

Before the
Federal Trade Commission
Washington, DC

In the Matter of)
)
Microsoft Corporation.)
_____)

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

INTRODUCTION

1. This complaint concerns the privacy implications of the Microsoft XP operating system that is expected to become the primary means of access for consumers in the United States to the Internet. As is set forth in detail below, Microsoft has engaged, and is engaging, in unfair and deceptive trade practices intended to profile, track, and monitor millions of Internet users. Central to the scheme is a system of services, known collectively as “.NET,” which incorporate “Passport,” “Wallet,” and “HailStorm” that are designed to obtain personal information from consumers in the United States unfairly and deceptively. The public interest requires the Commission to investigate these practices and to enjoin Microsoft from violating Section 5 of the Federal Trade Commission Act, as alleged herein.

PARTIES

2. The Electronic Privacy Information Center (“EPIC”) is a non-profit, public interest research organization incorporated in the District of Columbia. EPIC’s activities include the review of government and private sector policies and practices to determine their possible impact on the privacy interests of the American public. Among its other activities, EPIC has prepared reports and presented testimony before Congress and administrative agencies on the Internet and privacy issues.

3. The Center for Digital Democracy (“CDD”) is a non-profit organization that represents the interests of citizens and consumers with respect to new media technologies.

4. The Center for Media Education (“CME”) is a national nonprofit, nonpartisan organization dedicated to creating a quality electronic media culture for children, their families, and the community. CME's report "Web of Deception" (1996) first drew attention to potentially harmful marketing and data collection practices targeted at children on the Internet and laid the groundwork for the Children's Online Privacy Protection Act.

5. Computer Professionals for Social Responsibility (“CPSR”) is a public-interest alliance of computer scientists and others concerned about the impact of computer technology on society

6. Consumer Action is a 30 year-old, San Francisco-based non-profit education and advocacy organization. It works on a wide range of consumer and privacy issues in conjunction with its national network of 6,500 community-based organizations.

6'. The Consumer Federation of America ("CFA") is a non-profit association organized in 1967 to advance the interests of consumers through advocacy and education. CFA's current membership is comprised of over 280 national, state, and local consumer groups throughout the United States, which, in turn represent more than 50 million consumers.

7. The Consumer Task Force for Automotive Issues (“CTFAI”) was co-founded by Ralph Nader and Remar Suttton. CTFAI monitors auto fraud activities for consumer groups, attorneys general, and plaintiff firms. CTFAI has particular interest in consumer privacy since using the Internet is a common practice for consumers looking for information on cars and loan.

8. The Electronic Frontier Foundation (“EFF”) is a non-profit organization based in San Francisco, California. EFF is a donor-supported membership organization working to protect our fundamental rights regardless of technology; to educate the press, policymakers and the general public about civil liberties issues related to technology; and to act as a defender of those liberties.

9. Junkbusters is a privacy advocacy and consulting company based in New Jersey and incorporated in Delaware.

10. The Media Access Project (“MAP”) is a non-profit, public interest law firm

that promotes the public's First Amendment right to hear and be heard on the electronic media of today and tomorrow.

11. NetAction is a San Francisco-based nonprofit organization that promotes use of the Internet for grassroots citizen action, and educates policy makers on technology policy. In 1997, NetAction launched a campaign that mobilized Internet users to pressure the Justice Department to enforce antitrust laws against Microsoft.

12. The Privacy Rights Clearinghouse ("PRC") is a nonprofit consumer information and advocacy program based in San Diego, California.

13. U.S. Public Interest Research Group ("USPIRG") serves as the national association of state PIRGs, which are independent, non-profit, non-partisan advocacy organizations around the country. U.S. PIRG and the state PIRGs have a long-standing interest in data privacy and data protection and have published a series of reports on privacy-related topics, including identity theft.

