

**Before the
Federal Trade Commission
Washington, DC 20580**

In the Matter of)
)
Ask.com)
)

Complaint and Request for Injunction, Request for Investigation and for Other Relief

INTRODUCTION

1. This complaint concerns the business practices of the company Ask.com and specifically a product it has offered to Internet users in the marketplace called “AskEraser.” The company purports to provide an Internet search engine that provides privacy protection by limiting the collection and use of Internet search histories. In fact, the product does not work as advertised: Internet search histories will be retained without notice to Internet users. Moreover, AskEraser requires Internet users to disable genuine privacy features, and it exposes Internet users to additional tracking, monitoring, and profiling by means of a Persistent Identifier.
2. The Federal Trade Commission (“FTC” or “Commission”) has identified the business practices of Internet search companies as critical components of the Internet economy and the privacy safeguards for American consumers. The Commission is specifically interested in

what types of consumer data are collected, how such data are used, what protections are provided for that data, and the costs and benefits of behavioral advertising to consumers . . . what companies are disclosing to consumers and what consumers understand about the online collection of their information for use in advertising . . . what regulatory and self-regulatory measures currently govern the practices related to online behavioral advertising, as well as anticipated changes in the behavioral advertising space in the future.¹
3. This matter presents a unique opportunity for the Commission to promote the development of genuine Privacy Enhancing Techniques that would protect the privacy interests of American consumers.

PARTIES

4. The Electronic Privacy Information Center (“EPIC”) is a public interest research organization incorporated in Washington, D.C. EPIC’s activities include the review of government and private sector policies and practices to determine their possible impact on

¹ Fed. Trade Comm’n, “Ehaviorial Advertising: Tracking, Targeting, and Technology,” Public Workshop, Nov. 1-2, 2007, <http://www.ftc.gov/bcp/workshops/ehavioral/index.shtml>.

the privacy interests of the American public. Among its other activities, EPIC first brought the Commission's attention to the privacy risks of online advertising.² EPIC also initiated the complaint to the FTC regarding Microsoft Passport in which the Commission subsequently required Microsoft to implement a comprehensive information security program for Passport and similar services.³

5. Center for Digital Democracy ("CDD") is a non-profit organization incorporated in Washington, D.C. CDD is committed to preserving the openness and diversity of the Internet in the broadband era.
6. Consumer Action ("CA"), founded in 1971, is a national non-profit education and advocacy organization headquartered in San Francisco with offices in Los Angeles and Washington, D.C. CA has a national reputation for multilingual consumer services in the fields of credit, banking, privacy, insurance and telecommunications.
7. Fairfax County Privacy Council ("FCPC") was established in 2003 to focus attention on privacy issues affecting Virginians.
8. Patient Privacy Rights is a national consumer watchdog organization based in Austin, TX. The mission of Patient Privacy Rights is to empower Americans to protect and preserve their human rights to medical privacy.
9. U.S. Bill of Rights Foundation is in Washington, D.C.
10. Ask.com is an Internet company that was established in April 1997.⁴ As of July 19, 2005, Ask.com became a wholly owned business of IAC/InterActiveCorp. ("IAC").⁵ IAC Search & Media (formerly Ask Jeeves, Inc.) was founded in 1996 in Berkeley, California. IAC Search and Media delivers information retrieval products through a diverse portfolio of Web sites, portals and downloadable applications. IAC Search and Media's search and search-based portal brands include: Ask.com, Ask for Kids, Bloglines, Evite, Excite, iWon, FunWebProducts and MyWay. IAC Search and Media is a wholly-owned business of IAC/InterActiveCorp. Business headquarters are located in Oakland, California, with offices throughout the United States, as well as in Europe and Asia.⁶

² In the Matter of DoubleClick, Complaint and Request for Injunction, Request for Investigation and for Other Relief, before the Federal Trade Commission (Feb. 10, 2000), *available at* http://www.epic.org/privacy/internet/ftc/DCLK_complaint.pdf.

