

Chairman Deborah Majoras
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580



January 23, 2008

Dear Chairman Majoras:

1634 I Street, NW Suite 1100
Washington, DC 20006
202.637.9800
fax 202.637.0968
<http://www.cdt.org>

On behalf of the Center for Democracy and Technology, we write to respond to the petition filed by several privacy groups on January 19, 2008 alleging unfair and deceptive practices by Ask.com. We urge the Commission to expeditiously review the petition and to publicly dismiss its allegations as unfounded. In doing so, the Commission should renew its public support for robust research and development of privacy-enhancing technologies.

The petitioners did not do their due diligence in research, nor make the effort of contacting Ask.com by phone, and therefore did not recognize that the company had proactively addressed or is in the process of addressing the concerns previously raised by the petitioners that are within Ask.com's control.

First, with respect to the use of opt-out cookies, CDT strongly agrees that cookies are not the preferred method of managing user privacy choices. However, as a search engine, Ask.com does not have control over its users' browser settings, leaving software installation as the other main option for providing such choices to users. Since software installation is often considered more invasive for users, Ask.com chose to implement the opt-out cookie, accompanied by a clear, persistent indicator on all Ask.com search pages that shows the user whether the opt-out cookie is present and provides a simple way to turn AskEraser back on should the opt-out cookie be deleted.

Before the release of AskEraser, CDT discussed its concerns regarding opt-out cookies with Ask.com, urging them to offer a software solution as another choice for consumers. By the time the privacy groups' voiced their concerns to Ask.com in December, the company informed us that they were already investigating software alternatives.

Second, the issue of the timestamp as a subversive user tracking technology has been resolved. In CDT's tests, we found that Ask.com had removed the timestamp from the cookie at the beginning of the year (see the screenshot on the last page). We have also received confirmation from Ask.com that users who received cookies containing timestamps automatically have the timestamps replaced with the new cookie content (either "on" or "off") the next time they visit the Ask.com site.

Third, we agree that law enforcement access to personal data is a difficult issue, but it is not unique to AskEraser. It is a difficult question for any online company. Law enforcement access to user data, assuming appropriate legal compliance, is beyond the control of Ask.com or any other company. We share a concern that the law enforcement standard for search and access to data is unclear, that the legal protections have been outstripped by rapidly developing technology, and that the protections are in dire need of revision. We believe that it is therefore important for Web companies to inform their users that the companies are obliged to comply with law enforcement. But having said that, we reject the idea that technology products or policies that give users greater control cannot be considered privacy-enhancing simply because they follow the law.

While dismissing the privacy groups' petition, the Commission can also bolster the position of companies that step forward to provide their customers with new privacy-enhancing tools. Such companies, CDT believes, should be applauded for their vision, not condemned for their efforts; to do otherwise runs the risk of stifling innovation at a time when new and creative privacy tools are sorely needed.

A strong, affirmative statement from the Commission supporting the willingness of companies to seek new and innovative methods of privacy protection will keep the innovation alive and allow companies

like Ask.com to continue to seek a balanced approach that addresses privacy while encouraging a vibrant marketplace.

Sincerely,

Leslie Harris, President
Ari Schwartz, Deputy Director
Alissa Cooper, Chief Computer Scientist

Note: It has been implied that CDT received financial support for our work on AskEraser. This is not true. CDT was asked to help Ask.com as it developed a privacy-enhancing product beginning in early 2007. At that time Ask.com was not a financial supporter of CDT. Toward the end of 2007, Ask.com's parent company, IAC, joined the CDT Internet Privacy Working Group, which is made up of wide range of companies and public interest groups as a forum to discuss and develop common solutions to Internet and related privacy issues.

cc:

Commissioner William E. Kovacic
Commissioner Pamela Jones Harbour
Commissioner J. Thomas Rosch
Commissioner Jon Leibowitz
Lydia Parnes, Director of the Bureau of Consumer Protection

*An Ask.com cookie, set on a CDT computer in early January,
with its content set to "on" rather than a timestamp.*

