

#### K. Coordination with State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP, the Director, RMS, or the Director, CISR, as appropriate, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the Office, the Office will notify the institution and the State regulatory authority of its decision. Once the Office has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

#### L. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress during the appeal or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

#### M. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

#### N. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the

Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 3501 Fairfax Drive, Suite E-2022, Arlington, Virginia, 22226, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on January 19, 2021.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2021-01547 Filed 1-22-21; 8:45 am]

**BILLING CODE 6714-01-P**

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### FEDERAL ELECTION COMMISSION

#### Sunshine Act Meeting

**TIME AND DATE:** Thursday, January 28, 2021 at 10:00 a.m.

**PLACE:** Virtual meeting. Note: Because of the covid-19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

**STATUS:** This meeting will be open to the public. To access the virtual meeting, go to the commission's website [www.fec.gov](http://www.fec.gov) and click on the banner to be taken to the meeting page.

**MATTERS TO BE CONSIDERED:**

Draft Advisory Opinion 2020-06:  
Escobar  
Audit Division Recommendation  
Memorandum on the Mississippi  
Republican Party (A17-15)  
Management and Administrative  
Matters

**CONTACT PERSON FOR MORE INFORMATION:**  
Judith Ingram, Press Officer; Telephone:  
(202) 694-1220.

**Authority:** Government in the Sunshine Act, 5 U.S.C. 552b.

**Laura E. Sinram,**

*Acting Secretary and Clerk of the Commission.*

[FR Doc. 2021-01594 Filed 1-21-21; 11:15 am]

**BILLING CODE 6715-01-P**

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### FEDERAL TRADE COMMISSION

[File No. 192 3172]

#### Everalbum, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement; request for comment.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before February 24, 2021.

**ADDRESSES:** Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write "Everalbum, Inc.; File No. 192 3172" on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** James Trilling (202-326-3497), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 24, 2021. Write "Everalbum, Inc.; File No. 192 3172" on your comment. Your comment—including your name and your state—

will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Due to the COVID-19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write "Everalbum, Inc.; File No. 192 3172" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must

identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <http://www.ftc.gov> to read this Notice and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 24, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

#### **Analysis of Proposed Consent Order To Aid Public Comment**

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 from 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.

By direction of the Commission.

**April J. Tabor,**  
Acting Secretary.

### Statement of Commissioner Rohit Chopra in the Matter of Everalbum, Inc.

Today's facial recognition technology is fundamentally flawed and reinforces harmful biases. I support efforts to enact moratoria or otherwise severely restrict its use. Until such time, it is critical that the FTC meaningfully enforce existing law to deprive wrongdoers of technologies they build through

unlawful collection of Americans' facial images and likenesses.

The case of Everalbum is a troubling illustration of just some of the problems with facial recognition. Everalbum operates a business line called Paravision, which developed and marketed facial recognition technology, including to clients in the security and air travel industries.<sup>1</sup> The company enhanced their facial recognition technology by allegedly baiting consumers into using Ever, a "free" app that allowed users to store and modify photos.<sup>2</sup>

As outlined in the complaint, Everalbum made promises that users could choose not to have facial recognition technology applied to their images, and that users could delete the images and their account. In addition to those promises, Everalbum had clear evidence that many of the photo app's users did not want to be roped into facial recognition. The company broke its promises, which constitutes illegal deception according to the FTC's complaint. This matter and the FTC's proposed resolution are noteworthy for several reasons.

First, the FTC's proposed order requires Everalbum to forfeit the fruits of its deception. Specifically, the company must delete the facial recognition technologies enhanced by any improperly obtained photos. Commissioners have previously voted to allow data protection law violators to retain algorithms and technologies that derive much of their value from ill-gotten data.<sup>3</sup> This is an important course correction.

<sup>1</sup> Paravision, <https://www.paravision.ai/> (last visited on Jan. 4, 2020).

<sup>2</sup> Compl., In the Matter of Everalbum, Inc., Comm'n File No. 1923172. This is not the only photo-sharing application that has drawn scrutiny for its ties to facial recognition and surveillance technology. Kashmir Hill & Aaron Krolnik, *How Photos of Your Kids Are Powering Surveillance Technology*, N.Y. Times (Oct. 11, 2019), <https://www.nytimes.com/interactive/2019/10/11/technology/flickr-facial-recognition.html>.

<sup>3</sup> The Commission voted 3–2 on a settlement with Google and YouTube that allowed the companies to retain algorithms and other technologies enhanced by illegally obtained data on children. Based on my analysis, the Commission also allowed Google and YouTube to profit from their conduct, even after paying a civil penalty. See Dissenting Statement of Commissioner Rohit Chopra In the Matter of Google LLC and YouTube, LLC, Comm'n File No. 1723083 (Sep. 4, 2019), <https://www.ftc.gov/public-statements/2019/09/statement-commissioner-rohit-chopra-regarding-youtube>. The Commission voted 3–2 on a settlement with Facebook to address unlawful facial recognition practices that violated a 2012 Commission order. Like the Google/YouTube settlement, Facebook was not required to forfeit any facial recognition or other related technologies. The settlement also provided an unusual immunity clause for senior executives, including Mark Zuckerberg and Sheryl Sandberg. See also Dissenting Statement of Commissioner Rohit

Second, the settlement does not require the defendant to pay any penalty. This is unfortunate. To avoid this in the future, the FTC needs to take further steps to trigger penalties, damages, and other relief for facial recognition and data protection abuses. Commissioners have voted to enter into scores of settlements that address deceptive practices regarding the collection, use, and sharing of personal data. There does not appear to be any meaningful dispute that these practices are illegal. However, since Commissioners have not restated this precedent into a rule under Section 18 of the FTC Act, we are unable to seek penalties and other relief for even the most egregious offenses when we first discover them.<sup>4</sup>

Finally, the Everalbum matter makes it clear why it is important to maintain states' authority to protect personal data. Because the people of Illinois, Washington, and Texas passed laws related to facial recognition and biometric identifiers, Everalbum took greater care when it came to individuals in these states.<sup>5</sup> The company's deception targeted Americans who live in states with no specific state law protections.

