

Analysis of Proposed Consent Orders to Aid Public Comment
In the Matter of Collectify, Inc., File No. 092-3142

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement from Collectify, Inc. (“Collectify”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that Collectify made to consumers concerning its participation in the Safe Harbor privacy framework (“Safe Harbor”) agreed upon by the U.S. and the European Union (“EU”). It is among the Commission’s first cases to challenge deceptive claims about the Safe Harbor. The Safe Harbor provides a mechanism for U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with seven principles and related requirements. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework.

Collectify sells comprehensive cataloguing software to consumers over the internet, including through a website (www.collectify.com). According to the Commission’s complaint, since at least September 2001, Collectify has set forth on its website, www.collectify.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework.

The Commission’s complaint alleges that Collectify falsely represented that it was a current participant in the Safe Harbor when, in fact, from October 2004 until July 2009, Collectify was not a current participant in the Safe Harbor. The Commission’s complaint alleges that in October 2001, Collectify submitted a Safe Harbor self-certification, which it renewed in October 2002 and October 2003. Collectify did not renew its self-certification in October 2004 and was in “not current” status on the Commerce website until it renewed its self-certification in July 2009.

Part I of the proposed order prohibits Collectify from making misrepresentations about its membership in any privacy, security, or any other compliance program sponsored by the government or any other third party.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Collectify to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with

responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Collectify submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.