14. Microsoft Corporation ("Microsoft") was founded as a partnership in 1975 and incorporated in the State of Washington in 1981. Microsoft develops, manufactures, licenses, and supports a wide range of software products for a variety of computing devices. Microsoft's principal place of business is One Microsoft Way, Redmond, Washington 98052-6399. At all times material to this complaint, Microsoft's course of business, including the acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

15. EPIC, CDD, CME, CPSR, Consumer Action, CFA, CTFAI, EFF, Junkbusters, MAP, NetAction, PRC, and USPIRG bring this complaint against Microsoft alleging unfair and deceptive trade practices under Section 5 of the FTC Act.

16. The complainants reserve the right to amend this complaint as new facts emerge regarding this matter.

THE IMPORTANCE OF PRIVACY PROTECTION

17. The right of privacy is a personal and fundamental right in the United States. The privacy of an individual is directly implicated by the collection, use, and dissemination of personal information. The opportunities for an individual to secure employment,

insurance, and credit, to obtain medical services, and the rights of due process may be jeopardized by the misuse of certain personal information.

18. Privacy law in the United States has by tradition protected the privacy of consumer in the offering of new commercial services enabled by new technologies. For example, the Cable Act of 1984 protects the privacy of cable subscriber records created in connection with interactive television services. The Electronic Communications Privacy Act of 1986 protects the privacy of electronic mail transmitted over the Internet. The Video Privacy Protection Act of 1988 protects the privacy of rental record for video recordings of commercial programs made available to the public for home viewing. The medical privacy regulations mandated by the Health Insurance Portability and Accountability Act establish safeguards for the delivery of medical information in electronic formats.

19. The vast majority of Americans are today “concerned” or “very concerned” about the loss of privacy particularly with regard to commercial transactions that take place over the Internet. One poll has indicated that the “loss of personal privacy” is the number one concern facing the United States in the twenty-first century. A recent poll shows that Americans favor government action to safeguard online privacy. Another recent poll indicates that the ability to remain anonymous online is supported by both Internet experts and ordinary Internet users.

20. The Federal Trade Commission has played a significant role in the last several years investigating and prosecuting violations of section 5 of the Federal Trade Commission Act where the privacy interests of Internet users are at issue.

STATEMENT OF FACTS

Background

21. Microsoft is the largest computer software company in the world. Microsoft’s customers include consumers, small and medium-sized organizations, enterprises, educational institutions, Internet Service Providers, and application developers. Most consumers of Microsoft products are individuals in businesses, government agencies, educational institutions, and at home.¹ The Microsoft operating system is used by more Internet users than any other operating system in the world. Microsoft’s database of

¹ Microsoft Corporation Form 10-K for the Fiscal Year Ended June 30, 2000.

Passport users is the largest commercial database of Internet users. At present there are more than 100 million users.²

22. Microsoft's Internet business activities include the MSN network of Internet products and services and alliances with companies involved with broadband access and various forms of digital interactivity.³ Microsoft's online properties include MSN Internet Access, MSN Hotmail, MSN Messenger Service, WebTV Networks, Microsoft CarPoint, Microsoft Home Advisor, Expedia, Inc., MSN MoneyCentral and MSNBC.⁴

23. The far-reaching and inter-connected nature of Microsoft's Internet business activities provides a unique potential for the collection, sharing and use of personal information concerning the users of its various properties. This potential to track, profile, and monitor users of the Internet has far-reaching and profound implications for privacy protection in general and in particular with regard to the growth of electronic commerce.

24. As is set forth in detail below, Microsoft has developed technical capabilities and business practices that facilitate such tracking, profiling, and monitoring in an unprecedented manner. As a direct result of these capabilities and business practices, Internet users who seek to engage in online commerce will routinely disclose to Microsoft virtually all aspects of their private transactions with other merchants.

25. Internet users will also be confronted with a confusing labyrinth of inter-connected Microsoft websites that collect and share their personal data. Consumer confusion is exacerbated by the misleading registration practices, incoherent privacy policies, and covert data sharing arrangements that are intended to facilitate the collection of personal information from consumers by Microsoft while simultaneously making it difficult if not impracticable for consumers to exercise control over their personal information.

