

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Chair Lina M. Khan
Commissioner Rebecca Kelly Slaughter
Commissioner Alvaro M. Bedoya
Commissioner Melissa Holyoak
Commissioner Andrew Ferguson

FTC Matter No. #P246202

ORDER TO FILE A SPECIAL REPORT

Pursuant to a resolution of the Federal Trade Commission (“FTC” or “the Commission”) dated July 19, 2024, entitled “Resolution Directing the Use of Compulsory Process Regarding Surveillance Pricing Involving Intermediary Companies” a copy of which is enclosed, [COMPANY] is ordered to file with the Commission, no later than 45 days after date of service, a Special Report containing the information and Documents specified herein.

The Commission is seeking information concerning surveillance pricing involving intermediary companies. The Special Report will assist the Commission in conducting a study of how these companies develop and deploy surveillance pricing products and services for consumers.

The Special Report is required to be subscribed and sworn by an official of [COMPANY] who has prepared or supervised the preparation of the report from books, records, correspondence, and other data and material in your possession. Your written report should restate each item of this Order with which the corresponding answer is identified. If any question cannot be answered fully, give the information that is available and explain in what respects and why the answer is incomplete. The Special Report and all accompanying documentary responses must be Bates-stamped.

[COMPANY] is required to respond to this Order using information in [COMPANY]'s possession, custody, or control, including information maintained in a central data repository to which [COMPANY] has access. [COMPANY] should not forward this Order to separately incorporated subsidiaries or affiliates. [COMPANY] should not seek any responsive information and data from separately incorporated subsidiaries or affiliates or from individuals (other than in their capacity as [COMPANY]'s employee or as [COMPANY]'s agent). However, [COMPANY] should provide information relating to separately incorporated subsidiaries or affiliates if [COMPANY] already has possession, custody, or control of such information. No later than 14 days from the date of service, [COMPANY] should contact Commission staff and indicate whether all of the information required to respond to this Order is in [COMPANY]'s possession, custody, or control. If certain information is not in [COMPANY]'s possession, custody, or control, no later than 14 days from the date of service, [COMPANY] also must: (1) Identify, both orally and in writing, each question or sub-question that [COMPANY] is not able to fully answer because information is not in [COMPANY]'s possession, custody, or control, and (2) for each, provide the full names and addresses of all entities or individuals who have possession, custody, or control of such missing information.

Confidential or privileged commercial or financial information will be reported by the Commission on an aggregate or anonymous basis, consistent with Sections 6(f) and 21(d) of the FTC Act. Individual submissions responsive to this Order that are marked “confidential” will not be disclosed

without first giving the Company ten (10) days' notice of the Commission's intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act.

Specifications

1. List each User Segmentation Solution or Targeted Pricing Solution produced, developed or in development, licensed in, from, or out, to a third party, sold or provided by the Company in the United States, and, for each:
 - a. describe in detail the Solution, including its intended uses, technical approach and design (e.g., type of algorithmic model used), features, and data inputs;
 - b. submit materially different copies of all Promotional Material; and
 - c. submit documents sufficient to show the Company's plans, business strategies, research and development efforts, product or service roadmaps, and competitive positioning.

2. For each User Segmentation Solution or Targeted Pricing Solution:
 - a. describe and list in detail all internal and external data sources used by the Solution;
 - b. for each data source identified in subpart (a), describe in detail the data collection method for the data source, including any platform used to collect data, how the platform obtains or collects data, how long the data is retained for, and whether the data are collected by the Company, a Data Broker, a Business Customer, or other third party;
 - c. for each externally collected data source identified in subpart (a), provide the name and contact information of the external party, explain how much the Company pays for the data, and submit materially different copies of each data sharing agreement between the Company and the external party;
 - d. describe in detail and submit documents sufficient to show any due diligence or oversight the Company performs in the selection or monitoring of internal and external data sources to ascertain or verify whether the data source has provided notice to consumers and obtained consumers' consent for the disclosure of their personal data to the Company and/or the use of their personal data in a User Segmentation Solution or Targeted Pricing Solution;
 - e. submit a complete data map, including all data fields utilized by any training model, algorithm, or other component;
 - f. for each data field identified in subpart (e), explain:
 - i. which entity provides the data, including but not limited to the Company, the Business Customer, the Individual Consumer, or another party or data source,
 - ii. whether the data field is required and how the Solution handles missing data,
 - iii. whether the data is altered from its original source, the method used to alter the data (e.g. censored, anonymized, aggregated, top-coded), and why the data is altered,
 - iv. whether the data are proprietary to the provider,
 - v. any efforts taken to comply with data sharing agreements, and
 - vi. retention period for the data field.
 - g. describe in detail, and submit technical documentation sufficient to show how segmentation or pricing is determined for Individual Consumers, including but not limited to design documentation, input parameters, system diagrams, segmentation categories for classifiers or models, procedures for testing and validating the models, and APIs;

