

Before the
Federal Trade Commission
Washington, DC

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

**Supplemental Materials in Support of Pending Complaint
and Request for Injunction, Request
for Investigation and for Other Relief**

INTRODUCTION

1. On July 26, 2001, the Electronic Privacy Information Center (“EPIC”) and twelve organizations filed a complaint with the Commission requesting an injunction and investigation alleging that Microsoft Corporation (“Microsoft”) is engaging in unfair and deceptive trade practices.
2. The parties reserved the right to amend their complaint as new facts emerged regarding Microsoft Windows XP, .Net, HailStorm, and Passport.
3. The following paragraphs supplement the complainant’s July 26, 2001 filing, incorporate by reference the earlier statements, and allege new facts supporting the position that Microsoft has engaged in unfair and deceptive trade practices in violation of Section 5 of the Federal Trade Commission Act.
4. The complainants reserve the right to further amend this complaint as new facts emerge regarding this matter.

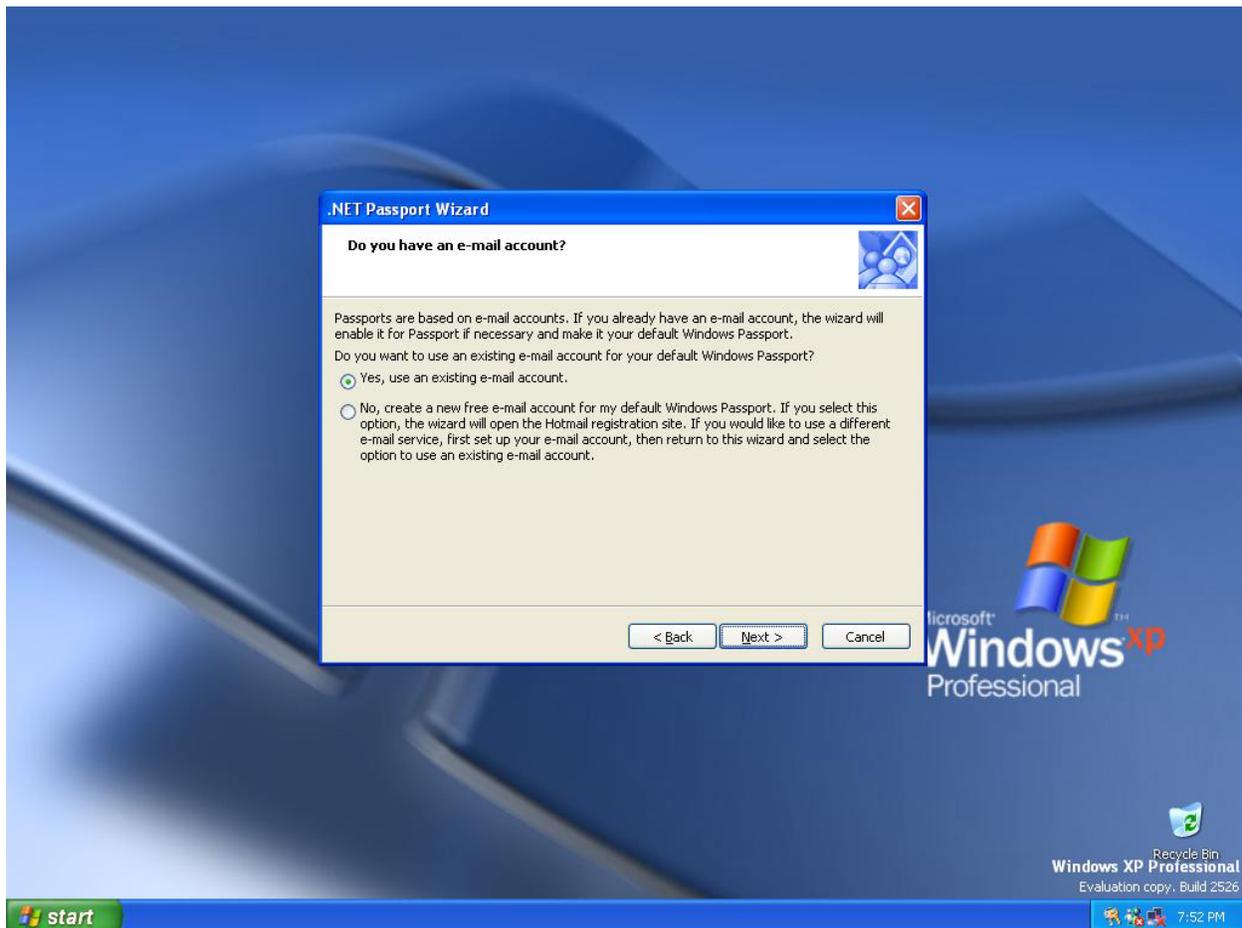
ADDITIONAL PARTIES

5. Subsequent to the filing of the original complaint, the Consumer Project on Technology (“CPT”) joined as one of the complainants. CPT was created by Ralph Nader in 1995, to investigate consumer concerns with new technologies, including Internet, software and other information technologies. CPT and Mr. Nader played an important role in pushing for the Department of Justice to bring antitrust actions against Microsoft and other companies, and CPT investigates a number of consumer protection and intellectual property issues, as documented on its web site.