26. When viewed both in its entirety and in terms of specific business practices outlined below, and considering the extraordinary market dominance enjoyed by Microsoft, the collection and use of personal information within the Microsoft network under Windows XP and with the associated .NET services constitutes a series of unfair and deceptive trade practices.

² New York Times, July 26, at C4.

³ Microsoft Corporation Form 10-K for the Fiscal Year Ended June 30, 2000.

⁴ Id.

Windows XP Impact on Consumer Profiling

27. With the release of the new operating system Windows XP and its associated services, Microsoft will transform the process for the collection and use of personal information on American consumers who engage in electronic commerce on the Internet. Personal information associated with commerce, such as credit card numbers, has traditionally resided under the personal control of the individual consumer. Such information is typically disclosed in the context of a particular transaction for a particular purpose to a particular merchant. With the release of Windows XP, Microsoft proposes to move the locus of control away from the end user to Microsoft. Although it is described by Microsoft as a “user-centric,” the Windows XP architecture is more accurately described as “Microsoft-centric.”

28. The Microsoft Passport is a user authentication standard that will enable Microsoft to collect personal information from consumers and disclose that information to Microsoft partners and others. It makes Microsoft the central repository for routine information for commercial transactions, as well as personal facts such as birthdates and anniversaries.

29. The HailStorm platform will enable the widespread exchange of personal information among Microsoft business partners. It is intended to exchange the rapid exchange of a wide range of personal information set out in more detail below.

30. Microsoft privacy practices will have a profound impact on American consumers. According to Microsoft, the Hotmail web-based e-mail service, MSN, Microsoft.com, and Passport, are among the ten largest Web sites in the world.⁵

31. Microsoft is currently testing the Windows XP operating system. Several questions have already been raised about certain proposed features of XP that may disadvantage competing products, services and standards provided by Microsoft’s competitors.

32. The Windows XP system is expected to be finalized later this year and then sold to consumers.

33. The Federal Trade Commission is the primary federal agency responsible for investigating and prohibiting “unfair methods of competition in or affecting commerce; and unfair or deceptive acts or practices in or affecting commerce.”

⁵ Hailstorm White Paper, <http://www.microsoft.com/net/hailstorm.asp>.

A. Passport

34. According to Microsoft, “Microsoft Passport allows consumers to create a single sign-in, registration, and electronic wallet that can be shared between all of the sites that support Microsoft Passport.”⁶

35. The information that may be stored in the Microsoft Passport includes “real name,” country/region, state, city/locale, gender, age, occupation, marital status, e-mail, personal statement, hobbies and interest, favorite quote, favorite things (“Name your favorite books, artists, places, gizmos, or gadgets”), a personal photo (“include a photo of yourself, a loved one, or a favorite place, thing or pet”), a home page, options to routinely disclose the Public Profile in MSN chat rooms, and to be notified of future features, as well as whatever additional data Microsoft eventually chooses to request for the Public Profile.

36. The information maintained in the Passport Public Profile is under the “user control” in the sense that the user may choose not to provide certain information or to prevent certain information from being routinely disclosed, but the Profile is also very much under the control of Microsoft in the sense that the information is physically in the possession of Microsoft and may be obtained by Microsoft whether or not the user chooses to make the personal information public. Further, many of the practices described below demonstrate how Microsoft through the XP Registration procedures, access to MSN, use of Hotmail, and use of new services such as e-books seeks to obtain from the consumer detailed information for the Passport system.

37. The Microsoft Passport Privacy Policy contains a section entitled “Participating Sites’ Commitment to Privacy.” The title of this section reasonably would lead a consumer to believe what the heading implies; that sites that participate in Microsoft Passport have a commitment to protect users’ privacy. However, the section only contains one requirement for participating websites; “All Web sites participating in the Passport program must have a posted privacy policy.” Nothing is said regarding what level of protection that policy must provide. This section, with its deceptive title, is likely to promote consumer confidence in Passport by instilling the mistaken impression that participating websites will protect their personal information.

