



September 23, 2007

Privacy Commissioner of Canada
112 Kent Street
Place de Ville
Tower B, 3rd Floor
Ottawa, Ontario
K1A 1H3

Dear Commissioner Stoddart,

Re: Request for Audit of Google Inc. and DoubleClick Inc.

1. We are writing to request that you commence an audit of the personal information management practices of Google, Inc. ("Google"), under s.18 of the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, on the grounds that:
 - a) there are reasonable grounds to believe that Google is violating PIPEDA in one or more respects;
 - b) while other organizations may be engaging in similar privacy-invasive practices, Google dominates the online marketplace and sets industry standards for online advertising as well as search, maps, video sharing, and other online applications; and
 - c) the recently announced acquisition by Google of Click Holding Corp. ("DoubleClick") could lead to even more serious and widespread privacy invasions, if action is not taken now to limit the combined entity's collection, use, retention and disclosure of internet users' personal information.
2. We also request that you initiate a simultaneous audit of DoubleClick on the grounds that:
 - a) there are reasonable grounds to believe that DoubleClick is violating PIPEDA in one or more respects;
 - b) while other organizations may be engaging in similar privacy-invasive practices, DoubleClick is a market leader in internet-based advertising; and
 - c) Google's planned acquisition of DoubleClick raises serious additional privacy concerns deserving of attention now, in advance of merger approval by competition authorities.

Background

3. CIPPIC's request follows similar actions taken by public interest organizations in the U.S. and Europe: on April 20, 2007, the Electronic Privacy Information Centre ("EPIC"), the Centre for Digital Democracy ("CDD"), and the U.S. Public Interest Research Group ("USPIRG") filed a formal Complaint with the Federal Trade Commission ("FTC") requesting an injunction and investigation of Google and DoubleClick, on the grounds that

they “are engaging in unfair and deceptive trade practices that will be exacerbated by the proposed merger of the two companies”, that neither company has taken adequate steps to safeguard the personal data it collects, and that the proposed merger “will create unique risks to privacy”.¹ The FTC is now investigating the proposed merger.

4. This Complaint followed upon a November 1, 2006 Complaint by CDD and USPIRG calling on the FTC to undertake a formal investigation of online advertising practices generally, with particular attention to the privacy-invasive aspects of such practices.² In response, the FTC has scheduled Town Hall meetings on Nov.1-2, 2007 to discuss the privacy implications of online behavioural advertising.³
5. On April 13, 2007, Google announced an agreement to acquire DoubleClick for US\$3.1B in cash. This announcement prompted the subsequent EPIC/CDD/USPIRG complaint referred to above.
6. On May 1, 2007, the New York State Consumer Protection Board called for “a halt to the merger until the FTC has fully investigated Google’s planned use of consumer data post-merger”.⁴ In its letter to the FTC, the Board Chairperson expressed grave concerns about the privacy implications of the proposed acquisition.
7. In May 2007, the EU Article 29 Data Protection Working Party launched an investigation of Google’s data retention policies, later expanding the investigation to include the policies of all search engines.⁵ Google subsequently announced that it would limit its retention of server logs
8. On June 27, 2007, a coalition of European consumer groups (“BEUC et al”) wrote to the European Commission expressing similar concerns about the privacy implications of Google’s acquisition of DoubleClick, and urged that “these concerns be taken fully into account in the analysis carried out by the Commission or any other competition authority in the EU.”⁶ The European Commission Directorate on Competition subsequently announced a review into the merger.
9. On August 2, 2007, CIPPIC filed an application under s.9 of the *Competition Act*, asking the Commissioner of Competition to investigate the anti-competitive effects of Google’s proposed acquisition of DoubleClick.⁷
10. On August 22, 2007, the Australian Competition and Consumer Agency (“ACCC”) launched its own review of the proposed acquisition of DoubleClick by Google.⁸

¹ See <http://www.epic.org/privacy/ftc/google/> for access to the Complaint, Supplemental filing, and other related materials.

² See <http://www.democraticmedia.org/issues/privacy/FTCprivacypr.html> .

³ See <http://www.ftc.gov/opa/2007/08/ehavioral.shtm> .

⁴ See <http://www.epic.org/privacy/ftc/google/CPB.pdf> .

⁵ See http://www.epic.org/privacy/ftc/google/art29_0507.pdf and http://ec.europa.eu/justice_home/fsj/privacy/news/docs/pr_21_06_07_en.pdf

⁶ See http://www.epic.org/privacy/ftc/google/beuc_062707.pdf .

⁷ See http://www.cippic.ca/uploads/Google-DC_s.9_CompAct_complaint_FINAL.pdf .

