

FEDERAL TRADE COMMISSION
Washington, DC 20580

In the Matter of)
)
Universal Tennis, LLC)
)
_____)

Complaint, Request for Investigation, Injunction, and Other Relief

Submitted by

The Electronic Privacy Information Center (EPIC)

I. Introduction

1. This complaint concerns a secret, proprietary algorithm, used to assign personally identifiable numeric scores to tennis players under 13 years old and others, known as the Universal Tennis Rating (“UTR”). The UTR score defines the status of young athletes in all tennis related activity; impacts opportunities for scholarship, education and employment; and may in the future provide the basis for “social scoring” and government rating of citizens. EPIC seeks to ensure that all rating systems concerning individuals are open, transparent, and accountable.
2. As set forth in detail below, Universal Tennis, LLC, collects a wide range of tennis-related information, including online data, to generate and assign ratings for all players in Universal Tennis’s system, including children under 13. The algorithm used for this rating system remains secret and proprietary. No player is able to determine how his or her rating is derived or challenge its accuracy. UTR ratings of tennis players, including children, are published online. Players in nearly all organized U.S. and many international leagues are rated by this algorithm without the opportunity to opt out and without knowledge of the actual logic used to create the rating.
3. The use of a secret algorithm to score child tennis players without their parents’ consent constitutes a violation of the Children’s Online Privacy Protection Act (“COPPA”), subject to investigation and injunction by the Federal Trade Commission (“FTC”).
4. The use of a secret algorithm to score individuals is an unfair and deceptive trade practice under Section 5 of the FTC Act, subject to investigation and injunction by the Federal Trade Commission.

II. Parties

5. The Electronic Privacy Information Center (“EPIC”) is a public interest research center located in Washington, D.C. EPIC focuses on emerging privacy and civil liberties issues and is a leading consumer advocate before the FTC. EPIC has played a leading role in developing the authority of the FTC to address emerging privacy issues and to safeguard the privacy rights of consumers.¹ EPIC has advocated for Algorithmic Transparency for many years.²
6. Universal Tennis, LLC (the “Company”), is a Delaware corporation.³ Universal Tennis’s primary place of business is at 2024 Thomas Bishop Lane, Virginia Beach, Virginia 23454.⁴ Universal Tennis’s website lists the company’s contact address as P.O. Box 68699, Virginia Beach, Virginia 23471.⁵ Universal Tennis markets the Universal Tennis Rating (“UTR”), a rating system for tennis players.⁶ As of the date of this filing, Universal Tennis claims to have scored over 390,000 tennis players based on 4.6 million match results.⁷

¹ See, e.g., Agreement Containing Consent Order, *In re* Google, Inc., FTC File No. 102-3136 (Mar. 30, 2011); EPIC Complaint, *In re* Google, Inc., FTC File No. 102-3136 (Feb. 16, 2010), http://epic.org/privacy/ftc/googlebuzz/GoogleBuzz_Complaint.pdf; Agreement Containing Consent Order, *In re* Facebook, Inc., FTC File No. 092-3184 (Nov. 29, 2011); EPIC Complaint, *In re* Facebook, Inc., FTC File No. 092-3184 (Dec. 17, 2009), <https://epic.org/privacy/inrefacebook/EPIC-FacebookComplaint.pdf>; EPIC Request for Investigation, *In re* Choicepoint, Inc., FTC File No. 052-3069 (Dec. 16, 2004), <http://epic.org/privacy/choicepoint/fcraltr12.16.04.html>; EPIC Complaint, *In re* Microsoft Corp., FTC File No. 012-3240 (July 26, 2001), http://epic.org/privacy/consumer/MS_complaint.pdf; EPIC Complaint, *In re* DoubleClick, Inc., FTC File No. 071-0170 (Feb. 10, 2000), http://epic.org/privacy/internet/ftc/DCLK_complaint.pdf; Letter from EPIC Exec. Dir. Marc Rotenberg to FTC Comm’r Christine Varney (Dec. 14, 1995) (urging the FTC to investigate the misuse of personal information by the direct marketing industry), http://epic.org/privacy/internet/ftc/ftc_letter.html.

