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August 26, 2010

The Honorable Edward J. Markey
United States House of Representatives
2108 Rayburn House Office Building
Washington, DC 20515

The Honorable Joe Barton
United States House of Representatives
2109 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Markey and Barton:

Thank you for your letters regarding the collection of data about consumers' online behavior on three Microsoft Web sites — MSN.com, Live.com, and MSNBC.com — and Microsoft's use of that data to provide a personalized and relevant experience on those Web sites. Although these issues were discussed most recently in the *Wall Street Journal* article mentioned in your letter, Microsoft has been focused for years on the important privacy concerns raised by online data collection and targeted advertising. We have worked with Congress, the Federal Trade Commission, privacy advocates and industry groups to highlight the importance of consumer privacy and to develop and enhance online privacy protections across the industry.¹ We therefore welcome the opportunity to describe the many

¹ For instance, Microsoft was one of the first companies to advocate for comprehensive federal privacy legislation in the United States. See <http://www.microsoft.com/presspass/features/2005/nov05/11-03Privacy.msp>. We have testified before Congress on the need for strong privacy protections in the context of online behavioral advertising (<http://www.microsoft.com/presspass/exec/hintze/testimony070908.msp>), provided detailed comments to the Federal Trade Commission regarding their proposed self-regulatory principles for online behavioral advertising (<http://www.ftc.gov/os/comments/behavioraladprinciples/080411microsoft.pdf>) and participated in the FTC's privacy roundtables (<http://www.ftc.gov/os/comments/privacyroundtable/544506-00020.pdf>). We are also a participant in the Network Advertising Initiative (NAI) and its self-regulatory program for online behavioral advertising (<http://www.networkadvertising.org/>), and we worked closely with the American Association of Advertising Agencies (AAAA), Association of National Advertisers (ANA), Counsel of Better Business Bureaus (CBBB), Direct Marketing Association (DMA) and Interactive Advertising Bureau (IAB) in the development of their Self-Regulatory Principles of Online Behavioral Advertising (http://www.iab.net/public_policy/behavioral-advertisingprinciples).

specific ways we protect individuals' privacy in the context of online data collection and targeted advertising.²

The responsible collection and use of information is important to ensuring that we provide the fully-featured and customized online experience that consumers expect from Microsoft. For instance, consumers expect that today's news and information sites provide a customized user experience based on information collected from users. At the same time, if consumers feel that Microsoft and other companies are not protecting their privacy when they collect and use information over the Internet, the viability of these products and services and, more generally, the Internet's ability to serve as an engine of economic growth will be threatened. Advertising-supported services that consumers have come to rely on could decline in number and quality. This means that Microsoft, and all companies operating online, must adopt meaningful privacy practices that build trust with consumers. Consequently, Microsoft has taken a variety of concrete steps to protect the privacy and security of consumers in the context of online data collection and the personalization of advertising and other content.³ As more fully described below, our efforts have included the following:

- Microsoft's Privacy Principles for Live Search and Online Ad Targeting⁴ describe safeguards for the information we collect, delineate how this information might be used for online advertising and other purposes, and empower consumers to control the use of their personal information.
- We use a "layered" privacy notice that has a "top layer" with concise bullet-point summaries of our practices, including that we collect and use information for the display of personalized content and advertising, with links to more detailed information in the full Online Privacy Statement. We are also implementing an additional "about our ads" link in the footers of our Web sites that provides direct access to information about ad targeting.
- In our search and advertising services, we use a technical method (known as a one-way cryptographic hash) to separate records of search terms and browsing behavior from records that include account holders' personal information, such as name, e-mail address, and phone number, and to keep them from being easily recombined. We also rely on this method to

² It is worth noting that Microsoft plays multiple roles in the online advertising ecosystem. We are an advertiser that promotes our products and services through the placement of ads, we are a publisher of Web sites (such as those identified in your letters) that are supported by online advertising, and we operate an ad network that connects advertisers with publishers across the Internet. Our responses to your questions are focused on our role as a publisher, but also give the broader context of our other activities, particularly in our role as an ad network, to provide a more complete picture.

