

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between DoubleClick Inc. (“DoubleClick”), on the one hand, and plaintiffs on behalf of themselves and the members of the general public of California and the purported classes (collectively “Plaintiffs”) in the actions entitled: *In re DoubleClick Inc. Privacy Litigation*, No. 00-CIV-0641 (NRB) (United States District Court for the Southern District of New York) (“Federal Action”); *In re DoubleClick Inc. Cases*, J.C.C.P. No. 4120 (Superior Court of California, County of Marin) (“California State Action”); and *Notargiacomo v. DoubleClick Inc.*, Cause No. 2000-03-1182-D (District Court of Cameron County, 103rd Judicial District, State of Texas) (“Texas State Action”) (collectively the “Actions”). Plaintiffs and DoubleClick are collectively referred to herein as the “Parties.”

WHEREAS:

A. Plaintiffs brought thirteen (13) actions in various federal courts against DoubleClick alleging violations of 18 U.S.C. § 1030 et seq., 18 U.S.C. § 2510, 18 U.S.C. § 2701 et seq., NY GL § 349 et seq., NY GL § 350-a et seq., and NY Civil Rights Law § 50 et seq., as well as invasion of privacy, trespass to property, conversion, tortious conversion and quantum meruit, unjust enrichment, negligence, misrepresentation, active concealment, and declaratory judgment. The thirteen (13) actions were consolidated into the Federal Action.

B. Plaintiffs brought five (5) actions in various California state courts against DoubleClick alleging violations of 18 U.S.C. § 1030 et seq., 18 U.S.C. § 2510 et seq., 18 U.S.C. § 2701 et seq., Cal. Bus. & Prof. Code § 17200 et seq., Cal. Bus. & Prof. Code § 17500 et seq., Cal. Pen. Code §§ 631, 637.2 et seq., Cal. Civ. Code § 1750, and Art. 1, § 1 of the Cal. Constitution, as well as common law invasion of privacy, and unjust enrichment. The five (5) actions were consolidated into the California State Action.

C. Plaintiffs brought the Texas Action against DoubleClick alleging violations of Tex. Pen. Code § 16.02 et seq. and Tex. Pen. Code § 33.02 et seq., as well as invasion of privacy, trespass to chattels and unjust enrichment.

D. DoubleClick has denied, and continues to deny, that it has committed any violations of law or engaged in any wrongful acts alleged in the complaints or petition filed in the Actions or otherwise.

E. Counsel for Plaintiffs and DoubleClick have engaged in good-faith discussions and mediation regarding the possibility of settling the Actions and on October 5, 2001 reached an agreement in principle concerning the proposed settlement of the Actions as set forth below.

F. Plaintiffs' counsel, having made a thorough investigation of the facts, believe that the proposed settlement is fair, reasonable and adequate and in the best interests of Plaintiffs.

NOW, THEREFORE, the Parties to the Actions agree to compromise and settle the Actions utilizing the following definitions, for the following consideration, and pursuant to the following settlement procedures and terms.

I. DEFINITIONS

A. "Effective Date" means the first date after which all of the following events and conditions have been met or have occurred:

1. All Parties have finalized and executed this Settlement Agreement;
2. The Court of Appeals for the Second Circuit has remanded the Federal Action to the District Court for settlement proceedings, without vacating the decision of the District Court in the Federal Action;
3. The District Court in the Federal Action has preliminarily approved the Settlement Agreement and the method for providing notice to the "Settlement Class," as defined herein and all of Plaintiffs' Co-Lead Settlement Counsel have made an appearance in the Federal Court;

4. The District Court in the Federal Action has entered a judgment and Order of dismissal, providing final approval of the Settlement Agreement and dismissing with prejudice all claims by the Settlement Class that were asserted in the Federal Action;

5. The judgment and Order of dismissal has become “Final,” as defined herein;

6. Orders of dismissal with prejudice in the California State Action and the Texas State Action, dismissing with prejudice all claims against DoubleClick that were asserted in those actions, have been obtained and become Final; and

7. Plaintiffs’ counsel have verified in writing that fewer than a certain number (the “Tip-Over Number”) of potential members of the “Settlement Class,” as defined herein, have requested exclusion from the Settlement Class. The Tip-Over Number has been stated in a confidential letter from DoubleClick to Plaintiffs’ counsel.

