

COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

FEDERAL TRADE COMMISSION

In the Matter of Unrollme, Inc.

FTC File No. 172 3139

September 19, 2019

By notice published on August 20, 2019, the Federal Trade Commission (“FTC”) has proposed a Consent Order with Unrollme, Inc. (“Unrollme”) that would settle alleged violations of federal law.¹ The FTC’s Agreement Containing Consent Order² (“Consent Order”) follows the FTC’s Complaint (“Complaint”), which alleges that Unrollme, in coordination with its parent company, Slice Technologies, Inc. (“Slice”), violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).³

The Electronic Privacy Information Center (“EPIC”) submits these comments to recommend specific changes to the proposed Consent Order to safeguard the privacy interests of Unrollme users. EPIC is a public interest research center in Washington, D.C. established in 1994 to focus on public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and Constitutional values. EPIC has a particular interest in protecting consumer privacy, and has played a leading role in developing the authority of the FTC to

¹ FTC, *Unrollme, Inc.; Analysis to Aid Public Comment*, 84 Fed. Reg. 43,123 (Aug. 20, 2019), <https://www.federalregister.gov/documents/2019/08/20/2019-17815/unrollme-inc-analysis-to-aid-public-comment>.

² *In the Matter of Unrollme, Inc.*, (Decision and Order), FTC, File No. 172 3139 (Aug. 8, 2019), https://www.ftc.gov/system/files/documents/cases/172_3139_unrollme_order_8-8-19.pdf.

³ *Id.*

address emerging privacy issues and to safeguard the privacy rights of consumers.⁴ EPIC has also routinely filed many other complaints with the FTC regarding business practices that harm consumer privacy and comments on proposed consent orders.⁵

EPIC's comments are divided into five sections. Section I sets out FTC's legal obligations in considering these comments before finalizing the proposed Consent Order. Section II summarizes the FTC Complaint and Consent Order. Section III lays out EPIC's proposed modifications to the Consent Order. Section IV responds to the Separate Statement of Commissioner Noah Joshua Phillips.

In short, EPIC recommends that the FTC modify the proposed Consent Order and require Unrollme to: (1) notify its entire userbase of the unfair and deceptive practices; (2) delete all inactive users' data, in addition to all Covered Consumers' data, and define "commercial production systems"; and (3) require reauthorization from Covered Consumers in order to maintain access to their email accounts.⁶

⁴ Letter from EPIC Executive Director Marc Rotenberg to FTC Commissioner Christine Varney (Dec. 14, 1995) (urging the FTC to investigate the misuse of personal information by the direct marketing industry), http://epic.org/privacy/internet/ftc/ftc_letter.html; see also EPIC, *In the Matter of DoubleClick*, Complaint and Request for Injunction, Request for Investigation and for Other Relief, before the Federal Trade Commission (Feb. 10, 2000), http://epic.org/privacy/internet/ftc/DCLK_complaint.pdf; EPIC, *In the Matter of Microsoft Corp.*, Complaint and Request for Injunction, Request for Investigation and for Other Relief, before the Federal Trade Commission (July 26, 2001), http://epic.org/privacy/consumer/MS_complaint.pdf.

⁵ See, e.g., Comments of EPIC, *In the Matter of Aleksandr Kogan and Alexander Nix*, FTC File No. 182 3106 & 1823107 (Sept. 3, 2019), <https://epic.org/apa/comments/EPIC-FTC-CambridgeAnalytica-Sept2019.pdf>; Comments of EPIC, *Standards for Safeguarding Customer Information*, FTC Document No. 2019-10910 (Aug. 1, 2019), <https://epic.org/apa/comments/EPIC-FTC-Safeguards-Aug2019.pdf>; *In re Zoom Video Commc'ns, Inc.* (Complaint, Request for Investigation, Injunction, and Other Relief), July 11, 2019), <https://epic.org/privacy/ftc/zoomEPIC-FTC-Complaint-In-re-Zoom-7-19.pdf>; Comments of EPIC, *In the Matter of Uber Technologies, Inc.*, FTC, Docket No. 152-3054 (May 14, 2018), <https://epic.org/apa/comments/EPIC-FTC-Revised-Uber-Settlement.pdf>; Comments of EPIC, *In the Matter of Paypal, Inc.* FTC File No. 162-3102, (Mar. 29, 2018), <https://epic.org/apa/comments/EPIC-FTC-PayPal-ConsentOrder.pdf>; *In the Matter of Google Inc.* (Complaint, Request for Investigation, Injunction, and Other Relief), July 31, 2017, <https://www.epic.org/privacy/ftc/google/EPIC-FTC-Google-Purchase-Tracking-Complaint.pdf>; *In the Matter of Genesis Toys and Nuance Communications* (Complaint and Request for Investigation, Injunction, and Other Relief), Dec. 6, 2016, <https://epic.org/privacy/kids/EPIC-IPR-FTC-Genesis-Complaint.pdf>.

