,920, 52,927.

<sup>8</sup> *Id.* There is an ambiguity in the Proposed Rule that the Commission should resolve. Proposed Section 610.4(d)(4)(i) provides that “[a]ny website offering free credit reports must first display a separate landing page to consumers before the consumer may obtain the report from that website.” From the wording of this provision, specifically the phrase “obtain the report,” it is possible to interpret the Proposed Rule as permitting the operator of the website to include such an intercept page just prior to displaying to the consumer the ultimate page at which he or she clicks a button to actually complete the request for the report. The remainder of the Proposed Rule seems to envision that the landing page will be displayed to consumers before they access the homepage of the website. The Commission should clarify this ambiguity.

For purposes of these comments, Experian has interpreted Proposed Section 610.4(d)(4) as requiring that the consumer must be directed to the intercept page before he or she may access the homepage or other entry point to the substantive offering by the operator of the website. In any event, most of these comments, including specifically the arguments that the Proposed Rule violates Section 205 and the constitutional challenges, would be fully applicable even if the Commission intended to require that the separate landing page must be inserted just before the consumer views the page at which the request for a report is completed. Accordingly, the Commission should consider the points raised in these Comments under either possible interpretation of the ambiguous Proposed Rule.

### **III. THE PROPOSED RULE IS ARBITRARY AND CAPRICIOUS, AND WOULD HARM THE PUBLIC INTEREST**

The provisions of the Proposed Rule concerning Internet websites would, without cause, adversely affect the public interest by denying consumers access to valuable and truthful commercial speech. In fact, the proposed landing page requirement would substantially confuse consumers and suppress lawful speech. The Commission has provided no justification for its departure, in the context of free credit reports on Internet websites only, from the principles under which it has regulated advertising for the last quarter century. There is no basis for abandoning those standards here, when alternative disclosure-focused regimes are available, such as the one established by the ConsumerInfo Order. Such a disclosure requirement has and would effectively prevent consumer confusion between the free credit report provided by a commercial website and the free file disclosure available through AnnualCreditReport.com.

#### **A. Experian's Commercial Speech Serves the Public Interest and Is of Substantial Value to Consumers.**

The commercial speech provided by Experian through its websites substantially promotes the public interest. For many years dating back before AnnualCreditReport.com was created, Experian's websites have offered products and services of substantial value to millions of consumers in protecting and managing their credit.

AnnualCreditReport.com offers consumers the opportunity to obtain only a single, simple product: a free filed disclosure that a person may obtain once a year from each of the nationwide consumer reporting agencies. Commercial websites, on the other hand, offer consumers access to a broad range of additional products and services that cannot be obtained at AnnualCreditReport.com. In Experian's case, this includes unlimited access to credit reports, credit monitoring, credit scores, dispute resolution capacity (e.g., to dispute inaccurate items in a credit report), and identity theft assistance including expense and loss reimbursement for victims. In particular, credit monitoring is an important tool in combating identity theft, one of the most serious financial crimes that consumers face. It also may lead to early detection of incorrect information in a consumer report, thereby facilitating the consumer's efforts to have that information corrected. For these reasons, credit monitoring has become a "best practice" utilized by companies that have suffered data security breaches. Over 1,000 companies have contracted with Experian to provide their customers with credit monitoring services when the integrity of their data has been compromised.

Financial literacy is one of Congress' highest priorities but has proven to be a challenging issue in consumer education. The issues consumers face with respect to credit are often unfamiliar to them and may be complex. The rudimentary level of financial education in our school system makes this area difficult for many individuals to approach. Both the public and private sectors have undertaken initiatives to address the



financial literacy issue. Experian's websites provide information that helps educate consumers and improves their financial literacy on issues of immediate, practical concern. Some of Experian's advertisements for free credit reports have attained cult status among young consumers and have provided an effective vehicle for communicating to them important information about their credit and the consequences of their financial decisions.

Commercial websites also provide a basic, easy to understand education on credit reports, including what a credit report is, what it includes, how it is used, and how a consumer should read and review a credit report. The websites also include similar information about credit scores: what they are, how they are developed and used by financial institutions, and how the score could affect an individual's financial well-being. In addition, they provide consumers with information about such topics as identity theft, credit fraud, how those who have been victimized can protect themselves, and advice concerning purchases and factors they should consider when applying for a credit card.

Millions of consumers have accessed commercial websites, purchased products or services from them, and continued monthly subscriptions. This is clear proof that many consumers voluntarily seek to access these websites and assign real value to the products and services they offer. In particular, the data show that consumers place significant value on the products that Experian offers.

- Over the last 12 months, there were over [ ] million unique visitors to FreeCreditReport.com.
- On average, over [ ] million consumers are enrolled at any one time in the daily credit report monitoring at FreeCreditReport.com websites.
- More than [ ] million consumers have received free credit reports from ConsumerInfo.com without purchasing any products, by cancelling their subscription within the trial period.

The data also show that consumers understand when they are dealing with a commercial website and can differentiate between the free credit report offered through an Experian website and the website at which they may obtain the free file disclosure provided by Federal law. In the last year, Experian has provided [ ] million free file disclosures to consumers online via AnnualCreditReport.com. In that year, more than [ ] million consumers clicked through to AnnualCreditReport.com from Experian websites. Further, Experian's data demonstrate that only 0.28% (twenty eight hundredths of one percent) of consumers accessing its websites thought that the free credit report they had been offered was the free file disclosure available at AnnualCreditReport.com. These data also show that Experian's websites, taken together, are one of the largest drivers of traffic to AnnualCreditReport.com, and are likely responsible for a significant percentage of the Experian credit reports consumers order online through AnnualCreditReport.com.

In sum, the facts show that consumers can and do distinguish between products offered on commercial sites and the free annual file disclosures offered on AnnualCreditReport.com. Both the products offered by commercial websites and the traffic that they drive to AnnualCreditReport.com contribute to the success of the Congressional policy that seeks to provide consumers with ready and easy access to their credit reports for purposes of maintaining the accuracy of credit files.

### **B. The Proposed Rule Will Confuse Consumers.**

The Commission has pointed to no evidence that the separate landing page mandated by the Proposed Rule would better protect consumers from confusion than the traditional disclosure approach. The Commission has not relied upon any study of the effects of such a separate landing page on consumers interested in free credit reports or, indeed, any study of Internet behavior that could be viewed as analogous.

In fact, there are substantial reasons for concern that the proposed intercept page requirement would be more likely to confuse consumers than to inform them. Consumers who attempt to access a commercial website generally expect the site to have a polished look and feel, with sophisticated graphics and content. The separate landing page mandated by the Proposed Rule, however, is radically different – a stripped-down page that must display only the text required by the rule, a large hyperlink to AnnualCreditReport.com, and a much smaller link to the commercial site that the consumer intended to visit. The dramatic difference between the consumer's expectation and the reality of what is displayed will trigger doubts in the minds of many consumers about whether the unknown and unexpected landing page is legitimate or whether it is fraudulent. This concern is magnified by consumers' heightened vigilance about the dangers of "phishing" and similar scams. See e.g., FTC Consumer Alert, [How Not to Get Hooked by a 'Phishing' Scam.](#)<sup>9</sup> As a result, consumers will be less likely to trust the instructions on such a webpage and, in many cases, will react by abandoning their efforts to access the website they originally sought to visit.

To test this hypothesis, ConsumerInfo.com conducted a market research study of the landing page concept as currently proposed by the Commission – a quantitative test of the reactions of a large, randomly selected and statistically valid sample of web site traffic – and a focus group review of the proposed landing page. The test demonstrated that the proposal will result in substantial consumer confusion and diversion or suppression of visitors who seek to access commercial websites, while driving very few consumers to the Commission's preferred website, AnnualCreditReport.com.

Between Friday, November 13 and Sunday, November 22, 2009, ConsumerInfo conducted a random sample test that instantly redirected [ ] visitors to

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<sup>9</sup> October 2006, available at [www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt127.shtm](http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt127.shtm) ("[P]hishers send an email or pop-up message that claims to be from a business or organization that you may deal with . . . . The messages direct you to a website that looks just like a legitimate organization's site. But it isn't. It's a bogus site whose sole purpose is to trick you into divulging your personal information so the operators can steal your identity and run up bills or commit crimes in your name.").

FreeCreditReport.com to a mockup of the proposed intercept page required by the Proposed Rule, in which the hyperlink to AnnualCreditReport.com was in 20 point type and the hyperlink to FreeCreditReport.com was in 10 point type. (Attachment 3 is a copy of the test page). The following key findings were tracked and observed from this test:

- The unique visitors to the proposed intercept page generated [ ] total page views.<sup>10</sup> The ratio of page views to unique visitors was [ ], i.e., on average [ ] of the visitors reloaded the web page.
- On average visitors to this intercept landing page spent [ ] minutes on the page.
- [ ] of the total visitors to the intercept page abandoned it without clicking on either link. The page was deemed abandoned when the visitor exited the session by closing the browser.
- There were [ ] clicks on the link to AnnualCreditReport.com that was included on the test landing page. The click-through rate to AnnualCreditReport.com as a percentage of total page views was [ ].
- There were [ ] clicks on the link to FreeCreditReport.com that was included on the test landing page. The click-through rate to FreeCreditReport.com as a percentage of total page views was [ ].

The combination of (1) the high rate of page abandonment; (2) the large amount of time that consumers spent on the landing page; and (3) the high ratio of page views per visitor, demonstrates the significant level of frustration and confusion experienced by consumers viewing the landing page.

Simply put, the data demonstrate not only that the proposed intercept page confuses consumers but also alarms them. It will not drive traffic to the AnnualCreditReport.com site, as the Commission claimed would occur without any support. Rather, it will have the opposite effect of driving consumers away. The data show that nearly [ ] as many consumers who view the landing page abandon their search as those who click through to AnnualCreditReport.com.

In addition, the dramatic difference between the click-through rate to FreeCreditReport.com, compared to the click-through rate to AnnualCreditReport.com, demonstrates that the vast majority of visitors going to FreeCreditReport.com are not “seeking to exercise [their] federal right to obtain [their] free annual disclosure online” and do not confuse this commercial website with AnnualCreditReport.com, as the Commission asserts. 74 Fed. Reg. at 52,921.

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<sup>10</sup> A “page view” represents a website visitor’s request to load a single website page. The total “page views” thus represent the total requests by visitors to that website to load the web page. Website visitors may request to “reload” the page if they believe they have landed on the wrong page or that the page did not load completely or loaded incorrectly.

The quantitative data are confirmed by the analysis of the landing page requirement by two focus groups that were conducted and mediated for ConsumerInfo by a third party market research firm with 28 consumers in two cities. In each focus group, the mediator displayed the landing page and then disclosed to the participants that this would be the first page they would see if they were to click on a link to or type FreeCreditReport.com into their Internet browser. The participants gave the following responses:

**Focus Group 1, Participant 5:** “I think I’d have a virus like I said before.”

**Focus Group 1, Participant 1:** “I think I would be like wait a minute, what do I want to do here? I don’t know.”

“I just went to this thinking maybe it was a part of the FreeCreditReport? Or the free aspect of FreeCreditReport? Was this the free part that they were talking about? Or maybe they have to do this by law?”

**Focus Group 1, Participant 7:** “I don’t like it at all.”

**Focus Group 1, Participant 6:** “All the sites I’ve ever seen at I’ve never seen anything come up like that.”

**Focus Group 1, Participant 5 (responding to Participant 6):** “Unless it was under construction.”

**Focus Group 1, Participant 6 (responding to Participant 5):** That’s right . . . unless it’s under construction, I’ve never seen anything like that.

**Focus Group 1, Participant 3 (responding to Participant 6):** “It’s scary really.”

**Focus Group 2, Participant 4:** “I’ve never heard of this annualcreditreport.com so if I saw this I would be confused. What free credit federal law thing are you talking about?”

**Focus Group 2, Participant 5:** “You would never visit this site again if you came here.”

**Focus Group 2, Participant 4 (responding to Participant 5):** “You would be afraid that it’s a fake site. I wouldn’t.”

**Focus Group 2, Participant 6:** “[Y]ou would think you were being redirected.”

**Focus Group 2, Participant 2:** “[Y]ou think you are going to a different site.”

These comments confirm that consumers would be confused by the landing page. Rather than better informing consumers as the Proposed Rule speculates that it would, the unexpected appearance of the landing page will confuse consumers and cause concern that they may be victims of a virus or a phishing attack.

In sum, the evidence shows that the assumptions upon which the Commission based these provisions of the Proposed Rule are incorrect, and the proposed landing page requirement accordingly is arbitrary and capricious.

**C. The Proposed Rule Constitutes an Unjustified Change in the Commission's Policy of Preventing Consumer Deception through a Disclosure Approach.**

Rather than implementing the new statute by building upon existing techniques that have proven successful in preventing consumers from being misled by Internet advertisements, the website provisions of the Proposed Rule would effectuate a sea change in the Commission's approach to regulating potentially deceptive advertising. They are based on the unsubstantiated assumption that commercial websites inherently confuse and deceive consumers about whether the free credit reports they offer are the free annual file disclosures provided by Federal law. Through the Proposed Rule, the Commission seeks to implement an impermissible substantive policy decision that consumers would be better off if they obtained free credit reports from AnnualCreditReport.com rather than from commercial websites. As such, the Proposed Rule is arbitrary and capricious.

**1. The Commission Has Departed Without Justification from Its Longstanding Policy that Clarifying Disclosures Must Be "Prominent" and Accompany and Appear Proximally to the Advertising Representation to Which They Relate.**

The most objectionable aspect of the Proposed Rule is the landing page requirement, which would interpose a separate intercept page between consumers and the commercial websites they seek to access. To our knowledge, the Commission has never previously required that a disclosure aimed at making a representation not misleading must appear on a separate page from the claim to which the disclosure relates. Moreover, the agency has never required that an intercept page containing only the disclosure, and no other content whatsoever, must be shown to the consumer before that person can access the webpage that would contain the offer that the disclaimer modifies. If adopted, the Proposed Rule would constitute a dangerous precedent for the extension of similar landing page requirements to many other areas of Internet advertising in which notices and disclaimers must appear.

