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A comment filed in paper form should include the "Chitika, File No. 102 3087" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

Peder Magee (202-326-3538) or Tracy Shapiro (202-326-2343), FTC Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 14, 2010), on the

World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the section above, and must be received on or before the date specified in the section.

#### **Analysis of Agreement Containing Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Chitika, Inc. ("Chitika").

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.

Chitika is a network advertiser that engages in online behavioral advertising, the practice of tracking consumers' activities online in order to serve them targeted advertisements based upon their individual Web browsing activity. Chitika offers an online behavioral advertising service in which it acts as an intermediary between Web site publishers and advertisers that wish to have their advertisements placed on websites. Chitika tracks the searches a consumer has conducted, the websites visited, and the content viewed in order to serve advertising targeted to the individual consumer's interests. When a consumer visits a Web site within Chitika's network of Web site publishers, Chitika sets a new cookie or automatically receives a cookie it has previously set in the consumer's browser (the "Chitika tracking cookie"). Chitika uses cookies to serve advertisements to consumers that are targeted to their interests.

The Commission alleges that representations Chitika made in its privacy policy regarding consumers' ability to opt out of receiving tracking cookies were false or misleading. Chitika's privacy policy stated that consumers could opt out of receiving Chitika cookies. For those consumers who elected to opt out, Chitika set an "opt-out cookie" in the consumer's browser so that no additional cookies

would be set in the consumer's browser, no additional information would be added to a previously set Chitika tracking cookie, and the data previously placed in the cookie would no longer be used to target advertisements to the consumer. From at least May 2008 to February 28, 2010, however, Chitika delivered opt-out cookies that were set to expire after ten (10) days. Accordingly, the complaint alleges that Chitika deceived consumers and violated Section 5 of the FTC Act by making an unqualified claim that consumers could opt out of targeted advertising when the opt out expired in ten (10) days.

Part I of the proposed order prohibits Chitika from misrepresenting (1) the extent of its data collection about consumers and (2) the extent to which consumers are able to control the collection, use, or sharing of their data.

Part II of the proposed order requires Chitika to take a number of steps to improve the transparency of, and consumers' ability to control, its collection of consumer data for online behavioral advertising. First, within thirty (30) days after service of the proposed order, Chitika must place a clear and prominent notice with a hyperlink on the homepage of its Web site that states: "We collect information about your activities on certain websites to send you targeted advertisements. To opt out of Chitika's targeted ads, click *here*." The mechanism that Chitika provides to allow consumers to prevent Chitika from collecting information about them must remain in effect for a minimum of five (5) years. Within close proximity to the mechanism, Chitika must disclose: (1) That Chitika collects information about consumers' activities on certain websites to deliver targeted ads; (2) that by opting out, Chitika will not collect this information to deliver such ads; (3) consumers' current choice status (*i.e.*, whether opted in or opted out of tracking); and (4) that consumers' choice is specific to the browser they are using (*i.e.*, if they switch browsers or devices, they will have to opt out again).

Part II of the proposed order includes two additional provisions. First, for a period of one (1) year, near the notice and hyperlink discussed above, Chitika's homepage must state that: "If you opted out of our targeted ads before March 1, 2010, the opt-out has expired and you must opt out again to avoid targeted ads."

The final provision in Part II requires that within any behaviorally targeted advertisement that Chitika serves, it must include a hyperlink that takes consumers directly to the required choice mechanism. The hyperlink text

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must state: "Opt out?"