³ In the Matter of Microsoft Corporation File No. 012 3240, Docket No. C-4069 (Aug. 2002), *available at* <http://www.ftc.gov/os/caselist/0123240/0123240.shtm>. *See also*, Fed. Trade Comm'n, "Microsoft Settles FTC Charges Alleging False Security and Privacy Promises" (Aug. 2002) ("The proposed consent order prohibits any misrepresentation of information practices in connection with Passport and other similar services. It also requires Microsoft to implement and maintain a comprehensive information security program. In addition, Microsoft must have its security program certified as meeting or exceeding the standards in the consent order by an independent professional every two years."), *available at* <http://www.ftc.gov/opa/2002/08/microsoft.shtm>.

⁴ IAC Search & Media, Fact Sheet: Ask.com, http://sp.ask.com/en/docs/about/fact_sheet.shtml.

⁵ Ask.com, Privacy Practices, http://about.ask.com/en/docs/about/privacy_practices.shtml.

⁶ Ask.com, Company Overview, http://about.ask.com/en/docs/about/company_overview.shtml.

THE IMPORTANCE OF PRIVACY PROTECTION

11. The right to privacy is a personal and fundamental right in the United States. The privacy of an individual is directly implicated by the collection, use, and disclosure of personal information. The opportunities to secure employment, to obtain medical services and the rights of due process may be jeopardized by the misuse of personal information.
12. The excessive collection of personal data in the United States coupled with inadequate legal and technological protection has led to a dramatic increase in the crime of identity theft.⁷
13. The federal government has established policies for privacy and data collection on federal Web sites that acknowledge particular privacy concerns “when uses of Web technology can track the activities of users over time and across different Web sites” and has discouraged the use of such techniques by federal agencies.
14. Privacy laws routinely require that information about consumers be deleted once the data is no longer needed.⁸ Courts have also recognized a privacy interest in the collection of information that concerns Internet use even where the information may not be personally identifiable.⁹
15. The Federal Trade Commission has a statutory obligation to investigate and prosecute violations of Section 5 of the Federal Trade Commission Act where the privacy interests of Internet users are at issue.

THE IMPACT OF INTERNET SEARCH ENGINES

16. Internet search engines, such as those offered by Ask, Google, and Yahoo are the primary means by which individuals access and search for content on the Internet.
17. Search terms entered into a search engine reveal the most intimate personal information, such as an individual’s medical concerns, personal associations, religious beliefs, political viewpoints, and sexual orientation.
18. In 2005, more than 60 million American adults used search engines on a typical day; out of which 5.4% used Ask.com as their search engine.¹⁰

⁷ Fed. Trade Comm’n, *Consumer Fraud and Identity Theft Compliant Data: January – December 2006* (Feb. 7, 2007), available at <http://www.consumer.gov/sentinel/pubs/Top10Fraud2006.pdf> (for the seventh year in a row, identity theft is the No. 1 concern of U.S. consumers).

⁸ See, e.g., Video Privacy Protection Act of 1988, 18 USC § 2710(e) (“A person subject to this section shall destroy personally identifiable information as soon as practicable”); Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. § 1681x (concerning disposal of consumer records).

⁹ *Gonzales v. Google*, 234 F.R.D. 674, 687 (N.D. Cal. 2006); *Northwestern Mem’l Hosp. v. Ashcroft*, 362 F.3d 923, 929 (7th Cir. 2004).

¹⁰ Lee Rainie et al., Pew Internet & American Life Project, *Search Engine Use November 2005* (2005), available at http://www.pewinternet.org/pdfs/PIP_SearchData_1105.pdf; Danny Sullivan, Search Engine Watch, *comScore Media Matrix Search Engine Ratings August 2006* (2006), <http://searchenginewatch.com/showPage.html?page=2156431>.

19. Search engine usage not only impacts online decisions of consumers, but also significant amounts of offline behavior. For example, information obtained through an Internet search query may result in a purchase at a retail store offline.
20. Search engine records are collected, stored, processed and transferred by Internet search companies; in the absence of meaningful privacy laws, consumers exercise no control over this information even though it is personal data.