With the tsunami of data being collected on individuals, we need all hands on deck to keep these companies in check. State and local governments have rightfully taken steps to enact bans, moratoria, and other restrictions on the use of these technologies. While special interests are actively lobbying for federal legislation to delete state data protection laws, it will be important for Congress to resist these efforts. Broad federal preemption would severely undercut this multi-front approach and leave more consumers less protected.

It will be critical for the Commission, the states, and regulators around the globe to pursue additional enforcement actions to hold accountable providers of facial recognition technology who make

Chopra In re Facebook, Inc., Comm'n File No. 1823109 (Jul. 24, 2019), <https://www.ftc.gov/public-statements/2019/07/dissenting-statement-commissioner-rohit-chopra-regarding-matter-facebook>.

<sup>4</sup> Statement of Commissioner Rohit Chopra Regarding the Report to Congress on Protecting Older Adults, Comm'n File No. P144400 (Oct. 19, 2020), <https://www.ftc.gov/public-statements/2020/10/statement-commissioner-rohit-chopra-regarding-report-congress-protecting>; Rohit Chopra & Samuel A.A. Levine, *The Case for Resurrecting the FTC Act's Penalty Enforcement Authority* (Oct. 29, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3721256](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256).

<sup>5</sup> Compl., *supra* note 2.

false accuracy claims and engage in unfair, discriminatory conduct.<sup>6</sup>

[FR Doc. 2021-01430 Filed 1-22-21; 8:45 am]

BILLING CODE 6750-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* NIDCR Special Grants Review Committee.

*Date:* February 18–19, 2021.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 666, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Latarsha J. Carithers, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 666, Bethesda, MD 20892, 301-594-4859, [latarsha.carithers@nih.gov](mailto:latarsha.carithers@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 19, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-01486 Filed 1-22-21; 8:45 am]

BILLING CODE 4140-01-P

<sup>6</sup> Prepared Remarks of Commissioner Rohit Chopra at Asia Pacific Privacy Authorities 54th APPA Forum (Dec. 7, 2020), <https://www.ftc.gov/public-statements/2020/12/prepared-remarks-commissioner-rohit-chopra-asia-pacific-privacy>.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:**

Carol A. Salata at 240-627-3727; [csalata@niaid.nih.gov](mailto:csalata@niaid.nih.gov). Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301-496-2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

**SUPPLEMENTARY INFORMATION:** Technology description follows:

#### Prefusion-Stabilized Fusion (F) Glycoprotein Vaccine Immunogens for Human Metapneumovirus

*Description of Technology:*

Human metapneumovirus (hMPV) infections have been shown as a common cause of upper and lower respiratory diseases such as bronchiolitis and pneumonia in young children, the elderly, and other immunocompromised individuals. Studies show that infections by the non-segmented negative strand RNA virus begin with attachment and entry of viral glycoproteins that mediate fusion with host cellular membranes. Like for the human respiratory syncytial virus (hRSV), a viral entry is initiated by the fusion (F) protein. Given its role in hMPV entry, the F protein has thus been a target for eliciting neutralizing antibodies and development of novel protein-based therapeutic vaccines.

Researchers at the Vaccine Research Center (VRC) of the National Institute of Allergy and Infectious Diseases (NIAID) developed improved recombinant human metapneumovirus (hMPV) F

proteins stabilized in the prefusion conformation that can elicit potent neutralizing antibodies against infection. Double and triple stabilized candidates were designed with inter- and intraprotomer disulfide mutations that increase protein production and show improved antigenic recognition by prefusion-specific antibodies. These second-generation immunogens constitute an improvement over the first generation constructs and are characterized by additional stabilization that results in optimal neutralization responses.

The second-generation stabilized prefusion hMPV F immunogens may be an ideal vaccine immunogen to elicit broad potent neutralizing antibodies against metapneumovirus infection, particularly in children and immunocompromised adults.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

*Potential Commercial Applications:*

- A promising vaccine immunogen to elicit broad potent neutralizing antibodies against metapneumovirus infection, particularly in children and immunocompromised adults.

*Competitive Advantages:*

- There are no approved vaccines or therapeutics against the second leading cause of pediatric viral lower respiratory tract infection in infants and young children.

- Second-generation hMPV F immunogens induce higher titer neutralizing responses than first-generation versions in mice.

*Development Stage:* Preclinical Research.

*Inventors:* Peter D. Kwong (NIAID); Guillaume Stewart-Jones (NIAID); John R. Mascola (NIAID); Ursula J. Buchholz (NIAID); Peter L. Collins (NIAID); Jason Gorman (NIAID); Li Ou, (NIAID); Tongqing Zhou (NIAID); Baoshan Zhang (NIAID); Wing-Pui Kong (NIAID); Yaroslav Tsybovsky (NCI).

*Publications:* Liu, P., et al (2013). A live attenuated human metapneumovirus vaccine strain provides complete protection against homologous viral infection and cross-protection against heterologous viral infection in BALB/c mice. *Clinical and Vaccine Immunology*, 20(8), 1246–1254. Battles, M.B., et al, (2017). Structure and immunogenicity of pre-fusion-stabilized human metapneumovirus F glycoprotein. *Nature communications*, 8(1), 1–11.

*Intellectual Property:* HHS Reference Number E-131-2019 includes U.S. Provisional Patent Application Number 63/017,581, filed on 04/29/2020.