

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

In the Matter of)
)
DoubleClick Inc.)
_____)

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

INTRODUCTION

1. This complaint concerns the information collection practices of DoubleClick Inc. and its business partners. As is set forth in detail below, DoubleClick Inc. has engaged, and is engaging, in unfair and deceptive trade practices by tracking the online activities of Internet users and combining that tracking data with detailed personally-identifiable information contained in a massive, national marketing database. DoubleClick Inc. engages in these activities without the knowledge or consent of the affected consumers, and in contravention of public assurances that the information it collects on the Internet would remain anonymous. The public interest requires the Commission to investigate these practices and to enjoin DoubleClick Inc. from violating the Federal Trade Commission Act, as alleged herein.

PARTIES

2. The Electronic Privacy Information Center ("EPIC") is a public interest research organization in Washington, DC. EPIC is a project of the Fund for Constitutional Government ("FCG"). FCG is a non-profit charitable organization established in 1974 to protect civil liberties and constitutional rights. EPIC's activities include the review of governmental and private sector policies and practices to determine their possible impacts on individual privacy interests. Among its other activities, EPIC has prepared reports and presented Congressional and administrative agency testimony on Internet and privacy issues.

3. DoubleClick Inc. ("DoubleClick") was organized as a Delaware corporation on January 23, 1996. DoubleClick's principal offices are located at 41 Madison Avenue, 32nd Floor, New York, New York 10010. At all times material to this complaint, DoubleClick'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 FTC Act, 15 U.S.C. § 44.

4. DoubleClick's business partners include more than 1,000 companies that have agreed to display DoubleClick advertising on the Web sites they operate and to enable the

placement of "cookies" on the computers of Internet users who visit their Web sites. At all times material to this complaint, such companies' 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 FTC Act, 15 U.S.C. § 44.

THE IMPORTANCE OF PRIVACY PROTECTION

5. The right of privacy is a personal and fundamental right in the law of the United States. The privacy of an individual is directly affected 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 endangered by the misuse of certain personal information.

6. U.S. privacy law has by tradition protected the privacy of consumers 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 records for video recordings of commercial programs made available to the public for home viewing.

7. Many 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 recent poll has indicated that the "loss of personal privacy" is the number one concern facing the United States in the twenty-first century.

8. The Federal Trade Commission today plays a critical role in protecting consumer privacy, particularly with respect to the offering of commercial services over the Internet, and the resulting collection and use of personal information.

STATEMENT OF FACTS

DoubleClick's Tracking of Online Activities

9. DoubleClick is a leading provider of Internet-based advertising. The company places advertising messages on Web sites that are part of the "DoubleClick Network," which consists of highly-trafficked Web sites grouped together by DoubleClick in defined categories of interest. Participating sites include AltaVista, The Dilbert Zone, Macromedia, U.S. News Online, PBS Online, Multex Investor Network, Travelocity and Major League Baseball.

10. DoubleClick tracks the individual Internet users who receive ads at Web sites in the DoubleClick Network. When a user is first "served" an ad, DoubleClick assigns the user a unique number and records that number in the "cookie" file of the user's computer.

When the user subsequently visits a Web site on which DoubleClick serves ads, DoubleClick reads and records that unique number. DoubleClick has acknowledged that "Web sites usually place certain information ('cookies') on a user's hard drive usually without the user's knowledge or consent."¹

11. Using the unique numbers contained in cookies, DoubleClick's "DART" technology enables advertisers to target and deliver ads to Web users based on pre-selected criteria. As a user visits Web sites that utilize DoubleClick's technology, DART collects information regarding the user and his or her viewing activities and ad responses. According to DoubleClick, "[t]he sophisticated tracking and reporting functionality incorporated into DART provides advertisers with accurate measurements of ad performance based on selected criteria."² In early 1999, the company described the technology as follows:

DART's dynamic matching, targeting and delivery functions enable Web advertisers to target their advertising based on a variety of factors, including user interests, time of day, day of week, organization name and size, domain type (i.e., commercial, government, education, network), operating system, server type and version, and keywords. In addition, DoubleClick offers the ability to match geographic location of the user's server and organization revenue, if known, through third-party databases. . . . Further, in order to deliver the advertisements on the pages that are likely to result in the best response, DART improves its predictive capabilities by continuously collecting anonymous information regarding the user's viewing activities and ad responses.