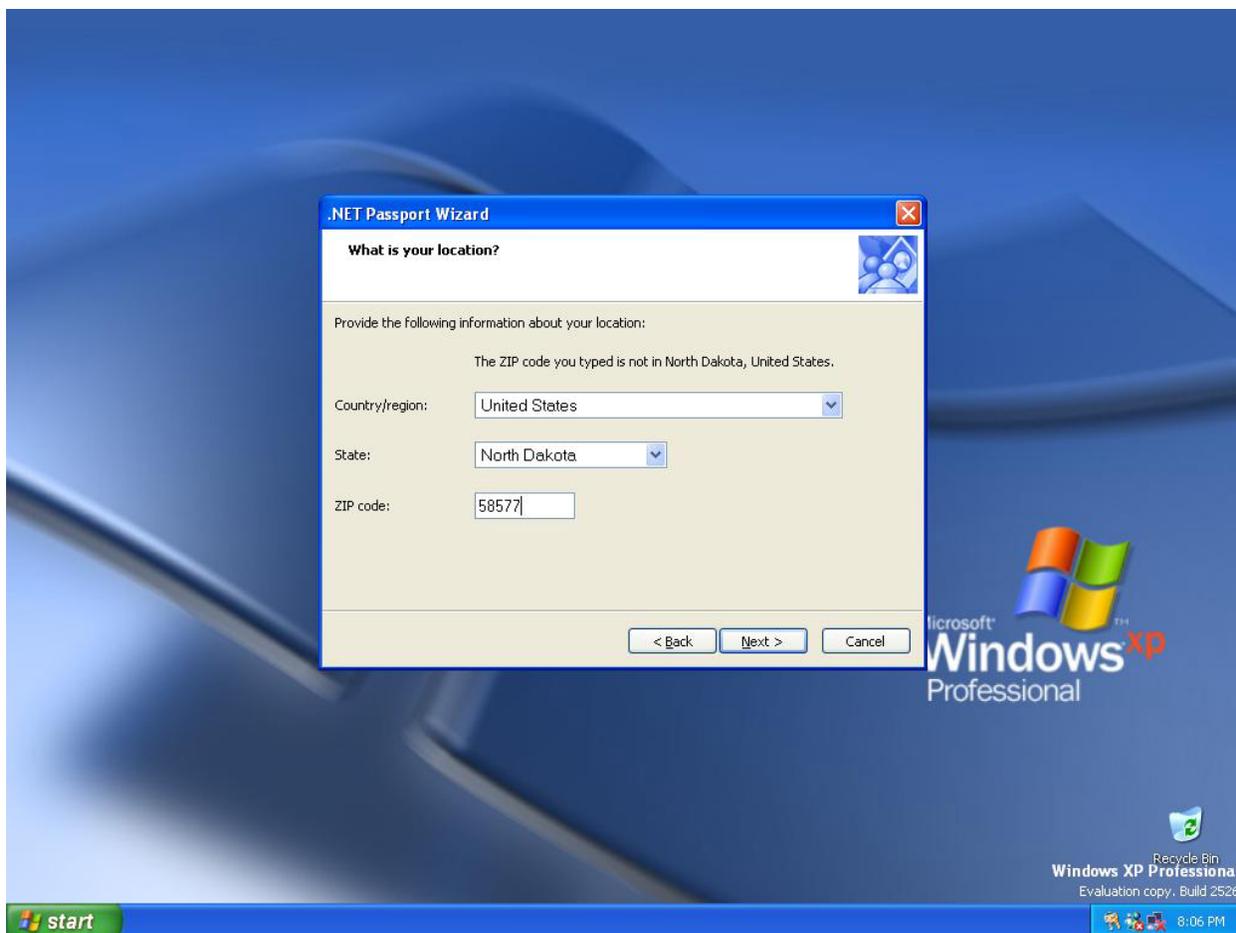
ADDITIONAL FACTS

Microsoft's Changes in Passport Policy

6. Subsequent to the filing of the original complaint, Microsoft announced a series of changes to the XP operating system and the Passport identification and authentication system allegedly to address issues raised in complainant's July 26, 2001 filing.
7. Microsoft announced that it is reducing the amount of information necessary to establish a Passport account. However, individuals signing up for Passport must still supply an e-mail address, their country, state, and zip code.¹



¹ Don Clark, Microsoft Doesn't Satisfy Critics With Changes to Passport System, Wall Street Journal, August 10, 2001, at <<http://interactive.wsj.com/articles/SB997394276629722987.htm>>.



Screenshots of “.NET Passport Wizard” page taken on 8/13/01

8. Microsoft announced that it has moved the Wallet function and the user profile services associated with Passport to other divisions within the company.²
9. Microsoft further announced that it will attempt to improve privacy by requiring Passport-affiliated merchants to support the Platform for Privacy Preferences (P3P).³ P3P is a complicated and confusing language for web sites to describe their privacy policies in a machine readable format that fails to provide any assurance of compliance with baseline privacy standards, including the FTC’s own privacy standards.⁴

Windows XP Disables Security Features

10. Microsoft Windows XP harms privacy and hinders the ability of users to protect their personal computers. XP will disable certain programs that users depend upon for privacy and

² Id.

³ Id

⁴ EPIC and Junkbusters, “Pretty Poor Privacy: An Assessment of P3P and Internet Privacy” (June 2000) <<http://www.epic.org/Reports/pretypoorprivacy.html>>; Self-Regulation and Privacy Online: A Federal Trade Commission Report to Congress (June 1999) <<http://www.ftc.gov/os/1999/9907/privacy99.pdf>>.

security such as Black Ice and Zone Alarm. XP employs a feature called “driver blocking,” which disables programs that do not use device drivers that are specifically compliant with the new operating system.⁵ As a result, regardless of the actual functionality of these programs under XP, their use will be blocked until software developers release newer, XP-compliant versions.

