



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

April 11, 2024

Eric Null
Greg Nojeim
Center for Democracy & Technology
1401 K Street NW, Suite 200
Washington, DC 20005

Thank you for your comment regarding the Federal Trade Commission's proposed consent agreement in the above-titled proceeding against X-Mode Social, Inc. and Outlogic, LLC ("hereinafter "X-Mode"). 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 is committed to protecting consumers from deceptive, unfair, and other unlawful practices, and we appreciate your feedback on this matter.

According to our complaint against X-Mode, Respondents violated the FTC Act by engaging in deceptive and unfair practices relating to consumers' sensitive location data. The proposed order, among other robust obligations, requires X-Mode to implement a program designed to ensure that consumers have consented to Respondents' collection and use of their location data, including data obtained from third party suppliers. The order also prohibits X-Mode from using or sharing sensitive location data, which is consumer location data associated with a sensitive location, as defined in the order, and to implement and maintain a sensitive location data program to develop a comprehensive list of sensitive locations and to prevent the use, sale, license, transfer, or disclosure of sensitive location data. The order also requires X-Mode to prevent, through contractual restrictions and technical measures, recipients of its location data from associating consumers with locations predominantly providing services to LGBTQ+ individuals, or locations of public gatherings of individuals during social demonstrations, marches, or protests, or using location data to determine the identity or location of an individual's home.

In your comment, CDT notes that it supports the proposed consent agreement, and the Commission's efforts to hold location data brokers and aggregators to account by placing substantive limits on the collection, use, and disclosure of consumers' location data. We appreciate CDT's support of the proposed consent agreement, and the Commission will continue to use its authority when appropriate to protect consumers' privacy and continue to require privacy-protective practices in our future enforcement work.

CDT raised two concerns regarding the proposed order: i) the ability to convert sensitive location data into non-location data pursuant to the proviso of Part II at (i)(b) and the potential for continued privacy harms; and ii) removing or clarifying the security exemption.

The Commission appreciates CDT's first concern regarding using sensitive location data to infer health care use and create audience segments based on visits to sensitive places. Under Parts II and III of the order, X-Mode is not permitted to make inferences or create audience segments using the sensitive location data. Part II's proviso at (i) is designed only to ensure that X-Mode may use the sensitive location data in a limited fashion to comply with its obligations in Part III. The proviso limits X-Mode's ability to use the sensitive location data for the purpose of *converting* it to non-location data or non-sensitive location data; meaning to coarsen location data so that is no longer fits the respective definitions of location data or sensitive location data. The proviso carves out this limited activity to ensure that Respondents can coarsen location data to either a zip code or census block location as part of its obligations under the sensitive location program. Indeed, under Part III.G of the order, X-Mode must initiate the process of deleting, or rendering non-sensitive, sensitive location data within a strict timeframe and may not use this sensitive location data for any other purpose during this process. The coarsening permitted by the proviso enables X-Mode to meet these obligations and helps protect a consumer's precise location and limit the granular insights that such location data may reveal. The proviso is limited to use for such conversion.

The Commission appreciates CDT's second concern as to the inclusion of the limited security exemptions applicable to location data collected on devices that are located outside the United States and used for security or national security purposes, as defined in the order. The Commission weighed the privacy interests of domestic and international consumers, and significant national interests of protecting the security of the American people. Based on the Commission's assessment, including these limited security exemptions are appropriate in the context of the specific unfair and deceptive business practices allegedly employed by the Respondents.

Having considered all the facts of this case and the comments submitted in response to the consent agreement, the Commission has now determined that the public interest would best be served by issuing the Complaint and 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>. It helps the Commission's analysis to hear from a variety of sources in its work, and it thanks you again for your comment.

By direction of the Commission, Commissioners Holyoak and Ferguson not participating.

April J. Tabor
Secretary



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Office of the Secretary

April 11, 2024

Jenna Ruddock
Matthew F. Wood
Free Press
1025 Constitution Ave NW, Suite 1110
Washington, DC 20036

Thank you for your comment regarding the Federal Trade Commission's proposed consent agreement in the above-titled proceeding against X-Mode Social, Inc. and Outlogic, LLC ("hereinafter "X-Mode"). 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 is committed to protecting consumers from deceptive, unfair, and other unlawful practices, and we appreciate your feedback on this matter.

