

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

In the Matter of)
)
Ask.com)
)

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

INTRODUCTION

1. On January 19, 2008, EPIC, the Center for Digital Democracy, Consumer Action, the Fairfax County Privacy Council, Patient Privacy Rights, and the U.S. Bill of Rights Foundation filed with the Federal Trade Commission (“FTC” or “Commission”) a “Complaint and Request for Injunction, Request for Investigation and for Other Relief” (“Complaint”). The Complaint concerned the business practices of the company Ask.com – specifically a product called “AskEraser.” As EPIC stated in the original complaint:

This complaint concerns the business practices of the company Ask.com and specifically a product it has offered to Internet users in the marketplace called “AskEraser.” The company purports to provide an Internet search engine that provides privacy protection by limiting the collection and use of Internet search histories. In fact, the product does not work as advertised: Internet search histories will be retained without notice to Internet users. Moreover, AskEraser requires Internet users to disable genuine privacy features, and it exposes Internet users to additional tracking, monitoring, and profiling by means of a Persistent Identifier.¹

2. In the original Complaint, the Petitioners also made clear the basis for Commission action in this matter based on both the FTC’s Section 5 authority and the Commission’s expressed interest in Internet business practices that involve the collection and use of consumer data.²
3. This Supplemental Complaint addresses the ongoing privacy threats posed by AskEraser, as well as Ask.com’s unfair and deceptive trade practices relating to AskEraser.

¹ Complaint at ¶1.

² Complaint at ¶2, ¶49, ¶¶49-64.

EPIC IDENTIFIED SUBSTANTIAL FLAWS IN ASKERASER,
AND NOTIFIED ASK.COM ABOUT THESE FLAWS

4. Ask.com announced Ask Eraser on December 11, 2007. Ask.com stated in its press release:

When enabled by the user, AskEraser completely deletes all future search queries and associated cookie information from Ask.com servers, including IP address, User ID, Session ID, and the complete text of their queries.³
5. The Electronic Privacy Information Center (“EPIC”) conducted testing and research relating to AskEraser. EPIC assessed the features described by the company, examined the cookie settings, reviewed the privacy policy, took relevant screen shots, and consulted with technical experts regarding the design of AskEraser.
6. On December 20, 2007, EPIC notified Ask.com of several flaws in the AskEraser service. EPIC detailed the problems with Ask Eraser and made specific recommendations to the company about how the threats to consumer privacy could be reduced.
7. Thirty days later, having received no substantive reply from Ask.com, EPIC, and several other privacy organizations, filed the Complaint with the FTC, urging the Commission to open an investigation under its Section 5 authority.

ASK.COM CHANGED THE ASKERASER COOKIE
IN RESPONSE TO EPIC’S ASSESSMENT

8. In the EPIC Letter to Ask.com and in the subsequent Complaint to the Commission, EPIC identified a substantial flaw in the design of Ask Eraser. As EPIC set out in the Complaint, the use of a Persistent Identifier in the AskEraser product enabled the permanent tracking of Internet users by the company and by others to whom the company might disclose the search query and the associated cookie.⁴
9. As EPIC noted in the Letter to Ask.com, the AskEraser cookie recorded the exact time, down to the second, that the user activated AskEraser. As a consequence, EPIC explained, “when histories are logged, reconstructing actual identity would be trivial.” Letter at 2.
10. EPIC further explained in the Letter that even if Ask.com were not logging search histories, Ask.com “will make it trivially easy for third parties to track users who have enabled Ask Eraser by simply noting the time/date you have assigned.” Id.
11. EPIC proposed in the Letter that Ask.com revise the entry in the cookie to include a non-unique identifier such as “Do Not Track” or “2037.” As EPIC explained, “both cookies

³ [Ask.com](http://www.ircconnect.com/ask/pages/news_releases.html?d=132847), “Ask.com Puts You in Control of Your Search Privacy With the Launch of 'AskEraser' New Tool is the First to Eliminate User's Search Activity,” http://www.ircconnect.com/ask/pages/news_releases.html?d=132847 (Dec. 11, 2007).

⁴ Complaint at ¶¶33-39.

would fulfill the purpose intended without creating the additional privacy risk.” Id.