11. As the EPIC/CDD/USPIRG and BEUC Complaints illustrate, it is difficult to separate the privacy implications of the proposed acquisition from its implications for competition and consumer choice. As BEUC states in its letter, “Never before has one single company had the market and technological power to collect and exploit so much information about what a user does on the Internet. . . .The unprecedented and unmatched databases of user profiles will constitute significant and possibly insurmountable barriers to entry but they appear also to be in clear violation of users’ privacy rights.”
12. The Canadian Commissioner of Competition is currently inquiring into the potential anti-competitive effects of this proposed merger, in response to CIPPIC’s application.
13. Like our colleagues in the U.S. and Europe, we are concerned not only about the merger’s effects on competition, but also about its implications for individual privacy. We therefore ask that you exercise your audit powers to investigate the personal information management practices of Google and DoubleClick, both separately and with a view to their proposed merger.

The Parties:

(A) Google

14. Google is the world’s largest and most powerful internet company, operating one of the world’s most popular websites and an increasingly wide range of popular online services and features including YouTube, Orkut⁹, Maps, and Gmail. Google dominates the online search market, attracting 75-80% of Canadian search engine queries,¹⁰ and app. 90% of advertisers worldwide.¹¹ Many of its other services and features are personalized to the user, many are inter-related, and most involve some kind of collection, retention, or use of personal information. The following tables list various services offered by Google.

Search Services

Alerts*	Email updates of the latest relevant Google results (web, news, etc.) based on user query or topic.
Blog Search	Search for blogs by user query.
Book Search	Search full text of books by user query.
Catalogs	Search and browse mail-order catalogs by user query or category.
Checkout*	Complete online purchases quickly and securely, track orders and shipping at one web location.
Desktop**	Indexes user computer files for desktop search and application launch. User can personalize computer desktop with news and photos.

⁸ See <http://www.accc.gov.au/content/index.phtml/itemId/788097> .

⁹ “According to a recent analysis by comScore Media Metrix, Google’s Orkut social network, which many had written off as dead on arrival, now draws 38.2 billion pages views per month worldwide. Facebook totals about 7.8 billion worldwide page views.”: <http://www.imediaconnection.com/news/16462.asp>

¹⁰ See Bill Sweetman’s Internet Marketing Blog: http://www.sweetmantra.com/2007/06/search_engine_s.html.

¹¹ See http://www.williamblair.com/Pages/news_story_dept.asp?uid=1248&depID=4 .

Directory	Browse web by topic.
Earth**	Explore the world by satellite images, maps, terrain, and 3D buildings.
Finance [!]	Search business information, news, and interactive charts.
iGoogle [!]	Personalized Google homepage with desired news, games, and more.
Images	Search for images on the web.
Maps [!]	View maps and search to get directions. Maps recently rolled out “Street View”, which allows users to view street level photographs and take virtual walks through cities in which this view is available. Currently, Street View is only available for Denver, Las Vegas, Miami, New York City, and the San Francisco Bay Area.
News [!]	Search thousands of international news stories.
Notebook*	Clip and collect information on this application as user surfs the web.
Patent Search	Search full text of US patents.
Product Search	Search for things to purchase.
Scholar	Search scholarly papers.
Specialized Searches	Search within specialized topics.
Toolbar**	Add a search box to your browser.
Video	Search for videos on Google Video and YouTube.
Web History*	User can view and manage web activity, including Google searches, web pages visited, images, videos, and news stories. Web History helps deliver more personalized search results and tracks interesting trends in user web activity.
Web Search	Search the internet’s billions of webpages.
Web Search Features	Search within categories, such as music, movies, books, and more.

- requires user to register with a Google account.

** requires user to download Google software.

[!] if user chooses to register with a Google account, user can personalize this product.

If not marked, then user does not need to register or download software in order to use the service.

Communication Services

Blogger*	Easy to use platform for blogging.
Calendar*	Organize schedule and share events with friends.
Docs & Spreadsheets*	Create and share projects online.
Gmail*	Fast, searchable email.
Groups*	Create mailing lists and discussion groups.
Orkut*	Social networking site to meet new people and share interests.
Picasa**	Find, edit, and share photos.
Reader	List favourite blogs and websites and receive updates from one centralized web location.
SketchUp**	Build 3D models.
Talk*	Instant messenger and voice calls system.
Translate	View webpages in other languages and translate text.
YouTube [!]	Watch, upload, and share videos.

* requires user to register with a Google account.

** requires user to download Google software.

[!] if user chooses to register with a Google account, user can personalize this product.

If not marked, then user does not need to register or download software in order to use the service.

Mobile Phone Services

Maps for Mobile	View maps and get directions on mobile phone.
Mobile	Use Google search on mobile phone's web browser.
Short Messaging Service	Text message search query to Google, Google text messages the results back to user.

Computer Improvement

Mini***	A software solution for companies that allows employees relevant and secure search across intranets, file servers, and business applications. Offers a customizable user interface.
Pack**	Users can select software they wish to download for free. Applications include Google Desktop, Google Earth, Google Photos Screensaver, Google Talk, Google Toolbar, Adobe Reader, Norton Security Scan, Spyware Doctor, Picasa, Skype, and RealPlayer.
Web Accelerator**	Makes web pages load faster by using various strategies, such as redirection of page requests, storing copies of frequently viewed pages, managing internet connection to reduce delays, and compressing data before sending to user's computer.