⁶ See Order at 5 ("Covered Consumer' means all consumers known to Respondent, as of the effective date of this Order, who enrolled in a Covered Product after initially declining to grant Respondent access to their email accounts.").

I. The FTC has a legal obligation to consider public comments prior to finalizing any consent order.

The Administrative Procedure Act requires that the Commission take public comments before finalizing any consent order and gives the Commission authority to modify an agreement based on received comments.⁷ EPIC has previously submitted many comments to the Commission on preliminary consent orders, subject to public review, that implicate the privacy interests of consumers.⁸ EPIC set out recommendations that would have established stronger data protection safeguards for consumers, consistent with the purpose of the settlement. The Commission recently adopted some of EPIC's recommendations in a consent order, and EPIC hopes to persuade the Commission to do so again.⁹ Accordingly, EPIC offers these recommendations on the Unrollme settlement to strengthen the proposed settlement and to protect the interests of Unrollme users. EPIC reminds the Commission that its authority to solicit public comment is pursuant to agency regulations, and the Commission has clear authority to modify a consent order. Commission Rules of Practice, 16 C.F.R. § 2.34 states:

(c) Public comment. Promptly after its acceptance of the consent agreement, the Commission will place the order contained in the consent agreement, the complaint, and the consent agreement on the public record for a period of 30 days, or such other period as the Commission may specify, for the receipt of comments or views from any interested person.

⁷ Administrative Procedure Act, 5 U.S.C. § 552 (2012); FTC Consent Order Procedure, 16 C.F.R. § 2.34(c), (e)(2) (2019).

⁸ See, e.g., Comments of EPIC, *In the Matter of Aleksandr Kogan and Alexander Nix*, FTC File No. 182 3106 & 1823107 (Sept. 3, 2019), <https://epic.org/apa/comments/EPIC-FTC-CambridgeAnalytica-Sept2019.pdf>; Comments of EPIC, *In the Matter of Snapchat, Inc.*, FTC File No. 132 3078 (June 9, 2014), <https://epic.org/apa/comments/FTC-Snapchat-Cmts.pdf>; Comments of EPIC, *In the Matter of Myspace LLC*, FTC Docket No. 102 3058 (June 8, 2012), <https://epic.org/privacy/socialnet/EPIC-Myspace-comments-FINAL.pdf>; Comments of EPIC, *In the Matter of Facebook, Inc.*, FTC Docket No. 092 3194 (Dec. 27, 2011), <https://epic.org/privacy/facebook/Facebook-FTC-Settlement-Comments-FINAL.pdf>; Comments of EPIC, *In the Matter of Google*, FTC Docket No. 102 3136 (May 2, 2011), https://epic.org/privacy/ftc/googlebuzz/EPIC_Comments_to_FTC_Google_Buzz.pdf.

⁹ See Comments of EPIC, *In the Matter of Uber Technologies, Inc.*, FTC File No. 152-3054, (May 14, 2018), <https://epic.org/apa/comments/EPIC-FTC-Revised-Uber-Settlement.pdf>; Comments of EPIC, *In the Matter of Uber Technologies, Inc.*, FTC File No. 152-3054, (Sep. 15, 2017), <https://epic.org/apa/comments/EPIC-FTC-Uber-Settlement.pdf>.

(e) Action following comment period.

