

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

AOL LCC,
a majority-owned subsidiary of
TIME WARNER INC.

) DOCKET NO.

**REQUEST FOR INVESTIGATION AND
COMPLAINT FOR INJUNCTIVE RELIEF**

The Electronic Frontier Foundation (“EFF”), having reason to believe that AOL LLC (“AOL”) has violated the Federal Trade Commission Act, and that investigation and injunctive relief is in the public interest, alleges that AOL committed unfair and deceptive trade practices by intentionally and publicly disclosing Internet search histories of more than half a million AOL users. Press reports, the analysis of commentators, and EFF’s own research show that these data include sensitive, personal information that can be linked to individuals.

In support of its complaint, EFF alleges as follows.

1. The Electronic Frontier Foundation is a 501(c)(3) nonprofit organization founded in 1990 to protect civil liberties in the digital age. Based in San Francisco, CA, EFF is a membership-supported organization that litigates and educates the public on issues such as free expression, freedom of the press, fair use of copyrighted works, anonymity, security, and privacy as they relate to computing and the Internet.
2. AOL is a Delaware corporation and a majority-owned subsidiary of Time Warner Inc. AOL maintains its principal place of business at 22000 AOL Way, Dulles, VA 20166. Time Warner Inc. is a Delaware corporation and maintains its principal place of business at One Time Warner Center, New York, NY 10019. AOL describes itself to the public as “a Web portal that provides a variety of custom content on top of linking you to relevant information available on the Internet.”¹ AOL also provides Internet connectivity options and specialized client software to its registered users.² AOL’s mission statement says that the company is dedicated “to the simple premise

¹ AOL, Welcome to AOL, <http://www.aol.com> (last visited Aug. 13, 2006).

² AOL, The New AOL — We’ve Changed, <http://free.aol.com/tryaolfree/thenewaol> (last visited Aug. 13, 2006) (describing dial-up Internet connectivity and other services); AOL, AOL Products: AOL 9.0 Security Edition — Providing Consumers With a Safer, More Secure Online Experience, http://corp.aol.com/products/brands_aol2.shtml (last visited Aug. 13, 2006) (describing AOL client software). Although previously only available to paying members, Time Warner Inc. announced on August 2, 2006 that AOL would begin offering its client software for free. Press Release, Time Warner Inc., Time Warner Announces that AOL Will Offer Its Software, E-mail and Many Other Products for Free to Broadband Users (Aug. 2, 2006), <http://www.timewarner.com/corp/newsroom/pr/0,20812,1222063,00.html>.

that our members and consumers deserve the best possible – and most valuable – online experience available anywhere.”³

3. AOL is a “corporation” as defined by Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
4. The acts and practices described in this complaint constitute “commerce” within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

FACTUAL ALLEGATIONS

AOL’s Collection of Personal Consumer Data and Privacy Practices

5. In addition to offering Internet users a search engine via its web sites <http://www.aol.com> and <http://search.aol.com>, registered AOL users may conduct Internet searches using the search engine included in their AOL client software. AOL users can type words and phrases into the software’s search box to generate an automated list of links to web pages containing information relevant to their interests.⁴
6. The AOL Network Privacy Policy makes representations to consumers about how the company secures AOL users’ privacy and disseminates their personal information. This policy contains the following statements regarding the privacy and security of personal information collected by AOL:

Collection of Your AOL Network Information. Your AOL Network information consists of personally identifiable information collected or received about you when you interact with the AOL Network’s Web sites, services and offerings as a registered user. Depending on how you use the Network, your AOL Network information may include . . . information about the searches you perform through the AOL Network and how you use the results of those searches[.]

* * *

How Your AOL Network information is Used. . . .

Your AOL Network information may be shared with the Network’s affiliated providers.⁵ You have choices about how your AOL Network

³ AOL, Our Mission, <http://corp.aol.com/whoweare/mission.shtml> (last visited Aug. 13, 2006).

⁴ AOL, AOL Products: AOL 9.0 Security Edition — Providing Consumers With a Safer, More Secure Online Experience (discussing features of latest AOL client software, including “enhanced AOL search” features).

⁵ According to AOL:

information is used, and whether affiliated providers receive personally identifiable information about you as an AOL Network user. Affiliated providers that receive your AOL Network information may use this information according to their applicable privacy policies.