Among other capabilities, DART technology allows advertisers "to track a user to the advertiser's own Web site to determine what actions a user takes following a click-through."

12. Through the use of cookies and DART technology, DoubleClick's collection of consumer information is extensive. In December 1998, the company received over 5.3 billion requests for the delivery of ads generated by approximately 6,400 Web sites. DoubleClick estimates that more than 48 million users worldwide visited Web sites within the DoubleClick Network during December 1998. According to Media Metrix, 45.8% of Internet users in the United States visited Web sites within the DoubleClick Network during the same month. During the fourth quarter of 1998, DoubleClick placed approximately 18,000 Internet advertisements for over 2,300 advertisers. In calendar year 1998, DoubleClick's DART technology delivered approximately 34 billion advertising impressions worldwide.

¹ DoubleClick Inc. Form 10-K/A (Amendment No. 2) for Calendar Year Ended December 31, 1998.

² *Id.*

13. DoubleClick reportedly has compiled approximately 100 million Internet user profiles to date.

DoubleClick's Prior Assurances of Anonymity

14. DoubleClick has publicly represented that any information it collected about Internet users and their online activities was, and would remain, anonymous. Thus, the "Privacy Policy" displayed at the DoubleClick Web site in 1997 (attached hereto as Exhibit A) provided:

DoubleClick does not know the name, email address, phone number, or home address of anybody who visits a site in the DoubleClick Network. All users who receive an ad targeted by DoubleClick's technology remain completely anonymous. Since we do not have any information concerning names or addresses, we do not sell or rent any such information to third parties. Because of our efforts to keep users anonymous, the information DoubleClick has is useful only across the DoubleClick Network, and only in the context of ad selection.

The "Privacy Policy" displayed at the DoubleClick Web site in 1997 did not state that it was "subject to change," or otherwise indicate that the assurance of anonymity was in any way conditional.³

Likewise, the "Privacy Policy" displayed at the DoubleClick Web site in 1998 (attached hereto as Exhibit B), when the company served some 34 billion advertising impressions, provided:

All users who receive an ad targeted by DoubleClick's technology remain completely anonymous. We do not sell or rent any information to third parties. Because of our efforts to keep users anonymous, the information DoubleClick has is useful only across sites using the DoubleClick technology and only in the context of ad selection.

The "Privacy Policy" displayed at the DoubleClick Web site in 1998 did not state that it was "subject to change," or otherwise indicate that the assurance of anonymity was in any way conditional.

15. DoubleClick's business partners have similarly represented that DoubleClick cookies generated at their Web sites were anonymous and that no personally-identifiable

³ The attached print-outs of material displayed at the DoubleClick Web site in previous years were obtained from cached copies of Web pages that EPIC accessed through the Google search engine at <http://www.google.com/>

information would be collected by DoubleClick or its business partners as a result of the placement of DoubleClick cookies.

DoubleClick's Acquisition of Ababus Direct

16. On June 13, 1999, DoubleClick entered into an agreement to acquire Abacus Direct Corporation ("Abacus"), a leading provider of specialized consumer information and analysis for the direct marketing industry.

17. Abacus created and directs the Abacus Alliance, a cooperative arrangement through which more than 1,050 direct marketers contribute their customers' purchasing histories to Abacus for inclusion in a comprehensive database. As of December 31, 1998, the Abacus database contained over 88 million detailed buyer profiles compiled from records of over 2 billion catalog purchasing transactions. Abacus claims that the Abacus Alliance members include over 75% of the largest consumer merchandise catalogs in the United States. The database is continually enhanced as members contribute current sales transaction information and as additional companies join the Abacus Alliance.

18. Since at least as early as 1998, the Abacus database has contained information identifying and tracking the activities of Internet users. On November 2, 1998, Abacus formed a strategic alliance with Catalog City, Inc., an on-line catalog Web site offering on-line shopping services to catalog shoppers, to jointly promote each others services and share certain "e-commerce data." That information includes consumer e-mail addresses and phone numbers, online transactions and "click data."