B. “Final” means the latest of:

1. The date of final affirmance on an appeal, the expiration of the time for a petition of certiorari and, if certiorari is granted, the date of final affirmance following review pursuant to that grant; or

2. The date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari; or

3. If no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s judgment dismissing the action.

C. “Intelligent Targeting” means DoubleClick’s Online Preference Marketing service, as defined herein, that builds Non-PII, as defined herein, user marketing scores based on an Internet user’s activity across participating Web sites.

D. “Non-Personally Identifiable Information” (“Non-PII”) means data collected about an Internet user that is associated with DoubleClick’s ad serving cookie ID and that does not contain Personally Identifiable Information, as defined herein.

E. “Online Preference Marketing” means ad serving based on a user’s Web activity across Web sites and over time. Online Preference Marketing does not include DoubleClick’s e-mail marketing products. In addition, Online Preference Marketing excludes the use of data provided by a Web site or advertiser directly to DoubleClick and used by DoubleClick for Internet advertising solely on behalf of such Web site or advertiser.

F. “Personally Identifiable Information” (“PII”) means data that identifies or locates a particular person, consisting primarily of name or address or telephone number or e-mail address.

G. “Plaintiffs’ Co-Lead Settlement Counsel” means the following Plaintiffs’ counsel who are designated as co-lead counsel for all settlement and enforcement proceedings relating to the settlement:

Bernstein Litowitz Berger & Grossmann LLP
Seth R. Lesser
1285 Avenue of the Americas
New York, New York 10019

Milberg Weiss Bershad Hynes & Lerach LLP
Dennis Stewart
600 West Broadway, Suite 1800
San Diego, California 92101

Miller Faucher and Cafferty LLP
Bryan L. Clobes
30 South 15th Street, Suite 2500
Philadelphia, Pennsylvania 19102

The Rothken Law Firm
Ira P. Rothken
1050 Northgate Drive, Suite 520
San Rafael, California 94903

H. “Released Claims” means any and all claims, rights (including rights to reimbursement or restitution), demands, actions, causes of action, suits, matters, issues, debts, liens, damages, attorneys’ fees, obligations, contracts, liabilities, agreements, costs, expenses or losses of any nature, whether known or unknown, matured or unmatured, contingent or absolute, existing or potential, suspected or unsuspected, whether under federal statutory law, federal common law or federal regulation, or the statutory or common laws or regulations of any and all states or subdivisions which are alleged or which could or might have been alleged in the Actions, as defined herein, including claims arising out of or otherwise directly related to the allegations, factual assertions,

events, transactions, acts, occurrences, statements, representations, omissions, or any other matter, embraced by, involved or set forth in, or otherwise related to, the Actions.

I. “Released Parties” means DoubleClick, and each of its predecessors, successors, parents, subsidiaries and affiliates, and each of their past and present officers, directors, employees, agents, attorneys, accountants, advisors, shareholders, representatives, partners, heirs and assigns.

J. “Sensitive Category” means a category which reveals an individual’s medical condition, sexual orientation, sexual behavior, or detailed financial information.

K. “Settlement Class” means all persons in the United States who have had any information about their computers or about them gathered by DoubleClick as a result of their Internet activity or who have had DoubleClick cookies placed upon their computers or browsers from January 1, 1996 through and including the date of preliminary approval by the Court of the Settlement Agreement.

L. “Settlement Class Member” means a person who fits within the definition of the Settlement Class and who has not validly and timely requested exclusion from the Settlement Class.