** requires user to download Google software.

*** requires user to purchase Google software.

15. Google is constantly developing new products. To encourage further innovation, Google has rolled out:

Code*	Download source code and open source code to enhance web sites and integrate computer functionality with Google.
Co-op*	Contribute expertise to customize search engine, deliver specialized search results, and help users refine their search on Google and own website.
Labs	Experiment with and provide feedback on Google's new experimental products that are gearing up for roll-out. There are hundreds of experimental Google products. Some Google Lab products include Google Transit, Google Search Trends, Google Page Creator, Google Suggest.

* requires user to register with a Google account.

16. Google's services are offered free to internet users; the company generates revenue through its online targeted advertising services. Advertisers pay on the basis of the number of user "clicks" on their ads. Google's AdWords services allows advertisers to select target keywords, which are then used to rank ads and target delivery by relevance to a user's search. Google provides its advertisers with a full complement of reporting services to enable fine tuning campaigns and real-time intelligence about which components are performing best. Google AdSense service for web publishers delivers text and image ads that are relevant to a website's content. When Google WebSearch is added to a given website, AdSense can deliver targeted advertisements to the search results page, improving the publisher's ability to generate revenue.
17. Google collects IP addresses and other personal information in order to provide many, if not most of these services. The information collected by Google from search queries alone forms a massive database of often highly sensitive user personal information. Earlier this

year, the EU Article 29 Working Party issued a letter to Google expressing concern about its policy of retaining user search data.¹²

(B) DoubleClick.

18. DoubleClick is a leading provider of internet-based advertising, placing ads on websites on behalf of its clients. Recent estimates place DoubleClick's share of the online advertising market between 75 and 80 percent.¹³
19. Using cookies and web beacons, DoubleClick offers a range of products that enable clients to track user online activity, create user profiles, and target advertisements to individual users based on those profiles.¹⁴ When a user is served an ad for the first time, DoubleClick assigns the user a unique number which is recorded in a persistent cookie file stored on the user's computer. As the user subsequently visits other websites on which DoubleClick serves ads, he or she is identified and recorded as having viewed each ad. This information is automatically compiled and analysed, resulting in profiles on which ad targeting is based.
20. DoubleClick's increasingly sophisticated products involve extensive collection of data about internet users for the purpose of target marketing. For example, in relation to one product, DoubleClick states:

"Rich Media's exclusive Audience Interaction Metrics package lets you gather data on more than 100 unique interactions in every creative unit including multiple exit links, counters, timers and video metrics. You'll automatically get metrics on how long each ad was displayed or how the viewer interacted with the ad. Plus, you can customize additional events to track based on your creative concept."¹⁵
21. DoubleClick has expanded its capability to track and collect data on user interaction with broadband video and so-called "rich media" (multimedia) formats. For example, its *Motif* product permits the collection and analysis of a broad range of "audience interaction metrics" including ad interaction time, interactive impressions, ad display time, exit links, event counters, timer events, and streaming video metrics.¹⁶
22. DoubleClick is a leader in behavioural targeting, "tracking the data of individual users across many websites in order to get them to engage in a variety of desired marketing

¹² See http://www.epic.org/privacy/ftc/google/art29_0507.pdf

¹³ Abigail Roberts and Paulina Roguska, "Google-DoubleClick: FTC takes on a deal; client switching could address anti-trust concerns – analysis" *Financial Times* (29 May 2007), online: <http://www.ft.com/cms/s/a6e96666-0df3-11dc-8219-000b5df10621,dwp_uid=e8477cc4-c820-11db-b0dc-000b5df10621.html>.

¹⁴ Google, "FAQ: Google acquires DoubleClick," online: <http://64.233.179.110/blog_resources/DC_FAQ.pdf>.

¹⁵ http://www.dartmotif.com/about/about_audienceinteraction.asp

¹⁶ DoubleClick DART Motif, About, online: <http://www.dartmotif.com/about/about_audienceinteraction.asp>.

behaviors.”¹⁷ *Boomerang* is DoubleClick’s one-to-one targeting solution, enabling DoubleClick’s clients to identify and re-target customized segments of prospects and customers based on actions they took on websites and other marketing messages they received. *Boomerang* is marketed as:

“[T]he most effective form of targeting available. It allows you to re-target the most desirable audience of all: browsers who have already shown an interest in your product or service. With *Boomerang*, you can now engage that audience in a dialogue, providing timely and relevant messages triggered by their online actions.”¹⁸

23. DoubleClick also operates one of the leading online ad auctions, enabling it to further collect information on users. “DoubleClick claims that its proposed system will enable sellers to automatically generate the best return on investment for each impression served and enable buyers to target and purchase only the inventory they want.”¹⁹