³ These specific privacy measures take place in the context of Microsoft's deep and longstanding commitment to protecting consumers' privacy. In addition to being among the first companies to appoint a chief privacy officer, Microsoft has been investing heavily in privacy policies and standards, training and infrastructure for many years. We have an established privacy governance program that includes roughly 40 professionals working full time on privacy matters and several hundred more with significant privacy responsibilities. Our strong corporate privacy function is part of our Trustworthy Computing group, and we progressively add resources, training and tools to deepen the privacy expertise within individual business groups.

⁴ See <http://download.microsoft.com/download/3/7/f/37f14671-ddee-499b-a794-077b3673f186/Microsoft's%20Privacy%20Principles%20for%20Live%20Search%20and%20Online%20Ad%20Targeting.doc>

ensure that we use only data that does not personally identify individual consumers to serve advertising online.⁵

- Our Online Privacy Statement allows users to easily access a tool that allows them to opt out of being served advertising based on information we have previously collected. Users can decide to make this opt-out choice persistent and “roamable”—applying it to any computer that a user logs on to using his or her Windows Live™ ID. Also, we also give people the ability to influence the personalized advertising they receive from Microsoft by selecting and de-selecting interests.⁶

With this background, please find below our responses to your specific questions.

1. What specific information about consumers does your company collect, either through your own Web site or through business relationships with third parties?

On the three Web sites addressed by your letters, Microsoft collects information from or about consumers that falls into several discrete categories. First, we collect information that consumers provide to us directly, such as by filling out a form on our Web site while creating an account or making a purchase. Second, Microsoft may collect information about how consumers are using our services. Third, we may collect information from third parties, such as analytics providers, and combine that information with the information that we have collected from users directly.

In the context of our online advertising activities, which are the focus of your inquiry, we collect information about the content of the pages that users are viewing and the users’ interactions with that content, and we describe the specific types of information that we collect in our privacy statement. As described in the statement and consistent with our strong commitment to protecting individual privacy, we base our ad selection solely on data that does not personally and directly identify individual users. For example, we may select the ads we display according to general interest categories assigned based on data explicitly provided to us by users, demographic or interest data we acquire from other companies, and a general geographic location derived from a user’s IP address. We also may assign interest categories and display ads based on the content or links a user chooses when using Microsoft’s and its advertising partners’ Web sites and services, the search terms a user enters when using Microsoft’s Internet search services, such as Bing, and information about a user’s connections on Microsoft’s communications or social networking services, such as Messenger. As described above and in our privacy statement, we segregate this ad personalization data from contact information or other data that directly identifies users (such as a name, e-mail address, etc.).

In order to ensure that consumers are fully informed about these practices, we provide additional detail about our targeting practices and give users the choice to opt out of the use of behavioral information

⁵ A white paper, “Privacy Protections in Microsoft’s Ad Serving System and the Process of ‘De-identification,’” provides additional detail on our practices and is publicly available at <http://www.microsoft.com/privacy>.

⁶ See <http://choice.live.com/AdvertisementChoice>.

we have collected for ad targeting by using our advertising preference tool, available at <http://choice.live.com/advertisementchoice/>.

2. If you have business relationships with third parties, please list the names of those third parties, including analytics firms.

Microsoft has many relationships with third parties for many different purposes. Given the context of this request, we assume that this question refers specifically to relationships that we have with third party advertising and analytics providers. In connection with the Web sites identified in your letters, we have relationships with a range of third parties in these areas.

The third party ad serving companies and ad networks we work with changes over time, but those we've worked with recently include 24/7 Real Media, aCerno, Inc., AdBlade, AdConion, AdFusion, Advertising.com, Bane Media, Brand.net, CasaleMedia, Collective Media, Fox Interactive, Interclick, Millennial, PrecisionClick, ROI Media, Social Media, SpecificMedia, TrafficMarketplace, Tribal Fusion, ValueClick, and YuMe. This list of ad serving companies and ad networks that we know or believe are engaged in online behavioral advertising is disclosed to consumers through our online privacy statement. Additionally, we work with third party analytics providers, which include ComScore, Nielsen Net Ratings and Omniture.