⁶ Microsoft Corporation Form 10-K for the Fiscal Year Ended June 30, 2000.

38. The Windows XP operating system leaves the user with little choice but to employ Passport. As soon as the user starts a computer and uses a modem, a dialog box appears on the screen stating: “You’ve just connected to the Internet. You need a Passport to use Windows XP Internet communications features (such as instant messaging, voice chat and video), and to access Net-enabled features. Click here to set up your Passport.”

39. The collection and use of detailed personal information in this fashion constitutes an unfair and deceptive trade practice.

B. HailStorm

40. HailStorm is a software based means to transfer personal information contained in the Microsoft Passport, as well as a host of other information, across any operating system, platform, or device. Microsoft lists an extraordinary range of consumer information that will be collected and subsequently disclosed by means of HailStorm. This information includes a person’s home telephone number, office telephone number, fax number, home address, business address, and geographic locations; a person’s actual name, nickname, birthdate, anniversary, other special dates, and personal photograph; a complete list of all names of all contacts contained in an electronic datebook, including names, addresses, contact dates, and personal details for all friends and associates; information concerning location and contact information; all forms of incoming mail, including voicemail, electronic mail, and fax mail; tracking information; personal and business documents; favorite websites and other identifiers; receipts, payment instruments, coupons and other transaction records, devices settings and capabilities across all platforms, including PC, PDA, and telephones; and detailed usage reports for each one of these services.⁷

41. Microsoft represents that when using HailStorm, the “user owns the data” that he or she enters into Passport. HailStorm will, according to Microsoft, “put people in control of their own data,” because “HailStorm starts with the assumption that the user controls all personal information and gets to decide with whom to share any of it and under what terms.”⁸

42. Despite these broad representations, the control that users will ultimately have over the extensive collection of their personal information within the HailStorm system will be subject to the vagaries of Microsoft’s business model.

⁷ Hailstorm White Paper, <http://www.microsoft.com/net/hailstorm.asp>.

⁸ Microsoft Corporation Form 10-K for the Fiscal Year Ended June 30, 2000

43. Microsoft states that it “intends to contractually bind licensees to specific terms of use that control what can and cannot be done with user data originating from a HailStorm source.” Microsoft has made its intention clear, stating that it “will operate HailStorm as a business.” In Microsoft’s HailStorm business model, “end users will be the primary source of revenue to Microsoft.”⁹

44. To use Windows XP, consumers will be unfairly led to believe that they need a Microsoft Passport. Passport is the “basic user credential” of Hailstorm. Although Microsoft claims the “users own their information” and that consumers will control the use of that information, Microsoft will charge consumers to relay this vast amount of individually identifiable information, ranging from their home addresses to the documents stored on their computers. Microsoft will also charge recipients to use the information.

45. As a result of these practices, Microsoft will essentially provide consumers the “right” to buy some limited level of “control” over the use of their own personal information outside of Microsoft, despite the fact that the consumer has no meaningful or effective control over the use of that information within Microsoft. Additionally, in reference to third parties, consumers’ control of their own information exists only so long as the consumers’ desires fit within the framework of Microsoft’s intent to “contractually bind licensees” regarding the use which they can and cannot make of this information.

46. Microsoft’s Windows XP / Passport / HailStorm business model constitutes both an unfair and a deceptive trade practice when considered in its entirety.

Misleading Product Activation and Registration Procedures

47. Microsoft represents to consumers that the product activation feature included in the new Windows XP operating system and its software suite Office XP will not combine the information gathered in the activation’s hardware sweep with personally identifiable information. Information at the Microsoft website states:

Microsoft Product Activation is completely anonymous, and no personally identifiable information is collected.

⁹ Id.