(2) The Commission, following the comment period, may determine, on the basis of the comments or otherwise, that a Final Decision and Order that was issued in advance of the comment period should be modified. Absent agreement by respondents to the modifications, the Commission may initiate a proceeding to reopen and modify the decision and order in accordance with § 3.72(b) of this chapter or commence a new administrative proceeding by issuing a complaint in accordance with § 3.11 of this chapter.¹⁰

Failure by the Commission to pursue modifications to proposed orders pursuant to public comment would therefore reflect a lack of diligence on the part of the Commission. Even if the Commission decides not to modify the settlement, it must provide a “reasoned response.”¹¹

II. The FTC Complaint and Consent Order identify unfair and deceptive practices by Unrollme and Slice in violation of federal law.

A. *The Commission has identified significant deceptive acts or practices, statements, and privacy violations made by Unrollme and Slice.*

The FTC Complaint details numerous, significant unfair and deceptive acts and practices by Unrollme, and its parent company Slice, concerning the collection and use of personal data.¹² Unrollme made false and misleading statements in order to gain their users’ trust and ultimately gain access to their personal emails, including e-receipts.¹³ The company directed these deceptive statements at its users in a coordinated and systematic way.¹⁴ Prior to May 2017, when users declined to grant Unrollme access to their email account during registration, those users were directed to reregister in multiple ways, which included repetitive messaging purportedly to allay their privacy concerns.¹⁵ This messaging consisted of deceptive statements used to induce

¹⁰ 16 C.F.R. § 2.34(c), (e)(2).

¹¹ See *Interstate Nat’l Gas Ass’n of Am. v. F.E.R.C.*, 494 F.3d 1092, (D.C.C. 2007); see e.g., Response of FTC Secretary Donald S. Clark to EPIC, *In the Matter of Google, Inc.*, File No. 102 3136, Docket No. C-4336 (Oct. 13, 2011), <https://www.ftc.gov/sites/default/files/documents/cases/2011/10/111024googlebuzzepic.pdf>.

¹² FTC, *In the Matter of Unrollme, Inc.*, (Complaint), FTC, File No. 172 3139 (Aug. 8, 2019), https://www.ftc.gov/system/files/documents/cases/172_3139_unrollme_complaint_8-8-19.pdf;

¹³ Complaint ¶ 10.

¹⁴ *Id.* ¶¶ 10–15.

¹⁵ *Id.*

Unrollme users to reregister and grant the company access to their email accounts.¹⁶

Additionally, when users contacted customer support about the company’s access to their email, they were told that Unrollme “does not touch [their] private emails.”¹⁷ Unrollme deployed these false and deceptive tactics to obtain access to user email accounts.¹⁸ Over 55,000 consumers were induced to complete the sign-up process and grant the company access to their email accounts after viewing some version of deceptive statements made by Unrollme.¹⁹ The company’s failure to disclose their collection of “personal emails in the form of e-receipts” and subsequently sell the information to third parties was “material to consumers in their decision to use Unrollme’s services.”²⁰

Unrollme established a false sense of trust with its userbase in order to gain access to their email accounts, which allowed the company to access, store, and sell their personal information.²¹ As the FTC describes in its Complaint, “Unrollme’s parent company, Slice, was actually accessing and collecting the entire body of consumers’ e-receipts for the purpose of selling purchase information contained therein.”²² “Unrollme’s failure to disclose . . . material information” that could affect consumers’ decisions not to use their service²³ “constitute unfair or

¹⁶ *Id.*

¹⁷ *Id.* ¶ 15.

¹⁸ *Id.* ¶ 10.

¹⁹ *Id.* ¶ 14. Over 20,000 consumers who initially declined to register were induced to register after viewing one of the following two messages from Unrollme: (1) “It looks like you clicked No thanks. In order to use Unroll.me, you need to tell Google to allow us to monitor your emails. Don’t worry, we won’t touch your personal stuff.”; and (2) “Authorization Declined In order to use Unroll.me, you need to authorize us to access your emails. Don’t worry, this is just to watch for those pesky newsletters, we’ll never touch your personal stuff.” Over 35,000 consumers who initially declined to register were induced to register after viewing the following message: “Oops! Looks like you declined access” “Unroll.Me requires access to your inbox so we can scan for subscriptions and allow you to begin clearing out your inbox.” *Id.* ¶¶ 11–14.