3. How does your company collect consumer information (e.g., direct consumer input, cookies, beacons, Flash cookies, other surveillance technologies)?

Microsoft uses a variety of methods for collecting information, depending upon the context. For example, we collect information through direct consumer input when individuals are creating an account or making a purchase. We collect information about the Web pages consumers view through the use of cookies and/or beacons. In some limited circumstances, such as storing user preferences like video playback screen size, our Web sites may utilize Flash cookies; but such Flash cookies are not used for purposes related to ad targeting.⁷ The specific technologies that we use change over time as we develop and launch new services.

In our online privacy statement, we provide users with information about the categories of technologies that we use and explain why we use them. For example, we explain that Web beacons help us to count users who visit certain Web pages, deliver co-branded services, and determine whether users have opened e-mail messages that we send to them. We also describe our use of cookies, which, among other benefits, help us store users' advertising preferences so that they receive advertising that is most relevant to them — or, if they have opted out, ensure that they do not receive targeted advertising at all. Similarly, we explain that cookies help us identify logged-in Windows Live ID users as they move between Web sites or Web pages without requiring them to log in again each time.

⁷ Like other members of the Network Advertising Initiative, we have confirmed that we are not using Flash cookies for online behavioral advertising. See http://www.networkadvertising.org/managing/faqs.asp#question_19 for the NAI's policy statement on Flash cookies and online behavioral advertising.

4. How does your company use the information it collects, both directly or through third parties, if applicable?

As we explain in our privacy statement, we use the information we collect for a variety of purposes related to operating and improving our Web sites and services, such as providing customer service; making our services easier to use by eliminating the need for users to repeatedly enter the same information; performing research and analysis aimed at improving customers' experience and our products, services and technologies; and displaying content and advertising that are customized to users' interests and preferences.

As also described above and in our privacy statement, we may use information that we collect to display advertising on portions of our Web sites that are advertising-supported. In that regard, we may use some of the information we collect in order to personalize the ads we show to users, but we have designed our systems to select ads based only on data that does not personally and directly identify individual users.

Finally, our privacy statement explains that we may use the personal information that we collect to communicate with users. For instance, we may send users certain mandatory service communications such as welcome letters, billing reminders, information on technical service issues, and security announcements, or we may send member updates relating to the services to which users subscribe. With users' permission, we also may send them information about other Microsoft products and services or share their personal information with Microsoft partners so they may send those users information about their own products and services.

5. Does your posted privacy policy fully explain these data collection and use practices?

Microsoft is committed to being transparent about its online advertising practices. We post a link to our privacy statement on every page of our Web sites, including the home page. We have written the privacy statement to be clear about the data we collect and how we use it, including uses for online targeted advertising.

We also were one of the first companies to develop so-called "layered" privacy notices that give clear and concise bullet-point summaries of our practices in a short notice, with links to the full privacy statement for consumers and others who are interested in more detailed information. And our privacy statement is clear about the data we collect and use for online advertising. For instance, the "top layer" of our privacy statement contains the following bullets related to our efforts to provide users more relevant advertising:

- We use cookies and other technologies to keep track of your interactions with our sites and services to offer a personalized experience.
- We use the information we collect to provide the services you request. Our services may include the display of personalized content and advertising.

- To opt-out of the display of personalized advertisements, go to the [Display of Advertising](#) section of the full privacy statement.

Our full privacy statement contains a detailed description of the way that we use the information we collect to display advertising and how users can opt out of receiving targeted advertising. Additional information about our privacy practices, such as a white paper that describes the methods we use to “de-identify” data used for ad targeting, is included in the online privacy center discussed above.

6. Does your posted privacy policy identify for consumers all affiliated and unaffiliated entities with which you share or provide access to consumer data, whether through direct disclosure, cookies, or some other means?