STATEMENT OF FACTS

21. Ask.com collects and retains data such as IP addresses, the address of the last URL visited before arriving at Ask.com, and data in undeleted cookies that were previously accepted from Ask.com, in combination with search histories.¹¹
22. AskEraser is a search product, offered by Ask.com that, once enabled, purports to delete search histories “within hours.” The company advertises that the new search tool “will offer its searchers unmatched control over their privacy.”¹²
23. The intent of the representation is to encourage Internet users to choose the AskEraser product over other competing search products because of the privacy protection that the company claims to provide.

The Opt-Out Cookie is a Flawed Technique for Privacy Protection

24. A “cookie” is information unique to a particular user that is stored as a text file on the user’s computer. Initially, cookies are passed from a Web server to the user’s Web browser. Once accepted, the original Web server, as well as other services depending on the configuration, can then retrieve the user’s cookie’s data containing passwords, preferences and most typically a unique ID, whenever the user visits the server’s page again.¹³
25. Cookies are routinely used for tracking Internet users when they click on different pages on the same Web site, when they return to a Web site, and as they move between distinct Web sites.
26. A person who wants to enable the AskEraser service on her computer will need to accept an Ask.com cookie that will be stored for two years.¹⁴

¹¹ Ask.com, Privacy Policy, <http://sp.ask.com/en/docs/about/privacy.shtml>; Ask.com, About AskEraser, <http://sp.ask.com/en/docs/about/askeraser.shtml>.

¹² Press Release, IAC Search and Media, Ask.com to Give People Unmatched Privacy Control, July 19, 2007, available at http://www.irconnect.com/askj/pages/news_releases.html?d=123324.

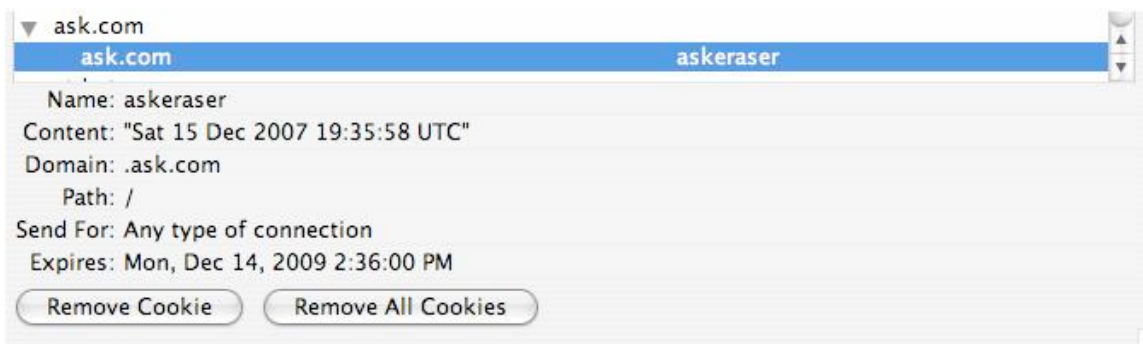
¹³ PC Security News, Definition and Terminology, http://www.pcsecuritynews.com/spyware_definitions_terminology.html.

¹⁴ Ask.com, About AskEraser, *supra* note 11.

27. If a person chooses not to accept and store the AskEraser cookie, the “features” will not be enabled.
28. Internet users who are concerned about privacy routinely delete cookies or refuse to accept cookies from Web sites that require them.
29. Requiring consumers to accept opt-out cookies as a means to protect privacy does not “scale,” *i.e.* the practical impact of this approach to privacy protection is to require a user to retain a cookie for every company for which he or she does not wish to be tracked.
30. A typical privacy feature in a software browser is the option not to accept a cookie. Ask.com requires users to disable this privacy feature so that the AskEraser cookie will be stored on the user’s computer.¹⁵
31. There are techniques available that would enable a company to provide anonymous browsing without requiring users to accept cookies.
32. Ask.com has purposefully chosen to use an opt-out cookie so as to better track the activities of users of AskEraser.