11. Restricting use of security techniques while simultaneously representing that Windows XP will provide a high level of privacy and security for Internet users constitutes an unfair and deceptive trade practice.

Windows XP Implements an Invasive Digital Rights Management Standard

12. Microsoft will require that device drivers for Windows XP include Digital Rights Management (DRM) features that track and monitor use of information in digital formats. These DRM systems routinely require individuals to divulge personal information in order to gain access to content. Microsoft concedes that this system will be used to monitor Internet users and has stated that XP will enable an “aggressive Internet surveillance program...that searches for unauthorized distribution of eBook content 24 hours a day, seven days a week.”⁶
13. Instituting driver blocking and DRM features will diminish users’ privacy, security, and control over their computers contrary to Microsoft’s express representations of enhanced security and user experience. As these express representations are likely to mislead a reasonable consumer and cause substantial harm, they constitute deceptive trade practices.
14. The deployment of DRM tracking features while simultaneously representing that Windows XP will provide a high level of privacy and security for Internet users constitutes an unfair and deceptive trade practice.

Absence of Cancellation Procedures

15. Subsequent to the filing of the original complaint, the complainants have learned that Passport provides no mechanism for users to cancel their account and permanently delete their personal information from Microsoft servers. Individuals who have requested that their personal information be removed from Microsoft servers have been told by the company that they will have to wait one year for their accounts to expire.
16. Routine privacy standards, such as collection limitations and data quality, are ignored by Passport. For example, personal data should only be collected to the extent necessary to complete a specific purpose, such as a transaction. Passport violates this principle by allowing the transfer of a user’s identity to web sites, hence eliminating any amount of anonymity enjoyed by Internet users.
17. Contrary to Microsoft’s representations, users will have little control over their personal information stored in Passport. The assignment of globally-unique identifiers, the absence of

⁵ At <<http://theregister.co.uk/content/4/20805.html>>.

