

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Everalbum, Inc., File No. 1923172

The Federal Trade Commission (“Commission” or “FTC”) has accepted, subject to final approval, an agreement containing a consent order from Everalbum, Inc., also doing business as Ever and Paravision (“Everalbum” or “Respondent”).

The proposed consent order (“proposed 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 again will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

Since 2015, Everalbum has operated “Ever,” a photo storage and organization application available as an iOS or Android mobile application (“app”) and in web and desktop formats. Ever allows consumers to upload photos and videos (collectively, “content”) from mobile devices, computers, or social media or cloud-based storage service accounts to Ever’s cloud servers.

In February 2017, Everalbum launched a new feature of the Ever mobile app, called “Friends.” The Friends feature uses face recognition to organize users’ photos by faces of the people who appear in them. When Everalbum launched the Friends feature, it enabled face recognition by default for all users of the Ever mobile app.

Everalbum’s application of face recognition to Ever app users’ content has not been limited to providing the Friends feature. The Commission’s proposed complaint alleges that, in four instances, Everalbum used images it extracted from Ever users’ photos in the development of face recognition technology. In one such instance, Everalbum used the resulting face recognition technology both in the Ever app and to build the face recognition services offered by its enterprise brand, Paravision (formerly Ever AI).

The proposed two-count complaint alleges that Everalbum violated Section 5(a) of the FTC Act by misrepresenting the company’s practices with respect to Ever users’ content.

Proposed complaint Count I alleges that Everalbum misrepresented the circumstances under which the company would apply face recognition to Ever users’ content. According to the proposed complaint, Everalbum published a help article entitled “What is Face Recognition?” on its website in July 2018. The proposed complaint alleges that the help article represented that the Ever app’s “Friends” feature was not active—and, therefore, that Everalbum would not apply face recognition technology to users’ content—unless users affirmatively enabled the feature. The proposed complaint further alleges that the help article was false or misleading, because, until April 2019, for users in most geographic locations, Everalbum applied face recognition to users’ content by default and users could not use an app setting to turn off face recognition.

Proposed complaint Count II alleges that Everalbum misrepresented that the company would delete the content of Ever users who chose to deactivate their Ever accounts. According to the proposed complaint, when Ever users sought to deactivate their accounts, Everalbum presented them with pop-up messages that represented that account deactivation would result in

Everalbum deleting their content. The proposed complaint alleges that Everalbum also made a similar representation in response to consumer inquiries and in its privacy policy. Despite its representations, Everalbum allegedly did not delete any users' content upon account deactivation and instead stored the content indefinitely.

The proposed order contains provisions to address Respondent's conduct and prevent it from engaging in the same or similar acts or practices in the future.

Provision I of the proposed order prohibits Respondent from making misrepresentations related to the collection, use, disclosure, maintenance, or deletion of Covered Information (as defined in the order); consumers' ability to control any of these actions; the extent to which Everalbum accesses or permits access to Covered Information; the extent, purpose, and duration of Everalbum's retention of Covered Information after consumers deactivate their accounts; or the extent to which Everalbum otherwise protects the privacy, security, availability, confidentiality, or integrity of any Covered Information.

Part II of the proposed order requires Respondent to clearly and conspicuously disclose, and obtain consumers' affirmative express consent for, all purposes for which it will use or share User's Biometric Information before using the information to create data needed for face recognition analysis or to develop face recognition models or algorithms.

Part III of the proposed order requires Respondent to delete (A) photos and videos of Ever app Users who requested deactivation of their accounts, (B) face recognition data that it created without obtaining Users' affirmative express consent, and (C) models and algorithms it developed in whole or in part using images from Users' photos.

Parts IV through VII of the proposed order are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondent to provide information or documents necessary for the Commission to monitor compliance. Part VIII of the proposed order states that the order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.