Grounds for Audit

I. The Google-DoubleClick Merger

24. Google’s proposed acquisition of DoubleClick would create a global behemoth in online targeted advertising. Aside from its implications for competition and consumer choice, this merger raises serious privacy concerns. Each company separately holds a wealth of information about internet users. Allowing this information to be combined or matched would create the potential for an unprecedented level of privacy-invasive tracking and profiling of internet users for the purpose of ever-more targeted advertising. While there are already legitimate privacy concerns about each company’s own practices (see below), the potential combination of these two data-gathering giants raises the privacy stakes significantly higher.
25. Both companies collect large amounts of personal information from internet users. Information on search queries, internet browsing, and other online activities collected by both Google and DoubleClick is associated with user IP addresses. This makes highly possible the merger of each company's user data, so as to construct detailed user profiles for more effective target marketing.
26. Information that can be linked to individuals constitutes “personal information” under PIPEDA. Google collects a range of personal information from its customers, depending on the type of service they register for or use. In addition, as noted above, both companies collect and use IP addresses for the purpose of target marketing. IP addresses uniquely identify specific computers on the network, and can be linked to internet account holders

¹⁷ DoubleClick, “Boomerang for Advertisers, Marketers, and Agencies”, online: <http://www.doubleclick.com/us/knowledge_central/documents/MISC/overview_boomerang_0607.pdf>.

¹⁸ DoubleClick, *Boomerang for Advertisers, Marketers, and Agencies*, online: <<http://www.doubleclick.com/us/products/dfp/>>, <http://www.doubleclick.com/us/knowledge_central/documents/MISC/overview_boomerang_0607.pdf>.

¹⁹ Tobi Elkin, “DoubleClick’s Ad Auction Plan Sweetens The Deal” *Online Media Daily* (5 April 2007), online: <<http://publications.mediapost.com/index.cfm?fuseaction=Articles.san&s=58246&Nid=29063&p=296654>>.

via ISP subscriber records. In PIPEDA Case Summary #319,²⁰ the Assistant Privacy Commissioner found that an IP address constitutes “personal information” under PIPEDA as it could be associated with an identifiable individual. Thus, any information about user searches and other online activity that is linked to an IP address raises privacy concerns and engages PIPEDA.

27. DoubleClick refutes suggestions that the data it collects will be used by Google or combined with Google’s databases. In a April 2007 press release, DoubleClick stated that:

Information collected by DoubleClick DART ad serving technology belongs to DoubleClick’s clients and not to DoubleClick. Any and all information collected by DoubleClick is, and will remain, the property of the company’s clients. Ownership rights, like the other terms of DoubleClick’s client contracts, will be unaffected by any acquisition. Further, Google would not be able to match its search data to the data collected by DoubleClick, as DoubleClick does not have the right to use its clients’ data for such purposes.²¹

28. However, even if DoubleClick is not *currently* permitted to match its consumer data with DoubleClick’s data, this policy could change in the future. It is of little comfort to know that the company’s current contracts and/or policies limit the matching of data when such contracts and policies could change over time – and indeed, are likely to do so given the inevitable business pressure for the two merged companies to leverage each other’s data. Moreover, DoubleClick’s statement refers only to Google *search* data, and not to any of the many other services offered by Google, many of which collect a great deal of personal information about the customer.

29. A Google/DoubleClick merger raises the very real spectre of a hugely dominant internet company with a wealth of highly personal information about internet users, gathered for the most part without the users’ knowledge, let alone informed consent. Many internet users likely do not know that Google or DoubleClick have been collecting their personal information and as such have not provided meaningful consent to this kind of use in the first place.²² Consumers who may have known and consented to the collection and use of their personal information by Google could not have envisaged that this data would be shared with DoubleClick for the purpose of further enhancing targeted marketing capabilities, and vice versa. We cannot imagine how Google and DoubleClick would obtain meaningful consent from each user in order to combine their databases.

30. Therefore, were Google-DoubleClick to share their respective databases, they would in our view contravene Principle 3 of *PIPEDA* by failing to obtain the meaningful consent of each user to such sharing the personal information.

²⁰ PIPEDA Case Summary #319, “ISP’s anti-spam measures questioned” (13 February 2006) online: <http://www.privcom.gc.ca/cf-dc/2005/319_20051103_e.asp>.

²¹ DoubleClick Press Release, “DoubleClick Statement Regarding Data Ownership” (20 April 2007), online: <http://www.doubleclick.com/us/about_doubleclick/press_releases/default.asp?p=573>.

²² Linda Rosencrance, “Survey Finds Solid Opposition to Release of Google Data to Feds” *Computerworld* (24 January 2006), online: <<http://www.computerworld.com/securitytopics/security/privacy/story/0,10801,107993,00.html>>.

31. Further, Principle 4.5.3 of *PIPEDA* states that in obtaining consent, the reasonable expectations of the individual are relevant. Despite the prevalence of targeted advertising in the online environment, we submit that internet users do not reasonably expect that their every move online is being tracked and analysed for the purpose of targeted advertising. This is particularly true of those internet users who surf the internet for non-commercial information only, and not as consumers.
32. Finally, subsection 5(3) of *PIPEDA* states that “an organization may collect, use, or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.” Given the extraordinary volume and often sensitive nature of the information being collected by Google and DoubleClick for targeted marketing purposes, we submit that a merged entity may fall afoul of this provision, especially if it combines databases. In our view, reasonable persons would consider the extent of profiling thereby engaged in to be inappropriate for the purposes of target marketing. Indeed, we submit that the existing practices of both Google and DoubleClick may fail this requirement of *PIPEDA* (see below).
33. Even if the two companies do not initially intend to share user data, they could decide to do so in the future. We believe that there is value in a clear proactive statement by the Privacy Commissioner to Google-DoubleClick now that personal information database sharing between Google and DoubleClick is not permitted under Canadian law.