The landing page requirement marks a sharp departure from the disclosure-focused principles that the Commission has long followed in regulating deceptive advertising. At least as far back as its 1983 Policy Statement on Deception, the Commission has applied the principle that a clarifying disclosure must accompany the

advertising representation to which it relates, and must appear prominently and proximately to it.<sup>11</sup> The 1983 Statement also provided that disclosures must be legible and understandable and are adequate if they conform to the provisions of the Commission's 1970 Statement of Enforcement Policy pertaining to clear and conspicuous disclosures. In that document, the Commission did not specify that disclosures must be of a particular type size, but simply adopted a functional requirement that the disclosures must be of sufficient size to be easily seen and read by consumers.<sup>12</sup>

Since 1983, in applying the "clear and conspicuous" requirement, the Commission has consistently followed the principle that a clarifying disclosure accompanying a representation must be "prominent." The "prominence" criterion requires that the disclosure must appear in the same document or page as the representation to which it relates, must be proximate to the representation, and ensure that consumers will receive the clarifying information in a manner that is easily seen and read at the same time they review the underlying claim. For example, in In the Matter of RBR Productions, Inc., the Commission issued a consent order noting that a disclosure would be deemed to be clear and conspicuous if it were of "sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears."<sup>13</sup> Similarly, in In the Matter of Beylen Telecom, the Commission reaffirmed the principle that clear and conspicuous disclosures must be in close proximity to the representations to which they relate.<sup>14</sup>

The Commission has followed these principles to the present day and has long applied them in the Internet area. In 2000, the Bureau of Consumer Protection issued a document entitled Dot Com Disclosures: Information about Online Advertising, which examined how its consumer protection rules apply to advertising on the Internet.<sup>15</sup> This document informed advertisers that:

2. Disclosures that are required to prevent an ad from being misleading . . . must be clear and conspicuous. In evaluating whether disclosures are likely to be clear and conspicuous in online ads, advertisers should consider the *placement* of the disclosure in an ad and its *proximity* to the relevant claim. Additional considerations include: the *prominence* of the disclosure . . . .

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<sup>11</sup> FTC, Policy Statement on Deception, appended to Cliffdale Assocs., Inc., 103 F.T.C. 110, 174 (1984).

<sup>12</sup> CCH Trade Regulation Reporter, ¶ 7569.09 (Oct. 21, 1970).

<sup>13</sup> In the Matter of RBR Prods., Inc., 122 F.T.C. 444, 464 (1996). See also In the Matter of Mobil Oil Corp., 116 F.T.C. 113, 122 (1993); In the Matter of Creative Aerosol Corp., 119 F.T.C. 13, 23 (1995).

<sup>14</sup> In the Matter of Beylen Telecom, Ltd., 125 F.T.C. 276, 285 (1998). Similarly, in In the Matter of Dell Computer Corp., 128 F.T.C. 151, 164 (1999), the Commission stated that for print advertisements, "a disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contract, and placement" as the representation to which it relates.

<sup>15</sup> FTC Bureau of Consumer Protection, Guidance, Dot Com Disclosures: Information about Online Advertising 1 (2000), available at [www.ftc.gov/bcp/edu/pubs/business/e-commerce/bus41.pdf](http://www.ftc.gov/bcp/edu/pubs/business/e-commerce/bus41.pdf).

3. To make a disclosure clear and conspicuous, advertisers should:

- Place disclosures near, and when possible, on the same screen as the triggering claim. . . .

In March 2008, the staff of the Division of Advertising Practices of the Bureau of Consumer Protection published a document entitled Federal Trade Commission Advertising Enforcement. It specified that when evaluating the effectiveness of a disclosure, the Commission considers four factors: (1) prominence; (2) presentation; (3) placement; and (4) proximity, and collected the Commission and judicial precedents that illustrated these points.<sup>16</sup> The document further emphasized that whether qualifying information is located in close proximity to the claim being modified is an important factor in evaluating the effectiveness of a disclaimer; and required that the disclaimer must be prominent enough for consumers to notice and read.

In adopting Section 205, Congress was well aware of the principles that the Commission has long followed in regulating advertising. The text of the statute, in particular its codification of the “prominence” requirement, is a clear directive to the Commission that it should apply these standards systematically, through a regulation of general applicability rather than through case-by-case adjudication, to all commercial websites that offer free credit reports and do not currently adhere to these principles.

The Commission has provided no facts to support its apparent position that Internet websites offering free credit reports – alone among all forms of advertising and unlike all other types of products and services offered on the Internet – must provide a compulsory disclosure to website visitors prior to, and in a separate place from, the representation to which it relates in order to avoid deceiving consumers. To the contrary, as shown in Section III.B above, the facts produced by a random sample test of consumer behavior show that consumers understand the identity of the entity making the offer under the traditional disclosure approach to preventing deception.

Similarly, the Commission has not provided a reasoned explanation for the sudden change in its policy concerning protection of consumer deception that extends back several decades. It certainly has not asserted that there is something different about the nature of commercial speech on websites that warrants a different regulatory regime to prevent deception than the disclosure-focused approach it applies elsewhere.

**2. The Proposed Rule Is Based on the Commission’s Impermissible Substantive Preference that, as a Matter of Policy, Consumers Should Obtain Free Credit Reports from AnnualCreditReport.com Rather Than from Commercial Websites.**

The provisions of the Proposed Rule concerning websites are based on the Commission’s implicit policy preference that consumers should obtain free credit reports

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<sup>16</sup>FTC, Federal Trade Commission Advertising Enforcement 25-28 (2008), available at <http://www.ftc.gov/oia/assistance/consumerprotection/advertising/enforcement.pdf>.

from AnnualCreditReport.com rather than commercial websites. This is an impermissible basis for agency action. The Commission possesses only the limited authority to prevent consumers from being deceived into believing that they are receiving the free file disclosure to which they are entitled under Federal law when they are not. It lacks the authority, however, to establish a regulatory preference for one source of free credit reports over another or to prevent commercial websites from promoting their products through truthful speech.

The Proposed Rule reflects this impermissible policy preference in several ways.

- First, the Preamble to the Proposed Rule states that the Commission proposed the landing page and timing requirements to make certain that “consumers view [the intercept page] at the most relevant time – when they seek to exercise their federal right to obtain free annual file disclosures on line.” 74 Fed. Reg. at 52,921. See id. (“the proposed disclosure would occur at the moment that a consumer is seeking to exercise his federal right to obtain his free annual disclosure online”). The Commission thus makes explicit the assumption on which the landing page requirement is based – that every consumer who accesses a commercial website offering a free credit report is, in reality, seeking to access the website at which the free file disclosures required by Federal law are available. The Commission has submitted no facts or analysis to support this extraordinary assumption. The data cited in Section III.B above show that the Commission’s assumption is unwarranted.
- Second, the Proposed Rule will impose a requirement that the landing page must contain a hyperlink to AnnualCreditReport.com that is twice the size of the hyperlink to the commercial entity’s own website. This provision explicitly seeks to divert consumers from the commercial site that they voluntarily sought to access and to steer them to the website the Commission favors. Indeed, the Commission itself has conceded that the simple fact of inclusion of a hyperlink to another website creates an inevitable risk of diversion of traffic to the other site. It has offered this very rationale as the justification for Proposed Section 610.2(h)(i), which would prohibit hyperlinks to commercial or proprietary websites on AnnualCreditReport.com. 74 Fed. Reg. at 52,918.

In addition, the data cited above show that the landing page requirement would in fact result in diversion of consumers from commercial websites to AnnualCreditReport.com, as well as abandonment of the search by a substantial percentage of the total number of visitors.

- Third, the Commission has taken the position that AnnualCreditReport.com is the only “authorized” site from which a consumer may obtain a free credit report. See Attachment 2. Experian strongly disagrees with this position. As a matter of law, the First Amendment denies the Commission the authority to determine that certain speech is “authorized” and therefore is to be preferred to other, competing speech. The agency’s authority is limited to assuring that commercial speech is



not deceptive or misleading, and it does not have the power to push consumers toward products or websites that it subjectively prefers. The Proposed Rule ignores explicit evidence, in the form of tens of millions of decisions by individual consumers – both before and after AnnualCreditReport.com was created – which demonstrate that free credit reports from commercial websites are of substantial value to them. In particular, as noted above, ConsumerInfo.com has provided more than [ ] million free credit reports to consumers who never paid it for any service.

For these reasons, the Proposed Rule impermissibly seeks to “restrict commercial speech in the service of other objectives that could not themselves justify a burden on commercial expression.” Edenfield v. Fane, 507 U.S. 761, 771 (1993).

### **3. The Commission Has Invited Complaints about Confusion Through Spoof Videos that Piggyback on Highly Successful FreeCreditReport.com Advertisements.**

The Commission has attempted to publicize the AnnualCreditReport.com website by preparing spoof videos that piggyback on the highly popular FreeCreditReport.com television advertisements. The Commission’s website contains a page from which consumers can launch a video that advertises AnnualCreditReport.com by mimicking the popular FreeCreditReport.com advertisement. See Attachment 2. On this page, the Commission explicitly solicits consumers to report if they have been misled by commercial websites. The website states:

File a Complaint

The FTC wants to hear from you if you paid for what you thought was your free annual credit report.

The spoof videos illustrate a fundamental contradiction in the Commission’s position. By imitating the FreeCreditReport.com advertisements, the Commission seeks to piggyback on Experian’s goodwill to promote AnnualCreditReport.com. At the same time, the Commission invites consumers to report to it any confusion about the identity of the provider of the free credit report – an association that the agency itself helps generate through the same web page. Despite this solicitation, however, the Commission has provided no data to suggest that visitors to commercial websites actually were seeking to reach AnnualCreditReport.com.

### **D. There Is No Justification for the Proposed Departure from the Existing Disclosure Regime for Offers on Internet Websites.**

The Commission’s traditional disclosure approach to regulation of advertising has been effective in combating deception in a wide variety of communications media. The Commission has pointed to no evidence that would justify treating offers of free credit reports on Internet websites differently from how it regulates every other industry, online

and offline. The data that do exist show that the disclosure-based approach is effective in preventing consumer deception.

Subparagraph I.C.3 of the ConsumerInfo Order sets forth the disclosure regime that ConsumerInfo must follow for making disclosures on its website about the availability of free credit reports through AnnualCreditReport.com. See Attachment 1. It provides that at the same time the company offers its free credit report to consumers, it must disclose that under Federal law, the consumer has a right to receive a free annual credit report by accessing AnnualCreditReport.com. It further provides that the required disclosure “shall be made in a prominent location and in close proximity to the free credit report representation and distinct from other text . . . .” It requires that a second disclosure be made clearly and conspicuously, at a location between the landing page and the location where the consumer submits an order, that the commercial offer is not related to the free credit report to which a consumer is entitled under Federal law and that the consumer must go to AnnualCreditReport.com to obtain that free report. The simultaneous disclosure of the representation and a prominent clarifying disclosure, in the same place as the claim it modifies, is consistent with the Commission’s longstanding principles about how to prevent consumer deception.

There are four significant differences between the requirements of the Order and the Proposed Rule.

1. Under the Order, the consumer experiences no delay in accessing the substantive content of the website that he or she sought to view when clicking on the URL for the website. Access occurs instantaneously.
2. The Order does not impose a requirement that a separate intercept page must be interposed between the consumer and the website. The consumer lands directly on the homepage of the website, as he or she expected.
3. The disclosure of the availability of the free credit reports at AnnualCreditReport.com occurs in the context of the advertisement made by the company for a product or service, and not in the context of some separate document that must be devoid of any other statements. The disclosure must appear “in a prominent location and in close proximity to the free credit report representation . . . .”
4. The Order does not require that the font size of the disclosure about the availability of a report at AnnualCreditReport.com must be twice the size of the link to the company’s website at which a free credit report may be offered.

The ConsumerInfo disclosure system has functioned effectively in informing consumers of the difference between the company’s commercial offering and the free credit report available from the website required by Federal law. In the last year, more than [ ] million consumers accessed AnnualCreditReport.com by clicking through from Experian websites. In addition, ConsumerInfo tracks the reasons consumers provide for

why they have cancelled their enrollment for credit monitoring. The data show that only approximately 0.28% of the respondents stated that they terminated the relationship because they believed that the free credit report they had been offered was a free credit report under the Fair and Accurate Credit Transactions Act.

The ConsumerInfo disclosure regime therefore clearly works to assure that consumers who utilize Experian's websites are aware of their rights to obtain a free credit report from AnnualCreditReport.com and that they understand the identity of the entity whose website they are visiting. The Commission has submitted no evidence that consumers have been deceived by the disclosure regime imposed under the agency's own Order.

In the Preamble to the Proposed Rule, the Commission states that despite its efforts to prevent confusion in the offering of products marketed as free credit reports, "the Commission continues to receive consumer complaints demonstrating ongoing confusion in the 'free credit report' marketplace." 74 Fed. Reg. at 52,921. Nothing in the Preamble, however, demonstrates that confusion is occurring with respect to the offering of free credit reports by ConsumerInfo pursuant to the disclosure requirements imposed by Subparagraph I.C.3 of the Order. The Commission has not pointed to any material which suggests that reasonable consumers have been misled into thinking that ConsumerInfo's credit report is the free annual file disclosure available through AnnualCreditReport.com.<sup>17</sup> Indeed, the only recent materials cited by the Commission are a newspaper article and a study that comments favorably in several places on the results of the disclosure regime established by the ConsumerInfo Order.<sup>18</sup>

In sum, the question whether commercial websites may offer free credit reports under appropriate conditions to protect consumers from deception has been settled. The Court in ConsumerInfo entered an Order providing that the company may offer these services through the Internet, pursuant to consumer protection conditions to which the Commission agreed. In May 2009, Congress adopted Section 205 that confirmed that these services may lawfully be offered. Thus, both the Legislative and Judicial Branches are in agreement on the threshold question that it is lawful for commercial companies to offer free credit reports. The only remaining question concerns the conditions under which they may be offered. On that issue, the evidence shows that the approach to disclosure set forth in the ConsumerInfo Order has worked effectively to inform

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<sup>17</sup> See FTC, Policy Statement on Deception, appended to Cliffdale Assocs., Inc., 103 F.T.C. 110, 178 (1984):

An advertiser cannot be charged with liability with respect to every conceivable misconception, however outlandish, to which his representations might be subject among the foolish or feeble-minded. Some people, because of ignorance or incomprehension, may be misled by even a scrupulously honest claim. . . . A representation does not become "false and deceptive" merely because it will be unreasonably understood by an insignificant and unrepresentative segment of the class of persons to whom the representation is addressed. Heinz W. Kirchner, 63 F.T.C. 1282, 1290 (1963).