² *Algorithmic Transparency: End Secret Profiling*, EPIC, <https://epic.org/algorithmic-transparency/>.

³ Delaware Department of State: Division of Corporations, File No. 5905135.

⁴ Commonwealth of Virginia, State Corporation Commission, ID No. T0636979.

⁵ *Universal Tennis Terms & Conditions*, Universal Tennis, <https://universaltennis.com/tos>.

⁶ *UTR Subscription Pricing*, Universal Tennis, <https://universaltennis.com/pricing.aspx>.

⁷ Universal Tennis, <https://universaltennis.com/>.

III. Factual Background

A. Universal Tennis Uses a Secret Algorithm to Score Child Tennis Players

7. According to the Company, Universal Tennis collects match results from high school, college, professional, international, and U.S. Tennis Association junior (12-18) and adult tournaments.⁸
8. According to the Company, the UTR is a number between 1 and 16 calculated based on a player's last 30 matches within the last 12 months. Scores are "dynamic" and "recalculated every day." Results are uploaded on a weekly basis. Universal Tennis's web site says that "it is hard to predict exactly how a player's rating will move after a few matches" and that "a player's rating can also change based on changes in the ratings of their recent opponents."⁹
9. Universal Tennis publishes these ratings for the purpose of commercial gain. A free subscription allows access to single-digit ratings. However, only paying subscribers are given access to "added player rating precision (2 decimals)," player rating history, and additional search and tracking features.¹⁰
10. The "Premium" service is available for \$4.95 per month. According to the Company, Premium subscribers are able to "Track the tennis level of play development for yourself, as well as for thousands of other tennis players, on the most comprehensive tennis rating system in the world."¹¹
11. The "Premium Plus" service is available for \$8.95 per month. According to the Company, Premium Plus subscribers receive "The service for thousands of college bound juniors, student-athletes [sic], college coaches and college tennis fans. There's nothing like it, when looking for a college tennis fit."¹²
12. The "Basic" service states "That's right, UTR Basic is forever free. No expiring trial, contract, or credit card required. Start using the UTR system today with our easy sign up process."¹³

⁸ Universal Tennis, *FAQ*, <https://universaltennis.com/faq>. See also *Junior Tournaments*, USTA Northern California, <http://www.norcal.usta.com/UTR/> ("[A]ll players who have played in a sanctioned norcal junior event, or a men's or women's open, will have generated at UT Rating").

⁹ *FAQ*, Universal Tennis, <https://universaltennis.com/faq>.

¹⁰ *UTR Subscription Pricing*, Universal Tennis, <https://universaltennis.com/pricing.aspx>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

13. Players can contact Universal Tennis to report incorrect match scores,¹⁴ but Universal Tennis provides no way to dispute the validity of a UTR score or to challenge the calculation of a score.
14. Universal Tennis provides no mechanism for players or their parents to opt out of their data being collected, used, and disclosed.¹⁵ Nor does Universal Tennis allow players to opt out of being scored.
15. Universal Tennis's privacy policy does not describe any means by which parents may have their children's personal information removed from Universal Tennis's web site.
16. UTR "has become a key factor in college recruitment in America."¹⁶ Thus the UTR impacts opportunities for scholarships, education, and employment.
17. The Intercollegiate Tennis Association "currently uses UTR ratings to assist with selections and seedings for select regional and national events."¹⁷
18. Six sections of the United States Tennis Association ("USTA") "actively employ UTR to design and manage their events."¹⁸ The USTA uses UTR as a tournament eligibility criterion and to seed participants.¹⁹
19. There is no reference to the "UTR" in the Universal Tennis Privacy Policy.²⁰
20. The Universal Tennis Privacy Policy states "We do not knowingly collect any personal information from children under the age of 13 on the Site."²¹
21. The section in the Universal Tennis Privacy Policy on "Access and Correction" is literally blank:

¹⁴ *FAQ*, Universal Tennis, <https://universaltennis.com/faq>.