II. Google

34. While our request for an audit is prompted by the proposed merger of Google and DoubleClick, we have reason to believe that some of Google’s own personal information management practices are non-compliant with *PIPEDA*.
35. In particular, there are reasonable grounds to believe that Google fails to comply with *PIPEDA* in a number of respects.²³ The following are just some ways in which Google may be violating Canadian privacy law; there may well be others:
 - Google fails to provide adequate notice of the fact that it retains search query results (Principles 4.8 and 4.3)
 - Google’s practice of retaining server log data connecting user IP addresses to user search queries for 18 months is longer than necessary (Principle 4.5.3)
 - Google’s practice of retaining “anonymized” server log data indefinitely is longer than necessary. (Principle 4.5.3)
 - Other Google products retain personal information for longer than necessary to fulfill Google’s purposes. (Principle 4.5.3)
 - Google does not give users the option of opting-out of unnecessary data sharing between Google services (Principle 4.3)
 - Google engages in excessive personal information collection and use for the purpose of targeted advertising (Principle 4.4, subs.5(3))

²³ We have not conducted an exhaustive assessment of Google’s policies and practices; instead, we have focused on Google’s feature service, *Search*, and its overall suite of services. In supplemental materials to their complaint to the FTC, EPIC, CDD, and U.S. PIRG address particular concerns with several of Google’s services.

Google Search does not give adequate notice of the fact that it retains search queries linked to IP addresses for 18 months

Principle 4.8 of PIPEDA states: *An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.*

Principle 4.3 of PIPEDA states: *The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.*

36. When a user goes to google.ca to search for content, he or she is presented with a simple white screen that displays the Google trademark with a search field. The user enters his or her query into the search field and clicks “Google Search”. Google then displays a web page with the search results that are determined to be relevant according to Google’s algorithms.
37. Google’s servers automatically record information when the user visits Google’s website or uses Google products. Google server logs record the search request, URL, Internet Protocol (IP) address, browser type and language, and the date and time of the request, and one or more cookies that may uniquely identify the user’s browser.²⁴ Google stores server logs indefinitely, but “anonymizes” them after 18 months.
38. The act of collecting user search queries and IP addresses invokes *PIPEDA*, requiring Google to provide adequate notice to users of any collection, retention, use, or disclosure of personal information other than that which can be reasonably implied (in this case, collection, retention and use necessary to deliver search results to the individual user). Without such notice, Google cannot be said to be obtaining meaningful consent from users to any other information practices, including retention and use for targeted marketing purposes.
39. The fact that Google's search service is entirely dependent upon targeted marketing to users is not evident to the ordinary computer user. It cannot therefore be said that users implicitly consent to the use of their data for marketing purposes, even if such use is central to Google's business model. Indeed, most users likely do not reasonably expect Google to retain their search queries in connection to their IP address for much longer than necessary to deliver the requested search results.²⁵
40. When a user accesses the Google homepage to conduct a search, he or she is presented with a simple search screen which does not display a Privacy Policy. There is no indication on the Google search page that personal information is being retained in

²⁴ Google Privacy Policy (14 October 2005) online: <<http://www.google.com/privacypolicy.html>>.

²⁵ Linda Rosencrance, “Survey finds solid opposition to release of Google data to feds” *Computerworld* (24 January 2006), online: <<http://www.computerworld.com/securitytopics/security/privacy/story/0,10801,107993,00.html>>.

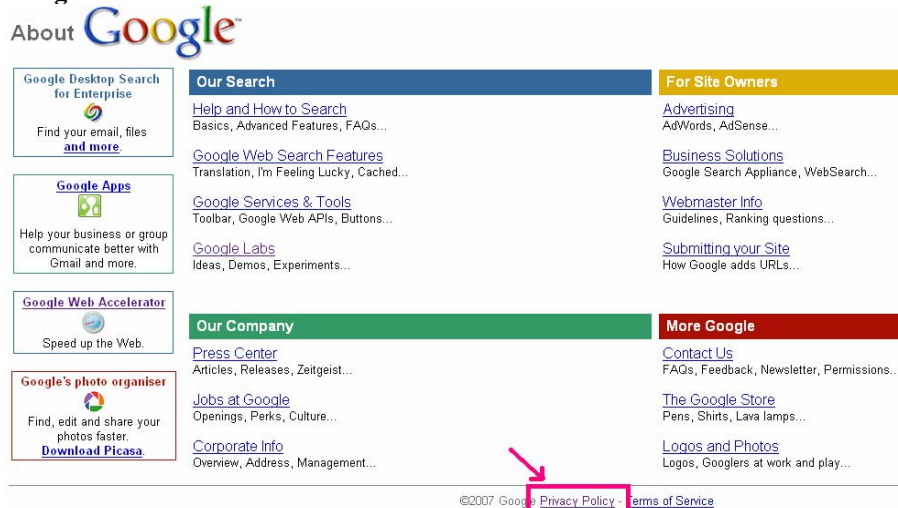
identifiable form for 18 months, and indefinitely in an “anonymized” form, for purposes other than the delivery of search results.