Your AOL Network information will not be shared with third parties unless it is necessary to fulfill a transaction you have requested, in other circumstances in which you have consented to the sharing of your AOL Network information, or except as described in this Privacy Policy. The AOL Network may use your AOL Network information to present offers to you on behalf of business partners and advertisers. These business partners and advertisers receive aggregate data about groups of AOL Network users, but do not receive information that personally identifies you.

* * *

Your Choices About Your AOL Network Information. . . . [S]ome AOL Network services (AOL Search, for example) may offer you the ability to control what information is collected or used when you use these services.

You may also choose whether the AOL Network's affiliated providers receive personally identifiable AOL Network information. This choice does not apply to the sharing of AOL Network information necessary to provide you the basic functionality of the Network (for example, recognizing you as an authenticated user on affiliated providers' Web sites or services). Additionally, the AOL Network may share personally identifiable AOL Network information with one or more of its affiliated providers when that information is necessary to carry out a specific transaction or request you make for an offering from the Network or its affiliated providers, or as otherwise specified at the time you take advantage of that particular Network offering.

* * *

"The AOL Network's affiliated partners include, or will soon include:

- AOL Internet Phone Service (AOL Enhanced Services L.L.C.)

The AOL Network may in the future designate other affiliated providers."

AOL Network, Affiliated Providers, <http://about.aol.com/aolnetwork/affiliates.html> (last visited Aug. 13, 2006).

Our Commitment to Security. The AOL Network has established safeguards to help prevent unauthorized access to or misuse of your AOL Network information[.]⁶

The policy is attached hereto as Exhibit A.

7. The AOL Network Privacy Policy does not state that AOL will disclose users' search queries or any other AOL Network information to third-party researchers or the general public.

AOL's Disclosure of 20 Million Consumer Search Records

8. On August 7, 2006, media organizations reported that AOL had publicly disclosed roughly 20 million search queries typed into the AOL client software by approximately 658,000 AOL users during March, April and May 2006.⁷ The data, posted as a 440-megabyte downloadable file named 500Kusers.tgz, were publicly available on the web site <http://research.aol.com> for ten days before AOL removed it.⁸
9. The news reports indicate that the personal data AOL disclosed included search queries revealing names, addresses, local landmarks, and medical ailments.⁹ Hundreds of the search queries also included such personal information as credit card numbers and Social Security numbers, the disclosure of which may facilitate identity theft.¹⁰ The disclosure also made public extremely sensitive search queries such as "how to tell your family you're a victim of incest," "surgical help for depression," "how to kill your wife," "men that use emotional and physical abandonment to control their partner," "suicide by natural gas," "how to make someone hurt for the pain they caused someone else," "revenge for a cheating spouse," "will I be extradited from ny to fl on a dui charge," and "my baby's father physically abuses

⁶ AOL, AOL Network Privacy Policy (last updated Apr. 3, 2006), http://about.aol.com/aolnetwork/aol_pp.

⁷ See, e.g., Kenneth Li, "AOL Draws Fire After Releasing User Search Data," Reuters, Aug. 7, 2006, http://today.reuters.com/news/articlenews.aspx?type=internetNews&storyID=2006-08-07T183427Z_01_WEN3477_RTRUKOC_0_US-AOL-PRIVACY.xml; Jeremy Kirk, "AOL Search Data Reportedly Released," IDG News Service, Aug. 7, 2006, http://www.macworld.com/news/2006/08/07/aol_index.php.

⁸ Parmy Olson, "AOL Lets Info Slip," Forbes.com, Aug. 8, 2006, http://www.forbes.com/business/2006/08/08/aol-internet-data-cx_po_0808aol.html.

⁹ See, e.g., Olson, "AOL Lets Info Slip"; Michael Barbaro and Tom Zeller, "A Face is Exposed for AOL Searcher No. 4417749," NY Times, Aug. 9, 2006, available at <http://www.nytimes.com/2006/08/09/technology/09aol.html?hp&ex=1155182400&en=9b5fd9ff341e3216&ei=5094&partner=homepage>; Anick Jesdanun, "AOL Apologizes for Privacy Breach," Associated Press, Aug. 8, 2006, available at <http://www.stltoday.com/stltoday/business/stories.nsf/0/84666FC902894052862571C4000519FC?OpenDocument>.

