

April 14, 2011

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Proposed Consent Agreement In the Matter of Chitika, Inc., File No. 1023087

Dear Commissioners and Staff:

The Institute for Science, Law and Technology is a multi-disciplinary policy and research institute at Chicago-Kent College of Law that analyzes legal, social, and ethical questions raised by the development of new technologies. We have an ongoing project exploring the legal and social implications of social networking and the internet with particular interest in issues involving privacy and the individual. We feel that the consent agreement from Chitika, Inc. should be approved by the Federal Trade Commission (FTC), but believe that the terms could go further. Moving forward, we believe that the internet advertising industry should be required to adopt a policy of collecting and using the personal information of only individuals who opt-in to a company's advertising service, because an opt-in policy best protects consumer privacy.

The collection and use of personal information is an important issue for U.S. adults— a majority of U.S. adults oppose having their personal information collected by internet advertising companies.¹ Chitika and other internet advertising companies (e.g., DoubleClick, Yahoo! Ad Network, Microsoft Advertising) currently provide a mechanism for consumers to opt-out of the collection and use of their personal information. These opt-out mechanisms consist of text and computer code added to the company's website. In place of an opt-out mechanism, an opt-in mechanism could be provided for consumers by Chitika and other internet advertising companies without creating an unreasonable burden on these companies. Opt-in policies have been adopted in the health care industry and by genetic research organizations to provide individuals control over the use of their personal information. Under the Health Insurance Portability and Accountability Act (HIPAA), health care providers who see patients are required to obtain consent from a patient before sharing their information for treatment, payment, and health care operations purposes.² HIPAA also requires the consent of the patient before sharing the patient's information for non-health care purposes, such as releasing information to financial institutions

¹ Joseph Turow et al., *Contrary to What Marketers Say, Americans Reject Tailored Advertising and Three Activities That Enable It*, at 3-4 (Sept. 2009), <http://ssrn.com/abstract=1478214>.

² 45 C.F.R. § 164.506.

determining loans and selling mailing lists to interested parties.³ Opt-in policies have also been adopted to protect research subjects' genetic information. The American Society of Human Genetics states that "results [of genetic research] must not be shared with employers, insurance companies, or other parties without the written permission of the subject."⁴ Individuals have a privacy interest in their personal information whether collected from their health care provider, a genetic researcher, or an internet advertising company and an opt-in policy should be adopted by the internet advertising industry to provide individuals control over and protection of their personal information.

Even though the preferred approach is an opt-in policy, the proposed order does provide for some protection of personal information through transparency and control over the collection of personal information. The requirement of a prominent notice and hyperlink should serve to inform the consumer and provide the consumer a degree of control over collection of information. The proposed order provides a reasonable minimum time period for the opt-out mechanism to remain in effect. However, to ensure consumers have control over their personal information, the status of the opt-out needs to be displayed prominently so that the consumers are aware when the opt-out expires and can renew the opt-out without having personal information collected if the consumer desires. Therefore it is important for the FTC to maintain the requirement in the proposed order that Chitika prominently display the individual computer user's current opt-out status.

The approach represented in the proposed order is an important first step. We applaud the efforts of the FTC to address the issue of privacy in the context of personal information collection for targeted internet advertising and hope that the FTC will continue to take a leading role.

Sincerely,

Jake Meyer, J.D.

Robert Ennesser

³ 45 C.F.R. §§ 164.502(a)(1), 164.508(d).

⁴ American Society of Human Genetics, Statement of Informed Consent for Genetic Research, 59 Am. J. Human Genetics 471, 472 (1996).