¹⁵ *Universal Tennis Privacy Policy*, Universal Tennis, <https://universaltennis.com/privacy>.

¹⁶ Mark Gregory, *Universal Tennis Rating: The Future of Tennis?* Britennis (Mar. 15, 2016), <http://britennis.com/2016/03/15/universal-tennis-rating-vs-internationalnational-rankings/>.

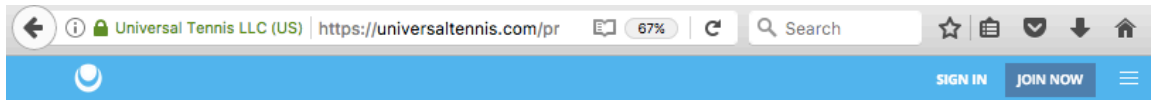
¹⁷ *Partners*, Intercoll. Tennis Assoc., <http://www.itatennis.com/AboutITA/Partners.htm>.

¹⁸ *American Tennis, the USTA, and the Universal Tennis Rating*, Universal Tennis (Sept. 5, 2016), <http://blog.universaltennis.com/2016/09/05/american-tennis-the-usta-and-the-universal-tennis-rating/>.

¹⁹ *Id.*

²⁰ *Universal Tennis Privacy Policy*, Universal Tennis, <https://universaltennis.com/privacy>.

²¹ *Id.*



9. Third-Party Ad Serving & Audience and Traffic Measurement Services

The Site may use third party network advertisers to serve the advertisements on the Site or may use a traffic measurement service to analyze the traffic on the Site. Network advertisers are third parties that display advertisements based on your visits to this Site and other Web sites you have visited. Third party ad serving enables us to target advertisements to you for products or Web sites you might be interested in. Although advertisers or other companies do not have access to the Site cookies, the Site's advertisers, sponsors, and/or traffic measurement services may themselves set and access their own cookies on your computer if you choose to have your cookies enabled in your browser. Cookies allow third party advertisers to show you advertisements or content you might be interested in. Other companies' use of their cookies is subject to their own privacy policies, not this one.

10. Access and Correction

11. Security

We will take reasonable steps to protect your personally identifiable information as you transmit your information from your computer to our Site and to protect such information from loss, misuse and unauthorized access, disclosure, alteration or destruction in accordance with this Privacy Policy and the Terms of Use. You should keep in mind that no Internet transmission is ever 100% secure or error-free. In particular, email sent to or from this Site may not be secure, and you should therefore take special care in deciding what information you send to us via e-mail. Moreover, where you use passwords, usernames, ID numbers or other special access features on this Site, it is your responsibility to safeguard them.

12. Links to Other Web Sites

You should be aware that when you are on the Site you could be directed to other sites beyond our control. For example, if you "click" on a banner advertisement, the "click" may take you off the Site onto a different Web site. This includes links from advertisers, sponsors and partners that may use the Site's logo as part of a co-branding agreement.

B. The Use of Secret Algorithms is Increasing

- 22. Algorithms are often used to make adverse decisions about people. Algorithms deny people educational opportunities, employment, housing, insurance, and credit.²² Many of these decisions are entirely opaque, leaving individuals to wonder whether the decisions were accurate, fair, or even about them.
- 23. Secret algorithms are deployed in the criminal justice system to assess forensic evidence, determine sentences, and even to decide guilt or innocence.²³ Several states use proprietary commercial systems, not subject to open government laws, to determine guilt or innocence. The Model Penal Code recommends the implementation of recidivism-based actuarial instruments in sentencing guidelines.²⁴ But these systems, which defendants have no way to challenge, are racially biased, unaccountable, and unreliable for forecasting violent crime.²⁵
- 24. Algorithms are used for social control. The Chinese government is deploying a "social credit" system that assigns to each person government-determined favorability rating. "Infractions such as fare cheating, jaywalking, and violating

²² Danielle Keats Citron & Frank Pasquale, *The Scored Society: Due Process for Automated Predictions*, 89 Wash. L. Rev. 1 (2014).

