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13 **IN THE UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 IN RE QUANTCAST  
 16 ADVERTISING COOKIE  
 17 LITIGATION

CASE NO. 2:10-cv-05484-GW-JCG

**NOTICE OF LODGING**

28

1 PLEASE TAKE NOTICE that, pursuant to Local Rule 15-1, Plaintiffs  
2 Plaintiffs Edward Valdez, Alan Bonebrake, Byron Griffith, Mary Huebner, Jose  
3 Marquez, Brittany Sanchez, Gerardo Valdez, Austin Muhs, and Kayla Valdez,  
4 individually, on behalf of themselves and others similarly situated, hereby lodge  
5 their First Amended Consolidated and Class Action Complaint, a copy of which is  
6 attached hereto.

7  
8 DATED: December 3, 2010

KAMBERLAW, LLC

9  
10 s/David A. Stampley

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14 **CENTRAL DISTRICT OF CALIFORNIA**

15 IN RE QUANTCAST  
16 ADVERTISING COOKIE  
17 LITIGATION

CASE NO. 2:10-cv-05484-GW-JCG  
JURY DEMAND

FIRST AMENDED AND  
CONSOLIDATED CLASS ACTION  
COMPLAINT FOR:

1. Violation of Computer Fraud and Abuse Act, 18 U.S.C. § 1030;
2. Violation of Computer Crime Law, Cal. Penal Code § 502;
3. Violation of Invasion Of Privacy Act, Cal. Penal Code § 630;
4. Violation of Consumer Legal Remedies Act, Cal. Civ. Code § 1750;
5. Violation of Unfair Competition Law, Cal. Bus. and Prof. Code § 17200;
6. Trespass to Personal Property/Chattel
7. Unjust Enrichment

1 **CLASS ACTION COMPLAINT**

2 Plaintiffs, Jennifer Aguirre; Alan Bonebrake; Alejandro Godoy; Byron  
3 Griffith; Mary Huebner; Jose Marquez; Austin Muhs; Brittany Sanchez; Edward  
4 Valdez; Gerardo Valdez ; and Kayla Valdez (“Plaintiffs”), on behalf of  
5 themselves and all other similarly situated individuals (each a “Class Member” of  
6 the putative “Class,” as further described herein), by and through their attorneys,  
7 as and for their complaint and demanding trial by jury, allege as follows based on  
8 their personal knowledge as to themselves and their own acts and observations  
9 and, otherwise, upon information and belief based on the investigation of counsel,  
10 which Plaintiffs believes further investigation and discovery will support with  
11 substantial evidence.

12 **I. NATURE OF THE CASE**

13 1. Plaintiffs and Class Members are consumers in the United States  
14 who use their desktop and laptop computers to access websites on the Internet,  
15 and including users who configured their web browser privacy settings to deny  
16 permission for third parties to set browser cookies on their computers.

17 2. Quantcast Corporation (“Quantcast”) is an Internet audience metrics  
18 company. Together, Quantcast and the online content-providers that deployed  
19 Quantcast’s technologies, MySpace, Inc., American Broadcasting Companies,  
20 Inc., ESPN, Inc., Hulu, LLC, JibJab Media, Inc., MTV Networks, Inc., NBC Uni-  
21 versal Inc., and Scribd (“Publishers”) (collectively, the “Defendants”) gained ac-  
22 cess to the computers of millions of consumers’ to plant cookie-like tracking code  
23 on users’ computers. With this tracking code, Defendants circumvented users’  
24 browser controls for managing web privacy and security.

25 3. Defendants engaged in these practices so they could monitor users,  
26 avail themselves of information about users’ web-browsing activities, and continue  
27 doing so for as long as Defendants’ liked without being subject to users’ browser  
28 privacy and security settings and cookie management utilities that limit the abili-

1 ties of third parties to set and read browser cookies.

2 4. The user information Defendants misappropriated and merged with  
3 information from Quantcast's web affiliations and data sources, included details  
4 about users' personal characteristics such as gender, age, race, number of chil-  
5 dren, education level, geographic location, and household income. Defendants  
6 used the resulting profiles to identify individual users and track them on an ongo-  
7 ing basis, across numerous websites, even spotting and tracking users when they  
8 accessed the web from different computers, at home and at work.

