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17 Attorneys for Plaintiff  
18 UNITED STATES OF AMERICA

19 **IN THE UNITED STATES DISTRICT COURT**  
20 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
21 **WESTERN DIVISION**

22 UNITED STATES OF AMERICA,

23 Plaintiff,

24 v.

25 OPENX TECHNOLOGIES, INC.,  
26 a Delaware Corporation,

27 Defendant.

Case No. 2:21-cv-09693

**COMPLAINT FOR PERMANENT  
INJUNCTION, CIVIL  
PENALTIES, AND OTHER  
RELIEF**

1 Plaintiff, the United States of America, acting upon notification and  
2 authorization to the Attorney General by the Federal Trade Commission (“FTC” or  
3 “Commission”), for its Complaint alleges that:

4 1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b),  
5 and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1),  
6 45(m)(1)(A), 53(b), and 56(a); and Sections 1303(c) and 1306(d) of the Children’s  
7 Online Privacy Protection Act of 1998 (“COPPA”), 15 U.S.C. §§ 6502(c) and  
8 6505(d), to obtain monetary civil penalties, a permanent injunction, and other  
9 equitable relief for Defendant’s violations of Section 5 of the FTC Act and the  
10 Commission’s Children’s Online Privacy Protection Rule (“Rule” or “COPPA  
11 Rule”), 16 C.F.R. Part 312.

12 **JURISDICTION AND VENUE**

13 2. Defendant OpenX Technologies, Inc. (“OpenX”) is a Delaware  
14 corporation, with its principal place of business in Pasadena, California.

15 3. OpenX transacts or has transacted business in the Central District of  
16 California.

17 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
18 §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), and 56(a).

19 5. Venue in the Central District of California is proper under 15 U.S.C.  
20 § 53(b) and 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(2), and (d).

21 **COMMERCE**

22 6. At all times material to this Complaint, OpenX has maintained a  
23 substantial course of trade in or affecting commerce, as “commerce” is defined in  
24 Section 4 of the FTC Act, 15 U.S.C. § 44.

25 **SECTION 5 OF THE FTC ACT**

26 7. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair and  
27 deceptive acts or practices in or affecting commerce.

28

1                   **THE CHILDREN’S ONLINE PRIVACY PROTECTION ACT**

2           8.       Congress enacted COPPA in 1998 to protect the safety and privacy of  
3 children online by prohibiting the unauthorized or unnecessary collection of  
4 children’s personal information online by operators of Internet Web sites and online  
5 services. COPPA directed the Commission to promulgate a rule implementing  
6 COPPA. The Commission promulgated the COPPA Rule, 16 C.F.R. Part 312, on  
7 November 3, 1999, under Section 1303(b) of COPPA, 15 U.S.C. § 6502(b), and  
8 Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into  
9 effect on April 21, 2000. The Commission promulgated revisions to the Rule that  
10 went into effect on July 1, 2013. Pursuant to Section 1303(c) of COPPA, 15 U.S.C.  
11 § 6502(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57(a)(d)(3), a violation  
12 of the Rule constitutes an unfair or deceptive act or practice in or affecting  
13 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

14           9.       The Rule applies to any operator of a commercial Web site or online  
15 service directed to children under 13 years of age (which includes operators of online  
16 services with actual knowledge that they are collecting personal information directly  
17 from users of another Web site or online service directed to children), or any operator  
18 that has actual knowledge that it is collecting or maintaining personal information  
19 from a child under 13 years of age. 16 C.F.R. § 312.3. The definition of “personal  
20 information” includes, among other things, “geolocation information sufficient to  
21 identify street name and name of a city or town,” and a “persistent identifier that can  
22 be used to recognize a user over time and across different Web sites or online  
23 services,” such as a “customer number held in a cookie, an Internet Protocol (IP)  
24 address, a processor or device serial number, or unique device identifier.” 16 C.F.R.  
25 § 312.2.

26           10.      Among other things, the Rule requires subject operators to meet specific  
27 requirements relating to collecting, using, or disclosing personal information from  
28 children, including but not limited to:

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a. Obtaining verifiable parental consent prior to collecting, using, or disclosing personal information fro

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1 advertising networks.

2 23. OpenX promotes itself as the highest quality programmatic advertising  
3 marketplace, and seeks to attract participants with claims that it employs a dual  
4 human and technology approach to traffic quality. According to OpenX, it has the  
5 only traffic quality team in the industry that conducts a human review of each Web  
6 site or App that sends ad requests, to ensure compliance with OpenX’s supply  
7 policies and to accurately classify the subject matter of all Web sites and Apps for  
8 the benefit of its demand-side partners.

9 **ANDROID AND iOS PERMISSION-BASED SYSTEMS**

10 24. The Android and iOS operating systems provide App developers with  
11 application programming interfaces (“APIs”) that facilitate the collection of data  
12 about consumers and their devices.