41. There is no direct link to Google’s Privacy Policy from the Search page. In order to access Google’s Privacy Policy, the user must first click “About Google” to enter a page with general information about Google. We submit that this does not constitute adequate notice, given the likelihood that most users assume that Google does *not* retain their search terms and IP addresses for longer than a few hours or days.
42. At the bottom of the “About Google” page, there is a “Privacy Policy” link. When clicked, this displays “Google Privacy Policy Highlights”. From the Highlights, the user can then access Google’s full Privacy Policy. Below is a screenshot of Google's Homepage, “About Google” page, and “Privacy Policy Highlights” page.

Google’s Homepage²⁶



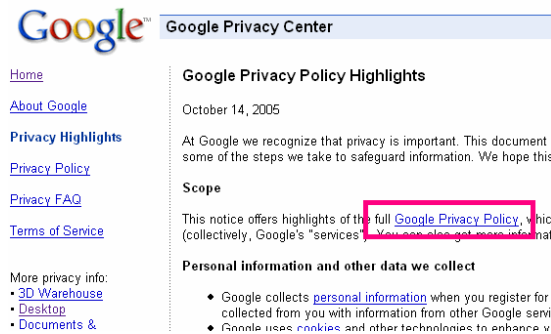
About Google²⁷



²⁶ Google Canada homepage, online: <<http://www.google.ca>>.

²⁷ About Google, online: <<http://www.google.ca/intl/en/about.html>>.

Google Privacy Policy Highlights²⁸



43. Moreover, there is no notice on Google's Privacy Policy Highlights, Privacy Policy, or Privacy FAQ web pages of its policy regarding the retention period for search queries and IP addresses.²⁹ Google "Privacy Policy Highlights" page merely states that this information is collected:

Google's servers automatically record information when you visit our website or use some of our products, including the URL, IP address, browser type and language, and the date and time of your request.³⁰

44. The full Privacy Policy outlines the information Google collects and how it is used, as follows:

When you use Google services, our servers automatically record information that your browser sends whenever you visit a website. These server logs may include information such as your web request, Internet Protocol address, browser type, browser language, and the date and time of your request and one or more copies that may uniquely identify your browser.³¹

45. We submit that this does not constitute a reasonable effort by Google to ensure that users of its search engine are advised of the fact that their search queries are being collected, linked to their IP addresses, stored as such for up to 18 months, and used for target marketing purposes in addition to delivering search results, maintaining the integrity of systems, and complying with any legal obligations.

²⁸ Google Privacy Policy Highlights, online: <<http://www.google.ca/intl/en/privacy.html>>.

²⁹ Google is currently retaining this data indefinitely, but announced in March 2007 that it would retain server logs with user IP addresses and search queries for a period of 18 months. This policy was to be implemented in "the coming months". See Peter Fleischer, "Taking steps to further improve our privacy practices" *Official Google Blog* (14 March 2007), online: <<http://googleblog.blogspot.com/2007/03/taking-steps-to-further-improve-our.html>>.

³⁰ Google Privacy Policy Highlights, online: <<http://www.google.ca/intl/en/privacy.html>>.

³¹ Google Privacy Policy, online: <<http://www.google.ca/intl/en/privacypolicy/html>>.

Google Search retains personal information longer than necessary to fulfill its purposes

Principle 4.5 of *PIPEDA* states: *Personal information shall be retained only as long as necessary for the fulfillment of [the purposes for which it was collected, except with the consent of the individual or as required by law].* Principle 4.5.3 adds: *Personal information that is no longer required to fulfil the identified purposes should be destroyed, erased, or made anonymous.*

46. We recognize that Google must retain a user's search query and IP address for a short period of time in order to return relevant results back to the user. We submit that 18 months is longer than necessary for Google to fulfil its stated purposes for collecting the information.
47. Google cites a number of purposes for retaining this data:
 - to improve our search algorithms for the benefit of users
 - to defend our systems from malicious access and exploitation attempts
 - to maintain the integrity of our systems by fighting click fraud and web spam
 - to protect our users from threats like spam and phishing
 - to respond to valid legal orders from law enforcement as they investigate and prosecute serious crimes like child exploitation; and
 - to comply with data retention legal obligations.³²
48. While there are data retention obligations in Europe, there are none in Canada. Diagnostic and maintenance purposes do not require the retention of IP addresses for more than 48 hours, if the policy of another search engine³³ is any example. With respect to Google's other purposes, we submit that eighteen months is an excessive period of time.