## 9 **II. JURISDICTION AND VENUE**

10 5. This Court has subject-matter jurisdiction over this action pursuant  
11 to 28 U.S.C. § 1331.

12 6. Venue is proper in this District under 28 U.S.C. § 1391(b) because  
13 defendants MySpace, Inc. and JibJab maintain principal executive offices and  
14 headquarters in Los Angeles County, California, and in this District.

15 7. Venue is also proper in this District under 28 U.S.C. § 1391(b) be-  
16 cause Defendants' improper conduct alleged in this complaint occurred in, was  
17 directed from, and/or emanated from this judicial district.

## 18 **III. PARTIES**

19 8. Plaintiffs are individuals residing in various locations in the United  
20 States.

21 9. Defendant Quantcast Corporation ("Quantcast") is a Delaware corpo-  
22 ration with headquarters at 201 Third Street, Second Floor, San Francisco, Cali-  
23 fornia 94103. Quantcast does business throughout the United States and, in par-  
24 ticular, in the State of California and Los Angeles County.

25 10. Defendant MySpace, Inc. is a Delaware corporation that maintains  
26 its headquarters at 407 N. Maple Drive, Beverly Hills, CA 90210. Defendant  
27 MySpace is a subsidiary of News Corporation and does business throughout the  
28 United States, and in particular, does business in the State of California and in this

1 judicial district.

2 11. Defendant American Broadcasting Companies, Inc. is a Delaware  
3 corporation that maintains its headquarters at 47 W. 66<sup>th</sup> Street, New York, NY  
4 10023. Defendant American Broadcasting Companies, Inc. is a subsidiary of The  
5 Walt Disney Company and does business throughout the United States, and in  
6 particular, does business in the State of California and in this judicial district.

7 12. Defendant ESPN, Inc. is a Delaware corporation that maintains its  
8 headquarters at 935 Middle Street, Bristol, CT 06010. Defendant ESPN is a sub-  
9 sidiary of The Walt Disney Company and does business throughout the United  
10 States, and in particular, does business in the State of California and in this judi-  
11 cial district.

12 13. Defendant Hulu, LLC (“Hulu”) is a Delaware corporation with  
13 headquarters at 12312 West Olympic Boulevard, Los Angeles, California 90064.  
14 Hulu does business throughout the United States and, in particular, in the State of  
15 California and County of Los Angeles.

16 14. Defendant JibJab Media, Inc. is a Delaware corporation that main-  
17 tains its headquarters at 228 Main Street, Suite 4, Venice, CA 90291. JibJab Me-  
18 dia, Inc. does business throughout the United States, and in particular, does busi-  
19 ness in the State of California and in this judicial district.

20 15. Defendant MTV Networks, Inc. is a Delaware corporation that main-  
21 tains its headquarters at 1515 Broadway, New York, NY 10036. MTV Networks,  
22 Inc. is a subsidiary of Viacom, Inc. and does business throughout the United  
23 States, and in particular, does business in the State of California and in this judi-  
24 cial district.

25 16. Defendant NBC Universal, Inc. is a Delaware corporation that main-  
26 tains its headquarters at 30 Rockefeller Plaza, New York, NY 10112. NBC Uni-  
27 versal, Inc. does business throughout the United States, and in particular, does  
28 business in the State of California and in this judicial district.





1 cookies—was retained when, in 2000, the Internet Engineering Task Force (IETF)  
2 finalized the global standard for web servers and browsers to follow in exchang-  
3 ing cookies. See “RFC 2965, HTTP State Management Mechanism” [Kristol and  
4 Montulli 2000], Internet Engineering Task Force, Oct. 7, 2000, available at  
5 <http://www.ietf.org/rfc/rfc2695.txt.pdf> (last accessed July 27, 2010).

6 19. Nascent Internet advertising companies protested the standard. The  
7 leading commercial browser vendors, Microsoft and Netscape, declined to im-  
8 plement it. Kristol at 21. Thus, a *de facto* standard was propagated as browser  
9 vendors engaged in mass distribution of their software: if a first-party website—  
10 the site the user expressly chose to visit—chose to display a web page that in-  
11 cluded a third-party advertisement or use a third-party-provided traffic counter,  
12 the third party gained the ability to set cookies on users’ computers with no notice  
13 to those users.