⁶ Anti-piracy efforts, at <<http://www.microsoft.com/ebooks/das/antipiracy.asp>>.

mechanisms to delete information, the inability of Microsoft to provide adequate security, the centralized storage of personal information, and the reduction of online anonymity pose a substantial risk that Passport will harm users' privacy.

18. These practices, in whole and in part, constitutes an unfair and deceptive trade practice.

Impact of .NET on User Anonymity

19. Through Passport and HailStorm, Microsoft is attempting to eliminate anonymity on the Internet to enable .Net, a distributed computing platform. Distributed computing depends on identification of users.⁷ If unchecked, Microsoft's distributed computing platform will result in users being required to identify themselves to merely surf the Internet. Already, Microsoft has deployed a series of HailStorm services that require users to identify themselves through Passport. These include MyAddress, MyProfile, MyContacts, MyNotifications, MyInbox, MyCalendar, MyDocuments, MyApplicationSettings, MyWallet, MyUsage, and MyLocation.⁸

20. Coercing users to identify themselves to enjoy basic web services is an unfair trade practice. The weakening of Internet anonymity will result in substantial harm to consumers and it will not provide countervailing benefits to competition. Further, the increasing integration of Microsoft in operating systems, browsers, and Internet access products makes this injury reasonably unavoidable to the average consumer.

The Flawed Microsoft Passport Privacy Policy

21. Subsequent to the filing of the original complaint, Complainants have determined that on many Passport sites, privacy policies are difficult to find, some privacy policies are written in confusing legalese, and rely on opt-out rather than opt-in consent practices. Less than a third of Passport business affiliate sites are members of privacy seal programs.⁹

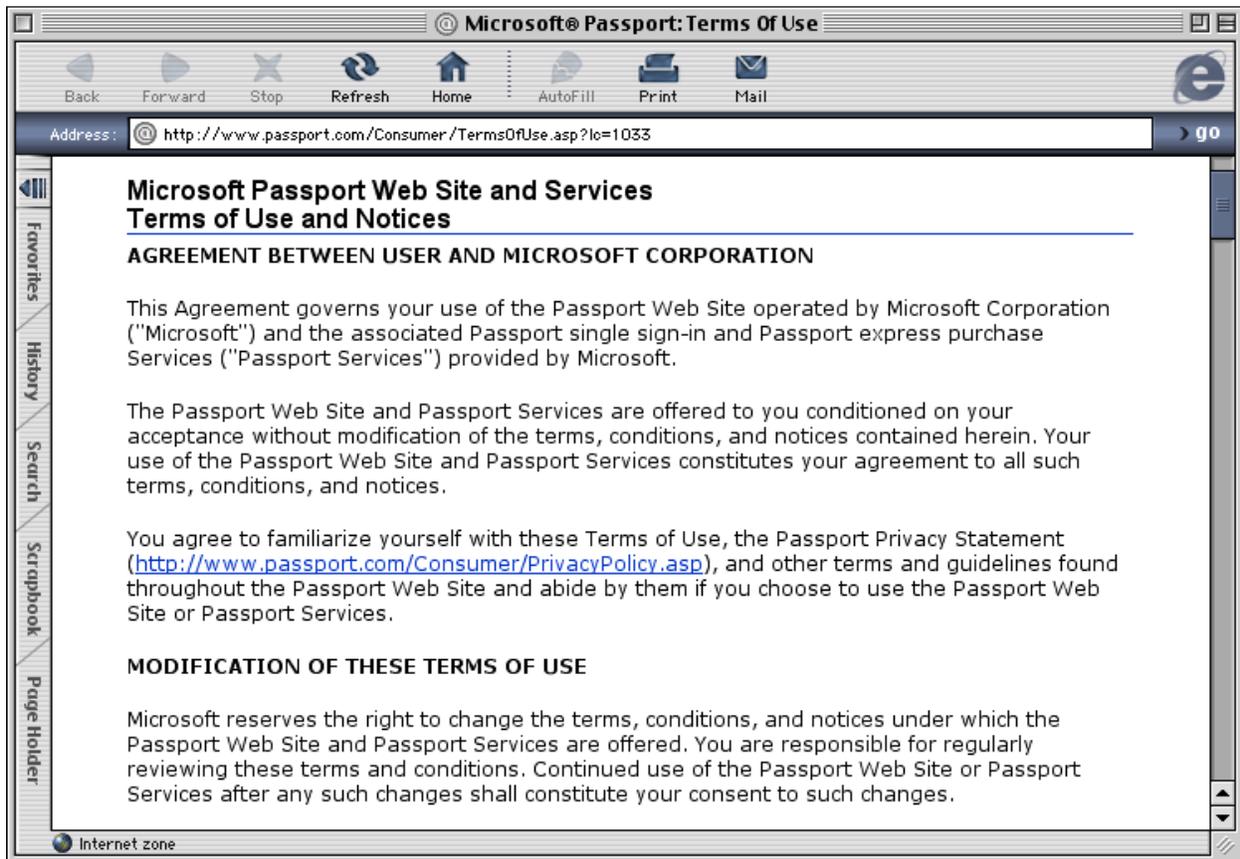
22. Microsoft has reserved the right to change the terms of service for Passport, making the company's representations of privacy protection and security illusory. The Microsoft Terms of Service for Passport appears on the Microsoft web site as follows:¹⁰