¹⁰ See, e.g., Ellen Nakashima, "AOL Takes Down Site With Users' Search Data," Washington Post, Aug. 8, 2006, at D01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/07/AR2006080701150.html>; Olson, "AOL Lets Info Slip."

me.”¹¹ The data did not directly link consumers’ names or AOL screen names to their searches. However, each individual user’s search queries during the three-month period were linked to a single unique identification number, creating a complete search history for each user.¹² The data also contained, *inter alia*, the domain names of all web pages that the consumers visited as a result of their searches, and the time and date of each search.¹³

10. In addition to the search history data, AOL posted a description of the data set on <http://research.aol.com>, which included the following disclaimer:

CAVEAT EMPTOR—SEXUALLY EXPLICIT DATA! Please be aware that these queries are not filtered to remove any content. Pornography is prevalent on the Web and unfiltered search engine logs contain queries by users who are looking for pornographic material. There are queries in this collection that use SEXUALLY EXPLICIT LANGUAGE. This collection of data is intended for use by mature adults who are not easily offended by the use of pornographic search terms. If you are offended by sexually explicit language you should not read through this data. Also be aware that in some states it may be illegal to expose a minor to this data. Please understand that the data represents REAL WORLD USERS, un-edited and randomly sampled, and that AOL is not the author of this data.¹⁴

This description is attached hereto as Exhibit B.

11. This “caveat emptor” disclaimer reflects AOL’s awareness that the data were sensitive. The data’s sensitivity shows that AOL users expected that their search queries would not be disclosed to the public.¹⁵
12. After AOL’s disclosure was reported by the media, AOL Spokesperson Andrew Weinstein released the following statement, attached hereto as Exhibit C:

This was a screw up, and we’re angry and upset about it. It was an innocent enough attempt to reach out to the academic community with new research tools, but it was obviously not appropriately vetted, and if it

¹¹ Declan McCullagh, “AOL’s Disturbing Glimpse Into Users’ Lives,” CNET News.com, Aug. 9, 2006, http://news.com.com/AOL+offers+glimpse+into+users+lives/2100-1030_3-6103098.html.

¹² Nakashima, “AOL Takes Down Site With Users’ Search Data”; Dawn Kawanoto and Elinor Mills, “AOL Apologizes for Release of User Search Data,” CNET News.com, Aug. 9, 2006, http://news.com.com/AOL+apologizes+for+release+of+user+search+data/2100-1030_3-6102793.html.

¹³ 500k User Session Collection, *available at* http://www.gregsdadetsky.com/aol-data/U500k_README.txt (last visited Aug. 14, 2006).

¹⁴ While the description was subsequently removed from <http://research.aol.com>, the text has been mirrored at http://www.gregsdadetsky.com/aol-data/U500k_README.txt. *See id.* (emphases in original).

¹⁵ *See Gonzales v. Google, Inc.*, 234 F.R.D. 674, 684 (N.D.Cal. 2006) (finding that “the statistic...that over a quarter of all Internet searches are for pornography...indicates that at least some [internet] users expect some sort of privacy in their searches.”).

had been, it would have been stopped in an instant.

Although there was no personally-identifiable data linked to these accounts, we're absolutely not defending this. It was a mistake, and we apologize. We've launched an internal investigation into what happened, and we are taking steps to ensure that this type of thing never happens again.

Here was what was mistakenly released:

- Search data for roughly 658,000 anonymized users over a three month period from March to May.
- There was no personally identifiable data provided by AOL with those records, but search queries themselves can sometimes include such information.
- According to comScore Media Metrix, the AOL search network had 42.7 million unique visitors in May, so the total data set covered roughly 1.5% of May search users.
- Roughly 20 million search records over that period, so the data included roughly 1/3 of one percent of the total searches conducted through the AOL network over that period.

The searches included as part of this data only included U.S. searches conducted within the AOL client software.¹⁶

Mr. Weinstein was later quoted in news reports as confirming that AOL released information that could be used to identify individuals.¹⁷

13. AOL admittedly intended the disclosed data to be used by third-party researchers, in clear violation of its privacy assurances. Furthermore, the data were available to anyone who visited <http://research.aol.com> or any other web site that subsequently mirrored or posted the data.
14. The data are now freely available on the Internet to anyone who wishes to download, analyze, or otherwise use it. For example, Internet users can search the database by user ID number, keyword, or web site result at sites such as <http://www.aolsearchdatabase.com> and <http://data.aolsearchlogs.com>, or download the complete database at <http://www.gregsadetsky.com/aol-data/>.¹⁸

¹⁶ Statement of Andrew Weinstein, AOL Spokesman, TechCrunch, AOL: "This was a screw up" (Aug. 7, 2006), available at <http://www.techcrunch.com/2006/08/07/aol-this-was-a-screw-up>.