Our privacy statement identifies the specific ad serving companies and ad networks that may be collecting data and serving targeted ads on our site. Specifically identifying these third parties by name is consistent with industry standards, self-regulatory guidelines, and FTC guidance because these companies typically offer consumers the ability to opt-out of targeted advertising, and providing the name and the link to their sites empowers consumers to exercise that choice. Other third parties that may collect or access data for more limited purposes where there typically is no equivalent user choice – such as analytics providers that may collect data by setting cookies from our Web sites in order to generate aggregate statistics about the operation of our Web sites, third party ad serving companies and ad networks not engaging in online behavioral advertising, third party content partners, or vendors working on our behalf – are described, but not specifically identified, in our privacy statement.

7. Does your company sell or otherwise monetize the information it collects? (a) If Yes, to which companies does it sell or otherwise disclose the personal information it collects? (b) What were the revenues associated with this sale or monetization for the last 12 months, or the most recent year for which your firm has such data?

Microsoft does not sell the personal information it collects about consumers. Microsoft also does not share that information outside of Microsoft and its controlled subsidiaries and affiliates without the consumer’s consent, except in the case of certain narrow circumstances described in our online privacy statement. These circumstances include cases in which the sharing is necessary to carry out a service or transaction authorized by a consumer, in connection with services offered by Microsoft and a partner on a co-branded basis, or in response to legal process. We also explain that we sometimes use outside vendors to help us provide our products or services, but that we allow these vendors to obtain only the personal information they need to deliver the service and require them to maintain the confidentiality of the information and prohibit them from using it for any other purpose.

Because Microsoft does not sell the personal information that it collects through these Web sites, it does not have any revenues from the sale or monetization of this data. To the extent that your question is intended to refer more broadly to any revenues associated with use of collected information in advertising generally or in services that rely on information about consumers (such as social media or other customized Web sites), Microsoft does not track revenues attributable to information collections

separately from other revenues, so we are unable to provide a specific figure in response to this question.

8. Is your company aware of all third-party tracking devices that may be installed on a user's computer when the user visits your site? (a) If yes, what evaluations does your company perform to discover such devices? If no, why not? (b) What actions does your company take upon discovery of a previously unknown third party tracking device?

Microsoft itself uses certain technologies, such as cookies and Web beacons, on the Web sites addressed by your letters, and Microsoft is, of course, aware of these technologies. Like many other Web sites, the Microsoft sites identified in your letters may include embedded videos or other content served from third party providers. These content partners could drop cookies or similar devices from their domains that Microsoft cannot read and may not always be aware of. In addition, advertisers that purchase ad space on portions of Microsoft's sites that are ad supported may include their own technologies in the ad creative. Microsoft requires these advertisers to comply with its advertising creative acceptance policy, which limits the type of data that advertisers may collect as well as subsequent use of data collected.⁸ Consistent with industry practices, advertisers may insert tags in their creative for a number of reasons, including limiting the number of times that an ad is shown to a particular user or reporting purposes. Microsoft's creative acceptance policy prohibits advertisers from retargeting visitors to Microsoft's sites based on site data. If we discover an apparent violation of our policy, we will contact the advertiser to investigate the matter and, if we determine that the tracking device violates our policy, we will promptly remove it from our site in accordance with our documented incident handling and response standards. We also will evaluate whether more general action against the advertiser was appropriate under the circumstances.

9. Does your company serve different pages, content, or advertisements to visitors, based upon information derived from tracking devices? If yes, please explain.

Yes, we display relevant advertising based upon consumers' using our Internet search service or browsing Web sites owned by Microsoft or our specific advertising partners. On some of our Web sites, we may also personalize certain pages, such as making certain types of content more prominent on the page based on the consumer's prior use of our services.

10. Does your company target individuals based on their health or financial status?

We target advertising using interest segments that reflect our estimation of the categories of advertising in which a particular consumer would be most interested. However, consistent with industry self-regulatory principles, we consider certain information related to medical and financial records to be

⁸ See http://advertising.microsoft.com/wwdocs/user/en-us/foradvertisers/MDAS_CAP_06.10.2010.pdf at pp 50-52.

sensitive information, and do not target ads based on such data.⁹ We do, however, offer some advertising segments based on inferred interests in certain less sensitive health or fitness topics.

11. Are there any user search or use habits that your company will not use for targeting purposes or tracking? If yes, what are they?