48. However, Microsoft then goes on to say:

Activation is different from product registration. If they wish, customers may voluntarily register their product by providing their name and contact information. Registration is for those customers who want to receive future communications on product updates, service releases and other special offers.¹⁰

49. Microsoft also claims that product registration, which requires personally identifiable information, is voluntary. However, users cannot receive support services for products without registering for Microsoft Passport. The user's product identification number is then linked to his or her personally identifiable Passport information. Information posted by Microsoft states:

Using the Online Support sites secured by Passport is easy. Passport provides secure authentication ensuring that your support interactions and all data exchanged with Microsoft is secure and private. To establish your own private and secure personalized support web page where you can interact with our award-winning Microsoft Support Professionals, first time users will need to (1) sign-up for Passport or sign-in to Passport and (2) complete a profile.

In order to identify the type of support you are entitled to, this system may automatically determine your product identification number. This number is required to receive support from Microsoft.¹¹

50. Through product activation and registration, Microsoft can actually match users to their machines. Although Microsoft represents to users that the product activation process preserves anonymity, users cannot receive software support anonymously for the product that they activate and are forced to register for Microsoft Passport.

51. This practice constitutes an unfair and deceptive trade practice.

¹⁰ Software Piracy on PressPass,
<http://www.microsoft.com/presspass/newsroom/piracy/productactivationfaq.asp>

¹¹ <http://servicedesk.one.microsoft.com/WRPublic/en/Consent.asp>

Hotmail Service Tracks Users

52. Hotmail is an email service offered by Microsoft.

53. Users of Hotmail email service are required to create Passport accounts, using the personal information they provided to sign up with Hotmail. No notice is provided to Hotmail users that they are being given Passport accounts, nor does the Hotmail website contain an opt-out feature. When Hotmail users login to Hotmail, they are simultaneously logged-in to the Passport system.

54. Passport will track Hotmail users as they visit other MSN sites, and provide users' personal information to those sites, unless the users click on a small "Sign-Out" button on the page each time they wish to move to a different MSN site. Hotmail's privacy policy states in part:

Your non-personally identifiable information from your Hotmail registration (such as zip code and gender) may be shared with other Microsoft websites to provide a more personalized advertising experience online. For example, you may see ads from a Microsoft bCentral/LinkExchange Banner Network member as you surf the Web but none of your personally identifiable information is shared with the third party websites.¹²

55. Passport tracks the behavior and divulges the personal information of Hotmail customers who neither have been notified of their Passport accounts, nor have granted permission for such use of their information. If a user visits the MSN homepage, a Passport "Sign-in" button will appear. If the user who did not come from Hotmail or another MSN site clicks this button, information on Passport will appear, along with an invitation to join the Passport system. However, if a Hotmail user who did not click the Passport "Sign-Out" button before exiting Hotmail visits the MSN homepage and clicks the same button, the MSN page will reload, with a message greeting the user by name.

56. This practice constitutes an unfair and deceptive trade practice.

¹² Hotmail MSN Hotmail Privacy Statement, http://lc1.law5.hotmail.passport.com/cgi-bin/dasp/hminfo_shell.asp?content=pstate

Kids Passport Captures Data from Parents for Unrelated Services

57. Microsoft makes the following representations regarding the Kid's Passport service, which enables the collection of information on children under the age of 13 that will be subsequently disclosed to Microsoft partners and other entities operating on the Internet.

Microsoft Kids Passport allows parents to consent to the collection, use and sharing of their children's information with Microsoft and the sites and services operated by or for Microsoft (including MSN) and with participating Passport Web sites that have *agreed to utilize Kids Passport as their parental consent process*. (emphasis added) . . .

All of these sites [participating passport websites] agree to have a posted privacy statement describing how they use personal information collected by their website. . . .