- h. describe in detail any changes to the Solution over time. For any Solutions that involve training a model, include the training frequency; and
 - i. submit materially different copies of each privacy notice, disclosure, consent form, terms of use, end user license agreement, or other document related to the collection or use of any consumer data utilized by the Solution.
3. For each User Segmentation Solution or Targeted Pricing Solution:
- a. provide the Company’s annual aggregate sales to all Business Customers, in units and dollars;
 - b. list all of the Company’s Business Customers and prospective Business Customers separately on an annual basis and the timespan of their contracts, agreements, or product licenses;
 - c. provide the name (legal name and, if applicable, operating name) and address for each of the 10 Businesses Customers who purchased or licensed the greatest units and dollar amounts of the Solution from the Company in the United States, indicate the units and dollar amounts purchased, stated separately on an annual basis, and submit all contracts and service agreements between the Company and each such Business Customer;
 - d. for each Business Customer identified in subpart (c) describe what contractual limitations the Company places on the use of its Solution and how the Company enforces compliance of contractual arrangements with the Business Customer, including but not limited to technical controls, data practices, or audit mechanisms;
 - e. for each Business Customer identified in subpart (c) describe the Company’s understanding of how the Business Customer uses the Company’s Solution;
 - f. describe instances in which Business Customers in the same industry obtain and use the same User Segmentation Solution, Targeted Pricing Solution, or data sources; and
 - g. describe and submit documents sufficient to show any representations you make to Business Customers regarding the data used in any User Segmentation Solution or Targeted Pricing Solution, including:
 - i. whether such data was obtained in compliance with applicable privacy and data protection laws,
 - ii. whether consumers were provided notice and gave consent for the use of their data by you or in a User Segmentation Solution or Targeted Pricing Solution, or
 - iii. the accuracy or reliability of any User Segmentation Solution or Targeted Pricing Solution.
4. Submit all analyses, reports, studies, communications, Promotional Materials and surveys that evaluate or analyze the actual, evaluated, or projected effects of any User Segmentation Solution or Targeted Pricing Solution on any Business Customer’s Solutions pricing, sales volume, or revenue and any segmented or targeted Individual Consumers.

Definitions

- D1. The terms “and” and “or” have both conjunctive and disjunctive meanings.
- D2. The terms “you,” “your,” and “the Company” mean [COMPANY]; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures; and all directors,

officers, employees, agents, and representatives of the foregoing. The terms “parent,” “subsidiary,” “affiliate,” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.

D3. The terms “each,” “any,” and “all” mean “each and every.”

D4. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

D5. “Business Customer” means an individual or entity that purchases or uses the Company’s products or services.

D6. The term “Data Broker” refers to companies that collect personal information about Individual Consumers from a variety of public and non-public sources and resell the information to other companies.

D7. “Targeted Pricing Solution” means any product or service—including but not limited to any data set or algorithmic tool—that is used, has been used, or has been marketed for use alone or in combination with other products or services to charge or set prices, or determine quantity and availability for Individual Consumers based on location, purchase history, return history, customer service history, browsing behavior, demographic information, or any other variables.