<sup>18</sup> See Robert N. Mayer & Tyler Barrick, Sites Offering 'Free' Credit Reports: Worth Consumer Consideration? 17-18 (July 3, 2007).

consumers of the identity of the entity offering a free credit report. Thus, there is no need or justification to discard this disclosure approach and adopt a different system that would confuse consumers and restrict or suppress truthful commercial speech. The requirements of Section 205 would be fully satisfied by a rule that adopted as a general requirement disclosure provisions similar to the ones in that Order.

Under these circumstances, the public interest would be better served if the Proposed Rule were revised to require all commercial websites that offer free credit reports to enhance their disclosures and implement the same type of disclosure-based protocols that are required by the ConsumerInfo Order. Such a rule would be fully effective in protecting consumers and would avoid the consumer confusion and other problems that would be presented by this unwarranted and poorly designed departure from the Commission's consistent approach to regulating advertising.

#### **IV. THE PROPOSED RULE EXCEEDS THE COMMISSION'S STATUTORY AUTHORITY**

The landing page, timing, and font size requirements of the Proposed Rule exceed the authority granted the Commission under Section 205.

##### **A. Provisions of the Statute.**

Section 205(a) of the statute added a new subsection 612(g) to the FCRA, 15 U.S.C. § 1681j. Subsection (g)(1) provides:

Subject to rulemaking . . . any advertisement for a free credit report in any medium shall prominently disclose in such advertisement that free credit reports are available under Federal law at: "AnnualCreditReport.com" . . . .

(emphasis added). Subsection (g)(2) further specifies the precise and exclusive disclosure language that must appear in television and radio advertisements: "This is not the free credit report provided for by Federal law."

Section 205(b)(2) provides the Commission with narrow rulemaking authority in two areas only:

- Subsection (A) directs the agency to establish the "specific wording to be used in advertisements" in media other than television, radio, and the Internet; and
- Subsection (B) provides that "for advertisements on the Internet," the rule:

shall include whether the disclosure required under section 612(g)(1) . . . shall appear on the advertisement or the website on which the free credit report is made available.

(emphasis added).

Section 205(b)(1) directs the Commission to issue the final rule by February 22, 2010, within nine months of the enactment of the law. Section 205(b)(3) specifies interim disclosure language that must appear in any advertisement for a free credit report if the rulemaking is not finalized by the deadline: “Free credit reports are available under Federal law at: ‘AnnualCreditReport.com’.”

**B. The Separate Landing Page Requirement Exceeds  
the Authority Provided by Section 205(b)(2)(B).**

In Section 205, Congress delegated to the Commission the very narrow authority to issue a rule concerning disclosures in Internet advertisements. The statute Section 205 modified, the FCRA, does not give the Commission general rulemaking authority. Rather, it restricts the Commission’s power to issue rules only to individually defined questions for which Congress delegated specific authority.<sup>19</sup> The Proposed Rule exceeds this narrow authority that Congress granted the Commission.

Section 205(b)(2)(B) authorizes the Commission to determine by rule only whether the required disclosure “shall appear on the advertisement or the website on which the free credit report is made available.” Congress gave the Commission a binary choice. It did not grant the agency broader rulemaking authority to choose another alternative. In the Proposed Rule, however, the Commission adopted neither of the two alternatives that Congress provided. Instead, it adopted a third option of its own creation – a requirement that disclosures must appear on a separate intercept page, “not easily bypassed and containing no distracting text,” to which consumers must be directed before they can review the webpage they intended to access. 74 Fed. Reg. at 52,917.

Congress’ determination to grant the Commission a binary choice that closely bounded its authority was a deliberate decision. During the legislative process, questions arose whether the appropriate disclosure could physically be placed in an Internet advertisement, based on the limited capacity of banner ads. Congress accordingly decided to grant the Commission only the limited authority to evaluate whether there were practical limitations specific to Internet advertising such that disclosures that might otherwise appear on the advertisements would be more appropriately provided on the website where the free credit report is offered. Section 205(b)(2) implemented this decision by delegating to the Commission the very narrow power to decide whether the disclaimer “shall appear on the advertisement or the website . . . .” (emphasis added)

From the point of view of the consumer, the intercept page is neither an “advertisement” nor “the website on which the free credit report is made available.” It is a separate location, a technological form of limbo that the Commission has interposed

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<sup>19</sup> See 15 U.S.C. § 1681s; *Fischl v. Gen. Motors Acceptance Corp.*, 708 F.2d 143, 149 n.4 (5<sup>th</sup> Cir. 1983) (“[The Commission] does not possess substantive rule-making power” under the FCRA); *In re Miller*, 335 B.R. 335, 346 n.7 (Bankr. E.D. Pa. 2005) (“[The Commission] was not given rule-making authority as to the FCRA”).

between the consumer and the advertiser. Its content consists exclusively of statements and operational features dictated by the Commission. The intercept page contains no substantive content whatsoever prepared by the advertiser. In sum, this landing page is not the website “on which the free credit report is made available.” From the intercept page, consumers must take a further step – clicking on a hyperlink – to actually navigate to the location that they intended to visit, and to get to the website “on which the free credit report is made available.” Unless a visitor takes additional steps, he or she will never be able to access a commercial offer for a free credit report.

Nothing in Section 205 grants the Commission authority to require that a consumer who seeks to access a commercial website must be taken to a separate landing page whose contents are dictated by the agency. Similarly, Section 205 does not authorize the agency to order that the consumer’s ability to access information he or she seeks to obtain from a commercial website may be delayed for some period of time so that the consumer must review a landing page the Commission has inserted as an insulator between the advertiser and the visitor. This provision does not empower the agency to require that the website operator establish an operational hyperlink to any other website or to prescribe that the hyperlink to another website must be twice the size of the hyperlink to the sponsor’s own website.

Further confirmation that the website requirements of the Proposed Rule exceed the Commission’s authority is provided by a comparison of those provisions with the specific language that Congress enacted for inclusion in radio and television advertisements and for the interim disclosures that it required for all advertisements in all media if the Commission fails to finalize this rulemaking by the statutory deadline. For radio and television advertisements, Congress required that the disclosure may consist only of the following: “This is not the free credit report provided for by Federal law.” Section 205(a), adding 15 U.S.C. § 1681j(g)(2). Further, if the Commission fails to adopt this rule in a timely manner, the interim disclosures for all covered advertisements must include only the following limited disclosure “Free credit reports are available under Federal law at: ‘AnnualCreditReport.com’.” Section 205(b)(3).

There is a striking difference between these concise and direct disclaimers and the Proposed Rule’s complicated combination of a separate landing page with no other content, a time delay before consumers may access the website, and government-dictated font size and operational hyperlinks. The differences in these two disclosure schemes highlight the illegality of the Proposed Rule’s rejection of the binary choice Congress provided the Commission in Section 205(b)(2) in favor of a third alternative of its own design.

Moreover, the Commission does not have authority under Section 205 to impose the font size requirement. Congress delegated only narrow rulemaking authority to the agency. The text of the statute does not grant the agency the power to impose a discriminatory requirement that the hyperlink for AnnualCreditReport.com must be twice the size of the link for ConsumerInfo’s own websites.

The font size requirement is not the only example of the Commission's acting outside the limits on its statutory authority. For example, nothing in Section 205(b)(2)(a) gives the Commission authority to impose detailed requirements on the formats of television and radio advertisements such as those in Proposed Section 610.4(c). Although the agency has not been delegated this power, the Proposed Rule nonetheless requires that an audio disclosure "shall be delivered in a slow and deliberate manner and in a reasonably understandable volume"; and that visual disclosures "shall be of a color or shade that readily contrasts with the background of the advertisement, in a font easily read by a reasonable consumer, and be parallel with the base of the advertisement." Proposed Section 610.4(c)(2)-(3).

**C. Inclusion of the Term of Art "Prominent" in Section 205(a)  
Defines and Limits the Scope of the Commission's Authority.**

The Commission attempts to justify the landing page requirement on the ground that Section 205(a) specifies that all disclosures shall be "prominent." It argues that the statute's use of this term must be viewed as meaning that "Congress sought a marked and substantial change from the status quo, requiring more significant disclosures than any currently required or used in advertising for 'free credit reports'." 74 Fed. Reg. at 52,916-17 (quoting 155 Cong. Rec. S 6179 (June 4, 2009) (statement of Sen. Levin)). The Commission thereby seeks to apply a gloss on the statute to justify a predetermined policy outcome. However, the literal language of the statute refutes the Commission's assertion, which is based entirely on a post-enactment statement by one member of Congress.<sup>20</sup>

Nothing in the text of Section 205 specifically directs or authorizes the Commission to require disclosures that would be "more noticeable and more effective" than those currently required, which the data show have worked very well. As noted at page 20 n.19 above, under the FCRA, the Commission lacks general rulemaking authority and must be granted express rulemaking authority on a case-by-case basis before it may adopt a rule on a specific subject. The Commission's attempt to derive broad rulemaking authority from use of the term "prominent" in Section 205(a) is plainly

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<sup>20</sup> As a post-enactment expression of views, this statement will be given no weight by a reviewing court. See e.g., Pittston Coal Group v. Sebben, 488 U.S. 105, 118-19 (1988). In any event, even if a court were to consider this statement, it does not support the imposition of an intercept page between the consumer and a commercial website. Rather, it confirms the limited nature of the authority granted the Commission for Internet advertisements:

The rulemaking will also require that all internet advertisers of free credit reports prominently display on the advertiser's homepage and possibly the advertising itself that consumers can order the free credit reports provided for by federal law from www.AnnualCreditReport.com.

155 Cong. Rec. at S 6179 (emphasis added). It is absolutely clear that the intercept landing page where the Commission would require its disclosure could in no way be characterized as "the advertiser's homepage." Moreover, were the Commission to assert that the statute requires it to go further and abandon the disclosure approach to regulating potentially deceptive speech, that construction would simply shift the focus of the constitutional challenge from the rule to Section 205 itself, whose text nowhere imposes such a requirement.

erroneous as a matter of statutory interpretation. In the context of the FCRA, the use of the term “prominently” in a general provision cannot modify the specific and limited authority that Congress gave the Commission with respect to Internet advertisements in Section 205(b)(2)(B) – authority to make a binary choice between a disclosure on the advertisement or on the website.

In any event, the Commission’s interpretation is clearly erroneous on its own terms. As discussed above, “prominence” is a longstanding term of art in the Commission’s regulation of advertising and is one of the important implementing factors in the Commission’s requirement that a representation must be “clear and conspicuous” and will not mislead consumers. In its historical context, the term “prominent” has a well-defined meaning – that to avoid deceiving or confusing consumers, a disclosure necessary to make a representation not misleading must appear in the same location as, and in proximity to, the advertising claim that must be qualified and must be set forth in a manner that consumers will notice and read.<sup>21</sup> Congress is deemed to understand the body of law that is associated with a term of art and to have intended to adopt those rules in incorporating the term of art in a statute.<sup>22</sup> Thus, by including the term of art “prominent” in Section 205(a), Congress narrowed the scope of the authority granted the Commission by requiring it to conform to its established standards for regulating advertising, rather than granting it *carte blanche* to do whatever it would like as the Commission asserts.

The landing page requirement is inconsistent with the established meaning of the term of art “prominent” in the Commission’s regulation of advertising. The disclosure does not appear at the same time as the statement it is supposed to modify. Moreover, the disclosure is not presented in the context of the actual advertisement, but appears in a separate location from the claim it modifies. Accordingly, the Proposed Rule exceeds the Commission’s authority under the statute.

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<sup>21</sup> See e.g., Policy Statement on Deception, appended to Cliffdale Assocs., 103 F.T.C. at 180-81 (1983); Dot Com Disclosures: Information about Online Advertising at 1, 6, 11 (2000); Federal Trade Commission Advertising Enforcement at 25-26 (March 1, 2008).

Indeed, the case upon which the Commission relies in the Proposed Rule to justify a separate landing page does not support the agency’s position. In fact, it adopts the traditional disclosure approach under which the disclaimer clarifying the representation must appear prominently and proximately to the advertising representation it modifies. In Hillman Periodicals, Inc. v. FTC, 174 F.2d 122, 123 (2d Cir. 1949), cited at 74 Fed. Reg. 52,920 n. 34, the court upheld a Commission Order which required that all reprints of abridged articles:

indicate clearly that they were abridged “unless the title of each and every reprint so advertised be immediately accompanied in equally conspicuous type by the word abridged.” Whenever a new title was used in place of the original it was required that “such substitute title be immediately accompanied, in equally conspicuous type, by the title under which such story was originally published.” (emphasis added).

<sup>22</sup> See e.g., Morissette v. United States, 342 U.S. 246, 263 (1952) (“where Congress borrows terms of art . . . it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed.”).



## V. THE PROPOSED RULE IS UNCONSTITUTIONAL

The Proposed Rule would unconstitutionally restrict and prohibit the commercial speech of commercial websites that offer free credit reports, in violation of the First Amendment. It also would constitute an uncompensated regulatory taking of their property in violation of the Fifth Amendment.

### A. The Proposed Rule Violates the First Amendment.

Commercial speech is protected by the First Amendment, because it “assists consumers and furthers the societal interest in the fullest possible dissemination of information.” Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n, 447 U.S. 557, 561-62 (1980). If the commercial speech is not false, deceptive, or misleading, or is only potentially misleading, then it may be restricted only if the government shows that “the restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest.” Id. at 566.

