

September 27, 2012

Honorable Jon Leibowitz, Chairman
Honorable Maureen Ohlhausen, Commissioner
Honorable J. Thomas Rosch, Commissioner
Honorable Edith Ramirez, Commissioner
Honorable Julie Brill, Commissioner
The Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

RE: Facebook's Disclosure of User Data to Datalogix

Dear Mr. Chairman and Members of the Commission:

The Commission recently adopted a Consent Order with Facebook that prohibits Facebook from misrepresenting the privacy or security of users' personal information or sharing that information without consent.¹ In spite of the consent order, Facebook is allowing Datalogix, a consumer-analytics firm, to match the personal information of Facebook users with personal information held by Datalogix to track Facebook users' offline commercial activity. Thus, the Electronic Privacy Information Center ("EPIC"), and the Center for Digital Democracy ("CDD") request that the Commission determine whether Facebook's new business practices, involving the disclosure of user information to Datalogix, violate the Commission's consent order.

Datalogix is a data-mining company based in the United States that collects information about consumer behavior from over 1,000 offline retailers. This information includes personal information, such as names, postal addresses, email addresses, demographic information, and behavioral information, such as purchase history.² Datalogix states that "[o]ur data includes almost every U.S. household and more than \$1 trillion in consumer transactions."³ According to CNN, Facebook allows Datalogix to match the personal information of Facebook users with personal information of consumers from the Datalogix database in order to profile the offline commercial activity of Facebook users.⁴ Datalogix collects real-world data (e.g. offline purchases) by forming partnerships with stores who offer membership or loyalty cards.⁵

¹ The FTC's settlement with Facebook arose from a detailed complaint submitted to the Commission by EPIC, CDD, and a coalition of consumer privacy organizations. FTC, "Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises," (Nov. 29, 2011), <http://ftc.gov/opa/2011/11/privacysettlement.shtm>.

² *Privacy*, DATALOGIX, <https://www.datalogix.com/privacy/> (last visited Sept. 27, 2012).

³ *About Us*, DATALOGIX, <http://www.datalogix.com/about/> (last visited Sept. 27, 2012).

⁴ Emily Steel and April Dembosky, *Facebook Raises Fears with Ad Tracking*, CNN (Sept. 24, 2012), <http://edition.cnn.com/2012/09/23/business/facebook-datalogix/>.

⁵ *Privacy*, DATALOGIX, <https://www.datalogix.com/privacy/> (last visited Sept. 27, 2012).

Facebook provides data on groups of users who have seen ads on its website.⁶ Datalogix matches these users "in a hashed format with the data [Datalogix] receives from [its] retail partners."⁷

Facebook's data-matching deal with Datalogix is part of a larger expansion of advertising based on the personal information of Facebook users. Facebook recently created Facebook Exchange to allow companies to target Facebook users based on browsing activity occurring off of Facebook's website.⁸ Advertisers state that Facebook Exchange enables them to "identify the right person and then show them the right ad at the right time,"⁹ and that "Facebook Exchange is the first time Facebook's 'walled garden' of inventory and audience has been made available for retargeting and web standard measurement."¹⁰

The Commission recently adopted a Consent Order that created new privacy protections for Facebook users.¹¹ Part I of the Consent Order prohibits Facebook from "misrepresent[ing] in any manner, expressly or by implication, the extent to which it maintains the privacy or security of covered information."¹² This prohibition includes any misrepresentation as to "the extent to which a consumer can control the privacy of any covered information maintained by [Facebook] and the steps a consumer must take to implement such controls," as well as "the extent to which [Facebook] makes or has made covered information accessible to third parties."¹³

Part II of the Consent Order requires that, "prior to any sharing of a user's nonpublic user information by [Facebook] with any third party, which materially exceeds the restrictions imposed by a user's privacy setting(s)," Facebook must make a "clear[] and prominent[]" disclosure and obtain the "affirmative express consent" of the user.¹⁴ The Order defines "nonpublic user information" as "covered information that is restricted by one or more privacy setting(s)."¹⁵

The Commission should investigate whether Facebook has violated Parts I and II of the Consent Order. Facebook did not attempt to notify users of its decision to disclose user information to Datalogix. Neither Facebook's Data Use Policy¹⁶ nor its Statement of Rights and

⁶ *How does Facebook partner with outside companies for campaign impact measurement? How does it affect me?*, FACEBOOK, <http://www.facebook.com/help/?faq=211774365532736> (last visited Sept. 27, 2012).

⁷ *See Id.*

⁸ *Introducing Facebook Exchange*, FACEBOOK, <http://www.facebook-studio.com/news/item/introducing-facebook-exchange> (last visited Sept. 27, 2012).

⁹ Otilia Otlacan, *Criteo to Provide Customers With Access to Facebook ExchangeAd Operations Online*, ADOPSONLINE (Sept. 17, 2012), <http://www.adoperationsonline.com/2012/09/17/criteo-to-provide-customers-with-access-to-facebook-exchange/>.

¹⁰ John Ebbert, *Accuen's Josh Jacobs Talks Facebook Exchange Potential*, AD EXCHANGER (Sept. 19, 2012), <http://www.adexchanger.com/social-media/accuens-josh-jacobs-talks-facebook-exchange-potential/>.

