



May 5, 2010

Senator Jay Rockefeller, Chairman
 Committee of Commerce, Science, and Transportation
 United States Senate
 531 Hart Senate Office Bldg.
 Washington, DC 20510

Senator Kay Bailey Hutchinson, Ranking Member
 Committee of Commerce, Science, and Transportation
 United States Senate
 284 Russell Senate Office Bldg.
 Washington, DC 20510

Representative Henry A. Waxman, Chairman
 Committee on Energy and Commerce
 United States House of Representatives
 2204 Rayburn House Office Bldg.
 Washington, DC 20515

Representative Joe Barton, Ranking Member
 Committee on Energy and Commerce
 United States House of Representatives
 2109 Rayburn House Office Bldg.
 Washington, DC 20515

Dear Chairman Rockefeller, Ranking Member Bailey Hutchinson, Chairman Waxman
 and Ranking Member Barton:

Enclosed is a complaint filed today with the Federal Trade Commission ("FTC"), alleging that Facebook Inc. has engaged in unfair and deceptive trade practices with respect to the collection and use of personal data obtained by the corporation. Such practices are subject to investigation and prosecution under Section 5 of the Federal Trade Commission Act.

Fifteen privacy and consumer organizations, including the Electronic Privacy Information Center ("EPIC"), the Center for Digital Democracy ("CDD") the Consumer Federation of America ("CFA"), and the US Public Interest Research Group ("U.S. PIRG"), support this petition.

We bring this complaint to your attention because it addresses a growing concern of millions of Internet users and also because many of the organizations who helped draft the complaint are increasingly concerned about the ability of the Federal Trade Commission to pursue important investigations on behalf of American consumers.

The complaint speaks for itself. Facebook continues to manipulate the privacy settings of users and its own privacy policy so that it can take personal information provided by users for a limited purpose and make it widely available for commercial purposes. The company has done this repeatedly and users are becoming increasingly angry and frustrated. But the Federal Trade Commission had already received a formal complaint about this problem.¹

In fact, this complaint also speaks to a growing concern about the ability of the FTC protect American consumers as new business practices emerge. In one example, EPIC filed a complaint with the FTC in September 2009, against Echometrix, a company selling “parental control” software that secretly monitored children’s online activity for marketing purposes.² This was a clear violation of consumer protection law. The FTC ignored EPIC’s complaint, but the Department of Defense shut down sales of the product once it became aware of the problem.

Similarly, the Electronic Frontier Foundation (“EFF”) and the World Privacy Forum (“WPF”) each filed a complaint with the FTC against AOL in August 2006. The complaints alleged that AOL committed unfair and deceptive trade practices by intentionally and publicly disclosing Internet search histories of more than half a million AOL users.³ The disclosure included sensitive, personal information that could be linked to affirmatively identify individuals.⁴ The FTC ignored that complaint.

In January 2009, CDD and U.S. PIRG amended a November 2006 petition to the FTC, which had asked the FTC to investigate tracking and targeting practices in the online advertising sector.⁵ The 2009 petition urged that the “FTC also act to

¹ EPIC, *In re Facebook* (Dec. 17, 2009); see also, EPIC, “Facebook Privacy” <http://epic.org/privacy/facebook/>

² EPIC, *In re Echometrix, Inc.*, (Sept. 25, 2009), <http://epic.org/privacy/ftc/Echometrix%20FTC%20Complaint%20final.pdf>.

³ EFF, *In re AOL LLC*, (Aug. 14, 2006), http://w2.eff.org/Privacy/AOL/aol_ftc_complaint_final.pdf; WPF, *In re AOL LLC*, (Aug. 16, 2006), http://www.worldprivacyforum.org/pdf/WPF_FTCcomplaint8162006fswp.pdf.

⁴ *Id.*

⁵ CDD & U.S. PIRG, *Complaint and Request for Inquiry and Injunctive Relief Concerning Unfair and Deceptive Mobile Marketing Practices*, (Nov. 1, 2006), http://democraticmedia.org/files/FTCadprivacy_0.pdf.

protect consumers from a growing number of deceptive and unfair marketing practices and the resultant threats to consumer privacy that are a part of the rapidly growing U.S. mobile advertising landscape.”⁶ The organizations have not heard back from the FTC.

The CDD, U.S. PIRG, and WPF also filed a complaint with the FTC in April 2010, asking the Commission to “investigate the growing privacy threats to consumers from the practices conducted by the real-time data-targeting auction and exchange online marketplace.”⁷ The complaint named Google, Yahoo, PubMatic, TARGUSinfo, MediaMath, eXelate, Rubicon Project, AppNexus, and Rocket Fuel.⁸ The complaint points out that there are currently technologies that enable the real-time profiling, targeting, and auctioning of consumers, which is largely unknown to the public. The FTC acknowledged receipt of the complaint, but could not confirm or deny whether an investigation would be conducted.

Patient Privacy Rights, a health privacy watchdog organization, met with Commissioner William E. Kovacic in September 2008, and detailed the need for the FTC to investigate or hold hearings on the unfair and deceptive uses of personal health information. The group followed up this meeting with a letter highlighting the development of a market based on the commoditization of health information. The organization’s letter received no response.

The *Privacy Journal*, a publication informing individuals on their right to privacy, wrote to the FTC in November 2009, urging the Commission to establish a baseline of accuracy by which Fair Credit Reporting Act entities may be evaluated and to revise its definition of “small inaccuracy” and “material error likely to affect a credit score.” The FTC acknowledged it had received the letter, but the *Journal* has not heard whether the FTC would pursue any of the suggestions.

Finally, in one particularly egregious example, it took the attack on Google in China in January of this year to get the company to routinely encrypt Gmail, something that EPIC had specifically recommended to the FTC in our March 2009 complaint concerning Cloud Computing.⁹ The FTC ignored that as well.

⁶ CDD & U.S. PIRG, Complaint and Request for Inquiry and Injunctive Relief Concerning Unfair and Deceptive Mobile Marketing Practices, (Jan. 13, 2009), http://www.democraticmedia.org/files/FTCmobile_complaint0109.pdf.

⁷ Press Release, Center for Digital Democracy, Urge FTC to Develop Rules to Protect Consumer Privacy in the New Personal Data Marketplace (Apr. 8, 2010) <http://www.democraticmedia.org/protect-consumer-privacy>.

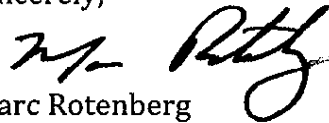
⁸ CDD, U.S. PIRG and WPF, *In re* Real-time Targeting and Auctioning, Data Profiling Optimization, and Economic Loss to Consumers and Privacy, (Apr. 8, 2010), <http://democraticmedia.org/files/u1/20100407-FTCfiling.pdf>.

⁹ EPIC, *In re Google and Cloud Computing*, <http://epic.org/privacy/cloudcomputing/google/ftc031709.pdf> at ¶¶9,30,47.

In the past, the Federal Trade Commission has taken decisive steps to safeguard consumer privacy. These decisions help spur innovation and competition, reduce risk to consumers, and promote trust and confidence in new business services. But the current FTC appears reluctant to take similar steps on behalf of American consumers.

Oversight of the Federal Trade Commission falls within the purview of your Committees. American consumers are becoming increasingly concerned about the collection and use of their personal information.

Sincerely,



Marc Rotenberg
EPIC Executive Director

cc: Members of the Senate Commerce Committee
Members of the House Commerce Committee
Chairman and Commissioners of the FTC