DoubleClick's Intention to Combine "Personally-Identifiable Information" and "Non-Personally-Identifiable Information"

19. Subsequent to entering into the agreement to acquire Abacus, DoubleClick began to distance itself from its earlier assurances that users would "remain completely anonymous." A revised "Privacy Policy" posted on the DoubleClick Web site in or around June 1999 (attached hereto as Exhibit C) stated:

In the course of delivering an ad to you, DoubleClick does not collect any personally-identifiable information about you, such as your name, address, phone number or email address. DoubleClick does, however, collect certain non-personally-identifiable information about you, such as the server your computer is logged onto or your browser type (for example, Netscape or Internet Explorer). The information collected by DoubleClick is used for the purpose of targeting ads and measuring ad effectiveness on behalf of DoubleClick's advertisers and Web publishers who specifically request it. . . .

In addition, in connection solely with the delivery of ads via DoubleClick technology to one particular Web publisher's Web site, DoubleClick combines the non-personally-identifiable data collected by DoubleClick from a user's computer with the log-in name and demographic data about users collected by the Web publisher and furnished to DoubleClick for the purpose of ad targeting.

There are some cases when a user voluntarily provides personal information in response to an ad (a survey or purchase form, for example). In these situations, DoubleClick (or a third party engaged by DoubleClick) collects the information on behalf of the advertiser and/or Web site. This information is used by the advertiser and/or Web site so that you can receive the goods, services or information that you requested. Where indicated in some requests, DoubleClick may use this information in aggregate form to get a more precise profile of the type of individuals viewing ads or visiting the Web sites.

20. Under the heading of "Future Plans," DoubleClick stated as follows in its revised "Privacy Policy" posted on the DoubleClick Web site in or around June 1999:

On June 14, 1999, DoubleClick and Abacus Direct Corporation announced their plan to merge in the third quarter of 1999. Abacus currently maintains a database consisting of personally-identifiable information used primarily for off-line direct marketing. DoubleClick has no rights or plans to use Abacus' database information prior to the completion of the merger. Upon completion of the merger, should DoubleClick ever match the non-personally-identifiable information collected by DoubleClick with Abacus' database information, DoubleClick will revise this Privacy Statement to accurately reflect its modified data collection and data use policies and ensure that you have adequate notice of any changes and a choice to participate.

There is no indication that DoubleClick's business partners, who operate the Web sites at which Internet users convey personally-identifying cookies to DoubleClick, made similar revisions to the privacy statements posted at their Web sites.

21. On November 23, 1999, DoubleClick completed its acquisition of Abacus. For the first time, DoubleClick stated that "personally-identifiable information" (including "the user's name, address, retail, catalog and online purchase history, and demographic data") would be combined with "non-personally-identifiable information collected by DoubleClick from Web sites on the DoubleClick Network." Specifically, a revised "Privacy Policy" currently (as of February 9, 2000) posted on the DoubleClick Web site (attached hereto as Exhibit D) states as follows:

On November 23, 1999, DoubleClick Inc. completed its merger with Abacus Direct Corporation. Abacus, now a division of DoubleClick, will

continue to operate Abacus Direct, the direct mail element of the Abacus Alliance. In addition, Abacus has begun building Abacus Online, the Internet element of the Abacus Alliance.

The Abacus Online portion of the Abacus Alliance will enable U.S. consumers on the Internet to receive advertising messages tailored to their individual interests. As with all DoubleClick products and services, Abacus Online is fully committed to offering online consumers notice about the collection and use of personal information about them, and the choice not to participate. Abacus Online will maintain a database consisting of personally-identifiable information about those Internet users who have received notice that their personal information will be used for online marketing purposes and associated with information about them available from other sources, and who have been offered the choice not to receive these tailored messages. The notice and opportunity to choose will appear on those Web sites that contribute user information to the Abacus Alliance, usually when the user is given the opportunity to provide personally identifiable information (e.g., on a user registration page, or on an order form).

