

# Spokeo Agrees to \$800,000 FTC Settlement

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*Written by Adam Veness*

**Spokeo, Inc.** has agreed to pay the FTC \$800,000 to **settle** the FTC's claims alleging that Spokeo violated the Fair Credit Reporting Act (FCRA) and committed unfair or deceptive acts or practices under the FTC Act. Spokeo is a data broker that collects personal information of millions of consumers and compiles that information into online profiles for each person. The information it collects and compiles includes a person's name, address, age range, email address, hobbies, ethnicity, religion, photos and social media use. This is the first time that the FTC has brought an action addressing the sale of Internet and social media information in the context of employment screening.

In its **complaint**, the FTC asserted that Spokeo is a "consumer reporting agency" under the FCRA because it assembles consumer information for the purpose of furnishing "consumer reports" to third parties. The FTC determined that Spokeo profiles are consumer reports under the FCRA because "they bear on a consumer's character, general reputation, personal characteristics, or mode of living and/or other attributes" and are "used or expected to be used . . . in whole or in part" as a factor in determining the consumer's eligibility for employment."

As support for the FTC's argument that Spokeo reports were used to determine employment eligibility, and thus constituted consumer reports, the FTC cited Spokeo's aggressive marketing and selling of its consumer profile information to recruiters and human resource departments in connection with employment screening. Specifically, Spokeo purchased thousands of online advertising keywords, including terms that targeted employment background checks, applicant screening, and recruiting. Spokeo also created an entire section of its website that was dedicated to recruiters and HR professionals and promoted the Spokeo URL: [Spokeo.com/HR](http://Spokeo.com/HR).

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### Spokeo's FCRA Violations

As a consumer reporting agency under the FCRA, the FTC alleged that Spokeo violated the FCRA in the following ways:

- 1) **Maintain Adequate Safeguards:** Spokeo failed to require prospective users of Spokeo's profile information to: identify themselves to Spokeo, certify the purpose for which the information is sought, and certify that the information will be used for no other purpose.
- 2) **Assure Accurate Information:** Spokeo failed to follow any reasonable procedures to assure maximum possible accuracy of the consumer information contained in the reports it prepared.
- 3) **User Notice:** Under the FCRA, Spokeo failed to provide a "Notice to Users of Consumer Report: Obligations of Users Under the CRA" to any person to whom it provided a consumer report.
- 4) **Permissible Purpose:** The FCRA prohibited Spokeo from furnishing consumer reports to persons that Spokeo did not have reason to believe had a "permissible purpose." Although the FCRA includes employment purposes as a permissible purpose, it prescribes certain conditions for furnishing and using consumer reports for employment purposes. Spokeo regularly furnished consumer reports to third parties without inquiring into the purpose for which the person was purchasing the report.

### Spokeo's FTC Act Violation

In addition to Spokeo's FCRA violations, the FTC alleged that Spokeo violated the FTC Act by committing "unfair or deceptive acts or practices in or affecting commerce." Specifically, the FTC alleged that Spokeo directed its employees to post comments on news and technology websites regarding Spokeo's services and Spokeo management reviewed the comments before they were posted. This was a

misrepresentation to consumers because it gave consumers the impression that the comments had been submitted by independent and ordinary consumers or business users of Spokeo. Accordingly, the FTC alleged that misleading consumers in this way constituted a violation of the FTC Act.

### The Settlement

Under the settlement, in addition to the \$800,000 fine for Spokeo's FCRA and FTC Act violations, Spokeo is required to submit a compliance reports to the FTC for twenty years. The compliance reports must include, among other things:

- Accounting records showing the revenues from all good or services sold, all costs incurred in generating that revenue, and the resulting net profit or loss;
- training materials related to the collecting and sale of consumer reporting information;
- a copy of each advertising or marketing material; and
- if operating as a consumer reporting agency, files containing the names, addresses, phone numbers, and permissible purposes for all entities to whom Spokeo supplies consumer reports (if operating as a consumer reporting agency).

The Spokeo settlement brings to light yet another avenue through which the FTC can pursue claims against companies that fail to adequately and properly manage consumer information.

For more information related to the FTC complaint and settlement, click on the links below.

### FTC Complaint

### Spokeo Settlement

### FTC Press Release

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Cynthia J. Larose is Chair of the firm's Privacy & Cybersecurity Practice, a Certified Information Privacy Professional-US (CIPP-US), and a Certified Information Privacy Professional-Europe (CIPP-E). She works with clients in various industries to develop comprehensive information security programs on the front end, and provides timely counsel when it becomes necessary to respond to a data breach.