

United States of America  
FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580

Office of the Secretary

April 30, 2013

Mr. Mark Sokolow  
State of Texas

Re: In the Matter of Filiquarian Publishing, LLC; Choice Level, LLC; and Joshua Linsk, individually and as an officer of the companies  
File No. 112 3195, Docket No. 401

Dear Mr. Sokolow

Thank you for your comment on the Federal Trade Commission's consent agreement in the aboveentitled proceeding. The Commission has placed your comment on the public pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment concerns the relief sought in the Commission's proposed consent order. First, you note that the proposed consent order does not demand civil penalties or the recovery of attorney fees. The Commission is authorized to use a variety of enforcement powers, including the ability to seek civil penalties, attorney fees and injunctive relief, to ensure compliance with the Fair Credit Reporting Act ("FCRA"). See § 621(a) of the FCRA, 15 U.S.C. § 1681s(a). The Commission may seek civil penalties in the event of a "knowing violation which constitutes a pattern or practice of violations." To that end, and as specified by the FCRA, the Commission considered whether the alleged violations were knowing and constituted a pattern or practice of violations. The Commission also considered the factors set forth in sections 621(A)(2)(A) and (B) of the FCRA for determining the amount of a civil penalty, including respondent's degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. After considering all of these factors and the facts of this case, the Commission determined that the injunctive provisions contained in the order, without civil penalties, provide the appropriate level of relief under the circumstances.

The proposed consent order includes several provisions intended to ensure that respondents will not engage in the future in practices similar to those alleged in the complaint. Principally, the proposed order demands injunctive relief that will bar respondents from (a) furnishing a consumer report to anyone they do not have reason to believe has a "permissible purpose" to use the report, (b) failing to take reasonable steps to ensure the maximum possible accuracy of the information conveyed in the reports, and (c) failing to provide users of their reports with information about their obligations under the FCRA. The proposed order will be in effect for a term of 20 years if respondents, or any of their successors or assigns, violate the terms of the Commission's final order during that time they would be liable for civil monetary penalties of up to \$16,000 per violation, or up to \$16,000 per day in the case of continuing

violations, pursuant to Section 5(l) of the FTC Act. For a period of five years respondents are obliged to distribute copies of the order to all relevant principals, officers, directors and employees and to maintain and upon request make available to the Commission business records demonstrating their compliance with the terms and conditions of the order. The proposed order further mandates that respondents submit a compliance report to the FTC within 60 days service of the order and periodically thereafter as requested.

Second, you ask how Filiquarian obtained access to criminal records about consumer. The criminal records that were accessed by Filiquarian mobile apps were provided to respondent Filiquarian by respondent Choice Level. Records of arrests, indictments, convictions, suits, tax liens, and outstanding judgments relating to individual consumers are items of public record.

Finally, you ask whether any consumer has been harmed by Filiquarian's actions and recommend that if any consumer has been harmed, that consumer should receive some form of restitution. The Commission does not have information about particularized harm to individual consumers resulting from respondent's business practices. However, marketing and selling background screening reports to potential employers without implementing any of the accuracy or dispute safeguards required by the FCRA potentially exposes a large number of consumers to