²⁰ *Id.* ¶ 20.

²¹ *Id.* ¶ 15.

²² *Id.*

²³ *Id.* ¶ 20.

deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.”²⁴

- B. *The Consent Order prohibits future misrepresentations, requires notifications to certain users, and deletion of certain users’ data.*

The Commission’s Consent Order imposes the following requirements:

- Unrollme may not misrepresent its data access, collection, use, storage, and sharing of its users’ emails and information.²⁵
- Unrollme must directly notify by email all active Covered Consumers about how the company uses and shares their information.²⁶
- Unrollme must delete all Covered Information collected from Covered Consumers who enrolled in a Covered Product prior to June 1, 2017 from the company’s “commercial production systems.”²⁷
- Unrollme must submit to the Commission an acknowledgement of receipt of the Order and deliver copies to certain company officers, managers, and employees, as well as provide signed and dated acknowledgements of receipt of the Consent Order.²⁸
- Unrollme must submit compliance reports to the FTC.²⁹

²⁴ *Id.* ¶ 22.

²⁵ Order at 6.

²⁶ *Id.* at 6; *see id.* at Ex. A.

²⁷ *Id.* at 6; *see id.* at 5 (“‘Consumer Email’ means any message to or from a consumer that is sent electronically via a network to a unique email address, and includes any subpart thereof and the content of the communication. . . . ‘Covered Product’ means any product, service or software operated, owned or distributed by Respondent that requires access to Consumer Emails. . . . ‘Covered Information’ means personally identifiable information from or about an individual consumer, including: (a) a first and last name; (b) a physical address or precise geolocation; (c) an email address or other online contact information, such as an instant messaging user identifier or an individual’s screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license or other government-issued identification number; (g) a financial institution account number; (h) credit or debit card number; or (i) a persistent identifier, such as a unique customer number held in a “cookie,” a static Internet Protocol (“IP”) address, a mobile device ID, or processor serial number.”).

²⁸ *Id.* at 6, 7.

²⁹ *Id.* at 7.

- Unrollme must create and retain certain records including accounting records, personnel records, consumer complaint records, and records that demonstrate Unrollme’s compliance with the Consent Order.³⁰
- Unrollme must submit additional compliance reports or other requested information upon written request from a representative from the FTC.³¹

III. The Consent Order should be modified to require Unrollme to notify its entire userbase, delete all inactive user data, define “commercial production systems,” and require reauthorization from all active users.

EPIC supports the findings of the Commission and the proposed recommendations, particularly the requirement for Unrollme to delete user data improperly obtained. However, the proposed Consent Order is insufficient to protect the privacy of consumers and current Unrollme users. EPIC urges the Commission to make the following modifications.

- A. *Require Unrollme to notify its entire userbase and to communicate a more comprehensive message that informs users of the company’s deceptive practices.*

The FTC should require Unrollme to notify its entire userbase, including inactive users. Provision II of the Commission’s Consent Order provides criteria for specific Unrollme users that will receive the FTC’s required notification; however, the language provided in this provision is unclear and potentially excludes a significant population of Unrollme’s userbase that has a right to understand the company’s data access, collection, use, storage, and sharing practices and policies. Additionally, the Commission makes the assumption that only Covered Consumers or users that have had their email purchase receipts used in market research products or sold to third parties might have made an alternate choice when granting Unrollme’s access to their email accounts. Unrollme misrepresented its data practices to *all* users registering for its

³⁰ *Id.*

³¹ *Id.* at 8.

service prior to May 2017 by failing to “state anywhere on its homepage, in its ‘frequently asked questions’ webpage, or *on any screen displayed to consumers during the signup process . . .* that Unrollme or its parent company, Slice, would collect, maintain, or sell information from users’ e-receipts.”³² Further, users “were not required to view the privacy policy” during the signup process, and some who did “reported that they found it confusing.”³³ This goes beyond the limitation set in the Provision regarding the sharing of users’ e-receipt information and reiterates the effect of Unrollme’s misrepresentations to all of its users.³⁴ As such, *all* users should be notified.

