

**Before the
Federal Trade Commission
Washington, DC**

In the Matter of)
)
Google, Inc.)
)
_____)

**Supplemental Materials in Support of Pending Complaint and Request for Injunction,
Request for Investigation and for Other Relief**

INTRODUCTION

1. On February 16, 2010, the Electronic Privacy Information Center (“EPIC”) filed a Complaint with the Federal Trade Commission (“FTC” or “Commission”) requesting an injunction and investigation.¹ The Complaint concerned the practices of Google, Inc., specifically the recent launch of the company’s Buzz social networking service. As Petitioners stated in the original complaint:

This complaint concerns an attempt by Google, Inc., the provider of a widely used email service to convert the private, personal information of Gmail subscribers into public information for the company’s social network service Google Buzz.²

2. The Petitioners described the importance of email privacy, the release of Google Buzz, Google’s disclosure of users’ email contacts, user opposition to the recent transformation of Google’s Gmail service into a social networking service, and violations of Section 5 of the FTC Act, including Google’s deceptive and unfair trade practices. The Petitioners concluded:

This change in business practices and service terms violated user privacy expectations, diminished user privacy, contradicted Google’s own privacy policy, and may have also violated federal wiretap laws. In some instances, there were clear harms to service subscribers.³

¹ EPIC FTC Complaint, *In re Google Buzz* (Feb. 16, 2009), available at http://epic.org/privacy/ftc/googlebuzz/GoogleBuzz_Complaint.pdf.

² *Id.* at 1.

³ *Id.*

3. The Petitioners respectfully requested the Commission to provide relief and specifically to:

Compel Google to make Google Buzz a fully opt-in service for Gmail users;

Compel Google to cease using Gmail users' private address book contacts to compile social networking lists;

Compel Google to give Google Buzz users more control over their information, by allowing users to accept or reject followers from the outset.⁴

4. In the original complaint, Petitioners reserved the right to "supplement this petition as other information relevant to this proceeding becomes available."⁵

5. This Supplemental Complaint addresses the ongoing privacy threats posed by Google, as well as the company's unfair and deceptive trade practices relating to the recent introduction of Google Buzz.

ADDITIONAL FACTS

Google Buzz Violates Google's Gmail Privacy Policy.

6. In whole and in part, the Gmail Privacy Notice describes the collection and use of personal data for the purpose of providing the Gmail email service.⁶

7. The Gmail Privacy Notice describes the information use policies relating to Gmail, "Google's approach to *email*."⁷ (emphasis added).

8. At the time that Google introduced Google Buzz, the Personal Information section of the Gmail Privacy Notice promised to its users that the company would only use their contact lists and other related data "in order to provide *the service* to you."⁸ (emphasis added). The statement is reproduced in full below:

- Gmail stores, processes and maintains your messages, contact lists and other data related to your account in order to provide the service to you.

9. In this provision, Google is clearly describing the use of contact lists and other user-related data for the provision of Gmail, the Google email service.

⁴ *Id.* at 15.

⁵ *Id.* at 16.

⁶ See Appendix A.

⁷ *Id.*

⁸ Google, Gmail Privacy Notice, <http://mail.google.com/mail/help/privacy.html> (last visited February 22, 2010).

10. In the section on Uses, the Google Gmail Privacy Policy states:⁹

- Google maintains and processes your Gmail account and its contents to provide the Gmail service to you and to improve our services.

11. In this provision, Google is clearly describing the processing of mail account information and its contents for the provision of Gmail, the Google email service.

12. In the section on Uses, the Google Gmail Privacy Policy further states:

- Google's computers process the information in your messages for various purposes, including formatting and displaying the information to you, delivering advertisements and related links, preventing unsolicited bulk email (spam), backing up your messages, and other purposes relating to offering you Gmail.

13. In this provision, Google is again describing the processing of mail account information and its contents for the provision of Gmail, the Google email service.

14. Google Buzz uses Gmail users' contact lists and related data for a separate and unrelated service, in violation of the Gmail Privacy Notice.

15. Google Buzz processes Gmail account information in violation of the Gmail Privacy Notice.

16. Google Buzz compiles a Gmail user's social networking list based on frequent personal email and chat contacts.

17. Google Buzz processes Gmail message information in violation of the Gmail Privacy Notice.

18. Google never did and still does not obtain "explicit consent" from Gmail users regarding Google Buzz and Google's use of address book contacts in violation of Google's own privacy policy.

19. Each instance above where there is a clear contradiction between the Gmail policy in place at the time Buzz was released and the use of Gmail account information by Google for the Buzz service constitutes an unfair and deceptive trade practice.

⁹ *Id.*

CONCLUSION

20. Petitioners incorporate by reference the Requests for Relief set forth in the initial Complaint.¹⁰
21. Petitioners reserve the right to supplement this complaint as new facts become available.

Respectfully submitted,

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¹⁰ EPIC FTC Complaint, *supra* note 1.

APPENDIX A



Gmail: Google's approach to email

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Gmail Privacy Notice

February 9, 2010

The [Google Privacy Policy](#) describes how we treat personal information when you use Google's products and services, including information provided when you use Gmail. In addition, the following describes our privacy practices that are specific to Gmail.

Personal information

- You need a [Google Account](#) to access Gmail. Google asks for some personal information when you create a Google Account, including your alternate contact information and a password, which is used to protect your account from unauthorized access. A Google Account allows you to access many of our services that require registration.
- Gmail stores, processes and maintains your messages, contact lists and other data related to your account in order to provide the service to you.
- When you use Gmail, Google's servers automatically record certain information about your use of Gmail. Similar to other web services, Google records information such as account activity (including storage usage, number of log-ins), data displayed or clicked on (including UI elements, ads, links); and other [log information](#) (including browser type, IP-address, date and time of access, cookie ID, and referrer URL).

Uses

- Google maintains and processes your Gmail account and its contents to provide the Gmail service to you and to improve our services. The Gmail service includes relevant advertising and related links based on the IP address, content of messages and other information related to your use of Gmail.
- Google's computers process the information in your messages for various purposes, including formatting and displaying the information to you, delivering advertisements and related links, preventing unsolicited bulk email (spam), backing up your messages, and other purposes relating to offering you Gmail.
- Google may send you information related to your Gmail account or other Google services.

Information sharing and onward transfer

- When you send email, Google includes information such as your email address and the email itself as part of that email.
- We provide advertisers only aggregated non-personal information such as the number of times one of their ads was clicked. We do not sell, rent or otherwise share your personal information with any third parties except in the limited circumstances described in the [Google Privacy Policy](#), such as when we believe we are required to do so by law.

Your choices

- You may change your Gmail account settings through the Gmail "settings" section.
- You may organize or delete your messages through your Gmail account or terminate your account through the Google Account section of Gmail settings. Such deletions or terminations will take immediate effect in your account view. Residual copies of deleted messages and accounts may take up to 60 days to be deleted from our active servers and may remain in our offline backup systems.
- You may choose to use additional Gmail features, such as chat, which connects to the Google Talk network, or Google Buzz. The Google Talk service has its own privacy notice available [here](#), and Google Buzz [here](#).

More information

Google adheres to the US Safe Harbor privacy principles. For more information about the Safe Harbor framework or our registration, see the [Department of Commerce's web site](#).

Further information about Gmail is available [here](#).

For more information about our privacy practices, go to the [full privacy policy](#). For questions concerning the product or your account, please check out the [Google Help](#) page.