

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Filiquarian Publishing, LLC; Choice Level, LLC; and Joshua Linsk,
individually and as an officer of the companies; File No. 112 3195

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Filiquarian Publishing, LLC; Choice Level, LLC; and Joshua Linsk, individually, and as an officer of the companies.

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.

The Commission's proposed administrative complaint alleges that the companies were operating as consumer reporting agencies without any procedures or policies in place to comply with the Fair Credit Reporting Act ("FCRA").

The respondents sold background screening reports containing criminal records through mobile applications ("apps") available in the iTunes and Google Android store (now GooglePlay) and through a website. Filiquarian developed and marketed apps that sold for \$0.99 each and allowed purchasers to conduct unlimited searches of criminal history information within a specific geographic area, such as a state or county. Each app included an express representation that purchasers could use the reports for employment purposes. Choice Level provided the underlying records accessed by purchasers of the Filiquarian apps. Joshua Linsk is the owner and sole officer of Filiquarian and Choice Level. During all times material to this complaint, Linsk, individually or in concert with others, formulated, directed, or controlled the policies, acts, or practices of the companies.

According to the complaint, despite Filiquarian clearly promoting its background reports for use in employment screening, both Filiquarian and Choice Level included disclaimers in their terms and conditions stating that their reports were not to be considered a screening product for insurance, employment, or credit, and that they were not compliant with the FCRA. Such disclaimers contradicted and failed to counteract the express representations made in Filiquarian's advertising, urging the use of the reports to screen potential employees. Marketing and selling background screening reports to potential employers without implementing any of the accuracy or dispute safeguards required by the FCRA potentially exposes a large number of consumers to harm to their reputations and employment prospects.

The complaint alleges that the reports produced by respondents were consumer reports under the FCRA and that respondents lacked any policies or procedures to comply with the FCRA. Specifically, the complaint alleges that respondents failed to adhere to three key requirements of the FCRA: to maintain reasonable procedures to verify who their users are and that the information would be used for a permissible purpose; to ensure that the information they

provided in consumer reports was accurate; and to provide notices to users and to those who furnished proposed respondents with information that was included in consumer reports. The complaint further alleges that by their violations of the FCRA, as stated above, proposed respondents have engaged in unfair and deceptive acts and practices, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

The proposed consent order contains provisions designed to prevent the respondents from engaging in the future in practices similar to those alleged in the complaint.

Part I of the order includes injunctive relief requiring respondents to comply with the relevant provisions of the FCRA. Parts II through VI are reporting and compliance provisions. Part II requires respondents to retain documents relating to their 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 respondents submit a compliance report to the FTC within 60 days, and periodically thereafter as requested. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this 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.