M. “State Actions” means the California State Action and the Texas State Action.

II. DENIAL OF LIABILITY

DoubleClick maintains that it has consistently acted in accordance with governing laws at all times and denies that it has committed any violations of law or engaged in any wrongful acts alleged in the complaints or petition filed in the Actions or otherwise.

III. CERTIFICATION OF CLASS CLAIMS

Plaintiffs and DoubleClick agree to certification of a nationwide class, for settlement purposes only, under Rule 23(b)(3) of the Federal Rules of Civil Procedure, with the named plaintiffs in the Actions serving as the representatives of the Settlement Class. DoubleClick does not consent to the certification of a class for any purpose other

than to effectuate the settlement of the Actions. In the event the Settlement Agreement is terminated pursuant to its terms, the Effective Date does not occur, or for any reason the settlement described in this Settlement Agreement is not effectuated, the certification of the Settlement Class shall be vacated and the Actions shall proceed as though the Settlement Class had never been certified.

IV. CONSIDERATION

In full and complete settlement of all claims in the Actions, the Parties agree that:

A. Policies and Procedures

For two (2) years, commencing no later than ninety (90) days after the Effective Date:

1. Privacy Policy

DoubleClick's privacy policy will be written in easy-to-read sentences and will include the following:

- (A) An explanation of DoubleClick's online ad serving service;
- (B) An explanation of DoubleClick's use of ad serving cookies and pixel tags;
- (C) Representative examples of interest categories which DoubleClick does not use for its Intelligent Targeting service; and
- (D) Representative examples of interest categories which DoubleClick does use for its Intelligent Targeting service.

2. Internal Policies

DoubleClick will institute the following policies:

- (A) Access Policy. DoubleClick will restrict access to DoubleClick's DART Web Ad Serving Log Files in the following manner:
 - (1) Access will be limited to those DoubleClick employees who, during the course of their employment with DoubleClick, are required to

have access to such data for analysis, technical and customer support, compliance with internal policies, procedures and customer contracts, and any governing laws and regulations;

(2) Access will be limited to those third-party vendors with a good-faith need to access DoubleClick's DART Web Ad Serving Log Files and who have agreed in writing to abide by all of DoubleClick's policy restrictions regarding the access to, use of and disclosure of such data; and

(3) DoubleClick will maintain technology and procedures, in accordance with industry standards, designed to prevent unauthorized access to such data.

(B) Purging Policy.

(1) On at least a weekly basis, DoubleClick will purge all DART Web Ad Serving Log Files that are more than three years old; and

(2) On at least a quarterly basis, DoubleClick will purge all back-up tapes of DoubleClick's DART Web Ad Serving Log Files that are more than three years old.

(C) Policy Related to Contemporaneous Privacy Policy. An Internet user's online data (including both PII and Non-PII) collected by DoubleClick under one version of DoubleClick's privacy policy will not be used in a manner materially inconsistent with that privacy policy, unless DoubleClick has that Internet user's permission to do otherwise.

(D) Successor-in-Interest Policy. DoubleClick will take reasonable steps to require that any successor-in-interest to DoubleClick does not use Internet users' online data (including both PII and Non-PII) collected by DoubleClick in a manner inconsistent with the DoubleClick privacy policy under which that data was collected.

3. Cookie Longevity

Any new DoubleClick ad serving cookie served to an Internet user's browser will expire no more than five (5) years after the date on which that cookie is served. The implementation of this obligation may be delayed in the event unforeseen technical issues arise. In such event, DoubleClick will work in good faith toward the earliest possible implementation of this obligation and will use reasonable efforts to keep Plaintiffs' counsel informed of the progress.

4. Previously Collected Information

(A) DoubleClick previously had planned to merge PII available through its newly-acquired division, Abacus, with Non-PII clickstream collected across Web sites. As a step toward this plan, DoubleClick collected PII online from its NetDeals Web site for preliminary testing. On March 2, 2000, DoubleClick announced that it would not proceed with the merger of PII with Non-PII clickstream collected across Web sites until there is agreement between government and industry on privacy standards. DoubleClick affirms that it has not combined PII with Non-PII clickstream collected across Web sites. All PII collected by DoubleClick from the NetDeals Web site for such preliminary testing of the Abacus Online project shall be purged within ninety (90) days after the Effective Date.