²³ EPIC v. DOJ (Criminal Justice Algorithms), EPIC, <https://epic.org/foia/doj/criminal-justice-algorithms/>; Algorithms in the Criminal Justice System, EPIC, <https://epic.org/algorithmic-transparency/crim-justice/>.

²⁴ Model Penal Code: Sentencing §6B.09 (Am. Law. Inst., Tentative Draft No. 2, 2011).

²⁵ See Julia Angwin et al., *Machine Bias*, ProPublica (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

- family-planning rules” would affect a person’s rating.²⁶ Low ratings are also assigned to those who frequent disfavored web sites or socialize with others who have low ratings. Citizens with low ratings will have trouble getting loans or government services. Citizens with high rating, assigned by the government, receive preferential treatment across a wide range of programs and activities.
25. In the United States, U.S. Customs and Border Protection has used secret analytic tools to assign “risk assessments” to U.S. travelers.²⁷ These risk assessments, assigned by the U.S. government to U.S. citizens, raise fundamental questions about government accountability, due process, and fairness.
26. The European Union has recognized that secret algorithms cause substantial harm. Article 15 of the EU Data Protection Directive, which followed from the U.S. Privacy Act of 1974, provides that individuals have a right to access “the logic of the processing” concerning their personal information.²⁸ That principle is reflected in the transparency of the FICO score, which for many years remained a black box for consumers, making determinations about credit worthiness without any information provided to the customers about how to improve the score.²⁹
27. The provision of Article 15 in the EU Data Protection Directive has been carried forward in Article 13 of the recently adopted General Data Protection Regulation.³⁰
28. “Social scoring” is a growing focus of cultural dystopias.³¹ The recognition that the technique could become widespread is self-evident.³²

²⁶ Josh Chin & Gillian Wong, *China’s New Tool for Social Control: A Credit Rating for Everything*, Wall Street J., Nov. 28, 2016, <http://www.wsj.com/articles/chinas-new-tool-for-social-control-a-credit-rating-for-everything-1480351590>

²⁷ *EPIC v. CBP* (Analytical Framework for Intelligence), EPIC, <https://epic.org/foia/dhs/cbp/afi/>.

²⁸ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Data, 1995 O.J. (L 281) 31, 43.

²⁹ See Hadley Malcom, Banks Compete on Free Credit Score Offers, USA Today, Jan. 25, 2015, <http://www.usatoday.com/story/money/2015/01/25/banks-free-credit-scores/22011803/>.

³⁰ <http://www.privacy-regulation.eu/en/13.htm>.

³¹ IMDb, “Nosedive,” (2017) (“Lacie lives in a world where people’s status is governed by their rating on social media.”), <http://www.imdb.com/title/tt5497778/>

³² Sophie Gilbert, “Black Mirror’s ‘Nosedive’ Skewers Social Media. . . the episode is set in a world where everyone is ranked out of five,” The Atlantic, Oct. 21, 2016. <https://www.theatlantic.com/entertainment/archive/2016/10/black-mirror-nosedive-review-season-three-netflix/504668/>

C. Scores for Athletes Are Typically Objective, Non-proprietary and Readily Provable

29. Sporting associations have long provided ratings of athletes that are objective, transparent, provable, and non-proprietary.
30. For example, The USA Track and Field (“USATF”) provides readily accessible Scoring Tables and Scoring Calculators for young athletes.³³
31. The U.S. Track & Field and Cross Country Coaches Association publishes the formula for athletes at the Association’s website.³⁴
32. The scores can be used in combination with records from individual events to evaluate the performance of individual athletes.³⁵
33. Sports associations routinely provide objective metrics. *USA Today* publishes the names of top performing high school basketball players based on points scored per game, rebounds scored per game, assists per game, and steals per game.³⁶
34. The results of these rating systems are freely available to all, including athletes, coaches, and schools.