#### 1. **The Proposed Rule Imposes an Unconstitutional Ban on Commercial Speech.**

Under the Central Hudson standard, the landing page, timing, and font size requirements violate the First Amendment. These requirements combine to act as a complete ban on the website owner’s commercial speech, driving consumers away before the commercial site can present its message. As such, the Commission must come forward with “tangible evidence that the commercial speech in question is misleading and harmful to consumers . . . .” Borgner v. Brooks, 284 F.3d 1204, 1211 (11<sup>th</sup> Cir. 2002); see also Ibanez v. Florida Dep’t of Bus. & Prof’l Regulation, Bd. of Accountancy, 512 U.S. 136, 146 (1994). The Commission must carry the burden of producing tangible evidence that the landing page requirements are not “more extensive than necessary” to directly advance a substantial government interest. Thompson v. W. States Med. Ctr., 535 U.S. 357, 367 (2002), quoting Cent. Hudson, 447 U.S. at 566. The Commission has demonstrated neither the existence of any harm nor that the proposed restrictions will alleviate any such harm.

First, the Proposed Rule would restrict far more truthful speech than is necessary to further the government’s interest in preventing consumers from being deceived about whether they are being offered the free file disclosure available to them at AnnualCreditReport.com. It is therefore not narrowly tailored to the harm the agency seeks to prevent. In particular, as shown in Section III.C.2 above, the Proposed Rule is structured to implement the Commission’s policy preference that consumers should obtain free file disclosures from AnnualCreditReport.com rather than the free credit reports available from commercial websites. This goal is not directly related to the government interest in preventing potential harm from consumer deception that is the sole justification under which the Commission could seek to regulate commercial speech. Accordingly, the Proposed Rule impermissibly seeks to “restrict commercial speech in

the service of other objectives that could not themselves justify a burden on commercial expression.” Edenfield v. Fane, 507 U.S. 761, 771 (1993).

Second, the Proposed Rule would restrict far more commercial speech than would occur under the Commission’s prevailing disclosure approach to avoiding deception in all other media except offers of free credit reports on commercial websites, as reflected in the ConsumerInfo Order. See Pearson v. Shalala, 164 F.3d 650, 657 (D.C. Cir. 1999) (rejecting the government’s position that it can prohibit or suppress commercial speech and ignore the disclaimer approach; “[t]he government insists that it is never obligated to utilize the disclaimer approach, because the commercial speech doctrine does not embody a preference for disclosure over outright suppression. Our understanding of the doctrine is otherwise.”)

The Commission certainly has provided no evidence of consumer deception or confusion under the disclaimer approach that would be necessary to justify a choice of suppression over disclosure. Id. at 659. Experian, like the D.C. Circuit in Pearson, is skeptical that the government could make the required showing “with empirical evidence that disclaimers . . . would bewilder consumers and fail to correct for deceptiveness . . .,” which would be necessary to justify the Commission’s opting for the intercept page requirement over a disclosure approach. Id. at 660.

The landing page and timing requirements will unconstitutionally delay, or suppress permanently, the receipt of truthful protected speech by all persons who seek to access the websites of commercial advertisers that offer free credit reports. Similarly, the advertisers would be prohibited from communicating truthful commercial speech to consumers. In addition, in many cases these requirements will permanently suppress communications with the advertiser that consumers voluntarily sought to initiate, by resulting in the diversion of some customers to the AnnualCreditReport.com website before those consumers ever access the advertisements and other information presented by the commercial website.

Further, because the Proposed Rule prevents the advertiser from presenting any information on the landing page other than links to AnnualCreditReport.com and the advertiser’s site, it prevents the advertiser from communicating truthful speech about the differences, and comparative advantages and disadvantages, between the advertiser’s products and the file disclosures available on the government-sponsored website. This restriction would in fact undermine, rather than advance, the Commission’s goals by confusing consumers, causing them to suspect that the landing page is a signifier of “phishing” or other illicit activity.

Moreover, the Proposed Rule is overbroad. Current customers of websites offering free credit reports will experience the delay and inconvenience of the landing page and timing requirements every single time they visit the website, even though the rationale of preventing consumer deception about the identity of the sponsor of the website would have no application whatsoever in their cases.

The font size requirement also is constitutionally objectionable because it constitutes a content-based discrimination against lawful speech based solely on the identity of the speaker. The Commission has long taken the position that the size of a disclosure is a material factor in determining whether a disclaimer is “clear and conspicuous.”<sup>23</sup> The requirement that the link to AnnualCreditReport.com must be twice as large as the link to the advertiser’s own website is structured to divert traffic to the site preferred by the agency and away from commercial websites. This provision thereby chills lawful speech by preventing commercial speakers from delivering their messages to willing recipients in an objectively non-misleading manner.

## **2. The Rule Is Not Narrowly Tailored to the Government Interest in Preventing Consumers from Being Misled.**

The Proposed Rule restricts or suppresses a substantial amount of constitutionally protected speech when a narrower disclosure requirement would effectively prevent consumers from being misled. Under the disclosure regime established by the ConsumerInfo Order, disclosures necessary to make an offer for a free credit report not misleading are communicated to the consumer in the same webpage and at the same time as information about the company’s offering are communicated. The representation and the disclaimer to which it is related are communicated in type that is the same size. Such a disclosure regime has far less of an adverse effect on commercial speech than the Proposed Rule.

“It is well established that the party seeking to uphold a restriction on commercial speech carries the burden of justifying it.” Edenfield, 507 U.S. at 770; see In re R.M.J., 455 U.S. 191 (1982) (the government must show that it has a “substantial interest” and that the interference with speech is “in proportion to the interest served”). The Commission has not carried its burden of showing that the disclosure regime provided in the ConsumerInfo Order would result in consumers being deceived or misled into believing that the commercial website offers the free file disclosure that AnnualCreditReport.com provides. The Preamble to the Proposed Rule speaks generally about the possibility of consumer confusion, but it does not present any facts or analysis showing that consumers actually have been confused or misled by the disclosure regime set forth in the ConsumerInfo Order.

## **3. The Proposed Rule Fails Even Under the Less Exacting Test for Disclosure Requirements.**

Even if the Proposed Rule’s landing page, timing, and font-size requirements could be considered mere disclosure requirements, and thus subject to the less demanding test that they be reasonably related to the Commission’s interest in preventing deception, the requirements are too burdensome to pass constitutional muster.<sup>24</sup> Disclosure requirements that effectively prevent an advertiser from communicating its message are

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<sup>23</sup> FTC Statement of Enforcement Policy, CCH Trade Regulation Reporter, ¶ 7569.09 (Oct. 21, 1970).

<sup>24</sup> Zauderer v. Office of Disciplinary Counsel of Sup. Ct. of Ohio, 471 U.S. 626, 651 (1985).

“unduly burdensome” and contrary to the First Amendment. See Ibanez, 512 U.S. at 146-47. Because the Proposed Rule’s restrictions prevent the advertiser from displaying its message along with the required disclosure, its requirements are overly burdensome and cannot meet even this more lenient standard.

Finally, it is no answer to the First Amendment argument for the Commission to observe that the law provides no protection for deceptive speech. As shown above, there is no evidence that deception occurs under the disclosure approach of the ConsumerInfo Order. Rather, the evidence shows that consumers are not deceived. For these reasons, the Proposed Rule violates the First Amendment.

## **B. The Proposed Rule Would Constitute an Unconstitutional Taking.**

Under the Takings Clause of the Fifth Amendment, an action by the government constitutes a taking if it results in a permanent physical invasion of property, no matter how minor, or if it destroys the economically beneficial uses of one’s property.<sup>25</sup> Intangible interests, such as Experian’s interest in the domain name and trademarks of FreeCreditReport.com, are a property interest protected by the Takings Clause.<sup>26</sup>

### **1. The Proposed Rule Would Constitute a Permanent Physical Invasion.**

The Proposed Rule is a permanent invasion of intangible property in the Internet context. The mandatory intercept page would displace the current FreeCreditReport.com home page from its virtual location as the first page seen by a visitor who accesses the site. The government would effectively occupy the first page and take it from Experian by exercising complete control over its content and format. In this respect, the Proposed Rule is analogous to a government regulation requiring pharmacies to wall off a separate reception room as the consumer enters the store; and prescribing that the owner must display in that space all the government-prescribed warning labels for drugs sold in the store while prohibiting the owner from communicating its own commercial speech to customers. This would constitute an effective physical taking because the shopkeeper would be divested of use of an important part of its property, which would be exclusively taken over by the government for its own purposes.

### **2. The Proposed Rule Would Constitute a Regulatory Taking.**

A taking also may occur through government regulation that imposes an undue burden on private property interests.<sup>27</sup> A regulation that does not entirely deprive an entity of the economically beneficial use of its property can still be considered a taking

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<sup>25</sup> See e.g., Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982); Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992).

<sup>26</sup> See e.g., Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1003 (1984).

<sup>27</sup> Huntleigh USA Corp. v. United States, 525 F.3d 1370, 1378 (Fed. Cir. 2008) (citing Pa. Coal Co. v. Mahon, 260 U.S. 393, 415 (1922)).

after balancing: (1) the economic impact of the regulation, (2) the extent to which the regulation interferes with the owner's investment-backed expectations, and (3) the harm to the owner with respect to the public interests at stake.<sup>28</sup>

The Proposed Rule constitutes an illegal regulatory taking because it would have a substantial adverse effect on the economic value of Experian's intangible property and significantly harm the extensive investments that the company has made in developing the FreeCreditReport.com domain name and trademarks. As demonstrated in Section III.B, while the proposal would drive some consumers away from commercial websites offering free credit reports to AnnualCreditReport.com, it would confuse a large number of consumers and cause them to simply abandon their effort to contact the commercial websites. This diversion and suppression of a substantial portion of the consumer traffic to these commercial websites would have a profound adverse effect on their economic value. Without visitors, there are no other economically valuable uses for the intellectual property, which due to the specificity of the domain names and associated businesses, cannot be adapted for another use or benefit.

Experian has invested substantial amounts over the years to develop FreeCreditReport.com and other brand names for its websites in reliance on existing law. Other commercial websites have made similar investments. However, without any showing of actual consumer deception, the Commission has proposed a rule that would greatly reduce the value of the FreeCreditReport.com website without any demonstrable benefit to the public interest. As demonstrated above, the data show that the current disclosure system under which Experian websites operate has worked well in preventing consumer confusion and educating consumers about the value of the products offered by its websites. Only a tiny percentage of customers have stated that they believed the free credit report offered by ConsumerInfo.com was the free file disclosure provided under the FACT Act. Given the significant and irreparable harm the Proposed Rule would cause if adopted and the clear evidence that it would harm the public interest by suppressing efforts by large numbers of consumers to access commercial websites, the Proposed Rule constitutes an actionable taking.

## **VI. SEVERAL ADDITIONAL PROVISIONS SHOULD BE REVISED**

Apart from the problems with the requirements for Internet websites, several other provisions of the Proposed Rule either exceed the Commission's authority, are unduly broad, or create ambiguities that should be corrected before the final rule is issued.

### **A. The Definition of "Free Credit Report."**

The definition of "free credit report" in Proposed Section 610.4(a) is far too broad and should be revised to make it consistent with the statute.

Section 205 is narrowly drawn and addresses only an "advertisement[]" for a free credit report." It seeks to assure that consumers will be able to distinguish between a free

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<sup>28</sup> Penn Cent. Transp. Co. v. City of N.Y., 438 U.S. 104, 124 (1978).

credit report offered by a commercial entity and the free annual file disclosure available at AnnualCreditReport.com. The statute does not cover other aspects of the consumer credit system such as credit scores or the many other types of information that can qualify as “consumer reports” under the FCRA.

As proposed, the definition of “free credit report” would exceed the authority granted to the Commission by the law. The proposed definition is “a consumer report or file disclosure that is prepared by or obtained from . . . a nationwide consumer reporting agency . . . .” By tying this term to the broad definition of “consumer report” under the FCRA, Proposed Section 610.4(a) would apply to many different types of reports that consumer reporting agencies provide but that are not available at AnnualCreditReport.com. These reports include, for example, credit scores, investigative reports, reports with checking account-type information, and reports prepared by a credit monitoring service or tenant screening service. These items lie well beyond the narrow scope of the “advertisements for free credit reports” that is the exclusive focus of Section 205, and the definition therefore exceeds the Commission’s authority. Moreover, since these products are not available from AnnualCreditReport.com, there is no possibility for the type of confusion that Section 205 seeks to address and thus no justification for restricting this commercial speech.

Consequently, the current definition of the term “free credit report” should be deleted and the definition should be revised to provide as follows:

(a) Free credit report. For purposes of this section, “free credit report” means a credit report or file disclosure that is prepared by or obtained, directly or indirectly, from a nationwide consumer reporting agency (as defined in section 603(p) of the Fair Credit Reporting Act) and which contains credit account information that is substantially similar to the information that is available from AnnualCreditReport.com; that is represented to be available to the consumer free of charge; and that is, in any way, tied to the purchase of a product or service.

**B. Confusion Concerning Internet-Hosted Multi-Media Advertising.**

Proposed Section 610.4(d)(5) establishes a separate disclosure requirement for “advertisements for free credit reports disseminated through Internet-hosted multi-media in both audio and visual format . . . .” The key term “Internet-hosted multi-media in both audio and visual format” is not further defined, is ambiguous, and potentially sweeping in scope. The Final Rule should define with greater precision the kinds of advertisements that are covered by this provision so that advertisers will be able to understand whether their offers are covered by this provision.

**C. Potential Inconsistency Between the Rule and the ConsumerInfo Order.**

The parts of the ConsumerInfo Order that require a disclosure related to AnnualCreditReport.com are likely to be rendered obsolete or superseded by the final rule. Whatever the outcome of the rulemaking, ConsumerInfo should not be subject to

multiple and potentially conflicting disclosure obligations, but should be subject only to the same obligations as any other commercial website offering free credit reports.