⁷ White Paper: Passport to Monopoly: Windows XP, Passport, and the Emerging World of Distributed Applications, Jun. 21, 2001, at <http://www.procompetition.org/headlines/WhitePaper6_21.pdf>.

⁸ Id.

⁹ Our view: Microsoft's 'Passport' wallet shouldn't be given to business partners, USA Today, Aug. 3, 2001, at <<http://www.usatoday.com/news/comment/2001-08-03-nceditf.htm>>.

¹⁰ Microsoft Passport Web Site and Services Terms of Use and Notices, at <<http://www.passport.com/Consumer/TermsOfUse.asp?lc=1033>>.



Screen shot of “Microsoft Passport:Terms of Use” taken 8/14/01

23. Passport will facilitate the spread of unsolicited commercial e-mail because the registration process relies on an opt-out system for sharing e-mail addresses. On the Passport registration page, users enter their e-mail address and are presented with language that has a default “on” setting. Microsoft places the burden on consumers to uncheck the option below in order to opt-out from having their e-mail address shared with third parties:

Microsoft can share my e-mail address with other Passport sites I sign in to.¹¹

24. These practices, in whole and in part, constitute unfair and deceptive trade practices.

Security Defects Revealed in Passport Design

25. Subsequent to the original filing, the complaints have learned that technical experts have identified significant security flaws in the Passport system

¹¹ Get a Passport, at

<<http://register.passport.com/default.asp?id=486&ru=http%3A%2F%2Fwww%2Epassport%2Ecom%2FConsumer%2Fdefault%2Easp%3F%3D1033>>.

26. For example, Passport can incorrectly indicate that a user has logged out of the system but still maintain user-identified Passport cookies on the browser. Such an error would allow a subsequent user of the same computer to access another's personal information.

27. Microsoft's Passport system has been vulnerable to simple attacks that could result in a malicious actor hijacking a user's account. One method involves capturing a user's session cookie through the use of a simple technique.¹² If successful, a malicious actor could gain access to the user's personal information, and employ the Wallet function to use credit card data.

28. Despite these weaknesses in the authentication protocol, Microsoft continues to make representations guaranteeing a high-level of security to Passport users. Two Microsoft officials stated recently: "We've built the tools and services that help you control your personal information on the Web, and we are committed to protecting data by voluntarily applying a strict standard to all of our customers worldwide."¹³

29. Security experts have found the Passport architecture inherently flawed. David P. Kormann and Aviel D. Rubin, two respected researchers at AT&T Labs, concluded in a 2000 paper:

. . . the system carries significant risks to users that are not made adequately clear in the technical documentation available. The bulk of Passport's flaws arise directly from its reliance on systems that are either not trustworthy (such as HTTP referrals and the DNS) or assume too much about user awareness (such as SSL)... Passport's attempt to retrofit the complex process of single sign-on to fit the limitations of existing browser technology leads to compromises that create real risk.¹⁴

30. The San Jose Mercury News also quoted Dr Rubin on August 15, 2001 as follows:¹⁵

Ari Rubin, a researcher on security issues for AT&T Labs, said Passport's problems "are fundamental things that can't really be fixed."