D8. “User Segmentation Solution” means any product or service—including but not limited to any data set or algorithmic tool—that is used, has been used, or has been marketed for use alone or in combination with other products or services to categorize or build profiles associated with Individual Consumers based on location, purchase history, browsing behavior, demographic information, or any other variables.

D9. “Individual Consumer” includes individual people, businesses, devices, user accounts, billing accounts, households, and families.

D10. “Promotional Material” means any written or verbal statement, illustration, or depiction that promotes the sale of a good or service or is designed to increase consumer interest in a brand, good, or service. Promotional material media includes, but is not limited to: packaging and labeling; advertising or promotional materials; print; television; radio; and Internet, social media, and other digital content.

D11. The term “Pricing” describes any method of conveying the monetary value or modifications to the monetary value, including but not limited to posted prices, markups, coupons, discounts, special offers, promotions, bonuses, and personalized deals provided in the context of online or in-person transactions or via mobile applications.

Instructions

For the purposes of this Order, the following Instructions apply:

1. Unless otherwise specified, all requests seek information and documents covering the period from July 19, 2021 to the date of this Order.
2. Unless otherwise specified, this Order requires the production of all responsive documents, data, and other information in your possession, custody, or control on the date that this Order was issued.
3. In order to comply in a manner consistent with the Commission’s Rules of Practice, 16 C.F.R. § 2.7(k), the Company shall schedule a teleconference, within 14 days after receiving this Order,

with the Commission representative identified in Instruction 9 of this Order to confer regarding your response.

4. Do not produce any Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”) prior to discussing the information with a Commission representative. If any document responsive to a particular Specification contains unresponsive Sensitive PII or SHI, redact the unresponsive Sensitive PII or SHI prior to producing the document.

The term “Sensitive Personally Identifiable Information” means an individual’s Social Security Number alone; or an individual’s name, address, or phone number in combination with one or more of the following:

- date of birth
- driver’s license number or other state identification number, or a foreign country equivalent
- passport number
- financial account number
- credit or debit card number

The term “Sensitive Health Information” includes medical records and other individually identifiable health information, whether on paper, in electronic form, or communicated orally. Sensitive Health Information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

5. Form of Production: You must submit documents as instructed below absent written modification.
 - a. Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:
 - i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and metadata.
 - ii. Submit emails in TIFF (Group IV) format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the email.
Bates End	Bates number of the last page of the email.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the person from whom the email was obtained.
Email BCC	Names of person(s) blind copied on the email.

Email CC	Names of person(s) copied on the email.
Email Date Received	Date the email was received. [MM/DD/YYYY]
Email Date Sent	Date the email was sent. [MM/DD/YYYY]
Email From	Names of the person who authored the email.
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems.
Email Subject	Subject line of the email.
Email Time Received	Time email was received. [HH:MM:SS AM/PM]
Email To	Recipients(s) of the email.
Email Time Sent	Time email was sent. [HH:MM:SS AM/PM]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Folder	File path/folder location of email.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt

- iii. Submit email attachments other than those described in subpart (a)(i) in TIFF (Group IV) format. For all email attachments, provide extracted text and the following metadata and information as applicable:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.

Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of person from whom the file was obtained.
Date Created	Date the file was created. [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Native Link	Relative file path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

- iv. Submit all other electronic documents, other than those described in subpart (a)(i), in TIFF (Group IV) format accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.

Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the original custodian of the file.
Date Created	Date the file was created. [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY HH:MM:SS AM/PM]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC-0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

- v. Submit documents stored in hard copy in TIFF (Group IV) format accomplished by OCR with the following information:

Metadata/Document Information	Description
Bates Begin	Beginning Bates number of the document.
Bates End	Bates number of the last page of the document.
Custodian	Name of person from whom the file was obtained.