Accordingly, at the conclusion of the rulemaking, the Commission should take the appropriate steps necessary to provide that for those parts of the final rule that address the disclosure obligations related to AnnualCreditReport.com, ConsumerInfo will be subject only to the provisions of the final rule.

## CONCLUSION

The Commission should modify the Proposed Rule by removing the landing page, timing, and font size requirements for advertisements on websites. The public interest would be better served if the Commission adopted instead a carefully tailored disclosure-focused approach, such as that established by the ConsumerInfo Order, which would ensure that consumers receive effective disclosures concerning the identity of the sponsor of a website and the fact that offers for free credit reports on commercial websites are not for the free annual file disclosures required by Federal law. The Commission also should modify the Proposed Rule to cure the various additional issues identified by these comments.

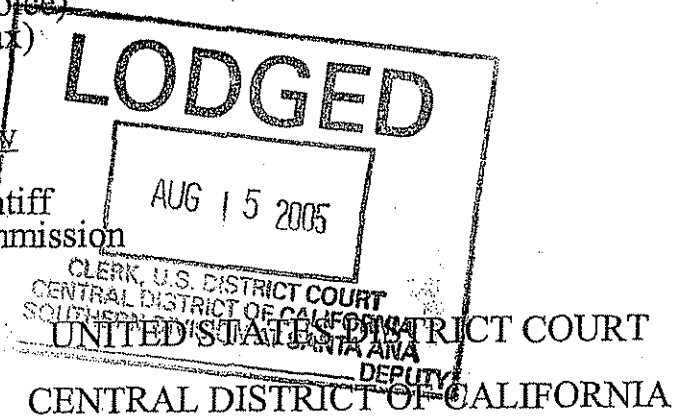
**ATTACHMENT 1**



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8 Attorneys for Plaintiff  
9 Federal Trade Commission



10 FEDERAL TRADE COMMISSION,

11 Plaintiff,

12 v.

13 CONSUMERINFO.COM., INC., a  
14 corporation,

15 doing business as

16 EXPERIAN CONSUMER DIRECT,  
17 QSPACE, INC.,  
18 and IPLACE INC.,

19 Defendant.

20 CV SACV05-801 AHS(MLGx)

21 **STIPULATED FINAL  
22 JUDGMENT AND ORDER  
23 FOR PERMANENT  
24 INJUNCTION**

25 Plaintiff, Federal Trade Commission ("FTC" or "Commission") is  
26 concurrently filing its Complaint, which alleges that Defendant Consumerinfo.com,  
27 Inc., doing business as Experian Consumer Direct, Qspace, Inc., and Iplace, Inc.,

1 has engaged in unfair or deceptive acts or practices in violation of Section 5 of the  
2 FTC Act, 15 U.S.C. § 45, in connection with the marketing of consumer reports  
3 and credit monitoring programs. The parties have agreed to the entry of this  
4 Stipulated Final Judgment and Order for Permanent Injunction ("Order") to resolve  
5 all matters in dispute in this action without trial or adjudication of any issue of law  
6 or fact herein and without Defendant admitting liability for any of the matters  
7 alleged in the Complaint. Defendant has waived service of the Summons and  
8 Complaint.

9  
10 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND**  
11 **DECREED** as follows:

12 **FINDINGS**

- 13 1. This Court has jurisdiction over the subject matter of this case and  
14 over Defendant Consumerinfo.com, Inc. dba Experian Consumer Direct, Qspace,  
15 Inc. and Iplace, Inc.
- 16 2. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and  
17 15 U.S.C. § 53(b).
- 18 3. The acts and practices of Defendant are in or affecting commerce, as  
19 "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
- 20 4. The Complaint states claims upon which relief may be granted against  
21 Defendant under Sections 5 and 13(b) of the FTC Act, 15 U.S.C.  
22 §§ 45 and 53(b).
- 23 5. Defendant makes no admissions as to the allegations in the Complaint,  
24 other than the jurisdictional facts.
- 25 6. Defendant waives: (a) all rights to seek appellate review or otherwise  
26 challenge or contest the validity of this Order; (b) any claim Defendant may have  
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1 against the Commission, its employees, representatives, or agents that relate to the  
2 matter stated herein; (c) all claims under the Equal Access to Justice Act, 28 U.S.C.  
3 § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any  
4 rights to attorneys' fees that may arise under said provision of law.

5 7. Entry of this Order is in the public interest.

6  
7 **DEFINITIONS**

8 For purposes of this Order, the following definitions shall apply:

- 9 1. "Assisting Others" means knowingly formulating or providing, or  
10 arranging for the formulation or provision of, any marketing materials.
- 11 2. "Billing Information" means any data that enables any person to  
12 access a customer's account, such as a credit card, checking, savings, share or  
13 similar account, utility bill, mortgage loan account, or debit card.
- 14 3. "Clearly and Conspicuously" means:
- 15 a. in print communications, the message shall be in a type size and  
16 location sufficiently noticeable for an ordinary consumer to read and comprehend  
17 it, in print that contrasts with the background against which it appears;
- 18 b. in communications disseminated orally, the message shall be  
19 delivered in a volume and cadence sufficient for an ordinary consumer to hear and  
20 comprehend it;
- 21 c. in communications made through an electronic medium (such as  
22 television, video, radio, and interactive media such as the Internet, online services  
23 and software), the message shall be presented simultaneously in both the audio and  
24 visual portions of the communication. In any communication presented solely  
25 through visual or audio means, the message may be made through the same means  
26 in which the communication is presented. Any audio message shall be delivered in

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1 a volume and cadence sufficient for an ordinary consumer to hear and comprehend  
2 it. Any visual message shall be of a size and shade, with a degree of contrast to the  
3 background against which it appears and shall appear on the screen for a duration  
4 and in a location, sufficiently noticeable for an ordinary consumer to read and  
5 comprehend it; and

6 d. regardless of the medium used to disseminate it, the message  
7 shall be in understandable language and syntax. Nothing contrary to, inconsistent  
8 with, or in mitigation of the message shall be used in any communication.

9 4. In the case of advertisements disseminated by means of an interactive  
10 electronic medium such as software, the Internet, or online services, "in close  
11 proximity" shall mean on the same webpage, online service page, or other  
12 electronic page, and proximate to the triggering representation, and shall not  
13 include disclosures accessed or displayed through hyperlinks, pop-ups, interstitials,  
14 or other means.

15 5. "Consumer Report" is synonymous in meaning and equal in scope to  
16 the usage of the term as it is defined in Section 603(d) of the Fair Credit Reporting  
17 Act, 15 U.S.C. § 1681a(d).

18 6. "Credit Report" means a consumer report that is used or expected to  
19 be used or collected in whole or in part for the purpose of serving as a factor in  
20 establishing the consumer's eligibility for creditworthiness.

21 7. "Credit Monitoring Program" means a program that enables a  
22 consumer to access information related to substantive changes in his or her credit  
23 history as recorded in his or her consumer report.

24 8. "Defendant" means Consumerinfo.com, Inc. doing business as  
25 Experian Consumer Direct, Qspace, Inc., and Iplace, Inc.

26 9. "Document" is synonymous in meaning and equal in scope to the  
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1 usage of the term in Federal Rules of Civil Procedure 34(a), and includes writings,  
2 drawings, graphs, charts, photographs, audio, and video recordings, computer  
3 records, and other data compilations from which the information can be obtained  
4 and translated, if necessary, through detection devices into reasonably usable form.  
5 A draft or non-identical copy is a separate document within the meaning of the  
6 term.

7 10. "Free Credit Report/Credit Check Monitoring" (or, "CCM") means a  
8 promotion offered by Consumerinfo.com, Inc., regardless of the name under which  
9 the promotion was offered, wherein a consumer received a free credit report in  
10 conjunction with enrollment on a trial conversion basis in a credit monitoring  
11 program.

12 11. "Full and Complete Refund" means a refund of any unrefunded  
13 amount paid for the Free Credit Report/Credit Check Monitoring in the 12-month  
14 membership period in which the cancellation took place, or the request for refund  
15 or chargeback, or complaint about the charge, was made. No consumer shall  
16 receive a refund of more than the unrefunded amount paid in a single twelve-month  
17 membership period.

18 12. "Marketing Partner" means any third party with which Defendant has  
19 an agreement under which Defendant agrees to provide order fulfillment services to  
20 that third party in conjunction with that third party's advertising, promotion, offer,  
21 or sale of any program in which the consumer receives a free credit report and is  
22 enrolled in a credit monitoring program on a trial conversion basis and under which  
23 Defendant does not have authority to control such advertising, promotion, offer, or  
24 sale.

25 13. "Material" when used in reference to the sale of goods or services  
26 means likely to affect a person's choice of, or conduct regarding, goods or services.

27



1 enjoined from:

2       A.    Misrepresenting, or assisting others in misrepresenting, expressly or  
3 by implication, that consumers can obtain a free product, program, or service, a free  
4 trial membership, or any such product, program, or service at no cost or obligation.

5       B.    Misrepresenting, or assisting others in misrepresenting, expressly or  
6 by implication:

7           1.    the amount of any charge, bill, or fee, including but not limited  
8 to, the cost of any consumer report or credit monitoring program;

9           2.    that a consumer will not be charged, billed, or assessed a fee;

10          3.    the timing or manner of any charge, bill, or fee assessment;

11          4.    that a consumer is legally obligated to pay a charge, bill, or fee  
12 assessment; or

13          5.    that a consumer will not be charged, billed, or assessed a fee  
14 without the consumer's authorization.

15       C.    Failing to make the following disclosures, clearly and conspicuously,  
16 in conjunction with the advertising, promotion, or sale of any offer, other than a  
17 promotion through a marketing partner, in which the consumer receives a free  
18 credit report and is enrolled in a credit monitoring program on a trial conversion  
19 basis:

20           1.    At least once in any short-form advertisement, Defendant shall  
21 include the following disclosure, or words of similar import, in close proximity to  
22 the free credit report representation:

23

24                   "with enrollment in [name of credit monitoring program]"

25

26           2.    At least once in any other radio or television advertisement,

27

1 Defendant shall include the following disclosures:

2

3 When you order your free report, you will begin your free  
4 trial membership in [name of credit monitoring program].

5 If you don't cancel within the 30 day [or other period]  
6 trial period, you will be billed \$12 [or other amount] for  
7 each month [or other billing period] that you continue  
8 your membership.

9

10 This offer is not related to the free credit report that you may be  
11 entitled to under Federal law. To obtain that free report, you must go  
12 to [www.annualcreditreport.com](http://www.annualcreditreport.com).

13

14 Provided that, in any radio or television advertisement longer than five (5) minutes  
15 in duration, the disclosures required by this Subparagraph I.C.2. shall be made, at  
16 Defendant's option, either immediately before each presentation of ordering  
17 instructions, or at least once every five (5) minutes.

18

19 3. In any other advertisement, and on any website or in any other  
20 medium, including but not limited to telephone, email, or direct mail, in which a  
21 consumer is able to enroll in the credit monitoring program, Defendant shall  
22 include the following disclosures:

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a. on the landing page of the website or at the first point of  
communication:

### **IMPORTANT INFORMATION**



1 When you order your free report here, you  
2 will begin your free trial membership in  
3 [name of credit monitoring program]. If you  
4 don't cancel your membership within the 30  
5 day [or other period] trial period, you will be  
6 billed \$12 [or other amount] for each month  
7 [or other billing period] that you continue  
8 your membership. Under a new Federal law,  
9 you may have the right to receive a free copy  
10 of your credit report once every 12 months  
11 from each of the three nationwide consumer  
12 reporting companies. To request your free  
13 annual report under that law, you must go to  
14 www.annualcreditreport.com. [Name of  
15 offering company] is not affiliated with the  
16 annual free credit report program.  
17

18 The reference to www.annualcreditreport.com shall be formatted to appear in  
19 a blue color and underscored and shall be an active hyperlink such that a consumer  
20 clicking on that hyperlink will be directed to that website. After September 1,  
21 2005, the word "may" shall be deleted from the third sentence of the disclosure  
22 required by this Subparagraph I.C.3.a.

23 The disclosure required by this Subparagraph I.C.3.a. shall be made in a  
24 prominent location and in close proximity to the free credit report representation  
25 and distinct from other text, such as inside a border; and

26 b. clearly and conspicuously, and not pursuant to a link, at a  
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location between the landing page and the location where a consumer submits an order:

"This offer is not related to the free credit report that you may be entitled to under Federal law. To obtain that free report, you must go to [www.annualcreditreport.com](http://www.annualcreditreport.com)."

After September 1, 2005, the word "are" shall be substituted for the words "may be" in the first sentence of the disclosure required by this Subparagraph I.C.3.b.; and

c. at the location or time that immediately precedes the point at which the consumer completes the transaction, under the heading "**PAYMENT INFORMATION**" in capital letters and bold print, the following disclosure, or words of similar import::  
"When you order your free report here, you will begin your free trial membership in [name of credit monitoring program]. If you don't cancel your membership within the 30 day [or other period] trial period, you will be billed \$12 [or other amount] for each month [or other billing period] that you continue your membership."

All written or printed disclosures required by this Subparagraph I.C.3. shall be in a type size that is no smaller than the type size of the principal text on the page, but in no event smaller than 12-point type.

1           4.     On a website or in any other medium in which a consumer is  
2 able to enroll in the credit monitoring program, Defendant shall disclose:

3           a.     all material terms and conditions of any cancellation or  
4 refund policy, or if Defendant has a policy of not accepting  
5 cancellations or making refunds, a statement that this is  
6 Defendant's policy. The disclosure required by this  
7 Subparagraph I.C.4.a. shall be made in the "**PAYMENT**  
8 **INFORMATION**" section referred to in Subparagraph I.C.3.c.;  
9 and

10          b.     any other material terms or conditions of the offer. The  
11 disclosure required by this Subparagraph I.C.4.b. shall be made  
12 in conformance with Subparagraphs I.D. and I.F.