D. A Well Established Alternative to UTR Exists: The Elo Rating System

35. There is no necessary reason that a rating system that enables young tennis players, or competitors in any sport or activity, must be secret, proprietary, or essentially unaccountable.
36. The Elo rating system, developed by Dr. Arpad Elo, is a widely renowned “method for calculating the relative skill levels of players in competitor-versus-competitor games such as chess.”³⁷
37. The formulas for the Elo rating are open for analysis and rating.
38. The rating of players under the Elo system is transparent and provable.

³³ See, e.g., USATF, “Youth Combined Event Scoring Tables – Girls,” https://www.usatf.org/statistics/calculators/youthCombinedEventsScoring/YouthCombinedEventScoringTables_Girls.pdf

³⁴ Tom Lewis, Comm’s Manager, USTFCCCA (2009), <http://www.ustfccca.org/assets/rankings/div1/d1-ranking-rationale-2010.pdf>.

³⁵ See, e.g., USA Track & Field, *American Youth Outdoor Track & Field Records* (Jan. 31, 2017), <http://www.usatf.org/statistics/records/view.asp?division=american&location=outdoor%20track%20%26%20field&age=youth&sport=TF>.

³⁶ See, e.g., *High School Basketball Stats Leaders*, *USA Today* (Jan. 11, 2016), <http://usatodayhss.com/2016/high-school-basketball-stat-leaders-4>.

³⁷ Wikipedia, *Elo Rating System*, https://en.wikipedia.org/wiki/Elo_rating_system (as of Apr. 19, 2017).

39. There is no assignment of “secret scores” in the Elo system.
40. The Elo rating system provides “algorithmic transparency” and is clearly preferable to secret, proprietary ratings systems such as UTR.
41. The Elo results are freely available to all participants, coaches, schools, clubs, tournament directors, and organizers

IV. Legal Analysis

A. The FTC’s COPPA Regulation and Enforcement Authority

42. The Children’s Online Privacy Protection Act (“COPPA” or “Act”) regulates the collection of children’s personal information by operators of online services.³⁸ The FTC has promulgated regulations, known as the “COPPA Rule,” implementing COPPA.
43. COPPA and the attendant Rule apply to operators of online services, websites, and apps directed to children under 13 as well as operators of online services, websites and apps serving a general audience.³⁹
44. Operators of online services directed to children under 13 must comply with the COPPA Rule’s requirements.⁴⁰
45. Online service operators with general audiences must comply with the COPPA Rule when the operator “has actual knowledge that it is collecting or maintaining personal information from a child.”⁴¹
46. Under the COPPA Rule, “personal information” includes a child’s “first and last name” or “[i]nformation concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier” including the child’s first and last name.⁴² Personal information also includes a child’s home or physical address, geolocation information, an Internet Protocol (IP) address, and other persistent identifiers.⁴³
47. The COPPA Rule requires that operators meet specific requirements prior to collecting, using, or disclosing personal information from children, including:
 - a. Posting a “prominent and clearly labeled” link on the home page of its website or online service to the operator’s privacy policy, which must

³⁸ Children’s Online Privacy Protection Act, 16 C.F.R. § 312.1.

³⁹ 16 C.F.R. § 312.3.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 16 C.F.R. § 312.2.

⁴³ *Id.*

provide a clear, understandable, and complete description what information the operator collects from children, how it uses that information, and how that information is disclosed;⁴⁴

- b. Using reasonable efforts and available technology to provide direct notice to parents of the operator’s information practices, including direct notice of any material changes to those practices;⁴⁵
- c. Obtaining verifiable parental consent prior to collecting, using, and/or disclosing personal information from children.⁴⁶

48. Operators must obtain verifiable parental consent through a method that is “reasonably calculated, in light of available technology, to ensure that the person providing consent is the child’s parent.”⁴⁷ The FTC has enumerated several specific methods that satisfy the requirements of verifiable parental consent, including:

- a. Providing a consent form to be signed by the parent and returned to the operator;
- b. Having a parent call or video-conference with trained personnel; or
- c. Verifying the parents’ identity by checking a form of government-issued identification against a database of such information.⁴⁸

49. Operators that use children’s personal information only for internal purposes may obtain parental consent using the “email plus” method, which allows operators to request consent in a return email message from the parent.⁴⁹

50. Under the COPPA Rule, operators must “establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.”⁵⁰

51. Operators may “retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected.”⁵¹

⁴⁴ 16 C.F.R. § 312.4(d).