Abacus, on behalf of Internet retailers and advertisers, will use statistical modeling techniques to identify those online consumers in the Abacus Online database who would most likely be interested in a particular product or service. All advertising messages delivered to online consumers identified by Abacus Online will be delivered by DoubleClick's patented DART technology.

Strict efforts will be made to ensure that all information in the Abacus Online database is collected in a manner that gives users clear notice and choice. Personally-identifiable information in the Abacus Online database will not be sold or disclosed to any merchant, advertiser or Web publisher.

Name and address information volunteered by a user on an Abacus Alliance Web site is associated by Abacus through the use of a match code and the DoubleClick cookie with other information about that individual. Information in the Abacus Online database includes the user's name, address, retail, catalog and online purchase history, and demographic data. The database also includes the user's non-personally-identifiable information collected by Web sites and other businesses with which DoubleClick does business. Unless specifically disclosed to the contrary in a Web site's privacy policy, most non-personally-identifiable information collected by DoubleClick from Web sites on the DoubleClick Network is included in the Abacus Online database. However, the Abacus Online database will not associate any personally-identifiable medical, financial, or sexual preference information with an individual. Neither will it associate information from children.

The Inadequacy of DoubleClick's "Opt-Out" Procedure

22. The most recent version of DoubleClick's "Privacy Policy" purports to offer users the ability to "opt-out" of the information sharing activities described above. It states, in pertinent part:

While some third parties offer programs to manually delete your cookies, DoubleClick goes one step further by offering you a "blank" or "opt-out cookie" to prevent any data from being associated with your browser or you individually. If you do not want the benefits of cookies, there is a simple procedure that allows you to deny or accept this feature. By denying DoubleClick's cookies, ads delivered to you by DoubleClick can only be targeted based on the non-personally-identifiable information that is available from the Internet environment, including information about your browser type and Internet service provider. By denying the DoubleClick cookie, we are unable to recognize your browser from one visit to the next, and you may therefore notice that you receive the same ad multiple times.

23. The vast majority of Internet users who receive cookies from DoubleClick never visit the DoubleClick Web site and therefore never learn of the "opt-out" procedures described by the company. DoubleClick cookies are placed on users' computers when users visit third-party Web sites that display ads placed by DoubleClick. Users are rarely given notice by such third-party Web sites that they need to visit the DoubleClick Web site in order to understand DoubleClick's data collection activities or learn about any available "opt-out" procedures.

24. A large percentage of DoubleClick cookies are placed on the computers of users who visit the AltaVista Web site. Approximately 18.7% of DoubleClick's revenues for the nine months ended September 30, 1999, resulted from advertisements delivered on or through the AltaVista Web site. Approximately 41.2% of DoubleClick's systems revenues for the nine months ended September 30, 1999, resulted from AltaVista billings.⁴

25. Visitors to the AltaVista Web site are not provided notice that their use of the AltaVista site will result in the placement of DoubleClick cookies on their computers. The AltaVista "Privacy Policy" displayed on February 9, 2000 (attached hereto as Exhibit E) provides, in pertinent part:

AltaVista uses one or more third party companies to serve advertisements at our site. These companies may use cookies to ensure that you do not see

⁴ DoubleClick Inc. Form 10-Q for the Quarterly Period Ended September 30, 1999

the same advertisements too often, but they also may collect information about you when you view or click an advertisement at our site. Cookies that are received with advertisements are read and placed by one of our advertising companies, and AltaVista does not have access to them, nor can we control how they are used.

The AltaVista "Privacy Policy" does not contain any reference to DoubleClick.

Inaccurate Information Posted by DoubleClick's Partners

26. Some third-party Web sites that generate DoubleClick cookies do inform users of their relationship with DoubleClick and that DoubleClick places cookies on the computers of users who visit such third-party sites. Some of those Web sites continue to assure users that they will remain anonymous. For instance, the "Privacy Stuff" page at the Dilbert TV Web site (attached hereto as Exhibit F) displayed the following information on February 9, 2000:

United Media contracts with DoubleClick to sell and manage the advertisements that you see on this site. The advertisements help us bring you the United Media site without charge. DoubleClick uses "cookies" to improve the quality of your visit to the Dilbert TV Web site. . . .

