

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Turn Inc., File No. 1523099

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.