The Persistent Identifier Enables Permanent Tracking of Internet Users

33. Upon examination of the AskEraser cookie placed on the user’s computer, EPIC determined that Ask.com inserts the exact time that the user enables the AskEraser service. This information is permanently stored on the user’s computer in the “content” field of the cookie.



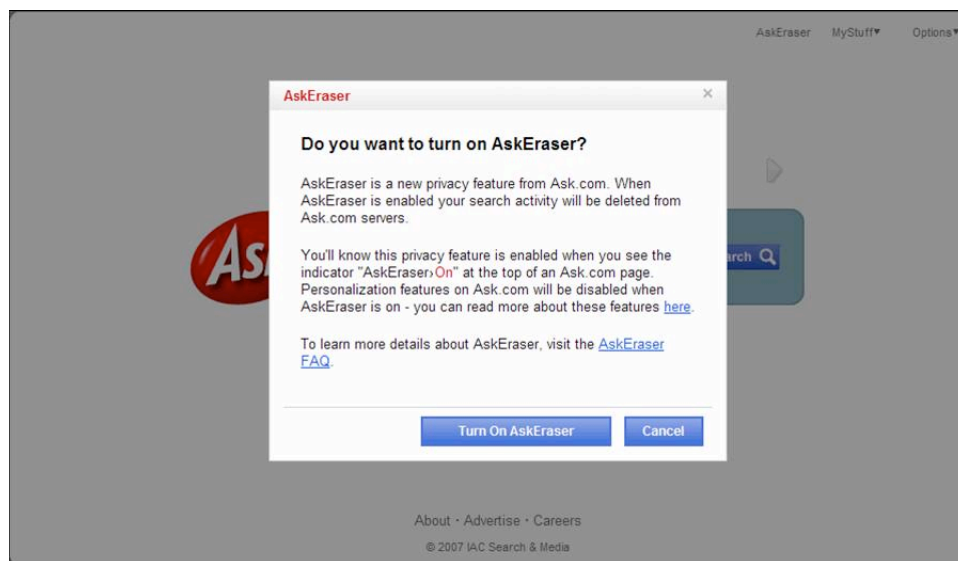
34. With this type of particular implementation, the text string in the “content” field is in fact, similar to a unique identifier, such as a person’s cell phone number or a Social Security Number. So, for example, a user will have the ID “Sat 15 Dec 2007 19:35:58 UTC.”
35. While it is conceivable that two Internet users could have the same Ask.com identifier, it is highly unlikely. It is more probable that more than one person might share the same phone number contemporaneously or over time.

¹⁵ *Id.*

36. The use of the AskEraser opt-out cookie provides a Persistent Identifier that allows Ask.com to track and monitor the user with the search query for as long as the user continues to use the AskEraser service.
37. The use of the AskEraser opt-out cookie provides a Persistent Identifier that allows any company to whom Ask.com conveys the search query and the associated cookie to track and monitor the user with the search query for as long as the user continues to use the AskEraser service.
38. The use of the AskEraser opt-out cookie provides a Persistent Identifier that allows any government agency to whom Ask.com conveys the search query and the associated cookie, whether intentionally or by other means, to track and monitor the user with the search query for as long as the user continues to use the AskEraser service.
39. Because the Ask.com identifier is maintained by the user on his or her computer in the cookie file it is trivially easy to identify the user and associated search terms, even after the search history is purportedly deleted from the Ask.com servers.

Disabling the Service without Notice

40. Upon reaching the Ask.com homepage, a user has the option of clicking on the “AskEraser” icon at the top right corner of the page to enable its function. After clicking on the icon, the user is prompted with a message indicating the enhanced privacy protection of using AskEraser and also how to determine whether AskEraser is enabled on the computer. The user then has the option of turning on AskEraser to enable its function.
41. Once AskEraser is enabled on the computer, an “on/off” icon appears next to the AskEraser icon, where the “on” icon is lit up. In this manner, the user is given notice that the service is operational.



42. However, Ask.com elsewhere indicates that there are circumstances where the service is disabled. Ask.com states: “In such case, we will retain your search data even if AskEraser appears to be turned on.”¹⁶
43. Ask.com does not provide users of the AskEraser service notice of when their search histories will be retained.
44. Ask.com continues to represent the deletion of search histories even as it is retaining search histories for government agents, private litigants, and others.