According to our complaint against X-Mode, Respondents violated the FTC Act by engaging in deceptive and unfair practices relating to consumers' sensitive location data. The proposed order, among other robust obligations, requires X-Mode to implement a program designed to ensure that consumers have consented to Respondents' collection and use of their location data, including data obtained from third party suppliers. The order also prohibits X-Mode from using or sharing sensitive location data, which is consumer location data associated with a sensitive location, as defined in the order, and to implement and maintain a sensitive location data program to develop a comprehensive list of sensitive locations and to prevent the use, sale, license, transfer, or disclosure of sensitive location data. Finally, the order also requires X-Mode to prevent, through contractual restrictions and technical measures, recipients of its location data from associating consumers with locations predominantly providing services to LGBTQ+ individuals or locations of public gatherings of individuals during social demonstrations, marches, or protests, or using location data to determine the identity or location of an individual's home.

In your comment, Free Press notes that it supports the proposed consent agreement, and the Commission's efforts to hold location data brokers and aggregators to account by placing substantive limits on the collection, use, and disclosure of consumers' location data. We appreciate Free Press' support of the proposed consent agreement, and the Commission will continue to use its unfairness authority when appropriate to protect consumers' privacy and continue to require privacy-protective practices in our future enforcement work.

Free Press raised three concerns regarding the proposed order: i) distinguishing sensitive location data from all location data; ii) broadening the categories of sensitive locations; and iii) adequate enforcement of various order requirements (de-identification of historic location data, "Clear and Conspicuous" notice, and a "simple, easily located" means to withdraw consent).

With respect to Free Press' first concern, the Commission has long asserted that location data is sensitive data. The Commission continues to have significant privacy concerns around the practices of the geolocation data broker industry and will continue to use all of our tools to protect Americans from unchecked corporate surveillance. The X-Mode order addresses the specific unfair and deceptive business practices allegedly employed by Respondents. Specifically, the order provisions address the Respondents' unfair alleged practice pursuant to Section 5 of the FTC Act of selling, licensing, or otherwise transferring precise location data associated with unique persistent identifiers that reveal consumers' visits to sensitive locations like where they seek medical help. Additionally, the order provisions also address the Respondents' unfair alleged practice pursuant to Section 5 of selling other location data without consumers informed consent.

Free Press' second concern relates to the categories of sensitive locations in the order and Free Press' view that the order should include any additional locations that consumers determine are sensitive in their view. Part III.E of the order requires that X-Mode assess, update, and document the completeness of their list of sensitive locations periodically, and as part of this update X-Mode must consider new categories of sensitive locations not enumerated in the definition of sensitive locations. Additionally, Part IV of the order includes several additional protections for a variety of other locations that consumers might determine are sensitive, such as locations of political protest or locations that could reveal sexual orientation or sexual preferences. Part IV also requires X-Mode to employ contractual restrictions and technical measures that prohibit associating location data with such locations. Finally, Parts IV and V of the order also require X-Mode conduct periodic compliance assessments of recipients of their location data, terminate relationships for non-compliance, and file third-party incident reports with the Commission.

The Commission appreciates Free Press' last concern as to ongoing enforcement of specific order provisions governing de-identification of historic location data, and the requirements to provide "Clear and Conspicuous" notice and a "simple, easily located" means to withdraw consent. Part XVII of the order imposes substantial recordkeeping requirements on X-Mode, including maintaining records that demonstrate compliance with these provisions. The Division of Enforcement vigorously monitors compliance with all orders entered in the Commission's consumer protection cases and will investigate possible order violations and initiate court actions for such violations, as appropriate.

Having considered all the facts of this case and the comments submitted in response to the consent agreement, the Commission has now determined that the public interest would best be served by issuing the Complaint and 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>. It helps the Commission's analysis to hear from a variety of sources in its work, and it thanks you again for your comment.

By direction of the Commission, Commissioners Holyoak and Ferguson not participating.

April J. Tabor
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April 11, 2024

Electronic Privacy Information Center (EPIC)
Demand Progress
Electronic Frontier Foundation (EFF)
1519 New Hampshire Ave NW
Washington, DC 20036

Thank you for your comment regarding the Federal Trade Commission's proposed consent agreement in the above-titled proceeding against X-Mode Social, Inc. and Outlogic, LLC ("hereinafter "X-Mode"). 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 is committed to protecting consumers from deceptive, unfair, and other unlawful practices, and we appreciate your feedback on this matter.