In addition, the required notification in Exhibit A of the Order falls short of the concern the Commission sets out to address, that Unrollme failed to disclose material information to its users during the signup process, thereby engaging in unfair or deceptive acts or practices.³⁵ Merely notifying consumers of Unrollme’s current information usage and sharing practices is not enough. EPIC has provided a proposed modification to the required notification in Exhibit 1 of these comments.

B. *Require Unrollme to delete all inactive user data, in addition to all Covered Consumer data, and define “commercial production systems.”*

EPIC supports the FTC’s requirement to delete all Covered Consumer data in their commercial production environment; however, there are significant gaps that must be addressed. The FTC should require Unrollme to delete all inactive user data, as well as define “commercial production systems” in its Consent Order to include Unrollme and Slice’s entire ecosystem.

³² Complaint ¶ 8 (emphasis added).

³³ *Id.* ¶ 9.

³⁴ *Id.*

³⁵ *Id.* ¶¶ 20, 21.

While Unrollme may no longer have access to inactive user email accounts, this does not necessarily mean that Unrollme does not still use, store, share, or sell inactive user information.³⁶ Because inactive users have gone so far as to remove Unrollme’s access to their email, many may have done so because of the public concern that arose from Unrollme’s mishandling of user data.³⁷ It is particularly important to ensure that these users have their information deleted because but for being inactive, they may fall within the definition of a Covered Consumer. Users’ motivation to deactivate their accounts aside, the company should respect users’ decision to end their relationship with the company and delete all of their information.

Importantly, Provision III of the Consent Order specifies that user data must be deleted from Unrollme and Slice “commercial production systems.” This is ambiguous. The Commission should define “commercial production systems” in its Consent Order definitions and ensure that the definition includes all testing, staging, and backup environments in the Unrollme and Slice ecosystems. EPIC urges the Commission to consider the appropriate scope of user information that Unrollme and Slice should be required to delete to protect consumers.

C. *Require Unrollme to deauthorize its access to all user email accounts and obtain reauthorization from all active users.*

The FTC should require Unrollme to deauthorize its access to all user email accounts and obtain reauthorization from all active users before it should be allowed to continue to collect their personal information. Under the current version of the Commission’s Order, only active Covered Consumers will have their Covered Information deleted; however, this does nothing to

³⁶ See Alfred Ng, *Facebook still tracks you after you deactivate account – Deactivation does nothing for your privacy*, CNET (April 9, 2019), <https://www.cnet.com/news/facebook-is-still-tracking-you-after-you-deactivate-your-account/>.

³⁷ See Kari Paul, *Customers revolt after discovering Unroll.Me is selling their data to Uber* (April 25, 2017), <https://www.marketwatch.com/story/customers-revolt-after-discovering-unrollme-is-selling-their-data-2017-04-24>; Mike Isaac & Steve Lohr, *Unroll.me Service Faces Backlash Over a Widespread Practice: Selling User Data* (April 24, 2017), <https://www.nytimes.com/2017/04/24/technology/personal-data-firm-slice-unroll-me-backlash-uber.html>.

protect consumers that were targeted by Unrollme’s deceptive practices to obtain them as users. As stated above, *all* users registering for the company’s service prior to May 2017 were subject to some form of misrepresentation made by Unrollme, not only Covered Consumers.

Although Unrollme is required to notify Covered Consumers of its current data practices, the notice in its current form does nothing to notify current users that Unrollme has been engaged in deceptive practices. Further, notification will “only help a very small number of users who choose to read [such] policies,”³⁸ and most users will ignore or delete the notification while Unrollme and Slice continue to collect data from consumers whose consent was obtained by deceit. To resolve this, Unrollme and Slice should be required to deauthorize its access to all active user email systems and be required to obtain reauthorization from its entire userbase, and only after viewing the company’s current privacy policy. This will ensure that Unrollme and Slice are collecting information only from users who were not subject to the company’s false and deceptive statements.

At a minimum, the Commission should require Unrollme to obtain reauthorization from all Covered Consumers, if not all users, because there is a significant gap in the Consent Order which will allow the company to passively continue its improper data collection practices without any repercussions.

