

In the Matter of US Search, Inc., and US Search, LLC
FTC File No. 102 3131, Docket No. C-4317
Concurring Statement of Commissioner Brill
March 25, 2011

The respondents in this matter, US Search, Inc., and US Search, LLC, (collectively, US Search) are online commercial information brokers that gather and sell information about individuals obtained from public records. The Commission's action announced today alleges that US Search deceived consumers when it failed to honor its promise to remove profiles of consumers who paid \$10 to opt out of US Search's databases. The resolution of this matter requires US Search to provide full refunds to every consumer who paid to opt out of the databases. I support the resolution of this case based on its particular facts.

This case raises a number of troubling issues. As noted in our recent draft report, "Protecting Privacy in an Era of Rapid Change," information brokers collect data from a wide variety of online and offline sources, including traditional public sources such as court files, property records, and telephone books.¹ While this sort of publicly available information has been gathered, processed, and sold by private parties since time immemorial, the marketplace for consumer information has been radically transformed in recent years. Until recently, it was not particularly cost effective for data brokers to trudge down to every tax assessor, county clerk, and courthouse to gather paper data, and then piece it together by hand in order to come up with a consumer profile. The advent of the Internet and high-speed data transfers has dramatically increased data brokers' ability to gather public information from just about any source imaginable. Data brokers can now use sophisticated computer algorithms to piece together countless bits of discrete public data – sometimes combined with nonpublic information – into a composite consumer profile that many would find unsettling in its comprehensiveness. Understandably, many consumers want to have the choice to opt out of such data gathering, processing, and use, at least for certain purposes, such as marketing.

More importantly, focusing only on the consumer's opt out options misses more problematic issues that should be addressed. The collection, processing, and use of information by data brokers can have as great an impact on consumers as data gathered through Internet tracking. Industry and policymakers have demonstrated their awareness of the issues surrounding Internet tracking, and a willingness to address them. It is encouraging to see the self-regulatory proposals concerning online tracking that industry has developed since the Commission released the staff's draft privacy report.² It also is

¹ Fed. Trade Comm'n, *Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers* (2010) (preliminary FTC staff report), available at <http://www.ftc.gov/os/2010/12/101201privacyreport.pdf>.

² Over the past few months there has been a great deal of discussion by industry, consumer groups, technologists, and policy makers about how to address collection and use of data through consumers' online interactions, both with first party websites and third party advertisers. Some of the solutions that are being discussed include browser modifications that will allow consumers to indicate their choices about data collection and use by websites they visit. See Press Release, Microsoft, Providing Windows Customers with More Choice and Control of Their Privacy Online with Internet Explorer 9 (Dec. 7, 2010) available at

encouraging to see the current legislative efforts to address some of these same online tracking issues.³

Unlike the recent self-regulatory efforts with respect to online tracking, there has been little effort by industry, since release of the draft staff report, to address the issues surrounding more traditional information brokers. I urge industry to work with technologists, consumer advocates, legislators and other policy makers to address the important issues relating to the collection, processing, and use of information by data brokers.

Among the issues that industry should consider are providing consumers with (1) meaningful notice, as described in the draft staff report, about information brokers' practices, and (2) a reasonable means to access and correct consumers' information held by information brokers. In addition, industry should consider whether, and under what circumstances, consumers should be given a reasonable mechanism to opt out of these databases.

<http://www.microsoft.com/presspass/features/2010/dec10/12-07ie9privacyqa.msp>; Google Public Policy Blog, Keep your opt-outs (Jan. 24, 2011) *available at* <http://googlepublicpolicy.blogspot.com/2011/01/keep-your-opt-outs.html>; and Mozilla Blog, Mozilla Firefox 4 Beta, now including "Do Not Track" capabilities (Feb. 8, 2011) *available at* <http://blog.mozilla.com/blog/2011/02/08/mozilla-firefox-4-beta-now-including-do-not-track-capabilities/>. Others use universal icons that will allow consumers to describe their choices about online data collection and use. *See* Press Release, Interactive Advertising Bureau Press Release, Major Marketing Media Trade Groups Launch Program to Give Consumers Enhanced Control over Collection and Use of Web Viewing Data for Online Behavioral Advertising (Oct. 4, 2010), *available at* http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-100410; Tony Romm and Kim Hart, *Political Intel: FTC Chairman on Self-Regulatory Ad Effort*, POLITICO Forums (Oct. 11, 2010), *available at* <http://dyn.politico.com/members/forums/thread.cfm?catid=24&subcatid=78&threadid=4611665>.

³ *See* H.R. 654, 112th Cong. (2011).