(B) In the event DoubleClick hereafter proceeds to collect PII and merge such PII with Non-PII clickstream across Web sites collected prior to the point at which the user chooses to allow the merger of PII and Non-PII ("Previously Collected Non-PII") for Online Preference Marketing, it will do so pursuant to the following restrictions:

(1) After notice (as described more fully in section IV.A.4.(B).(4) below) is provided to the user which informs the user that PII may be collected and merged with Previously Collected Non-PII about the user;

(2) After the user is given the choice to opt-in to such merger;

(3) The user affirmatively chooses to opt-in; and

(4) DoubleClick will require that the Web sites from which it collects PII for merger of such PII with Non-PII collected by DoubleClick, provide notice that is:

(a) Physical Terms

(i) Clear and conspicuous;

(ii) Delineated from the other text on the page and placed in a manner intended to draw attention to the notice;

(iii) Provided at the time and place (*i.e.*, on the Web page) at which PII is entered by an Internet user on a Web site; and

(iv) Located above or before the “submit” button.

(b) Content Terms

(i) The notice will provide the Internet user with the following factual information:

(aa) The PII submitted by the user may be shared with one or more third-party advertisers; and

(ab) The user’s name, address and/or e-mail address may be linked to other information about the user.

(ii) The notice will affirmatively provide the Internet user with a disclosure of the implications of his or her decision by informing the user that the submission of PII at that point may mean that some of the user’s future Web activity will not be anonymous.

B. Public Information Campaign

DoubleClick will conduct a public information banner ad campaign consisting of a total of 300 million banner ads:

1. The banner ads will invite consumers to learn more about how to protect their privacy on the Internet;
2. The banner ads will link an Internet user who clicks on the link to a site which provides:
 - (A) Information about online data collection associated with ad serving, including Online Preference Marketing; and
 - (B) An opportunity to opt-out of that user's browser's DoubleClick ad serving cookie.
3. Service of the 300 million banner ads will be completed no later than two (2) years after the Effective Date.

C. Annual Compliance Review

1. DoubleClick will retain a nationally recognized independent accounting firm mutually agreed upon with Plaintiffs' Co-Lead Settlement Counsel, to conduct two annual compliance reviews of the following:
 - (A) DoubleClick's compliance with its privacy policy disclosure obligations, as defined in section IV.A.1(A)-(D);
 - (B) DoubleClick's compliance with the access policy, as defined in section IV.A.2.(A);
 - (C) DoubleClick's compliance with the purging policy, as defined in section IV.A.2.(B);
 - (D) DoubleClick's compliance with the policy related to contemporaneous privacy policy usage, as defined in section IV.A.2.(C);
 - (E) DoubleClick's compliance with the agreement related to cookie longevity as defined in section IV.A.3;

(F) DoubleClick's compliance with the agreement set forth in section IV.A.4;

(G) DoubleClick's compliance with the agreement related to the public information campaign, as defined in section IV.B; and

(H) DoubleClick's Intelligent Targeting marketing scores exclude Sensitive Categories.

2. The accounting firm will be provided with and have access to information, including confidential and proprietary information, and procedures which are reasonably necessary to conduct its compliance reviews and the accounting firm will sign an agreement to keep such information confidential except for disclosure necessary to carry out the terms under this Agreement, or as may be required by law.

3. DoubleClick will have the opportunity to remedy any issues identified by the compliance review, prior to the finalization of the review findings and preparation of any summary of the final review findings ("Review Summary").

4. The Review Summary will report on DoubleClick's compliance with the undertakings specifically provided in section IV.C.1 herein.

5. The Review Summary will be disclosed by DoubleClick to Plaintiffs' Co-Lead Settlement Counsel.

6. The Parties agree to meet and confer in good faith regarding any questions Plaintiffs' Co-Lead Settlement Counsel may have about the Review Summary.