¹¹ *Facebook, Inc.*, FTC Docket No. C-4365 (2012) (Decision and Order), <http://www.ftc.gov/os/caselist/0923184/120810facebookdo.pdf> [hereinafter FTC Facebook Consent Order].

¹² FTC Facebook Consent Order, § I.

¹³ FTC Facebook Consent Order, §§ I.B, I.C.

¹⁴ FTC Facebook Consent Order, § II.

¹⁵ FTC Facebook Consent Order, ¶ 5.

¹⁶ *Data Use Policy*, FACEBOOK, https://www.facebook.com/full_data_use_policy (last visited Sept. 27, 2012)

(stating that Facebook might use personal information "to measure or understand the effectiveness of ads you and

Responsibilities¹⁷ adequately explains the specific types of information Facebook discloses, the manner in which the disclosure occurs, or the identities of the third parties receiving the information. In fact, Facebook only mentions Datalogix once - at the bottom of the “Interacting with Ads” page. This page requires at least five actions to reach from the Facebook.com home page and simply directs users to the Datalogix privacy policy.¹⁸ The Consent Order’s prohibition on misrepresentations includes misrepresentations by omission.¹⁹ Thus, the Commission should determine whether Facebook’s failure to notify users of the disclosure of user information to Datalogix violates the consent order.

Second, Facebook’s new data disclosure involves matching the personal information of Facebook users with the personal information held by Datalogix. Email addresses are among the types of personal information included in the data-matching arrangement, and an email address that has been restricted by a Facebook user is considered “nonpublic user information” that cannot be “shared” with a third party without the user’s consent.²⁰ Facebook asserts that the shared information is hashed, and thus anonymous. But the Commission has stated that “hashing is vastly overrated as an ‘anonymization’ technique.”²¹ Moreover, while EPIC favors techniques to deidentify user data, it is critical that the FTC police the adequacy of these practices. In the Liberty Financial matter, for example, the Commission sanctioned a company that “falsely represented that personal information collected from children in a survey would be maintained anonymously.”²² As the Commission found, “Liberty Financial did not maintain the information it collected at the Measure Up Survey area anonymously because Liberty Financial could identify individuals with their responses to the survey.”²³ Clearly, similar concerns arise here where the companies contend that they will match the data anonymously.

Finally, the method offered by Facebook and Datalogix for consumers to opt out of the data-sharing is confusing and ineffective. Consumers must first locate the opt-out link hidden within Datalogix’s long privacy policy.²⁴ Opting out requires that Datalogix place a persistent identifier, or “cookie,” on the user’s browser. As EPIC has previously explained, “opt-out cookies” are a poor method of protecting privacy, as “users understandably believe that deleting

others see,” and that “we don’t share information we receive about you with others unless we have . . . removed your name or any other personally identifying information from it.”).

¹⁷ <https://www.facebook.com/legal/terms>

¹⁸ See *Facebook Help Center: Interacting With Ads*, FACEBOOK, <http://www.facebook.com/help/?page=226611954016283> (last visited Sep. 27, 2012) ; see also Rebecca Greenfield, *Facebook Now Knows What You’re Buying at Drugstores*, ATLANTIC WIRE (Sep. 24, 2012), <http://www.theatlanticwire.com/technology/2012/09/facebook-tracking-you-drug-store-now-too/57183>.

¹⁹ FTC Facebook Consent Order, at I (“shall not misrepresent in any manner, expressly or by implication”)

²⁰ FTC Facebook Consent Order, at II.

²¹ Ed Felten, *Does Hashing Make Data “Anonymous”?*, TECH@FTC (Apr. 22, 2012),

<https://techatftc.wordpress.com/2012/04/22/does-hashing-make-data-anonymous>.

²² Fed. Trade Comm’n, *Young Investor Website Settles FTC Charges: Agency Alleged Website Made False Promises About Collection of Personal Information from Children and Teens*, (May 6, 1999), <http://www.ftc.gov/opa/1999/05/younginvestor.shtm>.

²³ *Id.*

²⁴ *Privacy*, DATALOGIX, <https://www.datalogix.com/privacy/> (last visited Sept. 27, 2012).

cookies will improve their privacy [and] do not realize that this step in fact removes the record of their request to be anonymous.”²⁵

For the above reasons EPIC and CDD request that the Commission investigate whether Facebook’s data-matching arrangement with Datalogix complies with the Facebook Consent Order.

Sincerely,

Marc Rotenberg, EPIC Executive Director
David Jacobs, EPIC Consumer Protection Counsel
Jeramie Scott, EPIC Fellow
Julia Horwitz, EPIC Fellow
Electronic Privacy Information Center (EPIC)
1718 Connecticut Ave. NW Suite 200
Washington, DC 20009
202-483-1140 (tel)
202-483-1248 (fax)

Jeff Chester, CDD Executive Director
1621 Connecticut Avenue NW
Washington, DC 20009
(202) 986-2220

²⁵ Letter from Marc Rotenberg, Executive Director, Electronic Privacy Information Center, and Jason Catlett, President, Junkbusters, to the Senate Commerce Committee, United States Senate (July 28, 2000), *available at* http://epic.org/privacy/internet/NAI_letter.html.