13          D.     Representing, or assisting others in representing, expressly or by  
14 implication, that any such product, program, or service is "free" or is available  
15 without cost or obligation, unless Defendant discloses, clearly and conspicuously,  
16 and in close proximity to the representation, all fees, costs, obligations or other  
17 material terms or conditions associated with the offer, including the material terms  
18 of any negative option offer. Provided that, for the purposes of any offer covered  
19 by Subparagraph I.C., compliance with that Subparagraph shall be deemed to be  
20 compliance with this Subparagraph I.D.

21          E.     In conjunction with a promotion through a marketing partner in which  
22 the consumer receives a free credit report and a credit monitoring program on a  
23 trial conversion basis, failing to make the following disclosures:

24           1.     the disclosure required under Subparagraph I.C.3.c.,  
25 or words of similar import, which shall be made, clearly and conspicuously, (a) in  
26 the "**Payment Information**" section on the ordering page referred to in  
27

1 Subparagraph I.C.3.c., and (b) either in the promotional offer made by the  
2 marketing partner or at the first point of contact between Defendant and the  
3 consumer; and

4           2.     the disclosure required under Subparagraph I.C.3.b.,  
5 or words of similar import, which shall be made, clearly and conspicuously, either  
6 in the promotional offer made by the marketing partner or at the first point of  
7 contact between Defendant and the consumer. After September 1, 2005, the word  
8 “are” shall be substituted for the words “may be” in the first sentence of this  
9 disclosure.

10           F.     Failing to disclose, clearly and conspicuously, before consumers are  
11 asked to pay money, reveal billing information, or submit consideration, or before  
12 any charge is incurred, all material terms and conditions of a negative option offer,  
13 which include but are not limited to the following:

14           1.     the fact that the customer’s account will be charged, billed, or  
15 assessed a fee unless the customer takes affirmative action to avoid the charge, bill,  
16 or fee assessment;

17           2.     when the charge, bill, or fee assessment will be submitted for  
18 payment;

19           3.     the specific steps the customer must take to avoid the charge,  
20 bill, or fee assessment;

21           4.     all material terms and conditions of a guarantee, refund, or  
22 return policy, or if Defendant has a policy of not making refunds or accepting  
23 returns, a statement that this is Defendant’s policy;

24           5.     the fact that periodic shipments of products or the periodic  
25 provision or the continuation of services will occur without further action by  
26 consumers;

27

1           6.     if products are provided in shipments or services provided on a  
2 periodic basis, a description of each good or type of good to be included in each  
3 shipment or a description of the services that will be performed or continued;

4           7.     if products are shipped or services provided on a periodic basis,  
5 the approximate interval between each shipment or service period or the number of  
6 shipments or service periods per year;

7           8.     the cost or range of costs for each shipment or service period,  
8 including shipping and handling costs; and

9           9.     the minimum number of purchases or minimum service period  
10 required by Defendant, if any.

11 Provided that, for the purposes of any offer covered by Subparagraph I.C.,  
12 compliance with that Subparagraph shall be deemed to be compliance with this  
13 Subparagraph I.F.

14         G.     Causing billing information to be submitted for payment, directly or  
15 indirectly, for any such product, program, or service advertised, promoted, offered  
16 for sale, or sold as part of an offer or agreement involving a negative option offer,  
17 without obtaining the express informed consent of consumers to be charged for any  
18 such product, program, or service using an account identified with sufficient  
19 specificity for consumers to understand what account will be charged, billed, or  
20 assessed a fee. To evidence consumers' express informed consent, Defendant must  
21 disclose, clearly and conspicuously, before consumers pay money, reveal billing  
22 information, or submit consideration, all material terms and conditions of the offer  
23 or agreement (including but not limited to those stated in Subparagraph I.F.), and  
24 obtain consumers' express agreement to be charged.

25         H.     Failing to honor a request that Defendant receives to cancel any sale or  
26 transaction involving a negative option offer, or to provide a refund in accordance  
27

1 with Defendant's disclosed policies.

2

3

## II. CONSUMER REDRESS

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**IT IS FURTHER ORDERED** that:

5

A. Defendant shall pay an amount sufficient to provide a full and  
6 complete refund to any consumer who meets the following qualifications:

7

1. The consumer was enrolled in the Free Credit Report/Credit  
8 Check Monitoring ("CCM") during the period November 1, 2000, through  
9 September 15, 2003 and was assessed a charge; and either:

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a. within the first three years of the consumer's membership  
in CCM cancelled such membership and received a pro-rata  
refund; or

b. prior to entry of this Order, contacted, directly or  
indirectly, Defendant, the Commission, the Better Business  
Bureau of the Southland (Colton, California), any credit or debit  
card issuer, or any other third party to request a refund or  
chargeback of the charge, or to register a complaint about the  
charge, for the CCM offer.

2. To identify all consumers who meet the qualifications of this  
Subparagraph II.A. for receiving a refund, Defendant shall review the following  
internal customer records as of June 20, 2005: (a) records of pro-rated refunds paid  
to consumers who cancelled their membership within the first three (3) years of  
membership; and (b) records that identify consumers in one or more of the  
following customer service categories: (i) "billing - questioning charge," (ii)  
"billing - general question," (iii) "possible credit card fraud," or (iv) "possible  
identity theft." Defendant also shall review any information it has received from

1 the Commission, the Better Business Bureau of the Southland (Colton, California),  
2 any credit or debit card issuer, or any other third party. In addition, Defendant shall  
3 provide a full and complete refund to any consumer if such consumer, within two  
4 hundred and fifty-five (255) days after entry of this Order, produces documentation  
5 sufficient to show that he or she meets the qualifications of this Subparagraph II.A.  
6 Defendant shall make such refund within thirty (30) days after receiving the  
7 consumer's documentation.

8 B. Defendant shall make refund payments to consumers who meet the  
9 qualifications set forth in Subparagraph II.A. in the following manner:

10 1. Within sixty (60) days after entry of this Order, Defendant shall  
11 attempt to obtain a credit for each such consumer on the consumer's credit or debit  
12 card account that was used to enroll in the CCM promotion. Defendant shall send  
13 a notice in the form set forth in Attachment A to each consumer for whom it has  
14 obtained such a credit. Defendant shall send such notice by email to the  
15 consumer's last known email address, or by first class mail to the consumer's last  
16 known address. No other information shall be included or added to the notice.

17 2. In the event that Defendant, despite reasonable efforts, is unable  
18 to procure a credit on a consumer's credit or debit card account that was used to  
19 enroll in the CCM promotion from the card issuer, Defendant shall deliver by  
20 email, within thirty (30) days after the attempt to credit the consumer's account, or  
21 ninety (90) days after entry of this Order, whichever is later, a Notice of Refund in  
22 the form set forth in Attachment B to the last known email address of the  
23 consumer. No other information shall be included or added to the notice. The  
24 subject line of the email shall state: "Important: Notice of Refund for Credit  
25 Monitoring." Defendant shall procure and utilize software technology sufficient to  
26 establish whether the consumer has opened the email notice.

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1           3.     In the event that Defendant, despite reasonable efforts: (a) is  
2 unable to provide a refund to a consumer as set forth in Subparagraph II.B.1., and  
3 (b) is unable to provide an email notice or to demonstrate that the consumer opened  
4 the email notice within thirty (30) days of sending the email notice to the  
5 consumer, as set forth in Subparagraph II.B.2., Defendant shall mail a Notice of  
6 Refund in the form set forth in Attachment C via first-class mail, postage prepaid,  
7 to the last known address of the consumer. Defendant shall mail such notice within  
8 thirty (30) days of the last date on which a consumer may have opened the email  
9 message as provided above, or one hundred and sixty five (165) days, after the  
10 entry of this order, whichever is later. The envelope enclosing the Notice of  
11 Refund shall be in the form set forth in Attachment D. No other information shall  
12 be included or added to the mailing. Defendant shall also retain a National Change  
13 of Address System ("NCOA") licensee to update consumers' last known addresses  
14 by processing them through the NCOA database. For each mailing returned by the  
15 U.S. Postal Service as undeliverable for which Defendant obtains a corrected  
16 address, Defendant shall, within fifteen (15) business days after receiving the  
17 corrected address, send the Notice of Refund to the corrected address.

18           4.     Defendant shall provide a refund to each consumer who, within  
19 two hundred and fifty five (255) days after entry of this Order, or within thirty (30)  
20 days of receiving a notice, whichever is sooner, requests a refund in response to a  
21 notice provided by the means set forth in Subparagraphs II.B.2. or II.B.3., and who  
22 produces documentation sufficient to show that he or she meets the qualifications  
23 of Subparagraph II.A. Within fifteen (15) days after receiving a request for refund  
24 within the time period provided in the notice, Defendant shall provide refunds by  
25 mailing a check via first class mail, postage prepaid, or by crediting the consumer's  
26 credit or debit card account, at the consumer's option. Defendant shall enclose  
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1 each refund check in an envelope that displays on its front, clearly and  
2 conspicuously, the words "REFUND CHECK ENCLOSED." No other information  
3 shall be included or added to the mailing, except that Defendant may provide  
4 explanatory information relating to the refund.

5 C. Defendant shall offer the right to cancel membership and receive a  
6 pro-rated refund of the current membership period fee to each consumer who was  
7 enrolled in the CCM promotion between November 1, 2000 and September 15,  
8 2003, and is still enrolled as of the date of entry of this Order. Defendant shall  
9 provide this right in the following manner:

10 1. Within thirty (30) days after entry of this Order, Defendant shall  
11 deliver a Notice of Right to Cancel in the form set forth in Attachment E by email  
12 to the last known email address of the consumer. No other information shall be  
13 included or added to the notice. The subject line of the email shall state:  
14 "Important: Notice of Right to Cancel Credit Monitoring." Defendant shall procure  
15 and utilize software technology sufficient to establish whether the consumer has  
16 opened the email notice within thirty days.

17 2. In the event that Defendant, despite reasonable efforts, is unable  
18 to provide an email notice or to demonstrate that the consumer opened the email  
19 notice within thirty (30) days of sending the email notice to the consumer, as set  
20 forth in Subparagraph II.C.1., Defendant shall mail a Notice of Right to Cancel in  
21 the form set forth in Attachment F via first-class mail, postage prepaid, to the last  
22 known address of the consumer. Defendant shall mail such notice within fifteen  
23 (15) days of the last date on which a consumer may have opened the email message  
24 as provided above, or one hundred and thirty-five (135) days after the entry of this  
25 order, whichever is later. The envelope enclosing the Notice of Right to Cancel  
26 shall be in the form set forth in Attachment G. No other information shall be  
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1 included or added to the mailing. Defendant shall also retain a National Change of  
2 Address System ("NCOA") licensee to update consumers' last known addresses by  
3 processing them through the NCOA database. For each mailing returned by the  
4 U.S. Postal Service as undeliverable for which Defendant obtain a corrected  
5 address, Defendant shall, within fifteen (15) business days after receiving the  
6 corrected address, send the Notice of Right to Cancel to the corrected address.

7           3. Defendant shall cancel the CCM membership, provide a  
8 pro-rated refund (calculated on a daily basis) for the cancelled portion of the  
9 membership, and refrain from charging any account, billing, or otherwise  
10 collecting or attempting to collect any payment, for each consumer who, within  
11 one hundred twenty (120) days after entry of this Order, or within thirty (30) days  
12 after receiving the Notice of Right to Cancel, whichever is later, requests  
13 termination of his or her membership, in any manner, in response to a Notice of  
14 Right to Cancel, or who otherwise demonstrates that he or she is eligible to cancel  
15 his or her membership. Within fifteen (15) days after receiving a request for  
16 refund, Defendant shall provide the refund by mailing a check via first class mail,  
17 postage prepaid, or by crediting the consumer's credit or debit card account, at the  
18 consumer's option. Defendant shall enclose each refund check in an envelope that  
19 displays on its front, clearly and conspicuously, the words "REFUND CHECK  
20 ENCLOSED." No other information shall be included or added to the mailing,  
21 except that Defendant may provide explanatory information relating to the refund.

22           D. For a period of two hundred and fifty five (255) days from the date of  
23 entry of this Order, Defendant shall provide and adequately staff during ordinary  
24 business hours, a toll-free telephone number to answer questions, provide  
25 information, and accept requests for termination of membership and/or refunds  
26 pursuant to this Order. Defendant shall also provide an email address at which  
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1 consumers can ask questions, request information and request termination of  
2 membership and/or refunds pursuant to this Order. Defendant shall send an  
3 automated reply message to each consumer who sends an email to that email  
4 address acknowledging receipt of the email and stating that Defendant will respond  
5 to each question and request received at such email address within two (2) business  
6 days of receipt. Defendant shall respond to each question and request received at  
7 such email address within two (2) business days of receipt.

8 E. The accounts upon which any refund checks are drawn shall remain  
9 open for at least ninety (90) days after Defendant sends such refund checks.

10 F. Within ten (10) business days after entry of this Order, Defendant shall  
11 pay nine hundred and fifty thousand dollars (\$950,000) to the Commission. In  
12 addition, in the event that any refund checks issued pursuant to this Subparagraph  
13 II. remain uncashed ninety (90) days after Defendant sends such refund checks, or  
14 two hundred ten (210) days after entry of this Order, whichever is later, Defendant  
15 shall pay to the Commission the amount of those uncashed checks. The  
16 Commission may apply the funds paid pursuant to this Subparagraph II.F. for such  
17 other equitable relief (including additional consumer restitution and consumer  
18 information remedies) as it determines to be reasonably related to Defendant's  
19 practices as alleged in the Complaint. Any funds not used for such equitable relief  
20 will be deposited with the United States Treasury as disgorgement. Defendant  
21 shall have no right to challenge the Commission's choice of remedies under this  
22 Subparagraph II.F. No portion of any payments under this Order shall be deemed a  
23 payment of any fine, penalty, or punitive assessment.