According to our complaint against X-Mode, Respondents violated the FTC Act by engaging in deceptive and unfair practices relating to consumers' sensitive location data. The proposed order, among other robust obligations, requires X-Mode to implement a program designed to ensure that consumers have consented to Respondents' collection and use of their location data, including data obtained from third party suppliers. The order also prohibits X-Mode from using or sharing sensitive location data, which is consumer location data associated with a sensitive location, as defined in the order, and to implement and maintain a sensitive location data program to develop a comprehensive list of sensitive locations and to prevent the use, sale, license, transfer, or disclosure of sensitive location data. Finally, the order also requires X-Mode to prevent, through contractual restrictions and technical measures, recipients of its location data from associating consumers with locations predominantly providing services to LGBTQ+ individuals or locations of public gatherings of individuals during social demonstrations, marches, or protests, or using location data to determine the identity or location of an individual's home.

In your comment, EPIC, Demand Progress, and EFF note that they support the proposed consent agreement, and the Commission's efforts to hold location data brokers and aggregators to account by placing substantive limits on the collection, use, and disclosure of consumers' location data. We appreciate your support of the proposed consent agreement, and the Commission will continue to use its unfairness authority when appropriate to protect consumers' privacy and continue to require privacy-protective practices in our future enforcement work.

You raised four concerns regarding the proposed order: i) distinguishing sensitive location data from all location data; ii) broadening the categories of sensitive locations; iii) including the ability to convert sensitive location data into non-sensitive location data or non-location data pursuant to the proviso of Part II at(i)(a)&(b); and iv) excluding location data collected outside the United States.

With respect to your first concern, the Commission has long asserted that location data is sensitive data. The Commission continues to have significant privacy concerns around the practices of the geolocation data broker industry and will continue to use all of our tools to protect Americans from unchecked corporate surveillance. The X-Mode order addresses the specific unfair and deceptive business practices allegedly employed by the Respondents. Specifically, the order provisions address the Respondents' unfair alleged practice pursuant to Section 5 of the FTC Act of selling, licensing, or otherwise transferring precise location data associated with unique persistent identifiers that reveal consumers' visits to sensitive locations like where they seek medical help. Additionally, the order provisions also address the Respondents' unfair alleged practice pursuant to Section 5 of selling other location data without consumers' informed consent.

Your second concern was to broaden the categories of sensitive locations to include additional locations that could reveal sexual orientation, gender identity, or sexual preferences. The Commission agrees that such locations are sensitive and consumers' visits to such locations warrants protection. In order to ensure that consumers' privacy is protected when they visit such locations, Provision IV of the order requires that X-Mode employ contractual restrictions and technical measures that prohibit associating location data with such locations. Provisions IV and V of the order also require that X-Mode conduct periodic compliance assessments of recipients of their location data, terminate relationships for non-compliance, and file third-party incident reports with the Commission.

You also raised concerns about X-Mode's ability to convert sensitive location data into non-sensitive location data or non-location data pursuant to the proviso of Part II at (i)(a)&(b). Under Parts II and III of the order, X-Mode is not permitted to make inferences or create audience segments using the sensitive location data. The proviso at (i) is designed to ensure that X-Mode may use the sensitive location data in a limited fashion. Under the order, X-Mode is limited to using sensitive location data for the purpose of *converting* it to non-location data or non-sensitive location data; meaning to coarsen location data so that it no longer fits the respective definitions of location data or sensitive location data. The proviso carves out this limited activity to ensure that Respondents coarsen location data to either a zip code or census block location. Coarsening the data helps protect a consumer's precise location and helps limit the granular insights that such location data may reveal. Further, under Part III.G. of the order, X-Mode must also initiate the process of deleting, or rendering non-sensitive, sensitive location data within a strict timeframe and may not use this sensitive location data for any other purpose during this process.

The Commission appreciates your last concern as to the inclusion of the limited security exemptions applicable to location data collected on devices that are located outside the United States and used for security or national security purposes, as defined in the order. The Commission weighed the privacy interests of domestic and international consumers, and significant national

interests of protecting the security of the American people. Based on the Commission's assessment, including these limited security exemptions are appropriate in the context of the specific unfair and deceptive business practices allegedly employed by the Respondents.

Having considered all the facts of this case and the comments submitted in response to the consent agreement, the Commission has now determined that the public interest would best be served by issuing the Complaint and 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>. It helps the Commission's analysis to hear from a variety of sources in its work, and it thanks you again for your comment.

By direction of the Commission, Commissioners Holyoak and Ferguson not participating.

April J. Tabor
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