DoubleClick uses cookies to make sure that you do not see the same advertisements repeatedly and when possible, shows advertising that is relevant to you based on what you have seen previously. Cookies are anonymous. DoubleClick does not know the name, e-mail address, phone number, or home address of anybody who visits the United Media site or any other site in the DoubleClick Network. All users receiving an ad from DoubleClick through the United Media site therefore remain entirely anonymous to DoubleClick; DoubleClick does not have any information to sell or rent to other parties.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

27. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.

DoubleClick's Activities Constitute Deceptive Trade Practices

28. DoubleClick has publicly represented that any information it collected about Internet users and their online activities was, and would remain, anonymous.

29. In truth and in fact, DoubleClick intends to combine data it has consistently described as "non-personally-identifiable information" with users' names, addresses, retail, catalog and online purchase histories, and other personally-identifiable information contained in the Abacus database. Therefore, DoubleClick's representations concerning the anonymity of information it collected and collects about Internet users were, and are, deceptive practices.

DoubleClick's Activities Constitute Unfair Trade Practices

30. DoubleClick's collection of information about Internet users, through the placement of cookies on users' computers and the linkage of cookie-generated data with information contained in the Abacus database, is performed without the knowledge or consent of the great majority of Internet users who receive DoubleClick cookies. Users who receive DoubleClick cookies on their computers do not knowingly access the DoubleClick Web site. Many of DoubleClick's partners, who operate the Web sites which generate DoubleClick cookies, provide either no information or inaccurate information about the placement of such cookies and the manner in which data about users will be collected or used. As a result, the great majority of users who receive DoubleClick cookies neither know that their activities are being monitored, nor are aware of any "opt-out" procedures that might be available.

31. DoubleClick's collection of information about Internet users, through the placement of cookies on users' computers and the linkage of cookie-generated data with information contained in the Abacus database, without the knowledge or consent of Internet users, is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or competition, and therefore is an unfair practice.

32. DoubleClick has publicly represented that any information it collected about Internet users and their online activities was, and would remain, anonymous.

33. DoubleClick's plan to combine "non-personally-identifiable information" with users' names, addresses, retail, catalog and online purchase histories, and other personally-identifiable information contained in the Abacus database, in violation of its representations to the contrary, is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or competition, and therefore is an unfair practice.

Consumer Injury

34. DoubleClick's conduct, as set forth above, has injured consumers throughout the United States by invading their privacy; using information obtained through the placement of DoubleClick cookies in ways and for purposes other than those consented to or relied upon by such consumers; causing them to believe, falsely, that their online

activities would remain anonymous; and undermining their ability to avail themselves of the privacy protections promised by online companies.

35. Absent injunctive relief by the Commission, DoubleClick is likely to continue to injure consumers and harm the public interest.

36. Absent injunctive relief by the Commission in this matter, other companies will be encouraged to collect personally-identifiable information from consumers in an unfair and deceptive manner.

37. Absent injunctive relief by the Commission in this matter, the privacy interests of consumers engaging in online commerce and other Internet activities will be significantly diminished.

REQUEST FOR RELIEF

WHEREFORE, EPIC requests that the Commission:

- A. Initiate an investigation into the information collection and advertising practices of DoubleClick and the Web sites on which DoubleClick places advertisements and/or generates cookies on the computers of Internet users;
- B. Order DoubleClick to destroy all records it created concerning Internet users during any period of time in which DoubleClick or any of its business partners were assuring the anonymity of the information DoubleClick collected;
- C. Order DoubleClick to obtain the express consent of any Internet user about whom DoubleClick intends to create a personally-identifiable record, and to develop such means as are necessary to ensure that the user has access to the complete contents of the record;
- D. Order DoubleClick to pay a civil penalty equal to fifty percent (50%) of the revenues it obtained as a result of the practices described herein, or such other civil penalty as may be appropriate;
- E. Permanently enjoin DoubleClick from violating the FTC Act, as alleged herein; and
- F. Provide such other relief as the Commission finds necessary to redress injury to consumers resulting from DoubleClick's violations of the FTC Act.

Respectfully Submitted,

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