24 G. Within two hundred and seventy (270) days after entry of this Order,  
25 Defendant shall furnish to the Commission the following:

26 1. the total number of:

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- a. consumers whose credit or debit card account was credited pursuant to Subparagraph II.B.1., and the date issued and amount of each credit;
- b. consumers who were sent a Notice of Refund by email pursuant to Subparagraph II.B.2.;
- c. consumers who failed to open the emailed Notice of Refund;
- d. consumers who were sent a Notice of Refund by first-class mail pursuant to Subparagraph II.B.3.;
- e. consumers who were sent a refund check pursuant to Subparagraph II.B.4., and the amount, check number, and mailing date of each check;
- f. consumers who cashed, deposited, or otherwise redeemed their refund checks;
- g. consumers who were sent a Notice of Right to Cancel by email pursuant to Subparagraph II.C.1.;
- h. consumers who failed to open the emailed Notice of Right to Cancel;
- i. consumers who were sent a Notice of Right to Cancel by first-class mail pursuant to Subparagraph II.C.2.;
- j. consumers who requested termination of their membership in the CCM;
- k. consumers whose credit or debit card account was credited with a pro-rated refund pursuant to Subparagraph II.C., and the date issued and amount of each credit;
- l. consumers who were sent a pro-rated refund check

1                   pursuant to Subparagraph II.C., and the amount, check  
2                   number, and mailing date of each check;

3                   m.     consumers who cashed, deposited, or otherwise redeemed  
4                   their pro-rated refund checks; and

5                   n.     "undeliverable" notices mailed to consumers pursuant to  
6                   this order and returned to Defendant.

7                   2.     Defendant shall provide on request from the Commission, within ten  
8                   (10) business days, in computer readable form and in computer print-out form:

9                   a.     the identity of any consumer that is included in Subparagraph  
10                   II.G.1;

11                   b.     all other documents and records evidencing efforts made and  
12                   actions taken by Defendant to identify, locate, contact, and  
13                   provide refunds to persons eligible to receive refunds pursuant  
14                   to Subparagraph II.A. and II.B; and

15                   c.     all other documents and records evidencing efforts made and  
16                   actions taken by Defendant to identify, locate, contact, and  
17                   provide refunds to persons eligible to cancel their membership  
18                   pursuant to Subparagraph II.C;

19                   H.     Defendant may destroy all records relating to the distribution of this  
20                   consumer redress six (6) years after the last of the funds are credited, delivered to  
21                   the Commission, or delivered to the FTC Treasury account, provided that, no  
22                   records shall be destroyed unless and until a representative of the Commission has  
23                   received and approved the final accounting report pertaining to Defendant's  
24                   payment. Records shall be destroyed in accordance with disposal methods and  
25                   procedures to be specified by the Commission. The Commission may, in its sole  
26                   discretion, require that such records, in whole or in part, be transferred, in lieu of  
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1 destruction, to the Commission.

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3 **III. RELIANCE ON DISCLOSURES**

4 **IT IS FURTHER ORDERED** that:

5 A. The Commission's agreement to this Order is expressly premised upon  
6 the truthfulness, accuracy, and completeness of the consumer complaint, refund,  
7 purchase data, and other information provided by Defendant and dated June 24,  
8 2005. Such data constitute material information relied upon by the Commission in  
9 negotiating and agreeing to the terms of this Order.

10 B. If, upon motion by the Commission, this Court finds that Defendant  
11 made any material misrepresentation in or omitted material information from the  
12 data provided, this matter shall be reopened to allow Plaintiff to show that  
13 additional relief, including but not limited to additional equitable monetary relief,  
14 consumer restitution, or disgorgement of ill-gotten gains should be entered against  
15 Defendant. Plaintiff shall have the right to engage in reasonable discovery for this  
16 purpose. Upon a sufficient showing by Plaintiff, the Court shall enter a revised  
17 Order against Defendant, which will become immediately due and payable, in  
18 addition to such other ancillary relief the Court deems proper.

19 C. In the event this matter is reopened pursuant to this Paragraph III,  
20 Defendant shall have no right to seek modification or abrogation of this Order, and  
21 all other Paragraphs of this agreement and Order shall remain in full force and  
22 effect unless otherwise ordered by this Court.

23 D. Any proceedings instituted under this Paragraph III are in addition to,  
24 and not in lieu of, any other civil or criminal remedies as may be provided by law,  
25 including any other proceedings that the FTC may initiate to enforce this Order.

26 E. For purposes of this Paragraph III and any subsequent proceedings to  
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1 enforce payment, including but not limited to a non-dischargeability complaint  
2 filed in a bankruptcy proceeding, Defendant waives any right to contest any of the  
3 allegations in the Commission's Complaint.

#### 4 5 **IV. COMPLIANCE MONITORING**

6 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and  
7 investigating compliance with any provision of this Order,

8 A. Within fifteen (15) days of receipt of written notice from a  
9 representative of the Commission, Defendant shall submit additional written  
10 reports, sworn to under penalty of perjury; produce documents for inspection and  
11 copying; appear for deposition; and/or provide entry during normal business hours  
12 to any business location in Defendant's possession or direct or indirect control, to  
13 inspect the business operation.

14 B. In addition, the Commission is authorized to monitor compliance with  
15 this Order by all other lawful means, including but not limited to the following:

16 1. obtaining discovery from any person, without further leave of  
17 Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and  
18 45.

19 2. posing as consumers and suppliers to Defendant, Defendant's  
20 employees, or any other entity managed or controlled in whole or in part by  
21 Defendant, without the necessity of identification or prior notice.

22 C. Defendant shall permit representatives of the Commission to interview  
23 any employer, consultant, independent contractor, representative, agent, or  
24 employee who has agreed to such an interview, relating in any way to any conduct  
25 subject to this Order. The person interviewed may have counsel present.

26 Provided that nothing in this Order shall limit the Commission's lawful use  
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1 of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§  
2 49, 57b-1, to obtain any documentary material, tangible things, testimony, or  
3 information relevant to unfair or deceptive acts or practices in or affecting  
4 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

5  
6 **V. COMPLIANCE REPORTING BY DEFENDANT**

7 **IT IS FURTHER ORDERED** that, in order that compliance with the  
8 provisions of this Order may be monitored:

9 A. For a period of three (3) years from the date of entry of this Order,  
10 Defendant shall notify the Commission of any changes in corporate structure that  
11 may affect compliance obligations arising under this Order, including but not  
12 limited to a dissolution, assignment, sale, merger, or other action that would result  
13 in the emergence of a successor entity; the creation or dissolution of a subsidiary,  
14 parent, or affiliate that engages in any acts or practices that are subject to this  
15 Order; the filing of a bankruptcy petition; or a change in the corporate name or  
16 address, at least thirty (30) days prior to such change, provided that, with respect to  
17 any proposed change in the corporation about which Defendant learns less than  
18 thirty (30) days prior to the date such action is to take place, Defendant shall notify  
19 the Commission as soon as is practicable after obtaining such knowledge.

20 B. Three hundred (300) days after the date of entry of this Order,  
21 Defendant shall provide a written report to the FTC, sworn to under penalty of  
22 perjury, setting forth in detail the manner and form in which it has complied and is  
23 complying with this Order. This report shall include, but not be limited to:

- 24 1. any changes required to be reported pursuant to Subparagraph  
25 V.A.  
26 2. a copy of each acknowledgment of receipt of this Order  
27



1 obtained pursuant to Paragraph VII.

2 3. the total amount of consumer restitution paid to Consumerinfo  
3 customers under Paragraph II.

4 C. For the purposes of this Order, Defendant shall, unless otherwise  
5 directed by the Commission's authorized representatives, mail all written  
6 notifications to the Commission to:

7 Western Region, Federal Trade Commission  
8 10877 Wilshire Boulevard, Suite 700  
9 Los Angeles, California 90024  
RE: FTC v. Consumerinfo.com, Inc.

10 D. For purposes of the compliance reporting and monitoring required by  
11 this Order, the Commission is authorized to communicate directly with Defendant.

12

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## VI. RECORD KEEPING

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**IT IS FURTHER ORDERED** that, for a period of six (6) years from the  
15 date of entry of this Order, in connection with any business where Defendant is the  
16 majority owner of the business or directly or indirectly manages or controls the  
17 business, Defendant and its agents, employees, officers, corporations, successors,  
18 and assigns, and those persons in active concert or participation with them who  
19 receive actual notice of this Order by personal service or otherwise, are hereby  
20 restrained and enjoined from failing to create and retain the following records:

21 A. Accounting records that reflect the cost of goods or services sold,  
22 revenues generated, and the disbursement of such revenues.

23 B. Personnel records accurately reflecting: the name, address, and  
24 telephone number of each person employed in any capacity by such business; that  
25 person's job title or position; the date upon which the person commenced work; and  
26 the date and reason for the person's termination, if applicable.

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1 C. Customer files containing the names, addresses, phone numbers, dollar  
2 amounts paid, quantity of items or services purchased, and description of items or  
3 services purchased, to the extent such information is obtained in the ordinary  
4 course of business.

5 D. Complaints and refund requests (whether received directly, indirectly  
6 or through any third party) and any responses to those complaints or requests.

7 E. Copies of all sales scripts, training materials, advertisements, or other  
8 marketing materials.

9 F. All records and documents necessary to demonstrate full compliance  
10 with each provision of this Order, including but not limited to, copies of  
11 acknowledgments of receipt of this Order, required by Paragraphs VII and VIII,  
12 and all reports submitted to the FTC pursuant to Paragraphs II and V.

13  
14 **VII. DISTRIBUTION OF ORDER BY DEFENDANT**

15 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the  
16 date of entry of this Order, Defendant shall deliver copies of this Order as directed  
17 below:

18 A. Defendant shall deliver a copy of this Order to all of its principals,  
19 officers, and directors, and to all managers who have responsibility directly or  
20 indirectly for any matters covered by this Order. Defendant also shall deliver an  
21 accurate summary of this Order to all of its employees who are engaged in conduct  
22 related to the advertising, marketing, sale, or delivery of, or who respond to  
23 consumer complaints or inquiries regarding consumer reports, credit scores, or any  
24 credit monitoring program. For current personnel, delivery shall be within five (5)  
25 days of service of this Order upon Defendant. For new personnel, delivery shall  
26 occur prior to them assuming their responsibilities.

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1 B. Defendant must secure a signed and dated statement acknowledging  
2 receipt of this Order, within thirty (30) days of delivery, from all persons receiving  
3 a copy of the Order pursuant to this Paragraph VII.

4  
5 **VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**  
6 **BY DEFENDANT**

7 IT IS FURTHER ORDERED that Defendant, within five (5) business days  
8 of receipt of this Order as entered by the Court, must submit to the Commission a  
9 truthful sworn statement acknowledging receipt of this Order, in the form shown on  
10 Attachment H.

11  
12 **IX. RETENTION OF JURISDICTION**

13 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this  
14 matter for purposes of construction, modification, and enforcement of this Order.

15  
16 **X. COSTS AND ATTORNEYS' FEES**

17 IT IS FURTHER ORDERED that each party shall bear its own costs and  
18 attorneys fees incurred in connection with this action.

19  
20 **XI. NOTICE OF ENTRY OF ORDER**

21 IT IS FURTHER ORDERED that entry in the docket of this Order by the  
22 Clerk of Court shall constitute notice to Defendant of the terms and conditions of  
23 this Order, and that Defendant waives all rights to contest in any future proceeding  
24 whether Defendant was properly served with this Order.

25 The parties hereby stipulate to the entry of the foregoing Order, which shall  
26 constitute a final Order in this action.

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**IT IS SO ORDERED:**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
United States District Judge

**STIPULATED BY:**

\_\_\_\_\_  
Thomas J. Syta, Esq.  
Raymond E. McKown, Esq.  
Jennifer M. Brennan, Esq.  
Attorneys for Plaintiff  
Federal Trade Commission

\_\_\_\_\_  
Consumerinfo.com dba Experian  
Consumer Direct, Qspace, Inc., and  
Iplace, Inc.  
by: Edward S. Ojdana  
Chief Executive Officer

\_\_\_\_\_  
by: Richard Grabowski, Esq.  
Attorney for the Defendant  
Jones Day  
3 Park Plaza, Suite 1100  
Irvine, California 92614-8505

\_\_\_\_\_  
by: Anne P. Fortney, Esq.  
Attorney for the Defendant  
Hudson Cook, LLP  
1900 M Street, N.W., Suite 700  
Washington, D.C. 20036

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**ATTACHMENT A**  
**NOTICE OF CREDITING OF ACCOUNT**

Dear [NAME]:

Our records show that you received a free credit report from Consumerinfo.com or Freecreditreport.com sometime between November 1, 2000 and September 15, 2003.

Our free credit report promotion came with a 30-day trial membership in our [name of credit monitoring program] credit monitoring program. After 30 days, unless you cancelled, we automatically enrolled you in the credit monitoring program at an annual fee of \$79.95. The Federal Trade Commission (FTC) has alleged that we did not make clear to consumers that they needed to cancel the trial membership to avoid being charged.

According to our records, you either cancelled your credit monitoring program membership or questioned the billing for the credit monitoring program, but didn't receive a full refund. Although we disagree with the FTC's charges, we also want satisfied customers. Therefore, we have reached an agreement with the FTC to pay full refunds to customers like you. We have credited your [credit] [debit] card account in the amount of the annual fee for the applicable year, less any amount you may have already received. Your credit should appear on your card statement shortly.

If you have any questions, please send an e-mail to

\_\_\_\_\_ . We will respond within two business days.

Sincerely,

Consumerinfo.com, Inc.

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**ATTACHMENT B**  
**NOTICE OF REFUND**

Dear [NAME]:

Our records show that you received a free credit report from Consumerinfo.com or Freecreditreport.com sometime between November 1, 2000 and September 15, 2003.

Our free credit report promotion came with a 30-day trial membership in our [name of credit monitoring program] credit monitoring program. After 30 days, unless you cancelled, we automatically enrolled you in the credit monitoring program at an annual fee of \$79.95. The Federal Trade Commission (FTC) has alleged that we did not make clear to consumers that they needed to cancel the trial membership to avoid being charged.

According to our records, you either cancelled your credit monitoring program membership or questioned the billing for the credit monitoring program, but didn't receive a full refund. Although we disagree with the FTC's charges, we also want satisfied customers. Therefore, we have reached an agreement with the FTC to pay full refunds to customers like you.