Google's "anonymized" search queries are not totally anonymous

49. Google's policy is to retain search queries in association with a user's IP address for 18 months, after which the server logs will be "anonymized" and kept indefinitely.³⁴
50. However, Google's method of "anonymizing" may not be effective. Obscuring the last eight bits of the IP address still allows investigators to narrow the IP address down to 256 possible computers or users, which could further narrowed with additional analysis of

³² Peter Fleischer, "How long should Google remember searches?" *Official Google Blog* (11 June 2007), online: <<http://googleblog.blogspot.com/2007/06/how-long-should-google-remember.html>>.

³³ See, for example, <<http://www.ixquick.com>>.

³⁴ Peter Fleischer, "How long should Google remember searches?" *Official Google Blog* (11 June 2007), online: <<http://googleblog.blogspot.com/2007/06/how-long-should-google-remember.html>>.

search term histories.³⁵ Even without linkage to an IP address, search queries can be linked to an identifiable individual, as was recently demonstrated with AOL search logs.³⁶

51. In 2006, AOL released “anonymized” search log data detailing 20,000,000 search queries of 658,000 subscribers over a 3 month period. Each subscriber was assigned a 6-digit identification number which enabled a compilation of the user’s search history. While AOL believed that removal of the IP address link to search queries was enough to anonymize the data, journalists were able to identify some users by cross-referencing search queries with public records. Many users use search engines to search their own name, personal addresses, social security numbers, and/or credit card numbers.³⁷ Other information that users type into search queries can, especially once compiled, identify individuals.
52. To the extent that purportedly anonymized server log data can still be linked to an individual, companies collecting this data must comply with *PIPEDA* principles. Keeping such server log data indefinitely is not compliant with *PIPEDA* data retention principles, as this is longer than is necessary to fulfill Google’s purposes for collecting the data.

Other Google services retain personal information longer than necessary to fulfill Google’s purposes

53. Google describes several purposes for which it processes personal information:
 - providing products and services to users, including the display of customized content and advertising;
 - auditing, research and analysis in order to maintain, protect and improve our services;
 - ensuring the technical functioning of our network; and
 - developing new services.³⁸
54. As noted above, Google offers a wide array of services in addition to Search, some of which require registration. For the majority of Google services, it is not clear what Google’s policy is for personal information retention. For example, Google maintains a copy of all instant message and email traffic associated with Google users who use *Google*

³⁵ Elinor Mills, “Google adding search privacy protections” *CNET* (14 March 2007), online: <http://news.com.com/Google+adding+search+privacy+protections/2100-1038_3-6167333.html>.

³⁶ Discussed above, see footnote 11.

³⁷ For more information on the AOL “anonymized” search log data scandal, see AOLSearchLogs.com, online: <<http://data.aolsearchlogs.com/search/index.cgi>>, a website to search the logs. See also Michael Arrington, “AOL proudly releases massive amounts of private data” *TechCrunch* (6 August 2006), online: <<http://www.techcrunch.com/2006/08/06/aol-proudly-releases-massive-amounts-of-user-search-data>> and Dawn Kawamoto and Elinor Mills “AOL apologizes for release of user search data” *CNET* (7 August 2006), online: <http://news.com.com/AOL+apologizes+for+release+of+user+search+data/2100-1030_3-6102793.html?tag=nefd.top>.

³⁸ Google Privacy Policy, online: <<http://www.google.com/privacypolicy.html>>.

Talk and Gmail. Google allows users to delete their stored chat log and emails, but it is unclear whether Google maintains backup copies of the information.³⁹

55. *Google Web History* retains user search queries and allows users to delete records that he or she can see, but fails to give users the option of deleting their search records from Google's servers.⁴⁰ *Orkut* records user hobbies, employment, address, phone number, and records are maintained even after a user deletes their profile or removes information from the service.⁴¹ Google also collects detailed personal information about users on *Google Checkout*. When registering, users must provide Google with their name, address, credit card number, card verification code, phone number, and desired shipping address. Google tracks user transaction history with *Checkout* and retains this information indefinitely in order to meet "reporting and auditing obligations", even after a user has canceled the service.⁴²
56. We submit that the indefinite retention of any personal information by Google is inappropriate and contrary to Principle 4.5.3 of PIPEDA. After a user disables his or her account or when a user requests that the information be deleted, Google should delete the user's personal information.
57. In our submission, all of Google's services should be assessed with a view to excessive retention of personal information.

Google does not give consumers the option of opting-out of unnecessary data sharing

Principle 4.3.3 of PIPEDA states: *An organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfil the explicitly specified, and legitimate purposes.*

58. Google states in its Privacy Policy that:

We may combine the information you submit under your account with information from other Google services or third parties in order to provide you with a better experience and to improve the quality of our services. For certain services, we may give you the opportunity to opt out of combining such information.

59. It is our understanding that when a user registers for a Google account and uses a handful of Google services, Google combines the personal information collected from each service

³⁹ Google Talk, Privacy Notice: Personal Information, online: <<http://www.google.com/talk/privacy.html>>, Google Talk, Chat Saving History, online: <<http://www.google.com/talk/chathistory.html#whysavegmail>>.

