

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

November 27, 2018

Dear Chairman Simons and FTC Commissioners

Re: How Google manipulates users into constant location tracking.

On behalf of members of the Transatlantic Consumer Dialogue (TACD)¹, we are writing to urge you to investigate deceptive and misleading practices by Google. A new report² published today by the Norwegian Consumer Council (NCC) shows how Google manipulates and nudges users of mobile phones with the Android operating system, such as Samsung phones, into being constantly location-tracked through the Location History and Web & App Activity settings, which are applied into all Google accounts.

This research, entitled “Every Step You Take,” is a follow-up of the report “Deceived by Design”³, which was brought to your attention last June by nine of our members, leading consumer and privacy organizations in the United States. The letter urged the Federal Trade Commission (FTC) to “investigate the misleading and manipulative tactics of the dominant digital platform in the United States, which steer users to ‘consent’ to privacy-invasive default settings.”⁴

The new report focuses on location tracking settings. Location data and history can reveal in detail an individual’s lifestyle, daily routines and interests. Over time the data can be used to infer highly sensitive information such as religious beliefs, political views and sexual orientation. NCC’s report shows Android users are being manipulated into enabling Location History and Web & App activity settings, including through:

- **Deceptive click-flow.** The click-flow when setting up an Android device pushes users into enabling “Location History” without being aware of it.

¹ TACD is a forum of 78 EU and U.S. organizations working together since 1998 to promote the consumer interest in the EU and U.S. governments’ policymaking; its members are leading consumer and digital rights organisations in the U.S. and EU <http://tacd.org/about-tacd/>

² <https://www.forbrukerradet.no/undersokelse/no-undersokelsekategori/every-step-you-take>

³ <https://fil.forbrukerradet.no/wp-content/uploads/2018/06/2018-06-27-deceived-by-design-final.pdf>

⁴ <https://thepublicvoice.org/wp-content/uploads/2018/06/FTC-letter-Deceived-by-Design.pdf>

- **Hidden default settings.** When setting up a Google account, the Web & App activity settings are hidden behind extra clicks and enabled by default.
- **Misleading and unbalanced information.** Users are not given sufficient information when presented with choices and are misled about what data is collected and how it is used.
- **Repeated nudging.** Users are repeatedly asked to turn on “Location History” when using different Google services.
- **Lack of individual service choice.** Google bundles all features and turns on invasive location tracking even if a user wants just one feature with location, e.g. photos sorted that way.

Based on the report findings, several European consumer organizations consider Google to be in breach of the EU General Data Protection Regulation (GDPR) and have issued formal complaints to their national Data Protection Authorities. The complaints ask authorities to investigate the legitimacy of the legal basis and purposes for collection of location data, notably in relation to advertising purposes; and whether the design patterns and tricks used by Google to push consumers to share location data are compatible with the GDPR principles regarding fairness and transparency of processing, and data protection by design and default.

As highlighted in TACD’s member letter of June 27, 2018, the practices demonstrated by this new research, similar to those unearthed in the earlier “Deceived by Design” report, raise very important issues, and in particular whether such tactics constitute unfair and deceptive trade practices under Section 5 of the FTC Act. Consumer organizations in the U.S. have documented similar practices for the FTC in the past, notably the way Google opted users into Buzz. In that case, the FTC took action and found that the practice was unfair and deceptive.⁵

To our knowledge, no response has been given to TACD’s U.S. members’ previous requests for investigation of these U.S. technology giants that process the personal data of billions of people worldwide. Google has recently publicly supported introduction of federal level data protection legislation in the U.S.⁶ However, vast evidence shows the company does not practice what it preaches. As demonstrated by NCC’s report, Google is removing individuals’ control over their data by deceit.

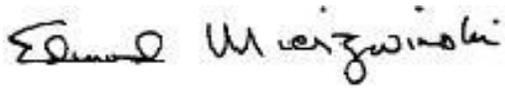
We hope that on the basis of this further evidence you will share our very serious concerns, and we once again urge you to thoroughly investigate the practices highlighted. In support of this request, please find attached an example of the Norwegian Consumer Council’s complaint to the Norwegian Data Protection Authority. The facts as described in this complaint apply to U.S. Android users as well, and this document should greatly assist the FTC in investigating whether

⁵ <https://www.ftc.gov/news-events/press-releases/2011/03/ftc-charges-deceptive-privacy-practices-googles-rollout-its-buzz>

⁶ <https://www.onetrust.com/icdppc-report-apple-google-facebook-and-microsoft-support-a-comprehensive-us-federal-privacy-law/>

Google has committed unfair and deceptive trade practices under Section 5 of the FTC Act. Please also find enclosed a Q & A factsheet regarding the findings of the new report.

Yours sincerely,



Edmund Mierzwinski
U.S. Co-Chair
Senior Director, Federal Consumer Programs
U.S. PIRG



Monique Goyens
EU Co-Chair
Director General, The European Consumer
Organisation (BEUC)

Cc: Maneesha Mithal, Director, Division of Privacy and Identity Protection