

May 2, 2011

Donald S. Clark , Secretary  
Federal Trade Commission  
Room H-135 (Annex N)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Mr. Clark,

Please find enclosed comments from the public collected by the Electronic Privacy Information Center (EPIC) regarding the Commission's proposed Consent Order In the Matter of Google, Inc., FTC File No. 102 3136. In promoting public comments in this matter, EPIC is seeking to fulfill the critical purpose of ensuring public participation in agency decision making.

Upon taking office in January 2009, President Barack Obama issued a Memorandum for the Heads of Executive Departments and Agencies on transparency and open government. In it, he declared that his administration is "committed to creating an unprecedented level of openness in Government." 74 FR 4685 (Jan. 26, 2009).<sup>1</sup> The President noted that public engagement "enhances the Government's effectiveness and improves the quality of its decisions." *Id.* As the President explained, "Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information." *Id.*

EPIC agrees, and believes the landmark nature of the Commission's Agreement with Google is an ideal opportunity for public input to inform the Government's actions. The Comprehensive Privacy Policy that Google has agreed to create touches so many Americans in so many ways that this Agreement demands the largest possible amount of public notice, engagement, and comment. To this end, EPIC organized a public information campaign and facilitated public comments regarding the Commission's Proposed Consent Order through the EPIC website and through a public petition.<sup>2</sup>

We would like to note for the record that the Commission's goals of facilitating public participation and ensuring the transparency of its decisions were not particularly well-served in this matter by ICF International, the contractor the

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<sup>1</sup> Available at

[http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment/](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/)

<sup>2</sup> See EPIC, "Fix Google Privacy," available at <https://epic.org/fixgoogleprivacy/>;

SignOn.Org, "Fix Google Privacy," available at [http://signon.org/sign/fix-google-privacy?source=c.fb&r\\_by=139981](http://signon.org/sign/fix-google-privacy?source=c.fb&r_by=139981).

Commission used to collect and process public comments. ICF placed unnecessary procedural and technological roadblocks before the public's right to comment on this Agreement. In similar situations in the past, federal contractors worked closely with EPIC to facilitate public comments, notably in the DHS rulemaking on the REAL ID Act of 2005.

Given the importance of the Commission's Agreement with Google, we were disappointed that similar cooperation could not be secured during this undertaking. As the President also stated, "Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government." 74 FR 4685.

EPIC urges the Commission to examine closely the processes it and its contractors have put in place and determine whether these processes can be simplified to better encourage meaningful public participation in the Commission's decision making. We specifically recommend that the agency accept comments by email to facilitate broad public participation when it creates opportunities for public comment.

Sincerely,

Marc Rotenberg  
EPIC Executive Director

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