13 25. In order to access certain data from a device, these operating systems  
14 require App developers to obtain a consumer’s consent through “permissions,” which  
15 involve notifying the consumer about the sensitive information (e.g., the consumer’s

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1 location data brokers, advertisers, advertising agencies, and advertising networks.

2 43. The OpenX Android SDK has been integrated into nearly two hundred  
3 Apps, including popular Apps that have been downloaded billions of times by  
4 consumers.

5 44. As a result of OpenX's practices, publishers provided incorrect  
6 information to consumers regarding their Apps' privacy practices. Indeed, App  
7 developers that have integrated the OpenX SDK represented to consumers in their  
8 privacy policies that consumers had the ability to control the collection and use of  
9 location data through their Apps and through their device location settings,  
10 notwithstanding the fact that OpenX collected the BSSID from their devices without  
11 consent.

12 45. OpenX did not have a regular practice of examining its data collection  
13 practices, assessing whether there was a justification or need for collecting various  
14 data, or checking whether it complied with Android or iOS platform policies, despite  
15 OpenX personnel raising these issues as privacy concerns.

16 **OPENX'S BUSINESS PRACTICES REGARDING COLLECTION OF**  
17 **INFORMATION FROM CHILD-DIRECTED PROPERTIES**

18 46. COPPA sets forth requirements for any operator of a Web site or online  
19 service directed to children and any operator that has actual knowledge that it is  
20 collecting or maintaining personal information from a child under 13 years of age.  
21 16 C.F.R. § 312.3. As described in Paragraphs 47 to 56, OpenX has actual  
22 knowledge that it collects personal information, including location information and  
23 persistent identifiers, from users of Web sites and Apps directed to children under 13  
24 years of age.

25 47. OpenX's traffic quality team is tasked with conducting a human review  
26 of every Web site or App that sends ad requests to its Ad Exchange. This review is  
27 intended to identify restricted content (e.g., pornography, online gambling, and  
28 extreme violence), categorize the property by subject matter or content (e.g.,

1 “Finance,” “News & Magazines,” or “Sports”), and determine whether the property  
2 is child-directed, among other goals.

3 48. To determine whether a property is child-directed, the traffic quality  
4 analysts are responsible for thoroughly reviewing the Web sites and Apps, including  
5 the App store pages, against numerous criteria, much of which is adopted from the  
6 COPPA Rule.

7 49. According to OpenX policy, the traffic quality analysts must flag Apps  
8 directed to children to be banned from participating in the Ad Exchange, unless an  
9 exception can be verified with management.

10 50. Notwithstanding OpenX’s policies and procedures, hundreds of child-  
11 directed Apps that OpenX reviewed were not flagged as child-directed and have  
12 participated in the OpenX Ad Exchange. OpenX had actual knowledge that these  
13 Apps were child-directed based on its human review of the Apps. The Apps for  
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**OPENX’S VIOLATIONS OF THE FTC ACT**

**COUNT I: Deception – OpenX Has Misrepresented Its Data Collection Practices, and Collected Consumer Location Data When the Consumer Had Not Provided Consent or Had Expressly Denied Consent**

57. As provided in Paragraphs 34 and 35,

1 Moreover, OpenX does not identify all child-directed properties, nor does it include a  
2 COPPA flag in bid requests to identify all child-directed inventory.

3 62. Therefore, the representations referred to in Paragraph 60 were false or  
4 misleading, and constitute a deceptive act or practice in violation of Section 5(a) of  
5 the FTC Act, 15 U.S.C. § 45(a).