Third Party Data Protection is Non-Existent

45. Ask.com does not prevent or regulate the collection and use of searches conducted on AskEraser by third-party advertising companies, which may use a third-party cookie to gather information about the Ask.com user. Therefore, information gathered on one site may be used for targeted advertising on another site.
46. Ask.com also shares information with third-party service providers. Certain services on Ask.com are supplied by third parties under contract, such as news, Smart Answers or sponsored links advertising. Even if AskEraser is enabled, the user’s search queries are kept on the servers of third-party companies.¹⁷
47. The extent of the relationship between Ask.com and Google.com is also of concern. Ask.com is a wholly-owned business of IAC.¹⁸ On November 12, 2007, IAC and Google announced an extended and broadened contract regarding sponsored listings. Neither the details of the contract nor the data practices involving Internet users have been disclosed to the public.
48. As a third-party advertisement provider, Google has access to Ask.com search results, and query information on Ask.com is passed on to Google.¹⁹

VIOLATIONS OF SECTION 5 OF THE FTC ACT

49. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts of practices in or affecting commerce. Section 5 applies to a wide range of business practices, including advertising, marketing, and billing, collection.

Ask.com’s AskEraser Constitutes Unfair Trade Practices

50. A practice is said to be “unfair” if meets three requirements:

- a) If it causes substantial injury to consumers;

¹⁶ Ask.com, About AskEraser, *supra*, note 11.

¹⁷ *Id.*

¹⁸ Ask.com, Privacy Practices, *supra*, note 5.

¹⁹ Miguel Helft, *Ask.com Puts a Bet on Privacy*, N.Y. Times, Dec. 11, 2007, available at <http://www.nytimes.com/2007/12/11/technology/11ask.html>.

- b) If the harm is not outweighed by any countervailing benefits; and
 - c) If the harm is not reasonably avoidable.²⁰
51. An Internet user genuinely seeking privacy protection regarding search histories for a sensitive personal matter will be provided a service from Ask.com that will (1) require disabling other privacy features on the user's computer, such as the browser setting to block cookies; (2) assign a unique identifier that will enable greater tracking of the Internet user's search queries, and (3) subject the user to routine recording of search histories by Ask.com and its business affiliates in direct contradiction to the purported purpose of the service.
 52. To the extent that the user has a substantial interest in the privacy protection features of a properly designed Internet search engine, it is clear that the AskEraser search function is unfair and poses a risk of substantial injury to the user.
 53. Because the product does not work as advertised and fails to provide any countervailing benefits, the unfairness is not diminished.
 54. Because the product (1) requires that the Internet user accept the AskEraser cookie to enable the service; (2) creates a Persistent Identifier over which the user has no control, (3) subjects the user to the retention of search histories without notice, and (4) transfers search query information to other companies without privacy safeguards, the harm for AskEraser users is unavoidable.
 55. Ask.com's provision of AskEraser in the marketplace as a privacy-protecting search engine is an unfair business practice.

Ask.com's Activities Constitute Deceptive Trade Practices

56. Deception occurs under Section 5 if, "first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material."²¹
57. The FTC Policy Statement on Deception outlines the three elements assessed in the determination of whether a business practice is deceptive:
 - a) There must be a representation, omission or practice that is *likely to mislead the consumer*. This includes failure to perform promised services. Actual deception is not required; it must be shown that the act or practice is likely to mislead.
 - b) The practice is examined from the perspective of a reasonable person in the circumstances.

²⁰ *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 249 (1972); *Orkin Exterminating Company, Inc. v. FTC*, 849 F.2d 1354, 1363-68 (11th Cir. 1988).