IV. The Statement of Commissioner Noah Joshua Phillips on notice and choice misunderstands the basis of privacy protection

Commissioner Phillips’s wrote separately that Unrollme “supported this free service by allowing its parent company to scan consumers’ emails for purchase-related information, which

³⁸ Nat’l Telecomms. & Info. Admin., U.S. Dep’t. Commerce, *Developing the Administration’s Approach to Consumer Privacy*, Request for Comments, Docket No. 180821780-8780-01 (Oct. 11, 2018), <https://www.federalregister.gov/documents/2018/09/26/2018-20941/developing-the-administrations-approach-to-consumer-privacy>.

the parent collected for the anonymized market research it sells.”³⁹ This is misleading because after the public learned that Unrollme monetized its users’ personal emails, other options for similar services, but with privacy enhancing techniques, were released.⁴⁰

Additionally, Commissioner Phillips contends that certain industry practices, such as recent actions by Google to restrict third-party access to Gmail accounts, and possibly this Consent Order, have a negative impact on consumer choice and competition.⁴¹ EPIC reminds Commissioner Phillips that notice and choice is antithetical to privacy protection.⁴² As the NTIA recently stated, these policies “have resulted primarily in long, legal, regulator-focused privacy policies and check boxes, which only help a very small number of users who choose to read these policies and make binary choices.”⁴³ These privacy notices fulfill the same purpose as terms and conditions; they disclaim liability for the company’s future conduct.

Privacy protection in United States law is based on “Fair Information Practices” (“FIPs”) that allocate rights to data subjects and responsibilities to those entities who choose to collect and use personal data.⁴⁴ A rights-based system: (1) provides transparency of how user information is

³⁹ FTC, *Unrollme, Inc.; Analysis to Aid Public Comment*, 84 Fed. Reg. 43,133, 43,134 (Aug. 20, 2019), <https://www.federalregister.gov/documents/2019/08/20/2019-17815/unrollme-inc-analysis-to-aid-public-comment>.

⁴⁰ E.g., Amit Agarwal, *How to Unsubscribe from Mailing Lists and Junk Newsletters in Gmail*, DIGITAL Inspiration (April 25, 2017), <https://www.labnol.org/internet/gmail-unsubscribe/28806/> (explaining that “all legitimate bulk email senders include a ‘List-Unsubscribe’ field in the message header,” and how consumers can create and use an open source Google script to manage email subscriptions for free).

⁴¹ FTC, *Unrollme, Inc.; Analysis to Aid Public Comment*, 84 Fed. Reg. 43,134 (Aug. 20, 2019), <https://www.federalregister.gov/documents/2019/08/20/2019-17815/unrollme-inc-analysis-to-aid-public-comment>; cf. Andy Wen, *Evaluating user trust in our API ecosystem*, GOOGLE CLOUD PROD. NEWS (Oct. 8 2018), <https://cloud.google.com/blog/products/g-suite/elevating-user-trust-in-our-api-ecosystems> (“3rd-party apps accessing [Google] APIs must use the data to provide user-facing features and may not transfer or sell the data for other purposes such as targeting ads, market research, email campaign tracking, and other unrelated purposes.”).

⁴² See Marc Rotenberg, *Fair Information Practices and the Architecture of Privacy (What Larry Doesn’t Get)*, 2001 STAN. TECH. L. REV. 1 (2001), <https://epic.org/Rotenberg-FIPS.pdf>.

⁴³ Nat’l Telecomms. & Info. Admin., U.S. Dep’t. Commerce, *Developing the Administration’s Approach to Consumer Privacy*, Request for Comments, Docket No. 180821780-8780-01 (Oct. 11, 2018), <https://www.federalregister.gov/documents/2018/09/26/2018-20941/developing-the-administrations-approach-to-consumer-privacy>; see Comments of EPIC, *Developing the Administration’s Approach to Consumer Privacy*, Docket No. 180821780-8780-01 (Nov. 9, 2018), <https://epic.org/apa/comments/EPIC-NTIA-Nov2018.pdf>.

