

From: rlynch  
Posted At: Monday, April 05, 2004 12:34 AM  
Posted To: spywareworkshop2004  
Conversation: The Effective Control of Spyware  
Subject: The Effective Control of Spyware

Spyware Workshop - Comment, P044509  
Office of the Secretary,  
Room 159-H, 600 Pennsylvania Avenue  
N.W., Washington, D.C. 20580

Federal Trade Commission

The Effects of Spyware

Most adware and spyware companies believe it is their inalienable right to intrude, install, advertise, market, monitor, modify, disable, damage, download, infiltrate, infect, extract, keylog, hijack and steal as part of their normal business activities.

It is not their right. It is completely unacceptable.

These actions are deliberate and calculated attempts to invade privacy, hijack the property of a victim and damage a system for commercial gain.

It is our right to defend and repel invaders within our property.

It is your job to protect the innocent.

One parasite example

After creating, and actively distributing, the worldwide plague that we know as the Peper Trojan, [www.memorywatcher.com](http://www.memorywatcher.com) <<http://www.memorywatcher.com/>> is still actively recruiting unsuspecting victims.

The following extracts from the recently modified Memory Watcher EULA highlight this.

<http://www.memorywatcher.com/TOS.html> <<http://www.memorywatcher.com/TOS.html>> (Terms of Service)

As of 5th April, 2004,

[QUOTE]By installing the Memory Watcher Software on your computer, you understand that: (i) Several ADVERTISING CONSOLES may be launched for the duration of time you spend online. [/QUOTE]

[QUOTE] (ii) QuadroGram may automatically transmit to and install on your computer, Software improvements, corrections, adaptations, conversions to more recent Software versions or any other changes to the Software, with or without giving notice. [/QUOTE]

[QUOTE] QuadroGram may elect in its sole discretion to condition the continuation of this license to accepting software improvements, corrections, adaptations, conversions to more recent Software versions or any other changes to the Software. By using the Software, you may be exposed to contaminated files, computer viruses, eavesdropping, harassment, electronic trespassing, hacking and other harmful acts or consequences that might lead to unauthorized invasion of privacy, loss of data and other damages.  
[/QUOTE]

[QUOTE]By downloading the Memory Watcher software, you agree to receive advertising messages delivered on your computer in any form and of any frequency.

The ad formats used by Memory Watcher will vary, but will primarily consist of pop-unders and pop-ups. Memory Watcher may use information about its users in order to make sure they are receiving advertisements that are relevant to them. All advertisements are delivered independently from websites our users are visiting and are not endorsed or affiliated with anyone else other than Memory Watcher.  
[/QUOTE]

These Terms of Service are the license that Quadrogram are passing off as their 'legal' justification.

It is purely a license to exploit unfettered on a massive scale.

The Centre for Disease Control coordinates a national effort for protecting the health and safety of people. CDC would have closed down Memory Watcher within 24 hours to protect the public's health, and sought legal proceedings against Quadrogram LLC.

#### Responses to Spyware Concerns

The most effective response will be multi layered. The peak response will be the establishment of a federal agency to monitor and regulate the malware known as adware and spyware. The following serves as a guide.

CDC serves as the national focus for developing and applying disease prevention and control, environmental health, and health promotion and education activities designed to improve the health of the people of the United States. CDC plays a critical role in protecting the public from the most widespread, deadly and mysterious threats against our health today and tomorrow.

CDC seeks to accomplish its mission by working with partners throughout the nation and world to monitor health, detect and investigate health problems, conduct research to enhance prevention, develop and advocate sound public health policies, implement prevention strategies, promote healthy behaviors, foster safe and healthful environments, and provide leadership and training.

Thank you for your time,

Iceblue

---

Outgoing mail is certified Virus Free.

Checked by AVG anti-virus system (<http://www.grisoft.com>).