²¹ Fed. Trade Comm'n, Policy Statement, Sept. 29, 1999, available at <http://www.ftc.gov/bcp/adcon/900rule/ellyatt.shtm>; *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 165, *appeal dismissed sub nom., Koven v. FTC*, No. 84-5337 (11th Cir. 1984); *Thompson Medical Co., Inc.*, 104 F.T.C. 648, 816 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

c) The representation, omission or practice must be a material one i.e. it is likely to affect the consumer's conduct or decision regarding the product.²²

58. Ask.com portrays itself as “serious about privacy” and “committed to meeting and exceeding emerging privacy trends.”²³ AskEraser is marketed as a tool that empowers users to maintain control over the collection and retention of data by choosing to opt-out to have their data deleted. However this representation is deceptive in several ways:

- a) AskEraser does not prevent or regulate the collection and use of searches conducted on Ask.com by third-party advertising companies, which may use a third-party cookie to gather information about the Ask.com user. Therefore, information gathered on one site may be used for targeted advertising on another site. A limited and rather burdensome option exists to prevent certain advertising companies from using their cookies to obtain search results. To achieve this, the user has to go to another site and individually select and disable the companies that the user does not want to receive advertising from.²⁴ This option is *not* reasonable given that AskEraser purports to protect the user's privacy upon simply clicking and enabling the AskEraser function.
- b) Ask.com also shares information with third-party service providers. In spite of AskEraser being enabled, the user's search queries are kept on the servers of third-party companies.²⁵
- c) Ask.com reserves the right to retain the search data of users in case of a court order, in spite of the use of AskEraser, without informing users. This is a deceptive trade practice as consumers are led to believe that their search histories will not be retained once AskEraser has been activated and are not given notification of the data retention, exchange or use.
- d) AskEraser does not offer protection when users install an Ask.com search toolbar.²⁶

59. AskEraser marketing leads the public to believe that their search histories not being collected and retained by Ask.com. Not only is this not always the case, search histories are accessible, collected and retained by both third-party advertisers and third-party service providers.

60. In conclusion, the business practices of Ask.com are deceptive and misleading.

Consumer Injury

61. The flaws in Ask.com's product AskEraser have injured consumers by surreptitiously invading their privacy; causing them to believe, falsely, that their online activities would remain anonymous; and undermining their ability to avail themselves of other actual privacy services, such as Web browsers that allow users to block cookies.

²² Fed. Trade Comm'n, Policy Statement on Deception, Oct. 14, 1993, *available at* <http://www.ftc.gov/bcp/policystmt/ad-decent.htm>.

²³ Ask.com, About AskEraser, *supra* note 11.

²⁴ Ask.com, Privacy Policy, *supra* note 11. *See also* Network Advertising Initiative, <http://www.networkadvertising.org/>.

²⁵ Ask.com, Privacy Policy, *supra* note 11.

²⁶ *Id.*

62. Absent injunctive relief by the Commission, Ask.com is likely to continue to injure consumers and harm the public interest.
63. Absent injunctive relief by the Commission, other companies will be encouraged to offer poorly conceived “privacy products” to consumers in an unfair and deceptive manner.
64. Absent injunctive relief by the Commission, the privacy interests of consumers engaging in online commerce and other Internet activities will be significantly diminished.

REQUEST FOR RELIEF

65. Order Ask.com to withdraw AskEraser from the marketplace.
66. Order Ask.com to cease engaging in and unfair deceptive trade practices.
67. Require Ask.com, as a condition of offering AskEraser in the future to:
 - a) Cease using the opt-out cookie
 - b) Cease creating a Persistent Identifier on customers
 - c) Provide meaningful notice if the service will be disabled
 - d) Establish enforceable privacy safeguards for the transfer of user information to third parties, consistent with Ask.com’s own policies.
68. Order Ask.com to delete all previously retained information, before the implementation of AskEraser.
69. Order Ask.com to inform all current users of AskEraser, by prominent notice displayed on the Ask.com Web site, that they should delete the Ask.com AskEraser cookie.
70. Order Ask.com to require its business partners to delete any search queries provided by Ask.com concerning AskEraser users.
71. Provide such other relief as the Commission may determine is appropriate and necessary.

Respectfully submitted,

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EPIC Executive Director²⁷

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²⁷ EPIC IPIOP Clerks Cynthia Aoki and Sobia Virk assisted in the preparation of this complaint.

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