It is important for you to read the Privacy Statement and Terms of Use for each website you are consenting for your child to visit and use.¹³

58. The Kids Passport privacy policy only requires one parental verification process. Participating Passport websites will not have to obtain "verifiable parental consent" if the user enters the site through Kids Passport because the participating websites will have already agreed to utilize Kids Passport as their parental consent process. Thus if a participating website changes its existing privacy policy after the parent has gone through the verification process and the changed policy conflicts with the parent's level of consent, the participating site will not have to obtain parental consent a second time. The burden will be on the parent to ensure that his/her consent level is consistent with participating websites' privacy policies at all times.

59. Even if the privacy policies of participating Passport websites contradict or provide less protection than Passport's privacy policy, the participating Passport websites' policies will govern over Passport's privacy policy. Hence, the parent is effectively required to read all participating Passport websites' privacy policies before providing parental consent in the first instance for Kids Passport

¹³ Microsoft Passport: Privacy Statement,
<http://www.passport.com/Consumer/PrivacyPolicy.asp?PPLcid=1033>

60. The design of Kids Passport further requires parents to review the privacy policies of participating websites on an ongoing basis to make sure that websites have not altered their privacy policies in a manner that conflicts with the parents' desired level of consent.

61. Parents are required to establish their own Microsoft Passport accounts in order to register their children with Kids Passport. Microsoft does not provide parents with any other means of registering their children with Kids Passport.

62. Microsoft's practice of requiring parents to register for Passport in order to register their children for Kids Passport is a deceptive practice. It enables further collection of personal information by Microsoft for purposes unrelated to the use of Kids Passport. Further, by requiring parents to verify their consent through credit card validation, Microsoft automatically creates a Passport Wallet for the parents, where their credit card information will be held.

63. These practices constitute unfair and deceptive trade practices.

Covert Sharing of Passport Information within the MSN Network
and Conflicting Privacy Standards within the MSN Network

64. Microsoft Passport facilitates greater access by Microsoft affiliates within the MSN network to personal information of computer users. Microsoft represents that

When you sign in to any area of MSN (and don't sign out) and you visit any other area of MSN, you will be automatically signed in . . . [and] your Passport information (excluding your wallet information) will automatically be shared with each area in MSN that you visit.

65. While facilitating the broad sharing of personal data, Microsoft makes it difficult, if not impossible, for users effectively to protect their privacy within the MSN Network because the various components offer contradictory and conflicting privacy policies. Thus, Microsoft advises users that "when you choose to visit the various areas of MSN . . . you are subject to their specific terms of use and privacy policies."¹⁴

66. Microsoft's collection and sharing of personal data under this procedure within its network constitutes an unfair and deceptive trade practice.

¹⁴ Id.

The Flawed Microsoft Passport Privacy Policy

67. The Microsoft Passport Privacy Policy states that, “[y]ou are in complete control of which web sites receive the Personal Information in your Passport profile and Passport wallet ... Microsoft will not share, sell, or use your Personal Information in any way not described in this privacy statement without your consent.”¹⁵

68. Participating web sites are not required to abide by the same information collection practices as purportedly apply to the Microsoft Passport services, and such sites can apparently share, sell, or use personal information in a manner not explicitly provided for in the Passport Privacy Policy.

69. Buy.com, a shopping site accessible through the Passport service¹⁶ reserves the right “to share [customers’] personally identifiable information with third parties who provide services to us, our customers and web site visitors ... includ[ing] authorized contractors, temporary employees and consultants and other companies working with us.”¹⁷ Further, customers of Buy.com who then wish to shop at other sites associated with that company (part of its “Partner Center”) are subject to entirely different privacy protections once again.

70. Participating web sites are not required to meet even basic industry standards of privacy protection to participate in Passport services. Microsoft only requires that participating web sites have “a posted privacy statement.”

71. Customers, assured by Microsoft that information in their Passport profile is protected according the principles of the Passport Privacy Policy, will reasonably assume that sites associated with Passport will offer the same protections, and share personal information they otherwise would not share.

