



Office of the Secretary

UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

April 6, 2017

A Noe  
State of Colorado

*Re: In the Matter of Turn Inc., File No. 152 3099*

Dear A Noe:

Thank you for your comments regarding the Federal Trade Commission's proposed consent agreement in the above-entitled proceeding. Your comments indicate that you believe the proposed order's only "punishment" is that Turn cease violating people's privacy and does not sufficiently deter similar conduct by companies other than Turn. Further, you believe that Turn should be required to delete, in a verified way, the data collected from the allegedly violative behavior. Finally, you raise concern that Turn is not required to admit to the alleged violations of Section 5 of the FTC Act set forth in the Complaint.

The Complaint in this matter alleges that Turn made material misrepresentations, in violation of Section 5 of the FTC Act, and the proposed order is designed to rectify this misconduct. The proposed consent agreement protects consumers' online privacy by prohibiting Turn from misrepresenting (1) the extent to which it collects, uses, discloses, retains, or shares covered information, as defined in the order,<sup>1</sup> and (2) the extent to which users may limit, control, or prevent Turn's collection, use, disclosure, retention, or sharing of covered information. In addition, the proposed order requires Turn to place a clear and conspicuous link on its homepage that states "Consumer Opt Out of Targeted Advertising." Consumers who click on the link are provided with a clear explanation of what information Turn collects and uses for targeted advertising, and an effective mechanism that enables them to opt out of the advertising. In addition, Turn's website must describe to consumers the technologies and methods it uses for targeted advertising. Finally, the proposed order requires Turn to honor mobile operating system control signals to opt out of or otherwise control or limit targeted advertising.

The Commission does not have authority to obtain civil penalties for an initial violation under Section 5 of the FTC Act. However, once the order becomes final, Turn will risk civil penalties of up to \$40,654 per violation per day (as provided by Section 5(l) of the FTC Act, 45

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<sup>1</sup> The proposed consent agreement defines "Covered Information" to include, among other things, email addresses or other online contact information; persistent identifiers, such as HTTP cookies, IP addresses, Device Advertising Identifiers, mobile device IDs, MAC addresses, or Verizon Wireless's X-UIDH header; browsing histories or other data about websites and applications devices have accessed; precise geolocation data; or authentication credentials such as login IDs or passwords.

U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c)). The prospect of paying civil penalties will provide Turn with an incentive to comply with the order. Accordingly, we believe the order provisions, along with the risk of substantial civil penalties for violating the order, appropriately address the conduct at issue. We also believe that the Commission bringing this action against Turn will deter other companies from engaging in similar conduct. As is the case with all Commission orders, Commission staff will closely monitor Turn's conduct to determine whether any violations occur.

The proposed order does not contain a data deletion provision. We note that since Turn ceased using the X-UIDH header in 2015, Turn cannot identify the users affected by the X-UIDH. Moreover, since the relevant time period, many consumers have likely taken measures – such as purchasing new devices or resetting their advertising identifiers – that establish clean tracking histories.

As to admission of liability, the provision that Turn “neither admit nor deny” liability is standard where one has consented to the entry of an order. It has no practical effect on the Commission's ability to enforce an order.

The Commission has placed your comment on the public record, pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission has now determined that the public interest would best be served by issuing the Decision and Order in the above-titled proceeding in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. Thank you again for your comment.

By direction of the Commission.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

April 6, 2017

Mia Simpson  
State of Washington

*Re: In the Matter of Turn Inc., File No. 152 3099*

Dear Ms. Simpson:

Thank you for your comment regarding the Federal Trade Commission's proposed consent agreement in the above-entitled proceeding. Your comment indicates that you are concerned about Turn Inc.'s ("Turn") misrepresentations regarding the company's tracking of your online activities, and believe consumers should receive "a large civil judgment" from the company as a deterrent to Turn and other companies in the future.

The Complaint in this matter alleges that Turn made material misrepresentations, in violation of Section 5 of the FTC Act, and the proposed order is designed to rectify this misconduct. The proposed consent agreement protects consumers' online privacy by prohibiting Turn from misrepresenting (1) the extent to which it collects, uses, discloses, retains, or shares covered information, as defined in the order,<sup>1</sup> and (2) the extent to which users may limit, control, or prevent Turn's collection, use, disclosure, retention, or sharing of covered information. In addition, the proposed order requires Turn to place a clear and conspicuous link on its homepage that states "Consumer Opt Out of Targeted Advertising." Consumers who click on the link are provided with a clear explanation of what information Turn collects and uses for targeted advertising, and an effective mechanism that enables them to opt out of the advertising. In addition, Turn's website must describe to consumers the technologies and methods it uses for targeted advertising. Finally, the proposed order requires Turn to honor mobile operating system control signals to opt out of or otherwise control or limit targeted advertising.

The Commission looks at a number of factors in determining appropriate relief that will deter future violations. In this case, we believe the prohibition against misrepresentations about the privacy of covered information, the required disclosure and Opt-Out mechanism, and the

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requirement that Turn honor mobile operating system controls, will deter future violations. In addition, while the Commission does not have authority to obtain civil penalties for an initial violation under Section 5 of the FTC Act, once the order becomes final Turn will risk civil penalties of up to \$40,654 per violation per day (as provided by Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c)). These civil penalties will provide Turn with an incentive to comply with the order. Accordingly, we believe the order provisions, along with the risk of substantial civil penalties for violating the order, appropriately address the conduct at issue. As is the case with all Commission orders, Commission staff will closely monitor Turn's conduct to determine whether any violations occur.

The Commission has placed your comment on the public record, pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission has now determined that the public interest would best be served by issuing the Decision and Order in the above-titled proceeding in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. Thank you again for your comment.

By direction of the Commission.

Donald S. Clark  
Secretary