12. EPIC also proposed that Ask.com use a session cookie that “would expire once the search result is returned.” As EPIC explained, that approach would be “much better.” Id..
13. Subsequent to the publication of the EPIC Letter and associated news reports of the problems with AskEraser,⁵ Ask.com modified the AskEraser cookie to address, in part, the problem EPIC identified. Now, Ask.com will set the Ask Eraser cookie to “on” when the service is enabled.⁶
14. However, Ask.com also extended the cookie expiration period from two years to thirty years. For reasons explained in the original Letter, the original Complaint, and restated below, this change demonstrates the flaw with the opt-out cookie and will require Internet users to disable genuine browser privacy techniques such as those that routinely delete cookies.

THE OPT-OUT COOKIE IS A FLAWED TECHNIQUE FOR PRIVACY PROTECTION

15. As EPIC explained in the Letter and the Complaint, the opt-out cookie is a flawed technique for privacy protection.⁷
16. The recent change to AskEraser further exacerbates the problem.
17. AskEraser’s opt-out cookie poses an ongoing threat to consumer privacy, and is an unfair business practice as it induces consumers to disable genuine privacy techniques.

ASK.COM CONTINUES TO DISABLE THE ASKERASER SERVICE WITHOUT NOTICE TO THE CONSUMER

18. In the Letter and the Complaint, EPIC detailed the flaws⁸ in Ask.com’s policy of “retain[ing] [users’] search data even if AskEraser appears to be turned on.”⁹
19. At the time of the filing of this Supplemental Complaint, the AskEraser privacy policy states:

Ask.com is serious about privacy. We are committed to meeting and exceeding emerging privacy trends in the search industry. Not only will we proactively delete the search activity of all Ask.com users from our servers after 18 months,

⁵ Elinor Mills, “Group says Ask’s privacy feature is flawed,” (Dec. 19, 2007), http://marketwatch-cnet.com.com/8301-10784_3-9836002-7.html?tag=more

⁶ “About Ask.com: AskEraser,” <http://sp.ask.com/en/docs/about/askeraser.shtml#cookiesrequired> (last visited, Feb. 8, 2008).

⁷ Letter at 1-2; Complaint at ¶¶24-32.

⁸ See Complaint at ¶¶40-44.

⁹ Ask.com, Privacy Policy, <http://sp.ask.com/en/docs/about/privacy.shtml>; Ask.com, About AskEraser: <http://sp.ask.com/en/docs/about/askeraser.shtml>.

but we also offer AskEraser, which, when enabled, deletes your search activity within hours.¹⁰

And:

At Ask.com, we believe that you as a user should have the power to control the usage of your search history. When enabled, AskEraser will completely delete your search queries and data from Ask.com servers, including: your IP address, User ID and Session ID cookies, as well as the complete text of your search query--all within a matter of hours.¹¹

20. This position was stated emphatically by Nicholas Graham, “a spokesman at IAC-owned Ask.com,” in an August 2007 interview with CNET:

[Question:] If you retain data for a limited period of time, is it completely deleted (in such a way that the data and backups cannot be recovered, even under court order) or is it anonymized instead?

[Answer] Graham: Users of AskEraser will have their complete search query data eliminated so that no one who requests it from Ask.com will be able to access it--ever. (emphasis added)¹²

21. However, buried deep down in the Ask Eraser “privacy policy,” in a section titled “Is there any reason Ask.com will stop deleting my search activity?” Ask.com concedes:

Even when AskEraser is enabled, Ask.com may temporarily retain your search activity data in the cases of:

* * *

Formal legal request -- Ask.com must abide by the laws and regulations of local, state and federal authorities. Even when Ask Eraser is enabled, we may store your search activity data if so requested by law enforcement or legal authority pursuant to due process. In such case, we will retain your search data even if AskEraser appears to be turned on.

22. Ask.com’s policy of retaining search histories flatly contradicts its representations regarding the purpose of the AskEraser service.

23. Ask.com’s policy of retaining search histories even flatly contradicts the name of the service “AskEraser.”

¹⁰ “About Ask.com: AskEraser,” <http://sp.ask.com/en/docs/about/askeraser.shtml> (last visited, Feb. 8, 2008).

¹¹ Id.

