

From: Jason  
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Subject: Spyware Workshop - Comment, P044509

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Federal Trade Commission  
Office Of The Secretary  
Room 159-H  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: FTC Public Workshop: "Monitoring Software On Your PC: Spyware, Adware, And Other Software"

Dear Sirs:

I have carefully reviewed each of the public comments submitted in response to the Commission's invitation in connection with the upcoming workshop on "spyware" and "adware". A number of those public comments indicate a misperception about "adware" and how it differs from "spyware" (a distinction already noted in my prior comment dated March 12 2004), see

<<http://www.ftc.gov/os/comments/spyware/040312lucas.pdf>><http://www.ftc.gov/os/comments/spyware/040312lucas.pdf>.

The purpose of this present submission, however, is to focus attention on two additional issues raised in the public comments submitted over the past few weeks. Those issues relate to:

- (1) the significance of the EULA to both computer users and adware companies; and,
- (2) the importance of "uninstallers" in the adware market.

It would appear that a number of consumers and companies contend that users should not be held accountable for their acceptance of a binding EULA because it was too long or too boring for them to read before they pressed "next." Such a position ignores the legal effect of binding digital contracts. To adopt that view would invalidate any online digital contract, including credit card purchases, online loan or mortgage applications and online banking. As with other contracts or agreements, there must come a point when the consumer has to be held accountable for his or her own actions.

Perhaps a solution would be to require the "Terms & Conditions" for the software product to be displayed on the same page as the "Accept" or "Next" button applying to those terms. C2 Media certainly agrees that users should not be required to click a button taking them to a

different page to view the terms of the contract they are being offered. The EULA should be visible to the user in a reasonably sized scroll window on the same page as the "Accept" button that installs the software. If the user makes a mistake and installs a piece of software they no longer want on their system, they should then be able to easily go to the add/remove programs option on their computer and remove it. All responsible "adware" companies should include a built-in uninstaller that is available to the user free of charge at any time. Companies who do not provide clear "Terms & Conditions" to the user, together with a complete uninstall option when their software is installed, should certainly be required to do so.

Legitimate adware is installed with an EULA and uninstaller --- usually in exchange for a free software product or service. Adware does not monitor or "spy" on a user. Adware only exists as an advertising channel to a subscriber base, much like cable networks retain time blocks on all channels on their network to display advertising. The user has agreed to be a subscriber of that particular advertising network in exchange for a product or service. With the acceptance of an EULA, this becomes a binding contractual agreement between the two parties. If a user believes his computer has been "invaded" by an advertising network associated with software he previously had chosen to install, he remains free at all times to simply uninstall it and "opt out" of the advertising network.

I think it is important to address the issue of uninstalling advertising software -- specifically that created by C2 Media. I have read several consumer complaints stating they could not remove the adware once installed on their system. I believe the reason for this problem is the users' failure to run the built-in uninstaller that came with the software from the add/remove programs menu. Because of the undue fear created in the market place over advertising software, those users resort to anti-adware programs which improperly remove the adware and damage the installation files.

Because of such "removal problems," C2 Media has always had a separate stand alone uninstaller available on its website help page -- <http://www.lop.com/help.html#uninstall> This uninstall program has been specially designed to remove even damaged installation of the advertising software. Moreover, C2 Media also has 24 hour "real human" e-mail assistance available to assist consumers with any uninstall difficulties they might experience.

There have been many instances where the users' own anti-virus software prevented the built-in uninstaller from functioning. Many consumers have reported that when they disabled (or in some cases uninstalled) their anti-virus software, the lop.com uninstaller functioned properly because it was no longer being interfered with from an outside program. Thus, if not interfered with by an outside program, there is no version of C2 Media advertising software that could not be easily removed by either the built-in uninstaller that came with the software, or the universal stand alone uninstaller available on my company's web page.

Should the FTC establish a rule that all adware must come with a built-in uninstaller, guidelines should also be established that govern anti-advertising or automatic uninstaller programs. Because some software

developers will no doubt continue to create products that do not contain a built-in uninstaller, there is a place and need for these anti-adware software products. However, anti-adware companies should be encouraged, if not required, to cooperate with advertising software companies by attempting to launch the advertising software's own built-in uninstall routines before resorting to a "forced removal" system -- an operation that directly encourages users to violate the terms of the EULA contract previously entered into with the adware vendor.

It is important to recognize the harm the "anti-advertising" industry is potentially causing in this situation with the current incarnations of their anti adware software products. Rather than attempt to prompt the proper built in uninstall option for the adware product when available, some "anti-adware" software products attempt to forcibly remove the adware component, resulting in the removal of critical system files (and, in some cases, even the built in uninstaller for the adware itself).

Rarely do these anti-adware programs completely remove all of the components of the adware. Instead, they leave behind remnants or improperly functioning components of the original adware software, possibly resulting in damage to the user's computer. Had the anti-adware software used the built-in uninstaller available from add/remove programs file and prompted the user for interaction at that point, the built-in uninstaller for the adware would have been activated and would have properly uninstalled the adware package, thereby fully restoring the users computer to its original state before the adware was installed. Thus, better communication and cooperation between adware companies, anti-virus companies, and consumers is needed and should be encouraged. Opening these channels of communication and cooperation will begin to eliminate erroneous claims against legitimate advertising software, as well as quelling both frustration and confusion on the part of the public regarding internet advertising.

Computers operate, of course, on software, much like a cable box is necessary to make the television that you paid \$2,000 for operate on the cable network, installing software on a computer is also necessary to operate an advertising channel on the internet communications medium. Thus, both a computer and a television are similarly priced devices whose wide variety of available content is almost entirely supported by advertising dollars.

Advertisements on the internet are akin to those that we are "forced" to see or hear on television or radio. When one turns on a television or radio, depending on what channel is chosen to tune in or "surf", a person is subjected to the will of the broadcaster as to when (and in what quantity) he/she will receive advertisements on the channel selected. Moreover local cable companies have the ability to sell ads across the entire spectrum of channels available to television viewers and radio listeners. Advertising software is no different than television or radio. With advertising software, the software developer is creating a subscriber base from which it can sell advertising, just like local cable companies.

Thank you for your time in reading my comments.

Sincerely,

Jason Lucas  
Executive Director  
C2 Media Ltd. (U.K.)