D. Notice to the Settlement Class

DoubleClick will provide notice to the Settlement Class about the proposed settlement as follows: (1) in a quarter-page ad in *USA Today*; (2) in a quarter-page ad in the *New York Times* National Edition; (3) via 1,000,000 Internet banner ads with a frequency limit of one impression delivered per unique DoubleClick ad serving cookie ID; (4) in a press release jointly issued by DoubleClick and Plaintiffs; and (5) via links on the Internet to a Web page dedicated solely to notice of the settlement. Neither Plaintiffs

nor DoubleClick will issue any other press release prior to final approval of this Settlement Agreement by the District Court in the Federal Action respecting this litigation or this settlement, except that the Parties may respond to the actions, including press releases, of a third party, consistent with the joint press release.

E. Attorneys' Fees and Costs

Plaintiffs' Co-Lead Settlement Counsel agree to make, and DoubleClick agrees not to oppose, an application to the Court in the Federal Action for attorneys' fees and costs in the Actions in the amount of \$1,800,000.00. No other request for attorneys' fees and costs from DoubleClick will be made. Within twenty (20) days of the Effective Date, DoubleClick will pay the fees and costs ordered by the Court up to \$1,800,000.00.

F. Special Master and Dispute Resolution

The Parties will agree to the selection of a Special Master should one be necessary. The Special Master will have jurisdiction to facilitate the resolution of disputes concerning interpretation of the provisions of the Settlement Agreement. The Parties will attempt to resolve any and all disputes in good faith before requesting the assistance of the Special Master and will agree to a standard of reasonableness and efficiency governing whether and when to request the assistance of the Special Master. DoubleClick will pay for the services of the Special Master subject to its right to seek reimbursement for time spent by the Special Master on matters determined by the Special Master to be frivolous or raised without good cause. If a dispute cannot be resolved through this process, either party may address the dispute to the District Court in the Federal Action.

V. RELEASES

A. Upon the Effective Date, the Plaintiffs, for themselves and as representatives of the Settlement Class, and on behalf of each Settlement Class Member and their respective agents, successors, heirs, or assigns, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal in the Federal Action, shall have

fully, finally, and forever irrevocably released, relinquished and discharged with prejudice all Released Claims against the Released Parties.

B. Upon the Effective Date, the Plaintiffs, on their own behalf and on behalf of all Settlement Class Members, represent and acknowledge that they fully understand that if any fact relating to any matter covered by this Settlement Agreement is found hereafter to be other than or different from the facts now believed by any of them to be true, each of them expressly accepts and assumes the risk of such possible other facts or differences in fact and agrees that this Settlement Agreement shall nevertheless remain in effect, and that each such person expressly waives all of the rights and benefits of Section 1542 of the California Civil Code, which reads as follows:

Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

C. Each of the Plaintiffs and the Settlement Class Members, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal in the Federal Action shall have, waived any and all provisions, rights and benefits conferred by Section 1542 of the California Civil Code or any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code.

D. Upon the Effective Date, each of the Released Parties shall be deemed to have, and by operation of the judgment shall have, fully, finally and forever released, relinquished and discharged each and all of the Plaintiffs and Settlement Class Members and their attorneys from all claims arising out of the institution, prosecution, assertion, or resolution of the Actions.

VI. SETTLEMENT PROCEDURES AND TERMS

A. Federal Action

1. Plaintiffs in the Federal Action will promptly request, and DoubleClick will so stipulate to (1) dismissal without prejudice of Plaintiffs' appeal pending in the Second Circuit, and (2) remand of the action to the District Court in the Federal Action for settlement proceedings, without vacating the prior decision of the District Court dismissing the Federal Action with prejudice.