- vi. Submit redacted documents in TIFF (Group IV) format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction 5.
 - b. Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact. Submit data separately from document productions.
 - c. Produce electronic file and TIFF submissions as follows:
 - i. For productions over 10 gigabytes, use hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 or 3.0 external enclosure.
 - ii. For productions under 10 gigabytes, CD-ROM (CD-R, CD-RW) optical disks and DVD-ROM (DVD+R, DVD+RW) optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats.
 - iii. All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of your compliance with this Order.
 - iv. Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.
 - d. Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.
- 6. Before using software or technology (including search terms, predictive coding, de-duplication, email threading or similar technologies) to identify or eliminate documents, data, or information potentially responsive to this Order you must submit a written description of such software or technology and any related processes and workflows. In addition:
 - a. if you use Technology Assisted Review to identify documents and information responsive to this Order or to exclude documents and information from further review describe your collection and review methodology, including: (a) how any software is used to identify responsive documents or exclude nonresponsive documents; (b) the process to identify and validate any seed set documents, if applicable; (c) the process to determine and validate accuracy of the automatic determinations of responsiveness and non-responsiveness; and (d) the collection and review process for foreign language documents, whether reviewed manually or by some technology-assisted method;
 - b. if you use search terms to identify documents and information responsive to this Order or to exclude documents and information from further review: for each custodian, search location, or document population provide (a) a list of proposed terms; (b) a tally of all the terms that appear in the collection and the number of documents containing each term; (c) a list of stop words and operators for the platform being used; and (d) a glossary of industry and company acronyms and terminology;
 - c. provide prevalence, recall, precision, validation, and confidence-level statistics;

- d. provide access to randomized, statistically-significant samples of non-privileged documents excluded from review or production by use of keyword search terms, Technology Assisted Review software, or any other means;
 - e. identify the person(s) able to testify on your behalf about information known or reasonably available to the organization relating to your use of software or technology in responding to this Order.
7. All documents responsive to this Order:
- a. shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in your files;
 - b. shall be marked on each page with corporate identification and consecutive document control numbers when produced in TIFF format (e.g., ABC-00000001);
 - c. if written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
 - d. shall be produced in color;
 - e. shall be accompanied by an index that identifies: (i) the name of each Person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that Person's documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that, Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request; and
 - f. shall be accompanied by an affidavit of a [COMPANY] officer stating that the copies are true, correct, and complete copies of the original documents.
8. If any material called for by this Order is withheld based on a claim of protected status, 16 C.F.R. § 2.7(a)(4), the claim must be asserted no later than the return date of this Order. In addition, pursuant to 16 C.F.R. § 2.11(a)(1), submit, together with the claim, a detailed log of the items withheld. The information in the log shall be of sufficient detail to enable the Commission staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. Unless modified by the Commission representative identified on the last page of this Order, submit the log in a searchable and sortable electronic format, and, for each document, including attachments, provide:
- a. Document control number(s);
 - b. The full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form);
 - c. A description of the material withheld (for example, a letter, memorandum, or email), including any attachments;
 - d. The date the material was created;
 - e. The date the material was sent to each recipient (if different from the date the material was created);
 - f. The email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent;
 - g. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors;
 - h. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material;
 - i. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material;

- j. The factual basis supporting the claim that the material is protected; and
- k. Any other pertinent information necessary to support the assertion of protected status by operation of law.

In the log, identify by an asterisk each attorney who is an author, recipient, or person copied on the material. The titles, business addresses, email addresses, and relevant affiliations of all authors, recipients, and persons copied on the material may be provided in a legend appended to the log. However, provide in the log the information required by Instruction 6(f). The lead attorney or attorney responsible for supervising the review of the material and who made the determination to assert the claim of protected status must attest, in writing, to the log.

A document, including all attachments, may be withheld or redacted only to the extent necessary to preserve any claim of protected status. Unless otherwise provided in the instructions accompanying this Order, and except for information and material subject to a valid claim of protected status, all responsive information and material shall be produced without redaction.

- 9. Any questions that you have relating to the scope or meaning of anything in this Order or suggestions for possible modifications to it should be directed to Patrick Roy via proy@ftc.gov. Please notify Patrick Roy by email in advance of each production. Any password(s) necessary to access the response to the Order shall be emailed to Patrick Roy.

By the direction of the Commission.

Lina M. Khan, Chair

DATED: July 19, 2024