⁴⁰ Google Web History, Privacy Notice, online: <<http://www.google.com/history/whprivacy.html>>.

⁴¹ Orkut: About, online: <<http://www.orkut.com/About.aspx>>, Orkut: Privacy, online: <<http://www.orkut.com/privacy.aspx>>, <<http://www.orkut.com/Settings.aspx>>, <<http://www.orkut.com/EditInterests.aspx>>.

⁴² Google Checkout, Privacy Policy: Information we collect and how we use it: transaction information, online: <<https://checkout.google.com/files/privacy.html>>, Google Checkout, Privacy Policy: Information we collect and how we use it: information about your use of the service, online: <<https://checkout.google.com/files/privacy.html>>.

under that user's account. For example, Google collects a user's search queries through *Search*, a user's address search queries through *Google Maps*, the blogs and websites a user frequents through *Blogger* and *Google Reader*, which media the user watches on *YouTube*, copies of a user's emails and instant messages on *Gmail* and *Talk*, and the user's schedule as inputted into *Calendar*. In addition to this, *Orkut* collects the user's hobbies, employment, address, phone number, and *Checkout* collects the user's name, address, credit card information, card verification code, phone number, and shipping address. All of this personal information may be collected by Google and linked to the user account.

60. Our preliminary research suggests that Google does not offer users the right to opt-out of all unnecessary data user or sharing, especially sharing among Google services.
61. To the extent that users are unable to opt out of unnecessary uses or sharing of their personal information among Google services, we submit that Google is in violation of Principle 4.3.3 of PIPEDA. We urge the Commissioner to audit all of Google's services with a view to assessing whether or not Google complies with this requirement of PIPEDA.

Google engages in excessive personal information collection and use for the purpose of targeted advertising

Principle 4.4 of PIPEDA states: *The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization.*

Subsection 5(3) of PIPEDA states: *An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.*

62. Google collects a variety of personal information about its users and uses that information to, among other things, improve its target marketing services. Online advertising services are constantly being improved, sometimes in ways that involve greater collection and use of personal data. This raises the question of what level of data collection and analysis is *necessary* for the purpose of target marketing; at what point is Google collecting more personal data than necessary for advertising purposes? No doubt Google is limiting its collection of data to that which is *relevant* for the marketing purposes, but the test in Canada is necessity, not relevance.
63. CIPPIC submits that a determination of what is necessary under Principle 4.4 should be driven not by what is *possible* or *desirable* from an advertising perspective, but rather what is actually *necessary* for Google to provide the service. The same test should be applied to all online advertisers, not just Google.
64. With respect to subs.5(3), reasonable internet users may accept as appropriate in the circumstances (i.e., a free service) that Google collects and uses a limited amount their personal information for target marketing purposes, for a limited time period. However, the increasing *extent* of information being gathered and used for this purpose may soon reach, if it has not already, a tipping point beyond which users consider it excessive and

inappropriate. We submit that this point may have been reached, and urge the Commissioner to audit Google's collection and use of personal information for advertising purposes with a view to this particular test.

III. DoubleClick

65. As noted above, DoubleClick uses persistent cookies, web beacons, and information on its log files to track user activity on client websites to better understand how the website is used and enhance the user experience at the website.⁴³ It is our understanding that this information includes IP addresses, and that it can be linked to individual users.
66. The Privacy Policy on DoubleClick's website addresses these activities under "Collection and Use of Non-Personal Information" stating that this information cannot identify a particular person.⁴⁴ However, as explained above, IP addresses can be linked to individual internet subscribers and therefore constitute "personal information" under Canadian privacy law.
67. If DoubleClick is indeed collecting "personal information", as we understand it to be, then we submit that it fails to comply with Principles 4.3 ad 4.8 of PIPEDA by failing to give adequate notice to computer users of its collection, use and disclosure of such personal information. Like Google, DoubleClick may also be non-compliant with Principle 4.4 and/or subs.5(3) of PIPEDA if it is collecting and using more personal information than necessary for the purpose of target marketing.
68. DoubleClick may be violating PIPEDA in other respects; we have not thoroughly investigated its activities to determine whether its information management practices comply with PIPEDA. We urge you to do so.

Conclusion

69. For the reasons set out above, we believe that there are reasonable grounds for the Privacy Commissioner to conduct a section 18 audit under *PIPEDA* of the personal information management practices of Google and DoubleClick, in light of their proposed merger.

Yours truly,

Philippa Lawson
Director, CIPPIC
plawson@uottawa.ca
613-562-5800 x2556

Janet Lo
Summer Student Intern, CIPPIC
jlo@cippic.ca

cc: Peter Fleischer, Global Privacy Counsel, Google

⁴³ DoubleClick Privacy Policy, online: <http://www.doubleclick.com/us/about_doubleclick/privacy/>.

⁴⁴ DoubleClick FAQ, online: <http://www.doubleclick.com/us/about_doubleclick/privacy/faq.asp>.