72. The Microsoft Passport Privacy Policy unfairly and deceptively leads consumers to believe that websites participating in Passport will abide by the same privacy practices as Passport itself.

¹⁵ Id.

¹⁶ Microsoft Passport - Site Directory, <http://www.passport.com/Directory/Default.asp>

¹⁷ http://www.us.buy.com/corp/privacy_policy_complete.asp

Harvesting of email addresses and Profiling of Users

73. The Passport service is intended to give Microsoft the ability to send unsolicited commercial email to Internet users and to profile their activities.

74. Microsoft obtains a user's email address and discloses that personal information to other Microsoft web sites whether or not the user intends to visit those sites or if there is any need for the address to be collected by those sites. According to Microsoft:

Creating a Passport --- . . . Your email address is required to create a Passport and it will be shared with Microsoft and its web sites . . .¹⁸

75. Microsoft retains the right to disclose email addresses obtained by Passport to enable unsolicited commercial email by web sites participating in the Passport network:

If in the future Passport sends email on behalf of participating web sites, you will be able to follow instructions contained in the email to choose whether or not you'd like to receive additional email.¹⁹

76. There appears to be no means by which users currently can limit the exchange of their email addresses with the Microsoft Network and no limitations on the unsolicited commercial email that may result from the collection of email addresses in this fashion.

77. Passport facilitates the profiling of Internet users by enabling the collection of personal information. According to Microsoft:

The site may store the profile and wallet information sent to it during this process in their database.²⁰

78. These practices constitute unfair and deceptive trade practices.

¹⁸ Microsoft Passport: Privacy Statement,
<http://www.passport.com/Consumer/PrivacyPolicy.asp?PPLcid=1033>

¹⁹ Id.

²⁰ Id.

Known Defects in Passport Design

79. Microsoft is aware of significant risks that users will have their personal information, including their credit card numbers, disclosed to others when the Passport service is used at a shared or public terminal, which could include a computer in a library, community center, workplace, or airport lounge. Microsoft advises:

You should always sign out of Passport when you are finished browsing the web to ensure that others cannot access your Passport profile or wallet.²¹

80. Microsoft is also aware of significant risks that users will inadvertently disclose personal information when they surf the web using the Passport service.

It is important for you to read the privacy statement and terms of use for each site you visit to ensure you are comfortable with how they might use your personal information.²²

81. Internet users are routinely unaware of web site privacy statements. According to one recent study, 41% of users report that they never or hardly ever read privacy statements online.

82. The failure to establish adequate security standards to ensure that personal information within the control of Microsoft, such as a credit card number, is not inadvertently disclosed to a third party is an unfair and deceptive trade practice.

Failure to Warn of Passport Security Flaws

83. Microsoft has a history of privacy and security failures that is inconsistent with its claim that “Any information provided to Microsoft remains secure and private.”²³

84. For example, in August 1999, when Passport was combined with Hotmail, a defect was discovered in Hotmail that allowed “anyone to read the private correspondence of

²¹ Id.

²² Id.

²³ Id.

about 50 million subscribers.”²⁴ In February 1999, Microsoft was found to be quietly creating “a vast data base of personal information about computer users.”²⁵ The online privacy seal organization TRUSTe subsequently found that Microsoft had compromised “consumer trust and privacy.” Defects in Microsoft’s software are routinely discovered that allow intruders unauthorized access to files, most recently a defect in Microsoft’s IIS Web server software that has allows the “Code Red” virus to compromise an estimated 300,000 computers, including some of Microsoft’s own servers.²⁶

85. Microsoft’s failure to disclose the actual risks associated with the collection and use of personal information in the Passport service constitutes an unfair and deceptive trade practice.