Version: 6.0.647 / Virus Database: 414 - Release Date: 29/03/2004

# Memory Watcher EULA

<http://www.memorywatcher.com/TOS.html>

## Terms of Service

### TERMS OF USE AND END USER LICENSE AGREEMENT -----

----- By installing the Memory Watcher Software on your computer, you understand that: (i) Several ADVERTISING CONSOLES may be launched for the duration of time you spend online. These consoles may continue to be launched as long as you have MemoryWatcher installed on your machine. MemoryWatcher does not monitor the activities or collect information from users once they have left MemoryWatcher. By downloading MemoryWatcher, you understand that these changes cannot be reversed without running the removal executable of MemoryWatcher. If you try to change the items above manually, your changes will be lost when you reboot or turn off your computer. (ii) QuadroGram may automatically transmit to and install on your computer, Software improvements, corrections, adaptations, conversions to more recent Software versions or any other changes to the Software, with or without giving notice. The Memory Watcher software and the services provided by that software are provided "as is," without warranty of any kind, either expressed or implied, including without limitation, warranties of performance, merchantability, fitness for a particular purpose or noninfringement. The Company does not warrant that the functions included in the Software will meet your requirements or that the operation of the Software will be uninterrupted or error free. The Company does not warrant that information will be transmitted in uncorrupted form or within a reasonable period of time. The Company does not warrant the accuracy of the data provided by the Software, and bears no liability for missing, unavailable or incorrect data. You bear the entire risk as to the use, quality and performance of the Software. Title, ownership rights, and intellectual property rights in the Software shall remain in the Company and/or its licensors. The license will terminate automatically if you fail to comply with the limitations described herein or if the Services are terminated or expire. On termination of this license, you must destroy all copies of the Software in your possession or control. The Company is permitted, at any time and for whatever reason, to limit, deny, modify, or cancel some or all of the functionality or content of the Software or the Service without prior notice. QuadroGram may elect in its sole discretion to condition the continuation of this license to accepting software improvements, corrections, adaptations, conversions to more recent Software versions or any other changes to the Software. By using the Software, you may be exposed to contaminated files, computer viruses, eavesdropping, harassment, electronic trespassing, hacking and other harmful acts or consequences that might lead to unauthorized invasion of privacy, loss of data and other damages. Under no circumstances and under no legal theory, tort, contract, or otherwise, shall QuadroGram, its licensors, or any of its affiliated entities be liable to you or any other person for any direct, special, incidental, or consequential damages of any kind including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, loss of data, loss of functionality, or any and all other commercial or non-commercial damages or losses, even if QuadroGram shall have been informed of the possibility of such damages, or for any claim by any other party. The Software is provided for your use, as described above, free of charge, and is supported by advertising revenue. By downloading the Memory Watcher software, you agree to receive advertising messages delivered on your computer in any form and of any frequency. QuadroGram may, in its sole discretion, change, modify, add or remove portions of this license at any time. Notice of material changes to this agreement will be posted on QuadroGram's web site or through the Software. Your continued use of the Software following notice of such change shall be deemed to be your acceptance of any such modification. If you do not agree to any such modification, you must immediately stop using the Software. This Agreement represents the complete agreement between you and QuadroGram concerning the subject matter hereof and supersedes all prior agreements and representations. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable. Any person who wishes to download and/or use the Memory Watcher downloadable software product (the "Software") must agree to the terms and conditions of this Terms of Use and End User License Agreement, (the "Agreement"), as well as all other policies and guidelines incorporated by reference in this Agreement. The Agreement is a binding agreement between

you and QuadroGram, LLC. (the "Company"), developer of Memory Watcher, and its affiliated entities. By registering for, downloading, installing, or using the Memory Watcher software, you agree to be bound by all terms and conditions of this agreement and all policies and guidelines incorporated by reference. If you do not wish to be bound by this agreement, do not indicate your acceptance and do not use the Memory Watcher software. These terms and conditions are accepted by downloading this product. The Company grants you a non-exclusive license to use the Memory Watcher software as described below. You may: a) use the Memory Watcher software on any one computer; b) copy the Memory Watcher software without change or modification for distribution to third parties free of charge; c) copy the Memory Watcher software for purposes of archiving, provided that any archival (or non-archival) copy must contain all of the Memory Watcher software's proprietary notices. You may not: a) modify, reverse engineer, or create derivative works based on the Memory Watcher software; b) copy the software except as specified above; c) rent, lease, sell or otherwise transfer rights to the software; d) permit other individuals to use the Memory Watcher software except under the terms of this agreement; e) remove all of the original proprietary notices included with the Memory Watcher software, including this Agreement.

PRIVACY POLICY Memory Watcher is free advertising-supported software. It is our strict policy to distribute this software only to users who have been given the opportunity to review and accept this privacy policy prior to the downloading of Memory Watcher. If you believe you have received Memory Watcher without accepting the privacy policy and license agreement please contact us at [help@memorywatcher.com](mailto:help@memorywatcher.com). **Memory Watcher aims to provide users with real-time available memory levels on their computer for free while delivering relevant advertising to those users. The ad formats used by Memory Watcher will vary, but will primarily consist of pop-unders and pop-ups. Memory Watcher may use information about its users in order to make sure they are receiving advertisements that are relevant to them. All advertisements are delivered independently from websites our users are visiting and are not endorsed or affiliated with anyone else other than Memory Watcher.** The Internet is constantly evolving, and because of this we reserve the right to update both the functionality of our software as well as our privacy policy. Please review our policy frequently. Use of the Memory Watcher software indicates your knowledge and acceptance of the privacy policy and license agreement posted on the Memory Watcher site at the time of your use of the product. If you are thirteen years old or younger, we will not collect, store or use your personally identifiable information. **In addition, parents or guardians of children over the age of thirteen should be aware that this program is designed to appeal to a mass audience and it is up to their discretion whether the program is fit for children over the age of 13.** If you want to uninstall Memory Watcher, you can do so easily through the add/remove function in your control panel. If you have any problems or general questions, please feel free to email us at [help@memorywatcher.com](mailto:help@memorywatcher.com). **You understand, acknowledge and agree that installation of Memory Watcher permits the downloading to your computer by Memory Watcher of software which allows us to update the Software and install other Applications, and that such downloads and updates may occur without notice to you.** Unless stated otherwise, any new products or services we provide or distribute, whether through our own or third party websites or servers, will also be subject to the terms of this Agreement. Disclaimer of Warranty YOU ACCESS AND USE OUR APPLICATIONS AND SERVICES AND ANY CONTENT AVAILABLE THROUGH OUR SERVICES OR ON OUR WEBSITE AT YOUR SOLE RISK. WE PROVIDE THE APPLICATIONS AND THE CONTENT ON AN "AS IS," AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT, SYSTEM INTEGRATION OR NON-INFRINGEMENT. WE MAKE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE SERVICES PROVIDED BY THIRD PARTIES ACCESSIBLE ON OR THROUGH OUR APPLICATIONS OR SERVICES. NEITHER WE NOR OUR DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, THIRD PARTY VENDORS, FACILITIES, INFORMATION PROVIDERS, LICENSORS, NOR ANY EXCHANGES, CLEARING ORGANIZATIONS OR OTHER SUPPLIERS PROVIDING DATA, INFORMATION, OR SERVICES (EACH A "PROVIDER") MAKE ANY REPRESENTATION OR WARRANTY: (A) AS TO THE TIMELINESS, SEQUENCE, ACCURACY, COMPLETENESS, RELIABILITY OR CONTENT OF THE APPLICATIONS OR THE SERVICES OR ANY INFORMATION, SERVICE OR

