



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 152 3099]

Turn Inc., Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before January 19, 2017.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/turnconsent>

online or on paper, by following the instructions in the Request for Comment part of the

SUPPLEMENTARY INFORMATION section below. Write “In the Matter of Turn Inc., File No. 152 3099 - Consent Agreement” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/turnconsent> by following the instructions on the web-

based form. If you prefer to file your comment on paper, write “In the Matter of Turn Inc., File No. 152 3099 - Consent Agreement” on your comment and on the envelope, and mail your

comment to the following address: Federal Trade Commission, Office of the Secretary, 600

Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your

comment to the following address: Federal Trade Commission, Office of the Secretary,

Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jamie E. Hine, (202) 326-2188, Attorney, and Justin Brookman (202) 326-2214, Attorney, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 20, 2016), on the World Wide Web at:

<http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 19, 2017. Write “In the Matter of Turn Inc., File No. 152 3099 - Consent Agreement” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/turnconsent> by following the instructions on the web-

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “In the Matter of Turn Inc., File No. 152 3099 - Consent Agreement” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 19, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order to Aid Public Comment

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

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 again will review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves Turn, a digital advertising company that enables commercial brands and ad agencies to engage in targeted advertising, which is the practice of tracking a consumer's activities or characteristics to deliver ads tailored to the consumer's interests. The FTC complaint alleges that Turn violated Section 5(a) of the FTC Act by falsely representing to consumers the extent to which consumers could restrict the company's tracking of their online activities and the extent to which Turn's opt-out applied to mobile app advertising.

Specifically, the complaint alleges that until at least April 2015, Turn's privacy policy misrepresented that consumers could prevent Turn's tracking by blocking or otherwise limiting cookies. Contrary to representations that consumers could opt out of tracking by instructing their browser to "stop accepting cookies," Turn tracked consumers by using and synchronizing the Verizon X-UIDH header, a unique identifier appended to the internet traffic of more than 100 million consumers on the Verizon Wireless data network. Even if a consumer deleted cookies or reset their device advertising identifier (*e.g.*, Apple's IDFA or Google's advertising ID), Turn would be able to recognize the user by cross-referencing the unique X-UIDH header associated with an individual consumer's device. In fact, if a Verizon Wireless user deleted their cookies, Turn would attempt to set a new cookie containing the same unique identifier as the cookie the user had deleted, thereby maintaining the linkage between the consumer's browser or device and an identifier associated with behavioral, demographic, or tracking data.

In addition, the complaint alleges that Turn's privacy policy misrepresented that its opt-out mechanism would be effective in blocking targeted advertising on both mobile websites and in mobile apps. Contrary to Turn's representations, Turn's opt-out applied only to mobile browsers, and was not effective in blocking ads in mobile applications.

The proposed consent order contains provisions designed to prevent Turn from engaging in similar acts and practices in the future. Part I of the proposed order prohibits Turn from misrepresenting (1) the extent to which it collects, uses, discloses, retains, or shares Covered Information; and (2) the extent to which users may limit, control, or prevent Turn’s collection, use, disclosure, retention, or sharing of covered information. Part II of the proposed order requires Turn, within thirty days following service of the order, to place a clear and conspicuous hyperlink on the Turn website homepage that states “Consumer Opt Out of Targeted Advertising.” The hyperlink must take consumers to a clear and conspicuous disclosure that explains what information Turn collects and uses for targeted advertising, and provides an effective opt-out mechanism that allows consumers to prevent Turn from collecting or using consumers’ information. In addition, Turn’s website must describe to consumers the technologies and methods it uses for targeted advertising. Part III of the proposed order requires Turn to honor mobile operating system control signal (*e.g.*, Apple’s IDFA or Google’s advertising ID) to opt out of or otherwise control or limit targeted advertising, where it knows or reasonably should know that it is receiving such a signal.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires acknowledgment of the order and dissemination of the order now and in the future to persons with managerial responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status and mandates that Turn submit an initial compliance report to the FTC. Part VI requires Turn to retain documents relating to its compliance with the order for a five-year period. Part VII mandates that Turn make available to the FTC information or subsequent compliance reports, as requested. Part VIII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

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

By direction of the Commission.

Donald S. Clark
Secretary.

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