Leading Industry Experts Have Expressed Concern about the Privacy Implication of Windows XP and the HailStorm Services

86. Walter S. Mossberg is a widely regarded commentator on the computer industry who writes a regular column for the Wall Street Journal. On July 5, 2001 (“Microsoft Cracks Down On Sharing Windows XP”) Mr. Mossberg examined the product activation procedure for Windows XP and noted that:

Windows will keep monitoring your setup to check that it’s still running on the same machine. If you make major hardware changes, the system could disable Windows and force you to check in with Microsoft in the mistaken belief the program has been transferred to another computer. One journalist reported that his copy of Office XP suddenly went into “reduced functionality mode” and insisted he activate again while he was using it on an airplane.

87. Mr. Mossberg concluded:

Microsoft has chosen a method of enforcing its policy that smacks of an invasion of privacy. The company says its database of PC configurations won’t contain any personal information, and will be encrypted so that

²⁴ Wired News at <http://www.wired.com/news/news/business/story/21490.htm>.

²⁵ New York Times, March 3, 1999.

²⁶ “Code Red” Worm Rearing to Attack on Net,” ZDNet News, July 21, 2001, <http://www.zdnet.com/zdnn/stories/news/0,4586,5094428,00.html>.

nobody can misuse it. But Microsoft's bully-boy behavior in the marketplace hardly inspires confidence that it won't somehow exploit this information.

88. Stewart Alsop is a widely regarded commentator on the computer industry who writes a regular column for Fortune Magazine. In an article for Fortune on July 23, 2001 ("Monopoly Has Just Begun Insidiously, incrementally, Microsoft is getting more and more of me. That has me worried.") Mr. Alsop examined the impact on Windows XP on consumer privacy. He found, for example, that when he tried to take advantage of a new consumer product, the "e-book," offered by a non-Microsoft company he was required to go through the Microsoft Passport registration procedure.

I decided to buy the e-book, but Microsoft forced me to register with its Passport service to activate Reader. The ostensible reason is that Microsoft keeps track of the digital rights to each copy of the book.

89. He had a similar experience when he attempted to download a new software product. Based on his experience with these two products, Mr. Alsop observed:

Microsoft is going to collect more and more information about what I buy and what I do. I don't really have a choice. It is very nearly impossible to use any computer without using Microsoft's software, and increasingly that means that it is very nearly impossible to avoid handing over your personal information to the company.

And this situation is just going to get worse, because Microsoft does have a monopoly, and it is using that monopoly to aggressively expand its dominance of computers--personal computers, office servers, handheld computers, even set-top boxes--and its dominance of the Web and Web services delivered through its Internet Explorer browser.

90. Mr. Alsop concludes:

This gets to the heart of why I'm really starting to worry. Microsoft is encroaching on the consumer side, increasingly using its position between us and every computer to make sure that it has the data to know who we are and what we're buying.

91. Esther Dyson is a widely regarded computer industry expert and chairman of EDventure Holding. Regarding the privacy implications of the practices described herein, Ms. Dyson said to the Industry Standard, a leading industry magazine:

I don't want the government, or Microsoft, asking me for my ID.

I find it kind of amazing. You sit and think, 'Can they actually do this? Is it believable?' One hopes not.

REQUEST FOR RELIEF

Wherefore, the Complainants request that the Commission:

- A. Initiate an investigation into the information collection practices of Microsoft through Passport and associated services;
- B. Order Microsoft to revise the XP registration procedures so that purchasers of Microsoft XP are clearly informed that they need not register for Passport to obtain access to the Internet;
- C. Order Microsoft to block the sharing of personal information among Microsoft areas provided by a user under the Passport registration procedures absent explicit consent;
- D. Order Microsoft to incorporate techniques for anonymity and pseudo-anonymity that would allow users of Windows XP to gain access to Microsoft web sites without disclosing their actual identity
- E. Order Microsoft to incorporate techniques that would enable users of Windows XP to easily integrate services provided by non-Microsoft companies for online payment, electronic commerce, and other Internet-based commercial activity; and
- F. Provide such other relief as the Commission finds necessary to redress injury to consumers resulting from Microsoft's practices as described herein.

Respectfully Submitted,

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General Counsel

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