A key problem with Passport relates to how the system works, said Rubin. It stores personal information on Microsoft's servers, which have proven vulnerable to outside attack from hackers. Rubin is also worried that Passport's sign-on Web page could be duplicated by a bogus merchant.

31. Microsoft's adherence to representations of Passport security and privacy in light of known defects constitutes an unfair and deceptive trade practice.

¹² Obscure, Microsoft Passport Account Hijack Attack (Hacking hotmail and more), Eye on Security, at <<http://www.eyeonsecurity.net/>>

¹³ Brian Arbogast & Richard Purcell, Opposing view: Microsoft values privacy, USA Today, Aug. 3, 2001, at <<http://www.usatoday.com/news/comment/2001-08-03-ncoppf.htm>>.

¹⁴ Risks of the Passport Single Signon Protocol, Computer Networks, Elsevier Science Press, volume 33, pages 51-58, 2000. <http://avirubin.com/passport.htm>.

¹⁵ <<http://www.siliconvalley.com/docs/news/depth/ms081501.htm>>.

Kids Passport System is not Compliant with Children's Privacy Law

32. In the original complaint, complainants alleged that the collection of data from parents for Kids Passport registration constituted an unfair and deceptive trade practice. Complainants further allege that the Kids Passport fails to comply with the requirements of the Children's Online Privacy Protection Act (COPPA).
33. Microsoft describes Passport as a "turnkey solution for obtaining parental consent to collect or disclose children's personal information." The company also has made representations that Kids Passport complies with federal law intended to protect children's privacy on the Internet: "Kids Passport can help you comply with the requirements of the Children's Online Privacy Protection Act (COPPA), as well as increase your ability to attract young visitors to your site."¹⁶
34. Congress enacted the COPPA to prohibit unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personally identifiable information from and about children on the Internet. (15 U.S.C. §§ 6501-6505.)
35. According to Microsoft, Kids Passport is designed to be a gateway for children so that they can visit COPPA-compliant websites: "Kids Passport makes the consent process easy for parents by providing one location for them to give consent for all participating Passport sites."¹⁷
36. Microsoft states that parents who sign up for the Kids Passport system should read "...the Privacy Statement and Terms of Use for each website you are consenting for your child to visit and use."¹⁸ This requirement violates the guidelines promulgated by the Commission in its Rule implementing COPPA. Accordingly, Section 312.4(b)(2)(iii) provides:

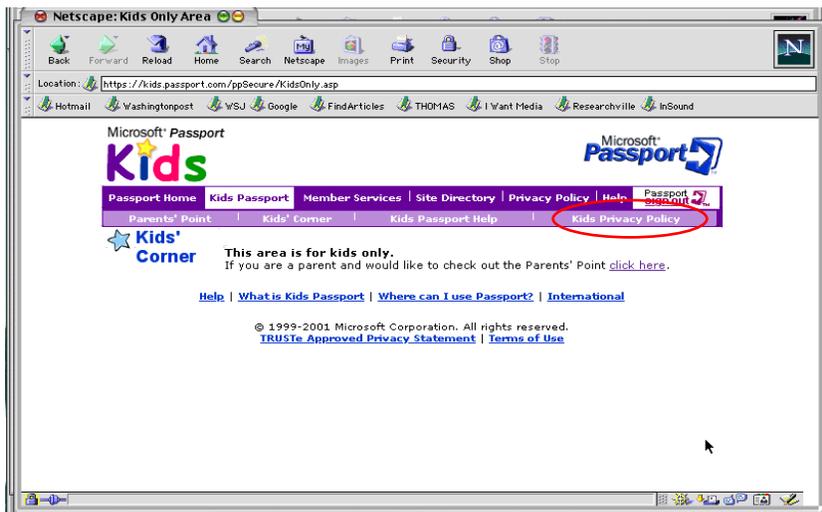
Where there are multiple operators with different information practices, there should be one notice summarizing all of the information practices that will govern the collection, use, and/or disclosure of children's personal information through the site.
37. Thus, Microsoft's policy is not only burdensome upon the parent, but is also not in compliance with the Commission Rule that protects children's online privacy.
38. Under COPPA regulations, web site operators are required to place a link to the notice on the home page of the website or online service such that a typical visitor would see the link without having to scroll down from the initial viewing screen. In addition, operators are required to post a link to that notice in a similar manner at each place on the website or online service where information is collected from children.

