December 20, 2007

Jim Lanzone, CEO
Ask.Com
A Division of IAC/InterActiveCorp (www.iac.com)
555 West 18th Street,
New York, NY 10011

Dear Mr. Lanzone,

We are writing to you regarding the Ask Eraser, which your company released last week with a lot of enthusiasm for its privacy safeguards. Many news stories mentioned the important developments for privacy, and many consumers were led to believe that if they were to use this product, it would help product their privacy.

After a more careful review of Ask Eraser, we have found at least three significant flaws. We believe that the flaws are correctable, and hope that you will work to bring the reality of Ask Eraser in line with your stated objective of protecting your customers' privacy. Our analysis of the flaws in Ask Eraser follows.

(1) The Opt-Out Cookie

A person who wants to implement the Ask Eraser feature will need to accept an Ask cookie to enable the Ask Eraser feature. The particular type of cookie Ask is using to enable the feature is known as an "opt-out" cookie. The "opt-out" cookie is a confusing and misleading approach to consumer privacy. First, it is counter-intuitive. Users who are concerned about privacy will typically delete cookies, especially cookies associated with activities, such as search, for which there is a privacy concern. But once the cookie is deleted, the privacy setting is lost and Ask will no longer honor the user's privacy status.

Second, the opt-out cookie does not scale. If users are required to accept opt-out cookies for every site that they do not want tracking them, a person would have to keep cookies for every single Internet site. That doesn't make very much sense, does it?

Third, the cookie expires after two years. Why does the cookie expire? What is it that happens at two years that leads Ask to believe that a person now wants their search activity tracked by your company? This is all the more problematic because privacy experts and advocates are pushing to reduce data retention time periods. By establishing an opt-cookie you are undercutting that effort, and hooking your product to other search companies that are keeping cookies for two years.

As you know, there are a number of techniques that enable anonymous web browsing that do not require users to create an opt-out cookie. For example, you could have an opt-in cookie instead of an opt-out cookie, and give users privacy by default. You could implement based URL based search queries. Ask Eraser could be an improved product if you chose to adopt one of these techniques.

(2) The Persistent Identifier

We analyzed the Ask cookie that enables the Ask Eraser feature. For those who might not know, the cookie is the information stored by your company on the user's system when he or she goes to the Ask web site.

A close examination of the Ask Eraser cookie reveals that Ask inserts the exact time, down to the second, that the user enables Ask Eraser. That information is permanently stored on the user's computer in the CONTENT field of the cookie.

This is what it looks like in the Firefox browser:
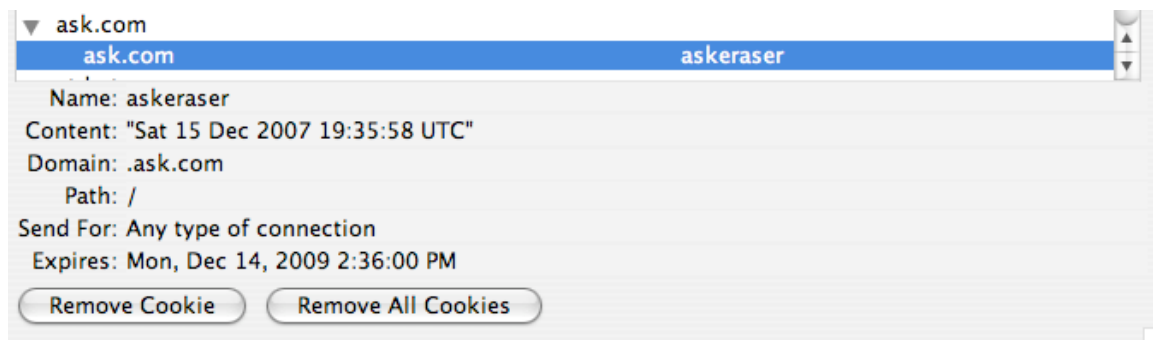
With this particular implementation, the text string in the CONTENT field operates like a unique identifier, such as a person's cellphone number or a Social Security Number. While it is conceivable that there could be more than one cookie issued at the exact same second, it seems unlikely. Particularly, when histories are logged, reconstructing actual identity would be trivial. Also, even if Ask were not logging search histories, by transferring this type of cookie to third parties, you will make it easy for third parties to track users who have enabled Ask Eraser by simply noting the time/date stamp you assigned.

Assuming that you must impalement an opt-out cookie, a more sensible cookie might be simply CONTENT = "Do Not Track" or CONTENT = "2037." Both cookies would fulfill the purpose intended without creating the additional privacy risk. And of course you could change the EXPIRES to some non-unique future date such as " Wed Dec 31, 2036 11:59:59 pm". The point is to avoid the risk that the time/date stamp operates as a unique identifier. Another possibility, which would be much better, is to use a session cookie that would expire once the search result is returned.

<u>(3) Secretly Turning Off Ask Eraser</u>

Your Frequently Ask Questions notes that there may be circumstances when you are required to comply with a court order. You state that "In such case, we will retain your search data even if Ask Eraser appears to be turned on."

This troubles us since you have assured the public that Ask Eraser does not retain search histories. Recognizing that you may have certain legal obligations, we would like you to make clear that you will clearly notify users at the time their Ask Eraser feature has been disabled so that no one is misled about the operation of your service.

In the absence of such a policy, it is not too difficult to imagine a scenario in which thousands of users will be using the Ask Eraser as it is logging search histories.

We haven't had the opportunity yet to assess the significance of Google processing your search queries. We will get to that soon.

We would appreciate it if you would let us know when Ask is planning to correct these flaws.

Sincerely.

Marc Rotenberg
Electronic Privacy Information Center (EPIC)

Jeff Chester
Center for Digital Democracy

Linda Sherry
Consumer Action

Mike Stollenwerk
Fairfax County Privacy Council

Lew Maltby
National Workrights Institute

Remar Sutton
Privacy Rights Now Coalition

Evan Hendricks
Privacy Times

Pam Dixon
World Privacy Forum