¹⁷ See, e.g., Barbaro and Zeller, "A Face is Exposed for AOL Searcher No. 4417749."

¹⁸ Should this data become unavailable online, EFF will provide a CD-ROM with the full database to the Commission upon request.

15. On August 9, 2006, the *New York Times* reported in an article, attached hereto as Exhibit D, that it had combined the data posted by AOL with other publicly available data to identify and locate AOL user No. 4417749, Thelma Arnold.¹⁹ Ms. Arnold confirmed to the newspaper that she had performed the search queries that led the *New York Times* to contact her. The newspaper also reported that several bloggers claim they have identified other AOL users' search histories based on available information.
16. EFF has also identified online commentators who have discussed specific search histories that may identify particular AOL users or households conducting searches. In the interest of protecting the privacy of these AOL users, EFF has provided this information to the Commission in an explanatory confidential appendix attached hereto as Exhibit E.
17. Based on its own preliminary analysis of the data disclosed by AOL, as well as the review of others, EFF has determined that substantial amounts of various types of personally identifiable information is likely contained in that data. For example, EFF has identified 175 searches from 106 distinct users that appear to contain Social Security numbers (*i.e.*, “ ____ - ____ ”), 8457 searches from 3739 distinct users that appear to contain phone numbers, and 10835 searches from 4099 distinct users that appear to contain street addresses. Additionally, 278 searches appear to contain MySpace “friend ids,” unique numbers that identify particular personal web pages hosted at <http://www.myspace.com>. EFF has provided examples of some of these searches to the Commission in the confidential appendix attached hereto as Exhibit E.
18. Furthermore, based on its review of the disclosed data, EFF found multiple examples of search histories that may personally identify a particular AOL subscriber or household, whether directly or in combination with publicly available information. These search histories reveal private, sensitive information about individuals' personal interests, medical concerns, sexual preferences, familial circumstances, and more. EFF has also identified individual search queries that contain substantial amounts of personally identifiable information such as names, addresses, Social Security numbers, birth dates and driver's license numbers. In the interest of protecting the privacy of these individuals, EFF has provided examples of these search histories to the Commission in the confidential appendix attached hereto as Exhibit E. EFF can also provide a CD-ROM to the FTC containing the complete data set as disclosed by AOL, if requested.
19. No fewer than thirty states require that consumers be notified when security breaches result in the unauthorized disclosure of personal information.²⁰ Many of these laws

¹⁹ Barbaro and Zeller, “A Face is Exposed for AOL Searcher No. 4417749.”

²⁰ States that have passed breach notification laws in recent years, include Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, and Wisconsin. ”

may well be triggered by AOL’s release of certain types of personal consumer data here. However, in the absence of Commission action, there is no uniform, nationwide legal protection for all consumers affected by AOL’s disclosure.

20. Furthermore, companies currently have few market incentives to take measures to protect consumers from similar data breaches in the future. When companies retain consumer data for unnecessarily long periods of time, they create security risks. Public policy thus weighs in favor of requiring companies to keep consumer information only as long as absolutely necessary to provide the services that consumers request.

21. AOL and other search engine providers are unlikely to police their own practices with respect to search information security. When asked whether AOL’s data breach is likely to change Google’s search history retention practices, Google CEO Eric Schmidt responded, “[w]e are reasonably satisfied . . . that this sort of thing would not happen at Google, although you can never say never.”²¹

22. To make matters worse, data disclosure by Internet companies is almost entirely out of consumers’ control. None of the consumers affected by AOL’s data breach could have taken steps to avoid this type disclosure, except by choosing not to use AOL search services or other search engines.

23. The disclosure of a consumer’s detailed Internet search history, even if “anonymized,” can reveal a consumer’s identity. AOL had admitted that “search queries themselves can sometimes include [personally identifiable data],” and that the information AOL disclosed can be used to identify particular individuals. Further, as demonstrated by the *New York Times* article described in ¶ 15, *supra*, the research of commentators described in ¶ 16, *supra*, and EFF’s analysis described in ¶¶ 17-18, *supra*, individual consumers have already been identified as a direct result of AOL’s disclosure.

VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT

Count I – Deceptive Trade Practice

24. Through the means described in ¶ 6 above, AOL represented, expressly or by implication, that it implemented reasonable and appropriate measures to protect personal consumer information from public disclosure.

25. In truth and fact, AOL did not implement reasonable and appropriate measures to protect personal consumer information from public disclosure. Specifically, AOL made 658,000 consumers’ detailed search data available to third-party researchers and the general public. Furthermore, AOL’s misrepresentations were material

²¹ Michael Liedtke, “Google to Keep Storing Search Requests,” Associated Press, Aug. 11, 2006, *available at* http://www.businessweek.com/ap/financialnews/D8JEBSQ80.htm?sub=apn_tech_down&chan=tc.

because they were likely to affect a consumer's choice of or conduct toward use of AOL's service. Therefore, the representations made above in ¶ 6 were false and misleading.

26. The acts and practices of AOL as alleged by EFF in this complaint are deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Count II – Unfair Trade Practice

27. As set forth in ¶¶ 8-14 above, AOL failed to employ proper security measures or take precautions to protect personal consumer information from public disclosure, which caused or is likely to cause substantial injury to consumers. The personal consumer information disclosed by AOL may, in some cases, be combined with other publicly available data to identify individual consumers or expose them to the risk of identity theft. This injury is not offset by countervailing benefits to consumers or competition, and is not reasonably avoidable by consumers. Furthermore, this practice runs counter to public policy. This practice was, and is, an unfair act or practice.

28. The acts and practices of AOL as alleged by EFF in this complaint are unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

PRAYER FOR RELIEF

WHEREFORE, EFF respectfully requests that this Commission:

- A. investigate the circumstances surrounding AOL's disclosure of consumers' personal information;
- B. order AOL to notify, via electronic and certified mail, each consumer whose search data has been publicly disclosed by AOL, and provide each consumer a copy of his or her disclosed record;
- C. order AOL to publicly disclose the full extent of the data breach, including whether similar consumer data has previously been made available to researchers or third parties;
- D. order AOL to expedite service cancellation and waive any cancellation or other fees upon service termination for all AOL subscribers who request cancellation as a result of AOL's disclosure of search data, including but not limited to those subscribers whose data were disclosed;
- E. order AOL to pay for at least one year of credit monitoring service for each individual affected by the data disclosure to help guard against identity theft;

- F. order AOL to refrain from collecting or storing logs of its users' search activity except where necessary incident to the rendition of AOL's services or the protection of AOL rights and property, and to refrain in any case from storing logs of its users' search activity in personally identifiable form or for more than fourteen (14) days;
- G. order AOL to amend its privacy policy to clearly include all search queries in the category of "AOL Network information" that is protected by the policy, regardless of whether those data are identifiable to a particular consumer;²²
- H. order AOL to refrain from explicitly or implicitly misrepresenting the extent to which it protects or discloses any personal information maintained about consumers in the future;
- I. order AOL to provide clear and conspicuous links on its web sites to the Commission's educational materials about Internet privacy;
- J. order AOL to obtain a biannual assessment and report from a qualified, objective, independent third-party professional, using procedures and standards generally accepted in the profession, within one hundred and eighty (180) days after service of the Commission's order, and biannually thereafter for twenty (20) years after service of the Commission's order, that:
 - i. set forth the specific administrative, technical, and physical safeguards that AOL has implemented and maintained during the reporting period to limit data retention and protect the privacy of consumer data;
 - ii. explain how such safeguards are appropriate to AOL's size and complexity, the nature and scope of AOL's activities, and the sensitivity of the personal information collected from or about consumers;
 - iii. explain how the safeguards that have been implemented meet or exceed the protections required by other parts of the Commission's order; and
 - iv. certify that AOL's security program is operating with sufficient effectiveness to provide reasonable assurance that the security,

²² Currently, the AOL Network Privacy Policy purports to apply only to personally identifiable information. *See AOL, AOL Network Privacy Policy (last updated Apr. 3, 2006)* ("When you register with and use the AOL Network, you provide the AOL Network with personally identifiable information (your 'AOL Network information'). This Policy explains the information practices that apply to your AOL Network information....").

confidentiality, and integrity of personal information is protected and, for biennial reports, has so operated throughout the reporting period;

- L. take any and all action the Commission deems appropriate pursuant to the Safe Harbour agreement between the United States and European Union; and
- M. order any other relief the Commission deems appropriate.

Respectfully submitted,

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