¹² Elinor Mills and Declan McCullagh, “In their own words: Search engines on privacy,” CNET, Aug. 13, 2007, http://www.news.com/In-their-own-words-Search-engines-on-privacy/2100-1029_3-6202047.html?tag=st.nl

24. Ask.com could protect the privacy of its users and comply with lawful orders by (a) disclosing only information in its possession and refusing to comply with prospective data collection requests; (b) notifying the user of the order and providing an opportunity for the user to object; or (c) simply conveying to the user the actual status of the Ask Eraser service such if the service is disabled for any reason, Ask.com will so inform the user.
25. Ask.com has taken none of these steps and has provided no indication of what steps it will take to protect user privacy when it receives a formal legal request.
26. Ask.com's policy of secretly disabling AskEraser without notice to the consumer poses an ongoing threat to consumer privacy, and is a deceptive trade practice.

ASK.COM STILL FAILS TO "ERASE" SEARCH HISTORIES
FOR ASKERASER USERS THAT IT TRANSFERS TO THIRD PARTIES

27. In the Complaint, EPIC detailed the flaws in AskEraser's failure to prevent the monitoring and retention of search queries on the servers of third party companies.¹³
28. Ask.com has failed to fix these problems.
29. Moreover, since EPIC filed the Complaint, search engine technology expert Danny Sullivan pointed out that the flow of information to third parties such as Google is "a serious concern, a serious flaw in what searchers may think they're getting – but don't get – in terms of privacy protection [from AskEraser]."¹⁴
30. Mr. Sullivan further warned that AskEraser deceives consumers, because "[s]omeone engaging AskEraser probably does not understand or expect that their query and IP address, along with perhaps a unique cookie ID, is flowing over to Google so that Ask can retrieve ads. And they are not reasonably expecting they have to go to Google or another partner to try and delete information there (if they can – they probably can't)."¹⁵
31. Ask.com's data transmittal to third parties, while AskEraser is enabled, poses an ongoing threat to consumer privacy, and is an unfair and deceptive trade practice.

THE COMMISSION SHOULD GIVE NO
WEIGHT TO CDT'S SUPPORT FOR ASK.COM

¹³ See Complaint at ¶¶45-48.

¹⁴ Danny Sullivan, "FTC Complaint Filed Over AskEraser: 'Unfair & Deceptive'" (January 23, 2008), <http://searchengineland.com/080123-094621.php>.

¹⁵ *Id.*

32. On January 23, 2008 the Center for Democracy and Technology (“CDT”) wrote to the Commission, on behalf of Ask.com and IAC, and asked the Commission to dismiss the complaint of EPIC and the privacy organizations concerning Ask Eraser.¹⁶
33. Five months prior to the actual release of Ask Eraser, CDT praised AskEraser in a press release issued by Ask.com. In that statement, CDT said, “[w]e’re extremely pleased to see a new breed of innovative, competitive tools that allow users greater control over their personal information . . . Ask.com has taken an important step toward giving Internet users choice in how they control sensitive information about their online activities.”¹⁷
34. In a series of press statements on December 11, 2007 CDT expressed support for the original AskEraser service with the Persistent Identifier that Ask.com subsequently withdrew.¹⁸
35. In the January 23, 2008 letter, and subsequent to the publication of the EPIC analysis, CDT conceded that the AskEraser service, which CDT had previously praised, was “a subversive user tracking technology.”¹⁹
36. CDT’s other statements about this matter should appropriately be disregarded.

CONCLUSION

37. EPIC incorporates by reference the Requests for Relief set forth in the Complaint,²⁰ and asks the FTC to seize this unique opportunity to promote the development of genuine Privacy Enhancing Techniques that would protect the privacy interests of American consumers.

Respectfully submitted,²¹

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¹⁶ CDT Letter to the FTC in Ask.com matter, January 23, 2008, http://www.cdt.org/privacy/20080123_FTC_Ask.pdf.

¹⁷ IAC Search & Media: Press Releases, “Ask.com to Give People Unmatched Privacy Control,” http://www.irconnect.com/ask/pages/news_releases.html?d=123324. (July 19, 2008)

¹⁸ See, e.g., CNN, “Ask.com 'eraser' scrubs search requests,” (Dec. 11, 2007), <http://edition.cnn.com/2007/TECH/12/11/ask.privacy.protection.ap/index.html>

¹⁹ *Id.*

²⁰ Complaint at ¶¶65-71.

²¹ Sobia Virk, EPIC IPIOP Clerk, assisted in the preparation of this complaint.

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