¹⁶ Passport Q&A for Business, <url>.

¹⁷ Id.

¹⁸ Microsoft Passport Is Committed to Safeguarding Security and Privacy, at <<http://www.passport.com/consumer/privacypolicy.asp?PPId=1033#kids>>.

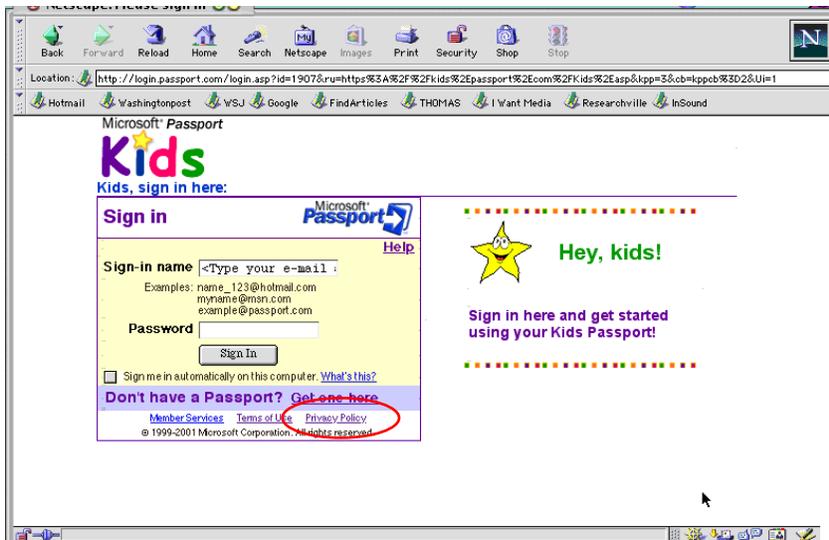
39. Correctly displaying links to a privacy policy is a critical requirement for the implementation of the COPPA, according to the Center for Media Education and the Annenberg Public Policy Center at the University of Pennsylvania.¹⁹
40. According to the FTC's definition, "clear and prominent means that the link must stand out and be noticeable to the site's visitors through use, for example, of a larger font size in a different color on a contrasting background. The Commission does not consider 'clear and prominent' a link that is in small print at the bottom of the page, or a link that is indistinguishable from a number of other, adjacent links."²⁰
41. Microsoft does not provide "clear and prominent" links to its privacy policies on the Kids Passport site, and is, therefore, not in compliance with a fundamental provision of COPPA. For example, on the entrance page to Kids Passport, the link to the "Kids Privacy Policy" is not differentiated from the other surrounding links. Similarly, on the Kids Passport sign-in page, a locus for collecting personal information directly from children, the link to the privacy policy is also not differentiated from the adjacent links. Likewise, the Kids Passport registration page requires users to scroll down to the bottom of the page to pinpoint the privacy policy link, which is, again, not differentiated from adjacent links.



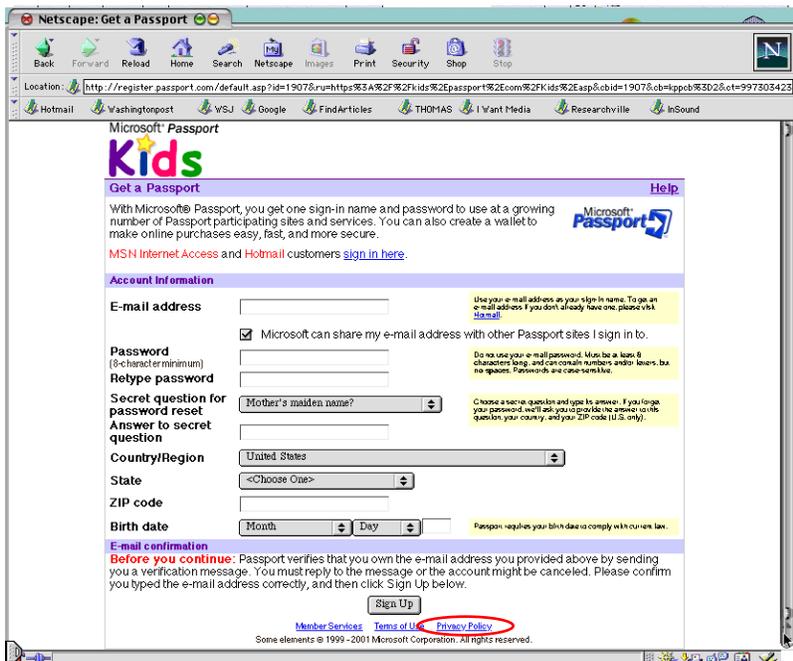
Screenshot of "Kids Corner" page taken on 8/8/01.