⁴⁴ See Privacy Act of 1974, 5 U.S.C. § 522a (2012); Video Privacy Protection Act of 1988, 18 U.S.C. § 2710 (2012).

collected, stored, used, and shared; (2) allows users to reasonably exercise control how their data is collected, stored, used, shared and disclosed to organizations; (3) requires organizations to reasonably minimize data collection storage length, use, and sharing to reduce privacy harm risks to consumers; (4) maintains strict security safeguards when handling user data; (5) allows users to access provided information to organizations, as well as amend or delete their own data; (6) requires organizations to mitigate risks when handling user data; and (7) holds organizations externally accountable for the mishandling of their users' data.⁴⁵

Moreover, the FIPs approach is economically more efficient, as it acknowledges the “information asymmetry” that arises in the collection of personal data, and allocates the responsibility to protect personal data to the party in the best position to minimize the risk, i.e. “the least cost avoider.”

Continued support for “notice and choice” will only contribute to further erosion of privacy protection for American consumers. However, if the Commissioner is genuinely concerned about restoring consumer choice and competition for Internet services, then unwinding the Facebook-WhatsApp merger, as EPIC has repeatedly urged,⁴⁶ would be a good place to start.

VI. Conclusion

The Commission should require Unrollme to notify its entire userbase about its current business practices concerning the collection and use of personal data and also describe its settlement with the FTC and the deceptive practices that took place when it sold its users'

⁴⁵ See Comments of EPIC, *Developing the Administration's Approach to Consumer Privacy*, Docket No. 180821780-8780-01 (Nov. 9, 2018), <https://epic.org/apa/comments/EPIC-NTIA-Nov2018.pdf>.

⁴⁶ EPIC, *Open Markets, Civil Rights Groups Press FTC on Facebook Consent Order* (Jan. 23, 2019), <https://epic.org/2019/01/epic-open-markets-civil-rights.html>; see also Marc Rotenberg, *The Facebook-WhatsApp Lesson: Privacy Protection Necessary for Innovation*, *TECHONOMY* (May 4, 2018), <https://techonomy.com/2018/05/facebook-whatsapp-lesson-privacy-protection-necessary-innovation/>.

personal information to third parties. Additionally, Unrollme should be required to delete all inactive user data along with the required Covered Consumer data and define “commercial production systems” to include the entire Unrollme and Slice ecosystem. Finally, Unrollme should be required to obtain reauthorization from all Unrollme users before they are allowed to continue to collect their information.

The FTC has a legal obligation to consider these comments before finalizing the order with Unrollme and must also provide a reasoned response if it fails to modify the order as above. EPIC urges the Commission to adopt the changes to the proposed Order set out above.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Christine Bannan

Christine Bannan
EPIC Consumer Protection Counsel

/s/ W. Hunter Daley

W. Hunter Daley
EPIC Law Clerk

EXHIBIT 1

[To appear with Unrollme logo]

Dear [Customer]:

Recently, we entered into a consent agreement with the Federal Trade Commission (FTC) because we were unclear with our customers about how we were collecting and sharing your personal data. As part of that agreement we have been ordered to update our customers on how we use and share your information. We collect information from transaction-related emails that you receive, which oftentimes includes your personal information. The types of transaction-related emails we collect your information from include:

- receipts for things you bought
- receipts for things you sold
- confirmation notifications for deliveries and returns
- confirmation emails when you register or cancel registration
- summaries of your transactions

We **do** collect and store your personal information (which can include, among other things, your name, shipping address, billing address, credit card information, and information about sensitive health-related products or services, or other products and services purchased by you), and later remove your personal information from those transaction-related emails. The transaction-related information is then used to develop market research reports which we sell to Fortune 500 companies, household name brands, investment companies and other businesses. These companies may use the reports to learn about customer trends in their industries or for other business purposes.

You can learn about how we collect and use your information by [reading our privacy policy](#). Please contact us at privacy@unroll.me if:

- you have any questions or comments about this privacy policy
- you'd like us to update your information
- you'd like us to update your preferences
- you need help deleting your Unroll.me account

If you want to delete your Unroll.me account, see our [FAQ](#) for instructions.