

**Analysis of Proposed Consent Order to Aid Public Comment**  
***In the Matter of Epic Marketplace, Inc., and Epic Media Group, LLC, File No. 112 3182***

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The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Epic Marketplace, Inc. and Epic Media Group, LLC.

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.

Epic Marketplace, Inc. ("Epic") is an advertising company that engages in online behavioral advertising, which is the practice of tracking a consumer's online activities in order to deliver advertising targeted to the consumer's interests. Epic is a wholly-owned subsidiary of Epic Media Group, LLC ("EMG"). Epic acts as an intermediary between website owners who publish advertisements on their website for a fee ("publishers") and advertisers who wish to have their advertisements placed on websites. Epic purchases advertising space on publishers' websites and contracts with advertisers to place their advertisements on the websites. Epic refers to the network of websites on which it purchases advertising space as the Epic Marketplace Network, which includes over 45,000 publishers.

The Commission's complaint alleges that, from March 2010 through August 2011, Epic engaged in "history sniffing" – running software code on a webpage to determine whether a user has previously visited a webpage – by checking how a user's browser styles the display of a hyperlink. This practice allegedly allowed Epic to determine whether a consumer had visited any of over 54,000 domains, including pages relating to fertility issues, impotence, menopause, incontinence, disability insurance, credit repair, debt relief, and personal bankruptcy. According to the complaint, history sniffing allowed Epic to determine whether consumers had visited webpages that were outside the Epic Marketplace Network, information it would not otherwise have been able to obtain, and Epic used this history-sniffing data for behavioral targeting purposes.

The FTC's complaint charges that Epic and EMG violated Section 5(a) of the FTC Act by falsely representing to consumers that respondents only collected information on consumers' visits to websites within the Epic Marketplace Network. The complaint also alleges that the companies failed to disclose to consumers that they were engaged in history sniffing.

The proposed order contains provisions designed to prevent Epic; EMG; their parent company FAS Labs, Inc.; and any of their subsidiaries, successors, and assigns (collectively, "respondents") from engaging in practices similar to those alleged in the complaint in the future.

Part I of the proposed order prohibits respondents from misrepresenting in any manner, expressly or by implication: (A) the extent to which they maintain the privacy or confidentiality

of data from or about a particular consumer, computer, or device, including but not limited to the extent to which that data is collected, used, disclosed, or shared; or (B) the extent to which software code on a webpage determines whether a user has previously visited a webpage.

Part II of the proposed order prohibits respondents from collecting any data through history sniffing – running software code on a webpage to determine whether a user has previously visited a webpage by checking how a user’s browser styles the display of a hyperlink or by accessing a user’s browser cache – or using any data obtained by history sniffing.

Part III of the proposed order prohibits respondents from using, disclosing, selling, renting, leasing, or transferring any information that was collected using history sniffing. In addition, within five (5) days after the date of service of the order, respondents must permanently delete or destroy all information collected using history sniffing.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires that respondents retain, for a period of three (3) years, documents relating to its compliance with the order. Part V requires dissemination of the order to all current and future principals, officers, directors, and managers; and all current and future managers, employees, agents, and representatives who have responsibilities on behalf of respondents with respect to the subject matter of this order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that respondents submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part VIII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

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