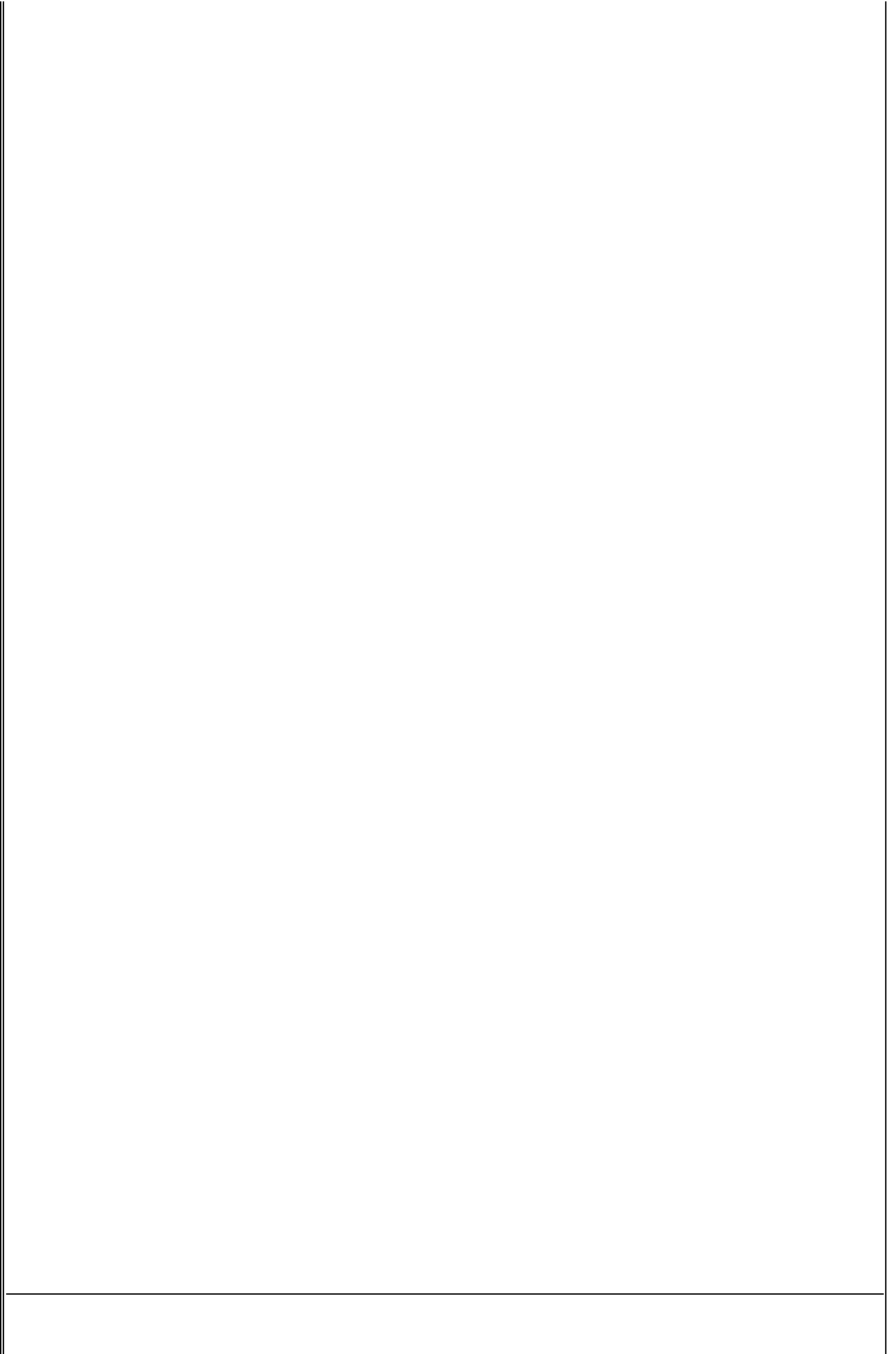
6 **OPENX'S VIOLATIONS OF THE COPPA RULE**

7 **COUNT III: COPPA – OpenX Has Collected Personal Information**  
8 **from Users of Child-Directed Properties**  
9 **Without Consent and Proper Notice**

10 63. Pursuant to the COPPA Rule, 16 C.F.R. § 312.3, any operator of a Web  
11 site or online service directed to children, or any operator that has actual knowledge  
12 that it is collecting or maintaining personal information from a child, is required to  
13 collect information from children in a COPPA-compliant manner. Those  
14 requirements include providing proper notice and obtaining parental consent before  
15 collecting, using, and disclosing personal information from children. As described in  
16 Paragraphs 12 to 23 and 46 to 56, OpenX is an operator of an online service directed  
17 to children because it is an operator of an online service with actual knowledge that it  
18 is collecting personal information directly from users of another Web site or online  
19 service directed to children.

20 64. In connection with operating its Ad Exchange and selling ad inventory,  
21 OpenX collected, used, and disclosed personal information from users of Web sites  
22 or online services directed to children. OpenX collects personal information,  
23 including location information and persistent identifiers, in ad requests from users of  
24 child-directed Web sites and Apps participating in its Ad Exchange and transmits  
25 that information in bid requests to its demand-side partners for use in online  
26 behavioral advertising.

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1 Court to award monetary civil penalties of not more than \$43,280 for each such  
2 violation of the Rule on or after January 14, 2020.

3 **CONSUMER INJURY**

4 70. Consumers are suffering, have suffered, and will continue to suffer  
5 substantial injury as a result of OpenX’s violations of the FTC Act and the COPPA  
6 Rule. Absent injunctive relief by this Court, OpenX is likely to continue to injure  
7 consumers and harm the public interest.

8 **PRAYER**

9 WHEREFORE, Plaintiff United States of America requests that the Court:

10 A. Enter a permanent injunction to prevent future violations of the FTC Act  
11 by OpenX with respect to the privacy of consumers’ personal information;

12 B. Enter a permanent injunction to prevent future violations of the COPPA  
13 Rule by OpenX;

14 C. Award Plaintiff monetary civil penalties from OpenX for each violation  
15 of the COPPA Rule alleged in this Complaint; and

16 D. Award any additional relief as the Court determines to be just and  
17 proper.

18  
19 Dated: December 15, 2021

Respectfully Submitted,

20 FOR THE FEDERAL TRADE  
21 COMMISSION:

FOR THE UNITED STATES OF  
AMERICA:

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