¹⁹ Center for Media Education, *COPPA, The First Year: A Survey of Sites* (Washington, D.C.: author, April 19, 2001). Joseph Turow, *Privacy Policies on Children's Websites: Do They Play By the Rules?* (Philadelphia, PA: Annenberg Public Policy Center of the University of Pennsylvania: March 2001).

²⁰ 64 Fed. Reg 59894.



Screenshot of "Kids Corner" Sign-in page taken on 8/8/01.



Screenshot(s) of "Kids Passport Registration" page taken on 8/8/01.

42. Microsoft Kids Passport collects unnecessary personally identifiable information, such as an e-mail address from children. Other children's sites allow children to register anonymously without divulging more than user names, zip code and password. Anonymous registration enables children to interact with sites in a one-to-one fashion, while still not being personally identified. It also permits web site operators to compile aggregate market research data without compromising children's online privacy.²¹ Considering that Microsoft's Passport

²¹ See Center for Media Education, COPPA, The First Year: A Survey of Sites (Washington, D.C.: author, April 19, 2001).

service already requires parents to sign up by submitting an e-mail address, it is unnecessary and privacy invasive for the company to collect e-mail addresses from children, as well.

43. The Commission's guidelines for COPPA Safe Harbors states that self-regulatory regimes should have "same or greater protections for children" as COPPA. The fact that Microsoft failed to comply with the law on the basic requirement of clear and prominent notice of its privacy policy shows that the Kids Passport regime is not offering "same or greater protections for children." As already determined by previous actions,²² COPPA is only as effective as its enforcement. Without clear guidance from the Commission and enforcement of existing statutes, there is a danger of enabling egregious practices that will erode the efficacy of current regulations, as well as children's (and consumer) privacy and parents' confidence for children's online safety.
44. In addition, the Commission's response to Microsoft's Kids Passport privacy guidelines will influence similar future online services. If the Commission does not respond adequately, it will set a dangerous precedent that undermines the goal of protecting children's privacy in the online environment. Accordingly, it is imperative that the Commission carefully review Microsoft's proposed guidelines to ensure that they meet the spirit and the letter of the Commission's rules and the Act itself.
45. The Federal Trade Commission is the federal agency responsible for COPPA compliance.
46. The above facts warrant an investigation into whether Kids Passport complies with the COPPA.

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

47. Subsequent to the filing of the original complaint, complainants learned that industry experts other than Walter Mossberg, Stewart Alsop, and Esther Dyson have expressed concerns about the privacy implications of Microsoft Windows XP.
48. For example, Dan Gillmor is a journalist with over eleven years of experience writing for major newspapers. Gillmor recently commented in *Mercury News* that:

Microsoft will force XP users to sign up for its Passport authentication system if they want to use key XP features. This is a dagger aimed at all kinds of other businesses, and despite Microsoft's claims to the contrary, it represents a potentially massive threat to customers' security and privacy. Microsoft says it will keep data private, but it has a horrendous security record—and a spotty history of keeping promises.²³

REQUEST FOR RELIEF

²² See <http://www.ftc.gov/opa/2001/04/girlslife.htm>

²³ Dan Gillmor, Government should block XP release, *Mercury News*, Aug. 2, 2001, at <<http://www.siliconvalley.com/docs/opinion/dgillmor/dg080301.htm>>

Wherefore, the Complainants restate their 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.

And further request that the Commission:

- G. Begin an investigation to determine whether Passport complies with the requirements of the Children's Online Privacy Protection Act.

Respectfully Submitted,

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