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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEB SITE: <http://commerce.senate.gov>

ELLEN DONESKI, STAFF DIRECTOR
DAVID SCHWIETERT, REPUBLICAN STAFF DIRECTOR

October 22, 2014

Mr. Michael Heyward
Chief Executive Officer
WhisperText LLC
69 Windward Avenue
Venice, CA 90291

Dear Mr. Heyward,

Your company WhisperText LLC describes its Whisper app as a service where “you’re free to anonymously share your thoughts with the world,”¹ and you have asserted that Whisper is the “safest place on the internet.”² Unfortunately, recent media accounts have raised serious questions regarding Whisper’s practices and commitment to the terms of its own privacy policy.

According to recent news reports, WhisperText tracked the approximate location of some users even where the user requested not to be tracked – and despite provisions in its privacy policy stating that a user’s “permission to our access to and tracking of your location based information is purely voluntary.”³ In addition, WhisperText allegedly set up a base in the Philippines to review user data while its privacy policy stated that the company processes and stores all user information in the United States.⁴ WhisperText on October 13 posted a revised privacy policy that reportedly contains new language including a statement that the company may be able to determine certain location information despite geolocation disabling.⁵

WhisperText also reportedly has entered into relationships with media outlets under which the company provides access to Whisper and its content.⁶ It is questionable, at best,

¹ Apple App Store, Description for Whisper – Share, Express, Meet (online at <https://itunes.apple.com/us/app/whisper-share-express-meet/id506141837?mt=8>).

² *Revealed: How Whisper App Tracks ‘Anonymous’ Users*, The Guardian (Oct. 16, 2014) (online at <http://www.theguardian.com/world/2014/oct/16/-sp-revealed-whisper-app-tracking-users>).

³ *Whisper App Rewrites Terms of Service and Privacy Policy*, The Guardian (Oct. 16, 2014) (online at <http://www.theguardian.com/world/2014/oct/16/-sp-whisper-privacy-policy-terms-of-service>).

⁴ *Whisper App Rewrites Terms of Service and Privacy Policy*, The Guardian (Oct. 16, 2014) (online at <http://www.theguardian.com/world/2014/oct/16/-sp-whisper-privacy-policy-terms-of-service>); *Revealed: How Whisper App Tracks ‘Anonymous’ Users*, The Guardian (Oct. 16, 2014).

⁵ WhisperText, LLC, Privacy Policy (updated Oct. 13, 2014); *Revealed: How Whisper App Tracks ‘Anonymous’ Users*, The Guardian (Oct. 16, 2014) (online at <http://www.theguardian.com/world/2014/oct/16/-sp-revealed-whisper-app-tracking-users>).

⁶ See e.g., *BuzzFeed United With an Alumnus of Gawker*, New York Times (Mar. 24, 2014) (online at http://www.nytimes.com/2014/03/24/business/media/buzzfeed-unites-with-an-alumnus-of-gawker.html?_r=0); *Exclusive: Read Ousted American Apparel CEO Dov Charney’s Termination Letter*,

Letter to Mr. Heyward
October 22, 2014

whether users seeking to post anonymously on the “safest place on the internet” would expect that WhisperText has information sharing relationships with third parties such as media organizations.

In an October 18, 2014, blog post, you state that WhisperText does not “actively” track users, but acknowledge that the company does collect data that can be used to approximate a user’s location. You also defend your company’s relationships with media organizations and note plans to continue with such partnerships.⁷

To assist the Committee in evaluating questions that have been raised about WhisperText’s practices and policies, I request a Committee staff briefing from your company. Specifically, please be prepared to address at the Committee briefing the following issues:

1. Whether and how WhisperText tracks or has tracked the location of its users who have opted out of geolocation services, and if it has, how does it or has it used that information;
2. The extent to which WhisperText retains user data and the location(s) where user data is processed and retained;
3. WhisperText’s practices regarding sharing user data with third parties, including when and how those practices have changed over time; and
4. WhisperText’s practices regarding notifying users about its privacy and data security policies related to user data, including any changes to those policies.

I also request that you provide the Committee with a copy of the company’s current terms of use and privacy policy, as well as copies of the policies in effect at the launch of the company and at the time of the company introduced its geolocation feature.

As the Chairman of the Committee with jurisdiction over the Federal Trade Commission and consumer protection issues including online privacy, I take this matter seriously. As Chairman, I have made consumer privacy a top priority, and the Committee has actively exercised its jurisdiction over commercial data practices and data security.

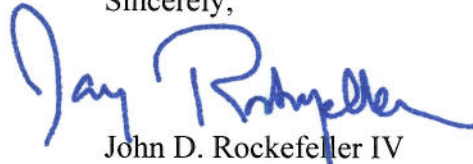
gawker.html?_r=0); *Exclusive: Read Ousted American Apparel CEO Dov Charney’s Termination Letter*, BuzzFeed (June 22, 2014) (online at <http://www.buzzfeed.com/sapna/exclusive-read-ousted-american-apparel-ceo-dov-charneys-term>) (reporting on revelations posted by a Whisper user about the dismissal of Dov Charney, the founder of American Apparel).

⁷ Michael Heyward, *What Whisper Is All About* (Oct. 18, 2014) (online at <https://medium.com/@michaelheywire/what-whisper-is-all-about-f12c45f2b0cd>).

Letter to Mr. Heyward
October 22, 2014

While Whisper may provide its users a unique social experience, the allegations in recent media accounts are serious, and users are entitled to privacy policies that are transparent, disclosed, and followed by the company. Thank you for your prompt attention to this request, and should you have any questions, please contact [REDACTED]
[REDACTED]

Sincerely,



John D. Rockefeller IV
Chairman

Enclosure

cc: John Thune
Ranking Member