

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Google Inc., File No. 1023136

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

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.

On February 9, 2010, Google launched a social networking service called Google Buzz (“Google Buzz” or “Buzz”) within Gmail, its web-based email product. Google Buzz is a platform that allows users to share updates, comments, photos, videos, and other information through posts or “buzzes” made either publicly or privately to individuals or groups of users. Google used the information of consumers who signed up for Gmail, including first and last name and email contacts, to populate the social network, which, in many instances, resulted in certain previously private information being made public.

The Commission’s complaint alleges that Google violated Section 5(a) of the FTC Act by falsely representing to users signing up for Gmail that it would use their information only for the purpose of providing them with web-based email. The complaint also alleges that Google falsely represented to consumers that it would seek their consent before using their information for a purpose other than that for which it was collected. The complaint further alleges that Google deceived consumers about their ability to decline enrollment in certain features of Buzz. In addition, the complaint alleges that Google failed to disclose adequately that certain information would become public by default through the Buzz product. Finally, the complaint alleges that Google misrepresented its compliance with the U.S.-EU Safe Harbor Framework, a mechanism by which U.S. companies may transfer data from the European Union to the United States consistent with European law.

The proposed order contains provisions designed to prevent Google from engaging in the future in practices similar to those alleged in the complaint with respect to all Google products and services, not only Gmail or Buzz.

Part I of the proposed order prohibits Google from misrepresenting the privacy and confidentiality of any “covered information,” as well as the company’s compliance with any privacy, security, or other compliance program, including but not limited to the U.S.-EU Safe Harbor Framework. “Covered information” is defined broadly to include an individual’s: (a) first and last name; (b) home or other physical address, including street name and city or town; (c) email address or other online contact information, such as a user identifier or screen name; (d) persistent identifier, such as IP address; (e) telephone number, including home telephone

number and mobile telephone number; (f) list of contacts; (g) physical location; or any other information from or about an individual consumer that is combined with (a) through (g) above.

Part II of the proposed order requires Google to give Google users a clear and prominent notice and to obtain express affirmative consent prior to sharing the Google user's information with any third party in connection with a change, addition or enhancement to any product or service, where such sharing is contrary to stated sharing practices in effect at the time the Google user's information was collected. This provision is limited to users of Google's products and services whom Google has identified at the time it shares their information with third parties, for example, users who are logged into a Google product.

Part III of the proposed order requires Google to establish and maintain a comprehensive privacy program that is reasonably designed to: (1) address privacy risks related to the development and management of new and existing products and services, and (2) protect the privacy and confidentiality of covered information. The privacy program must be documented in writing and must contain privacy controls and procedures appropriate to Google's size and complexity, the nature and scope of its activities, and the sensitivity of covered information. Specifically, the order requires Google to:

- designate an employee or employees to coordinate and be responsible for the privacy program;
- identify reasonably-foreseeable, material risks, both internal and external, that could result in the unauthorized collection, use, or disclosure of covered information and assess the sufficiency of any safeguards in place to control these risks;
- design and implement reasonable privacy controls and procedures to control the risks identified through the privacy risk assessment and regularly test or monitor the effectiveness of the safeguards' key controls and procedures;
- develop and use reasonable steps to select and retain service providers capable of appropriately protecting the privacy of covered information they receive from respondent, and require service providers by contract to implement and maintain appropriate privacy protections; and
- evaluate and adjust its privacy program in light of the results of the testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of its privacy program.

Part IV of the proposed order requires that Google obtain within 180 days, and on a biennial basis thereafter for twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: it has in place a privacy program that provides protections that meet or exceed the protections required by

Part III of the proposed order; and its privacy controls are operating with sufficient effectiveness to provide reasonable assurance that the privacy of covered information is protected.

Parts V through IX of the proposed order are reporting and compliance provisions. Part V requires that Google retain all “widely disseminated statements” that describe the extent to which respondent maintains and protects the privacy and confidentiality of any covered information, along with all materials relied upon in making or disseminating such statements, for a period of three (3) years. Part V further requires Google to retain, for a period of six (6) months from the date received, all consumer complaints directed at Google, or forwarded to Google by a third party, that allege unauthorized collection, use, or disclosure of covered information and any responses to such complaints. Part V also requires Google to retain for a period of five (5) years from the date received, documents that contradict, qualify, or call into question its compliance with the proposed order. Finally, Part V requires that Google retain all materials relied upon to prepare the third-party assessments for a period of three (3) years after the date that each assessment is prepared.

Part VI requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of the order. Part VII ensures notification to the FTC of changes in corporate status. Part VIII mandates that Google submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part IX is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

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