To receive your refund, please do **one** of the following:

- Reply to this email with your full name, address, and daytime telephone number, or write to the address listed below. We will mail a check to the address you give us; **or**
- Call us toll-free at [number] Monday through Friday between 9:00 a.m. and 5:00 p.m. (Pacific time).

Once we receive your information, we will provide your refund within a few weeks. The refund will be in the amount of the annual fee for the applicable year,

1 less any refund you may have already received. **You must send us your request**  
2 **within \_\_\_\_\_ days to be eligible for a refund.**

3 If you have any questions, please send an e-mail to  
4 \_\_\_\_\_ . We will respond within two business  
5 days.

6  
7 Sincerely,

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9 Consumerinfo.com, Inc.

10 [address]  
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**ATTACHMENT C**  
**NOTICE OF REFUND**

Dear [NAME]:

Our records show that you received a free credit report from Consumerinfo.com or Freecreditreport.com sometime between November 1, 2000 and September 15, 2003.

Our free credit report promotion came with a 30-day trial membership in our [name of credit monitoring program] credit monitoring program. After 30 days, unless you cancelled, we automatically enrolled you in the credit monitoring program at an annual fee of \$79.95. The Federal Trade Commission (FTC) has alleged that we did not make clear to consumers that they needed to cancel the trial membership to avoid being charged.

According to our records, you either cancelled your credit monitoring program membership or questioned the billing for the credit monitoring program, but didn't receive a full refund. Although we disagree with the FTC's charges, we also want satisfied customers. Therefore, we have reached an agreement with the FTC to pay full refunds to customers like you. To receive your refund, please fill out the enclosed application form and return it to us at the address listed on the form, or call us toll-free at [number] Monday through Friday between 9:00 a.m. and 5:00 p.m. (Pacific Time). Once we receive your information, we will provide your refund within a few weeks. The refund will be in the amount of the annual fee for the applicable year, less any refund you may have already received. **You must send us your request within \_\_\_\_\_ days to be eligible for a refund.**

If you have any questions, please send an e-mail to

\_\_\_\_\_. We will respond within two business days.



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Sincerely,

Consumerinfo.com, Inc.

**APPLICATION FORM**

To request your refund, fill out the information below and return it to the address on this form. **Note: this form must be returned by [date]**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State and Zip Code: \_\_\_\_\_  
Daytime phone number: ( ) \_\_\_\_\_

Consumerinfo.com, Inc.  
[Return address]

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**ATTACHMENT D**

Consumerinfo.com  
[address]

**FORWARDING AND RETURN POSTAGE GUARANTEED**

[Address or address window]

**ATTENTION: REFUND INFORMATION ENCLOSED FOR  
CREDIT MONITORING CUSTOMERS**

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**ATTACHMENT E**  
**NOTICE OF RIGHT TO CANCEL**

Dear [NAME]:

Our records show that you received a free credit report from Consumerinfo.com or Freecreditreport.com and are a current customer of our [name of credit monitoring program] credit monitoring program.

Our free credit report promotion came with a 30-day trial membership in our [name of credit monitoring program] credit monitoring program. After 30 days, unless you cancelled, we automatically enrolled you in the credit monitoring program at an annual fee of \$79.95. The Federal Trade Commission (FTC) has alleged that we did not make clear to consumers that they needed to cancel the trial membership to avoid being charged.

Although we disagree with the FTC's charges, we also want satisfied customers. Therefore, we have reached an agreement with the FTC to allow customers like you to cancel their credit monitoring program and receive a refund for the unused portion of the membership.

If you would like to continue your membership, you don't need to respond. We will continue to charge your account the annual fee of \$79.95. If you would like to cancel your membership and receive a refund, please do one of the following:

- Reply to this email with your full name, address, and daytime telephone number, or write to the address listed below. We will cancel your membership and mail a refund check to the address you give us.
- Call us toll-free at [number] Monday through Friday between 9:00 a.m. and 5:00 p.m. (Pacific time).

1           Once we receive your information, we will provide your refund within a few  
2 weeks. The refund will be in the amount of the unused portion of your current  
3 membership term. **You must send us your request within \_\_\_\_\_ days to be**  
4 **eligible for a refund.**

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6           If you have any questions, please send an e-mail to  
7 \_\_\_\_\_ . We will respond within two business  
8 days.

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10                                 Sincerely,

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**ATTACHMENT F**  
**NOTICE OF RIGHT TO CANCEL**

Dear [NAME]:

Our records show that you received a free credit report from Consumerinfo.com or Freecreditreport.com and are a current customer of our [name of credit monitoring program] credit monitoring program.

Our free credit report promotion came with a 30-day trial membership in our [name of credit monitoring program] credit monitoring program. After 30 days, unless you cancelled, we automatically enrolled you in the credit monitoring program at an annual fee of \$79.95. The Federal Trade Commission (FTC) has alleged that we did not make clear to consumers that they needed to cancel the trial membership to avoid being charged.

Although we disagree with the FTC's charges, we also want satisfied customers. Therefore, we have reached an agreement with the FTC to allow customers like you to cancel their credit monitoring program and receive a refund for the unused portion of the membership.

If you would like to continue your membership, you don't need to respond. We will continue to charge your account the annual fee of \$79.95. If you would like to cancel your membership and receive a refund, please fill out the enclosed application form and return it to us at the address listed on the form, or call us toll-free at [number] Monday through Friday between 9:00 a.m. and 5:00 p.m. (Pacific Time). Once we receive your information, we will provide your refund within a few weeks. The refund will be in the amount of the unused portion of your current

1 membership term. **You must send us your request within \_\_\_\_\_ days to be**  
2 **eligible for a refund.**

3  
4 If you have any questions, please send an e-mail to  
5 \_\_\_\_\_ . We will respond within two business  
6 days.

7  
8 Sincerely,

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11 Consumerinfo.com, Inc.

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13 **APPLICATION FORM**

14 To cancel your credit monitoring program membership and receive a partial  
15 refund, fill out the information below and return it to the address on this form.

16 **Note: this form must be returned by [date]**

17  
18 Name: \_\_\_\_\_

19 Address: \_\_\_\_\_

20 City, State and Zip Code: \_\_\_\_\_

21 Daytime phone number: ( ) \_\_\_\_\_

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24 Consumerinfo.com, Inc.

25 [Return address]  
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**ATTACHMENT G**

Consumerinfo.com

[address]

**FORWARDING AND RETURN POSTAGE GUARANTEED**

[Address or address window]

**ATTENTION: IMPORTANT NOTICE ABOUT YOUR [name of  
credit monitoring program] CREDIT MONITORING**

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**ATTACHMENT H**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CONSUMERINFO.COM., INC., a  
corporation,

doing business as

EXPERIAN CONSUMER DIRECT,  
QSPACE, INC.,  
and IPLACE INC.,

Defendant.

CV

AFFIDAVIT OF  
DEFENDANT  
CONSUMERINFO.COM  
doing business as  
EXPERIAN CONSUMER DIRECT,  
QSPACE, INC., and IPLACE, INC.

15 [Name of defendant's certifying official], being duly sworn, hereby states and affirms as  
16 follows:

17 1. My name is \_\_\_\_\_. My current residence address is  
18 \_\_\_\_\_. I am a citizen of the United States  
19 and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

20 2. I am an officer of defendant Consumerinfo.com in *FTC v. Consumerinfo.com*  
21 (United States District Court for the Central District of California).

22 3. On \_\_\_\_\_, I received a copy of the Stipulated Final Judgment  
23 and Order for Permanent Injunction, which was signed by the Honorable \_\_\_\_\_  
24 and entered by the Court on \_\_\_\_\_. A true and correct copy of the Order I  
25 received is appended to this Affidavit.

26 I declare under penalty of perjury under the laws of the United States that the foregoing is  
27 true and correct. Executed on \_\_\_\_\_, 2005, at \_\_\_\_\_.



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\_\_\_\_\_  
By:

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_

**ATTACHMENT 2**



## Federal Trade Commission Protecting America's Consumers

For Release: 03/10/2009

### **FTC Releases Spoof Videos with a Serious Message: AnnualCreditReport.com is the Only Authorized Source for Free Annual Credit Reports**

Despite the musical claims of some TV commercials, the only authorized source to get your free annual credit report under federal law is AnnualCreditReport.com. To reinforce this message, the Federal Trade Commission is featuring two new videos with their own catchy tunes. Both videos are available at [www.ftc.gov/freereports](http://www.ftc.gov/freereports) and [www.YouTube.com/FTCVideos](http://www.YouTube.com/FTCVideos).

The new videos highlight the differences between AnnualCreditReport.com and those other sites that claim to provide "free" credit reports. Other sites require users to pay hidden fees or agree to additional services. For example, some sites provide a free credit report if you enroll in a new service. If you don't cancel the service during a short trial period, you're likely to see membership fees on your credit card statement.

The Fair Credit Reporting Act requires each of the nationwide consumer reporting companies – Experian, TransUnion, and Equifax – to provide a free copy of your credit report, at your request, once every 12 months from AnnualCreditReport.com, a toll-free telephone number, or a mailing address. Details are at [www.ftc.gov/freereports](http://www.ftc.gov/freereports). Reviewing your credit report regularly is an effective way to deter and detect identity theft.

The FTC encourages people to post its videos on their own websites or blogs, and provides tools to help them do so. The jingles also are available as 30-second audio public service announcements at [www.ftc.gov/freereports](http://www.ftc.gov/freereports).

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,500 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of consumer topics.

#### **MEDIA CONTACT:**

*Office of Public Affairs*  
202-326-2180

(Free Credit Videos)

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#### **E-mail this News Release**

If you send this link to someone else, the FTC will not collect any personal information about you or the recipient.

#### **Related Items:**

Last Modified: Friday, March 13, 2009



"Restaurant" Video Transcript

"Restuarant" 30 Second

Audio PSA:  

[View larger](#), [download](#), or [embed audio or video](#)



"Apartment" Video Transcript

"Apartment" 30 Second

Audio PSA:  

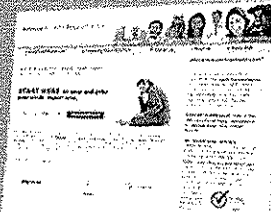
[View larger](#), [download](#), or [embed audio or video](#)

**Consumer Information:**

- [Free Annual Credit Reports](#)
- [FTC videos on YouTube](#)
- [Your Access to Free Credit Reports](#)

# FREE Annual Credit Reports

AnnualCreditReport.com is the **ONLY** authorized source to get your free annual credit report under federal law.



## What is AnnualCreditReport.com?

AnnualCreditReport.com is the **ONLY** authorized source to get your free annual credit report under federal law. The Fair Credit Reporting Act guarantees you access to a free credit report from each of the three nationwide reporting agencies — Experian, Equifax, and TransUnion — every twelve months. The Federal Trade Commission has received complaints from consumers who thought they were ordering their free annual credit report, but instead paid hidden fees or agreed to unwanted services. Don't be fooled by TV ads, email offers, or online search results. Go to the authorized source when you request your free report.

## How do I request my free credit report?

You can request your free report online, by phone or by mail. Visit AnnualCreditReport.com, call 1-877-322-8228, or fill out the Annual Credit Report Request form and mail it to Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. No matter how you request your report, you have the option to request all three reports at once or to order one report at a time. By requesting the reports separately, you can monitor your credit more frequently throughout the year.

## Why should I request my credit report?

Because the information in your credit report is used to evaluate your applications for credit, insurance, employment, and renting a home, you should be sure the information is accurate and up-to-date. In addition, monitoring your credit is one of the best ways to spot identity theft. Check your credit report at least once a year to correct errors and detect unauthorized activity.

## What should I look for when I review my credit report?

If you see accounts you don't recognize or information that is inaccurate, contact the credit reporting agency and the information provider. For more information, read the FTC's tips on how to dispute credit errors.

If you suspect identity theft, you may need to place a fraud alert on your credit report, close compromised accounts, file a complaint with the FTC, or file a police report. Start by visiting the FTC's identity theft website.

## FTC Seeks Comments on Proposals to Amend 'Free Credit Report' Rule

The Federal Trade Commission is seeking public comment on proposed amendments to the Free Annual File Disclosures Rule, also known as the "Free Credit Report Rule." The proposed amendments would implement a new law designed to prevent consumer confusion in advertisements for "free credit reports." The amendments also would address certain practices that may interfere with a consumers' ability to obtain the credit report that credit reporting agencies must provide for free under federal law. [Learn more.](#)

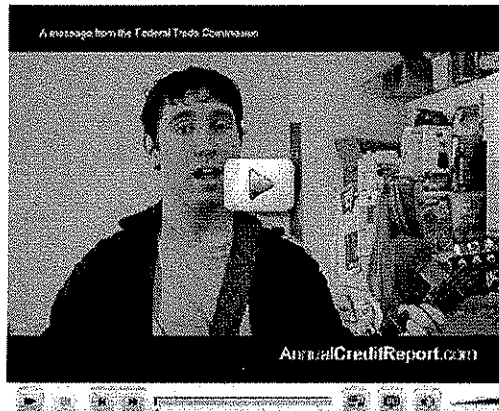
## File a Complaint

The FTC wants to hear from you if you paid for what you thought was your free annual credit report.

## SPAM

The FTC also wants you to forward us any unsolicited emails you've received offering you a free credit report. Send them to [spam@ftc.gov](mailto:spam@ftc.gov)

AnnualCreditReport.com will **NEVER** send you an email solicitation for your free annual credit report or use pop up ads.



Anyone can write a catchy jingle, but only AnnualCreditReport.com provides you with a truly free credit report. AnnualCreditReport.com requires no hidden fees or trial memberships.



## Listen to Audio PSAs.



"Apartment"



"Restaurant"

## Resources from the FTC

- ▶ [Your Access to Free Credit Reports](#)
- ▶ [Building a Better Credit Report](#)
- ▶ [Credit & Loans](#)

**ATTACHMENT 3**

**This is not the free credit report provided for by Federal law.  
To get your free report, visit [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com)  
or call 887-322-8228.**

Go to [www.freecreditreport.com](http://www.freecreditreport.com)