

August 17, 2018

Chairman Joseph J. Simons
Commissioner Maureen K. Ohlhausen
Commissioner Noah Joshua Phillips
Commissioner Rohit Chopra
Commissioner Rebecca Kelly Slaughter
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons and Commissioners Ohlhausen, Phillips, Chopra, and Slaughter:

The Associated Press reported this week that Google tracks user location even when users of the service explicitly opt-out of tracking.¹ Instead of ending the practice, Google simply revised its policy so that it could continue to track Internet users.²

This clearly violates Google's 2011 settlement with the FTC.³ Google is not permitted to track users after they have made clear in their privacy settings that they do not want to be tracked. This privacy violation affects all Android users and iPhone users who use Google Maps or search. EPIC urges the Commission to enforce its Order and hold Google accountable.

If a user disables "Location History," Google apps will still automatically store time-stamped location data without obtaining consent from the user. Pausing this setting only prevents Google from aggregating your location data and visualizing it in a timeline. To stop Google from saving other location markers, users must disable a setting under "Web and App Activity" that does not mention location information. This violates Section I.A.2 of the consent order:⁴

I. IT IS ORDERED that respondent, in or affecting commerce, shall not misrepresent

¹ Ryan Nakashima, *AP Exclusive: Google tracks your movements, like it or not*, AP News (Aug. 13, 2018), <https://www.apnews.com/828aefab64d4411bac257a07c1af0ecb>; see also Hayley Tsukayama, *How to track where Google's tracking you*, The Washington Post (Aug. 15, 2018) ("Turning off the location tracking on your phone isn't enough to stop Google from receiving any information about where you are, an [Associated Press investigation revealed this week.](#)"), https://www.washingtonpost.com/technology/2018/08/15/how-track-where-googles-tracking-you/?utm_term=.9d95b530514c

² Chaim Gartenberg, *Google updated its site to admit it still tracks you even if you turn off Location History*, Fortune (Aug. 17, 2018) ("some location data may be saved"), <https://www.theverge.com/2018/8/17/17715166/google-location-tracking-history-weather-maps>

³ The 2011 settlement followed a detailed complaint brought to the FTC by EPIC and a coalition of consumer organizations. The groups charged that Google had engaged in unfair and deceptive trade practices when it changed the privacy settings of Gmail users and opted them into Google Buzz, a service Google launched to compete with Facebook. The FTC agreed with the consumer groups, Google entered into a settlement and Buzz was discontinued.

⁴ *In the Matter of Google, Inc.*, Decision and Order, Docket No. C-4336 (Oct. 13, 2011), <https://www.ftc.gov/sites/default/files/documents/cases/2011/10/111024googlebuzzdo.pdf>.

in any manner, expressly or by implication:

A. the extent to which respondent maintains and protects the privacy and confidentiality of any covered information, including, but not limited to, misrepresentations related to:

- (1) the purposes for which it collects and uses covered information, and
- (2) the extent to which consumers may exercise control over the collection, use, or disclosure of covered information.

Google has misrepresented the extent to which users have control over the location data that the company has already acquired. A user who turned off the “Location History” setting believed that Google would no longer store their location information. And Google’s subsequent changes to its policy, *after it has already obtained location data on Internet users*, fails to comply with the 2011 order. The company cannot retroactively “change the terms of the bargain.” If the company wishes to revise its policies, it may in some circumstances, do so prospectively. But to acquire user data under one representation and then to use that same data for a purpose that is clearly in conflict is a “bait and switch,” plain and simple.

Google has engaged in many unfair and deceptive practices over the years. EPIC has consistently urged the FTC to exercise its full authority in protecting consumers, and even sued in 2012 to get the FTC to enforce its consent order against Google.⁵ Recently, EPIC and a coalition of consumer organizations sent a letter to the FTC about recent tactics by Facebook and Google to trick users into disclosing personal data.⁶ EPIC has filed many complaints with the FTC about Google, including: the tracking of in-store purchases,⁷ the integration of the Google+ social network with search results,⁸ the skewing of search results to favor its own content,⁹ failure to safeguard confidential information in its Cloud Computing Services,¹⁰ and the proposed acquisition of DoubleClick.¹¹

At the time of the 2011 settlement with Google, then FTC Chairman John Liebowitz said, “[w]hen companies make privacy pledges, they need to honor them. This is a tough settlement that ensures that Google will honor its commitments to consumers and build strong privacy protections

⁵ EPIC v. FTC (Enforcement of the Google Consent Order), <https://epic.org/privacy/ftc/google/consent-order.html>.

⁶ Consumer Privacy Organizations, Letter on “Deceived by Design,” (June 27, 2018), <https://thepublicvoice.org/wp-content/uploads/2018/06/FTC-letter-Deceived-by-Design.pdf>.

⁷ *In the Matter of Google Purchase Tracking*, Complaint and Request for Injunction, Request for Investigation and for Other Relief (July 31, 2017), <https://epic.org/privacy/ftc/google/EPIC-FTC-Google-Purchase-Tracking-Complaint.pdf>.

⁸ Letter from EPIC, Changes to Google Search (Jan. 12, 2012), <https://epic.org/privacy/EPIC-FTC-Google-Search-letter.pdf>.

⁹ Letter from EPIC, *Google Search Techniques, the Acquisition of YouTube, and Public Access to Information* (Sept. 8, 2011), https://epic.org/privacy/ftc/google/Google_FTC_Ltr_09_08_11.pdf.

¹⁰ *In the Matter of Google, Inc. and Cloud Computing Services*, Complaint and Request for Injunction, Request for Investigation and for Other Relief (March 17, 2009), <https://epic.org/privacy/cloudcomputing/google/ftc031709.pdf>.

¹¹ *In the Matter of Google, Inc. and DoubleClick* (April 20, 2007), https://epic.org/privacy/ftc/google/epic_complaint.pdf.

into all of its operations."¹² As Chairman Simons has recently stated, a “first priority for the Commission” will be “vigorous enforcement.”⁶ And Commissioner Chopra’s memo on repeat offenders correctly stated that “FTC orders are not suggestions.”¹³ But if the FTC does not enforce its Order, Google will perceive it as a suggestion.

The FTC’s failure to enforce its Consent Orders places American consumers at risk. The Commission’s inactions have made the Internet less safe and less secure for users and consumers. This is an opportunity for the FTC to make clear that the Commission will stand behind its judgements.

Sincerely,

/s/ Marc Rotenberg
Marc Rotenberg
EPIC President

/s/ Christine Bannan
Christine Bannan
EPIC Consumer Privacy Counsel

¹² Federal Trade Commission, *FTC Charges Deceptive Privacy Practices in Googles Rollout of Its Buzz Social Network: Google Agrees to Implement Comprehensive Privacy Program to Protect Consumer Data* (Mar. 30, 2011), <https://www.ftc.gov/news-events/press-releases/2011/03/ftc-charges-deceptive-privacy-practices-googles-rollout-its-buzz>

¹³ Commissioner Rohit Chopra, Repeat Offenders, Memorandum 2018-01 (May 14, 2018) at 3, <https://epic.org/privacy/ftc/Rohitmemo.pdf>.