⁴⁵ 16 C.F.R. § 312.4(b).

⁴⁶ 16 C.F.R. § 312.5.

⁴⁷ 16 C.F.R. § 312.5(b)(1).

⁴⁸ 16 C.F.R. 312.5 (b)(2).

⁴⁹ 16 C.F.R. § 312.5(b)(2)(vi). *See also, Complying with COPPA: Frequently Asked Questions*, FED. TRADE COMM’N (Mar. 20, 2015), <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions>.

⁵⁰ 16 C.F.R. § 312.8.

52. Operators are required to provide parents a reasonable means to direct the operator to delete any information collected about the child such that it is not maintained in a retrievable form and cannot be retrieved in the normal course of business.⁵²

B. The FTC's Section 5 Authority

53. Section 5 of the FTC Act prohibits unfair and deceptive acts and practices and empowers the Commission to enforce the Act's prohibitions.⁵³

54. Violations of COPPA are unlawful unfair and deceptive practices within the meaning of Section 5 of the FTC Act.

55. Independently of whether a practice violates COPPA, the FTC may find that a practice is unlawfully unfair and/or deceptive if it meets the FTC's tests, outlined in policy statements, for deception⁵⁴ and unfairness.⁵⁵

56. A trade practice is unfair if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."⁵⁶

57. There are three elements to an unfairness claim. First, the injury suffered by consumers must be "substantial."⁵⁷ Typically, this involves monetary harm, but may also include "unwarranted health and safety risks."⁵⁸ Emotional harm and other "more subjective types of harm" generally do not make a practice unfair.⁵⁹ Second, the injury "must not be outweighed by an offsetting consumer or competitive benefit that the sales practice also produces."⁶⁰ Thus the FTC will not

⁵¹ 16 C.F.R. § 312.10.

⁵² 16 CFR § 312.6, 312.2.

⁵³ See 15 U.S.C. § 45 (2010).

⁵⁴ Fed. Trade Comm'n, FTC Policy Statement on Deception (1983), <http://www.ftc.gov/bcp/policystmt/ad-decept.htm> [hereinafter FTC Deception Policy].

⁵⁵ Fed. Trade Comm'n, FTC Policy Statement on Unfairness (1980), <http://www.ftc.gov/bcp/policystmt/ad-unfair.htm> [hereinafter FTC Unfairness Policy].

⁵⁶ 15 U.S.C. § 45(n); see, e.g., *Fed. Trade Comm'n v. Seismic Entertainment Productions, Inc.*, Civ. No.1:04-CV-00377 (Nov. 21, 2006) (finding that unauthorized changes to users' computers that affected the functionality of the computers as a result of Seismic's anti-spyware software constituted a "substantial injury without countervailing benefits.").

⁵⁷ FTC Unfairness Policy, *supra*.

⁵⁸ *Id.*; see, e.g., *Fed. Trade Comm'n v. Information Search, Inc.*, Civ. No. 1:06-cv-01099 (Mar. 9, 2007) ("The invasion of privacy and security resulting from obtaining and selling confidential customer phone records without the consumers' authorization causes substantial harm to consumers and the public, including, but not limited to, endangering the health and safety of consumers.").

⁵⁹ FTC Unfairness Policy, *supra*.