TRANSACTION PROVIDED THEREBY, OR (B) THAT THE APPLICATIONS OR THE SERVICES WILL BE AVAILABLE OR WILL OPERATE IN AN UNINTERRUPTED OR ERROR-FREE MANNER, OR (C) THAT ERRORS OR DEFECTS RELATED TO THE APPLICATIONS OR THE SERVICES WILL BE CORRECTED. WE ALSO DO NOT WARRANT THAT THE APPLICATIONS OR THE SERVICES OR THE INFORMATION AVAILABLE THROUGH THE SERVICES, IS APPROPRIATE, ACCURATE OR AVAILABLE FOR USE IN ANY PARTICULAR JURISDICTION. WE MAKE NO WARRANTY THAT (i) WE CAN IDENTIFY ANY IDENTITY THEFT, (ii) THE QUALITY OF ANY PRODUCTS OBTAINED OR PURCHASED THROUGH THE USE OF OUR APPLICATIONS WILL MEET YOUR EXPECTATIONS; OR (iii) ANY ERRORS IN OUR APPLICATIONS OR MATERIALS WILL BE CORRECTED. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. The above exclusions may not apply in jurisdictions that do not allow the exclusion of certain implied warranties. Limitation of Liability YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT IN NO EVENT WILL MEMORY WATCHER, ITS PARENTS, SUBSIDIARIES, OR AFFILIATES OR THEIR EMPLOYEES, DISTRIBUTORS, SUPPLIERS, MERCHANT PARTNERS, ADVERTISERS, DIRECTORS OR AGENTS (EACH A "PROTECTED PARTY, COLLECTIVELY "PROTECTED PARTIES") BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR OTHER RELIEF ARISING OUT OF, OR RELATED TO, THIS AGREEMENT OR TO YOUR USE OR INABILITY TO USE ANY OR ALL OF THE APPLICATIONS OR SERVICES INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY, GOODWILL, OR OTHER INTANGIBLE LOSSES (EVEN IF MEMORY WATCHER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). TO THE EXTENT THE FOREGOING LIMITATION OF LIABILITY IS, FOR ANY REASON, HELD TO BE INAPPLICABLE OR UNENFORCEABLE IN WHOLE OR IN PART, THEN MEMORY WATCHER'S AGGREGATE LIABILITY, FOR ANY REASON AND FOR ANY CAUSE OF ACTION AND ANY THEORY OF LIABILITY, ARISING OUT OF OR RELATED TO THE SERVICES OR THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF DAMAGES ACTUALLY INCURRED OR THE AVERAGE REVENUE RECEIVED BY MEMORY WATCHER PER USER OF MEMORY WATCHER SOFTWARE PRODUCTS PER MONTH AS CALCULATED BY MEMORY WATCHER BASED ON THE USE OF SUCH PRODUCTS (AND NOT OTHER PRODUCTS OR SERVICES OFFERED BY MEMORY WATCHER) MULTIPLIED BY THE NUMBER OF COMPLETE MONTHS YOU HAVE BEEN AN APPLICATION USER. THE PROTECTED PARTIES ASSUME NO LIABILITY HEREUNDER FOR, AND SHALL HAVE NO OBLIGATION TO DEFEND YOU OR TO PAY COSTS, DAMAGES OR ATTORNEYS' FEES FOR, ANY CLAIM BASED UPON: (I) ANY METHOD OR PROCESS IN WHICH OUR APPLICATION MAY BE USED BY YOU; (II) ANY RESULTS OF USING OUR APPLICATION; (III) ANY USE OF OTHER THAN A CURRENT UNALTERED RELEASE OF ONE OF OUR APPLICATIONS; OR (IV) THE COMBINATION, OPERATION OR USE OF ANY OF OUR APPLICATION(S) WITH THIRD PARTY PROGRAMS OR DATA. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, our liability shall be limited to the extent permitted by law.

[Return to the Memory Watcher main page.](#)