Yes. As explained above, we consider certain types of information to be sensitive, and we do not use these categories of information for targeting ads. We continually evaluate our interest segments in an effort to exclude consideration of sensitive categories of information, and we rely on the guidance provided by the FTC and the leading industry self-regulatory programs to help us determine what categories should be considered sensitive. We believe companies should obtain opt-in consent before using such data for such purpose.

12. Has your company conducted a legal analysis of the applicability of communications and consumer privacy laws to the targeting and/or tracking practices utilized by your firm? If yes, please explain what this analysis concluded.

We continually review our data collection and use practices and have concluded that those practices, which include a number of industry-leading privacy protections, are fully compliant with all applicable privacy and data protection laws.

13. If your company tracks or targets visitors, how does it notify visitors to your company's site of this practice? If it does not provide notification, why not?

As explained elsewhere in this response, our privacy statement describes our data collection and ad targeting practices in detail. We post a link to our privacy statement on every page of our Web sites, including the home page. We also were one of the first companies to develop so-called “layered” privacy notices that give clear and concise bullet-point summaries of our practices in a short notice, with links to the full privacy statement for consumers and others who are interested in more detailed information. We are also implementing an additional “about our ads” link in the footers of our Web sites that provides direct access to information about ad targeting. Microsoft believes that this kind of transparency is critical to providing consumers with an informed understanding of a company’s data collection practices, of how their data might be used, and the privacy controls available to them.

14. If a user does not want to be tracked or targeted upon visiting your site, how would the user effectuate this preference?

As explained above, users of the Web sites addressed in your letters can choose to opt out of Microsoft’s use of collected data for ad targeting. To accommodate consumer preferences, Microsoft describes in its privacy statement three different ways for consumers to express their preferences: (1) Microsoft-specific preferences, (2) Industry-Wide preferences, and (3) browser-level controls.

⁹ “Entities should not collect and use financial account numbers, Social Security numbers, pharmaceutical prescriptions, or medical records about a specific individual for Online Behavioral Advertising without Consent.” See <http://www.iab.net/media/file/ven-principles-07-01-09.pdf> at pg 21.

Microsoft-specific preferences. We explain in our privacy statement that users can choose not to allow us to customize the advertising we display to them using our online advertising preference tool, available at <http://choice.live.com/advertisementchoice/>. Using that tool, users can opt out of targeted advertising for a particular computer or across computers when they are signed in using a Windows Live ID. They also can choose to allow targeted advertising and specify the specific interest categories that influence personalized advertising.

Industry-Wide Preferences. We also provide a link to the preference tool of the Network Advertising Initiative, which is a coalition of online advertising providers. That preference tool, available at http://networkadvertising.org/managing/opt_out.asp, provides users with a consolidated tool for opting out of targeted advertising by all members of the NAI.

Browser-Level Controls. Because these advertising preference tools are not designed to disable tracking technologies such as cookies, our privacy statement also informs users that they can use browser controls to opt out of receiving cookies entirely.

15. Please explain whether your company provides the ability of consumers to "opt-in" to the use of these practices or "opt-out," including whether they have an option to prevent both collection and use of their data. If your company provides the opportunity to opt-out, how many visitors have chosen this option according to your company's most recent data?

As described in our response to the previous question, Microsoft offers consumers the ability to opt out from the use of the information that we collect for advertising targeting purposes. Between 3/3/2008 and 8/6/2010, 100,373 total "opt outs" have been recorded. Of those 83,673 have been "cookie-based" opt outs; 7,119 have been opt outs using our "persistent" Windows Live ID opt out; and 9,581 have been opt outs where the user has elected to use both systems.

* * *

Microsoft recognizes that the protection of consumer privacy is an essential part of offering personalized content and advertising online. We have developed and implemented a number of privacy protections for consumers, and will continue to advance consumer privacy as these technologies evolve. We look forward to working with you to ensure consumers' privacy interests are protected as they continue to enjoy the proliferation of free services and information that online advertising supports.

Sincerely,



Michael Hintze
Associate General Counsel
Microsoft Corporation