2. Upon remand to the District Court in the Federal Action, the Parties will jointly seek the following from the United States District Court for the Southern District of New York:

(A) An order, substantially similar in form to Exhibit 1 attached hereto, granting preliminary approval of the Settlement Agreement and setting a fairness hearing on the proposed settlement;

(B) Approval of the form of the Notice to the Settlement Class ("Notice"), substantially similar in form to Exhibit 2 attached hereto, and the provision of Notice to the Settlement Class pursuant to section IV.D herein; and

(C) Entry of a Final Judgment and Order of Dismissal, substantially similar in form to Exhibit 3 attached hereto, providing:

(1) The final approval of the Settlement Agreement, dismissal with prejudice of the Federal Action, and release of the Released Parties from the Released Claims; and

(2) That members of the Settlement Class who do not file valid and timely requests for exclusion pursuant to the Notice above, will be bound by the Final Judgment and Order of Dismissal.

B. State Actions

The Parties agree that, within ten (10) days of the execution of this Settlement Agreement, Plaintiffs in the State Actions will provide defendant's counsel with executed

dismissals with prejudice of their respective actions (awarding no costs to any party) which defendant's counsel shall file when the dismissal with prejudice of the Federal Action becomes Final.

VII. ADDITIONAL TERMS

A. Stay of the Cases

The Parties agree that all proceedings in the Actions, except as necessary to consummate the settlement for which this Settlement Agreement provides, will be stayed, unless otherwise ordered by a court. To the extent necessary, the Parties shall file a stipulation and proposed order regarding such stays of the Actions. For good cause shown, any party may seek relief from that stay.

B. Consummation of Settlement

1. DoubleClick shall have the option to withdraw from the settlement in the event that more than the Tip-Over Number of members of the Settlement Class opt-out of the settlement.

2. Should this Settlement Agreement not receive final Court approval for any reason, or if this Settlement Agreement is canceled or terminated or is overturned on appeal, or does not become Final as a result of further proceedings on remand, or is successfully collaterally attacked, this Settlement Agreement shall be null and void and of no force and effect, and nothing herein shall be deemed to prejudice the position of any of the Parties with respect to the Actions or otherwise, and neither the existence of this Settlement Agreement nor its contents shall be admissible in evidence, referred to for any purpose in the Actions or in any other litigation or proceeding, or be deemed a presumption, concession or admission by DoubleClick of any fault, liability or wrongdoing. In light of the above, the Parties shall act reasonably to prevent loss of evidence.

C. Protective Orders

The Parties agree that all confidential information will be treated in accordance with the Protective Orders entered in the Actions.

D. Miscellaneous Terms

1. This Settlement Agreement may be executed in counterparts by any of the signatories hereto, including by facsimile transmission, and as so executed shall constitute one agreement.

2. This Settlement Agreement may be modified or amended, or any of its conditions may be waived, only by a writing signed by counsel for the Parties to the Actions.

3. This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties to the Actions and their respective agents, successors, executors, heirs and assigns.

Dated: _____, 2002

MORRISON & FOERSTER LLP

By: _____

Melvin R. Goldman
Lori A. Schechter

Counsel for Defendant
DoubleClick Inc.

Dated: _____, 2002

MILBERG WEISS BERSHAD
HYNES & LERACH LLP

By: _____

Dennis Stewart

Counsel for Plaintiffs

Dated: _____, 2002

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

By: _____
Seth R. Lesser
Counsel for Plaintiffs

Dated: _____, 2002

MILLER FAUCHER & CAFFERTY
LLP

By: _____
Bryan L. Clobes
Counsel for Plaintiffs

Dated: _____, 2002

THE ROTHKEN LAW FIRM

By: _____
Ira P. Rothken
Counsel for Plaintiffs

Dated: _____, 2002

BURR & FORMAN LLP

By: _____
E. Clayton Lowe, Jr.
Counsel for Plaintiffs

[Names and addresses of counsel
appear on signature pages]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re DOUBLECLICK INC. PRIVACY LITIGATION	:	Master File No. 00-CIV-0641 (NRB)
This Document Relates to:	:	
ALL ACTIONS	:	

SETTLEMENT AGREEMENT AND RELEASE