⁶⁰ *Id.*

find a practice unfair “unless it is injurious in its net effects.”⁶¹ Finally, “the injury must be one which consumers could not reasonably have avoided.”⁶² This factor is an effort to ensure that consumer decision making still governs the market by limiting the FTC to act in situations where seller behavior “unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.”⁶³ Sellers may not withhold from consumers important price or performance information, engage in coercion, or unduly influence highly susceptible classes of consumers.⁶⁴

58. The Commission has previously found that a company may not repurpose user data for a use other than the one for which the user’s data was collected without first obtaining the user’s “express affirmative consent.”⁶⁵

V. Universal Tennis’s COPPA Violation

A. Count I: Collection, Use, and Disclosure of Children’s Personal Information Without Obtaining Verifiable Parental Consent

59. Universal Tennis violates the COPPA Rule by failing to obtain verifiable parental consent prior to collecting, using, and disclosing children’s personal information.
60. As described above, Universal Tennis collects and discloses information about children online: specifically, their full names.
61. Universal Tennis is an “operator” under COPPA because it operates a web site on the internet and maintains personal information about children.
62. Universal Tennis collects information about children online by receiving data from the USTA electronically.
63. Universal Tennis has actual knowledge that it collects, uses, and discloses personal information on children under 13. Because Universal Tennis collects data from players in Under 12 USTA tournaments, it knows that these players are under 13.
64. As described above, Universal Tennis provides no method for parents to opt out of the collection, use, or disclosure of their children’s personal information.
65. Therefore, Universal Tennis has violated the parental consent requirements under the COPPA rule, 16 C.F.R. § 312.5.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *In the Matter of Google, Inc.*, FTC File No. 102 3136 (Oct. 13, 2011) (Decision and Order), <http://www.ftc.gov/sites/default/files/documents/cases/2011/10/111024googlebuzzdo.pdf>.

B. Count II: Failure to Comply with the Deletion and Data Retention Requirements

66. As described above, Universal Tennis does not have a way for parents to direct that their children's personal information must be deleted from Universal Tennis's web site.

67. Therefore, Universal Tennis has violated the deletion and data retention requirements under the COPPA Rule, 16 C.F.R. §§ 312.6, 312.10.

C. Count III: Failure to Provide Adequate Online Notice and Direct Notice to Parents of its Information Practices, and Material Changes Thereto

68. As described above, Universal Tennis collects data from multiple sources, including the USTA.

69. As described above, this data includes information that Universal Tennis has actual knowledge is about children under 13.

70. Although Universal Tennis has a privacy policy describing its collection, use, and disclosure of data collected on its web site, it does not have a prominent link to a privacy policy describing how it collects, uses, or discloses personal information about children that Universal Tennis collects from third parties.

71. Therefore, Universal Tennis has violated the direct parental notice and online notice requirements under the COPPA Rule, 16 C.F.R. § 312.4.

VI. Universal Tennis's Violation of the FTC Act

A. Count IV: Unfair Use of a Secret Algorithm to Assign Scores to Children

72. As described above, Universal Tennis scores children using a secret algorithm.

73. The use of a secret algorithm to score children creates a substantial risk of harm because children's development, educational, scholarship, and employment opportunities may be unfairly hindered by low and inaccurate scores, the calculation of which is secret and the validity of which parents are not permitted to dispute.

74. This injury cannot be reasonably avoided because parents are not allowed to opt out of UTR scoring.

75. The harms from the use of this secret algorithm are not outweighed by countervailing benefits to consumers or to competition.

76. Other methods that accomplish the goal of rating young competitors, such as the Elo technique, are readily available.

77. Universal Tennis's use of a secret algorithm to score children is an unfair act or practice in violation of Section 5 of the FTA Act, 15 U.S.C. § 45(n).

VII. Prayer for Investigation and Relief

78. EPIC urges the Commission to investigate the Universal Tennis Rating system, enjoin the Company's COPPA violations, and find that a secret, unprovable, proprietary algorithm to evaluate children is an unfair and deceptive trade practice under Section 5 of the FTC Act.

79. Specifically, EPIC asks the Commission to:

- a. Initiate an investigation of the collection, use, and disclosure of children's personal information by Universal Tennis;
- b. Halt Universal Tennis's scoring of children without parental consent;
- c. Require that Universal Tennis make public the algorithm and other techniques that produce the UTR;
- d. Require that Universal Tennis establish formal procedures for rectification of inaccurate, incomplete, and outdated scoring procedures; and
- e. Provide such other relief as the Commission finds necessary and appropriate.

Respectfully Submitted,

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