14 20. This development cleared the way for third-party advertising compa-  
15 nies to engage in widespread “network advertising.” By assembling a client net-  
16 work of many websites, advertising companies could recognize, track, and profile  
17 users activities across many websites. As early as 2001, DoubleClick was deliver-  
18 ing ads on a network of over 11,000 websites. *In re DoubleClick Inc. Privacy Lit-*  
19 *igation*, 154 F.Supp.2d 497, 500 (S.D.N.Y. 2001). By 2009, Google, which ac-  
20 quired DoubleClick, was serving ads on a network of millions of websites.  
21 Google Inc., SEC Form 10-K for period ending Dec. 31, 2009 at 9. In 2009, ad-  
22 vertising accounted for 97 percent of Google’s \$24 billion revenue in 2009. *Id.* at  
23 19. At the same time, it became more important to commercial entities to be able  
24 to measure advertising activity and user traffic.

25 21. Meanwhile, browser vendors and other companies have distributed  
26 software tools that offer users some measure of third-party cookie control. For  
27 example, users can accept or refuse to accept all or certain third-party cookies or  
28 to automatically delete them at intervals of users’ choosing. These software

1 tools—like other software owned or licensed by users, such as Adobe Flash Play-  
2 er—are under the authority and control of those users.

3 22. One reason users employ tools to manage and delete cookies is dis-  
4 taste for being profiled. According to PreferenceCentral, an online ad preference  
5 management provider, 58 percent of U.S. Internet users expressed willingness to  
6 receive behaviorally targeted ads in exchange for free content. However, when  
7 told how behavioral targeting works, the number of willing users dropped to be-  
8 low 38 percent, and 50 percent of users stated they would elect to receive a more  
9 limited selection of free content and untargeted advertisements. “Consumer Per-  
10 spectives on Online Advertising 2010,” PreferenceCentral, July 7, 2010, available  
11 at <http://www.preferencecentral.com/consumersurvey/results/behavioral->  
12 [targeting/](http://www.preferencecentral.com/consumersurvey/results/behavioral-) (last accessed July 28, 2010).

13 **B. Quantcast’s Conduct**

14 23. User control over third-party cookies has created challenges for ad-  
15 vertisers and online ad networks, as well as Internet metrics companies such as  
16 Quantcast, that attempt to track and profile users over time and/or across multiple  
17 websites. For online companies that rely on cookies to track users and measure  
18 user activity, cookie deletion skews the numbers.

19 24. Quantcast, however, identified a way to work with the websites and  
20 content-providers deploying its technology to work around user preferences by  
21 installing, on users’ computers, a tracking device that users could not easily de-  
22 tect, manage, or delete. In cooperation with websites, Quantcast planted its own  
23 tracking code on users’ computers—but not in a cookie. Quantcast and participat-  
24 ing website owners and operators, including the Publishers, stored tracking code  
25 as an Adobe Flash Media Player local shared object (LSO). Adobe Flash Media  
26 Player is software that enables users to view video content on their computers.  
27 Quantcast then merged the tracking results with information from other sources to  
28 arrive at metrics for the site.

1           25. Quantcast and the Publishers' use of this technology was inde-  
2 pendently confirmed in a report issued by academic researchers and titled, "Flash  
3 Cookies and Privacy," which found that:

4           a. A user visiting a Publisher site would receive a standard,  
5 browser cookie, and an identical "Flash cookie."

6           b. If the user deleted the browser cookie, the Flash cookie would  
7 be used to "re-spawn" the browser cookie.

8           c. These operations happened without any notice to the user and  
9 without any consent from the user.

10 "Flash Cookies and Privacy," A. Soltani, S. Canty, Q. Mayo, L. Thomas, C.J.  
11 Hoofnagle, Univ. Cal., Berkeley, Aug. 10, 2009 at 3, available at  
12 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1446862](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1446862) (last accessed July  
13 28, 2010).

14           26. In a letter to the Federal Trade Commission earlier this year, Adobe  
15 Systems Incorporated condemned the use of LSOs to back-up and re-spawn  
16 browser cookies without express user consent. Letter to FTC, Adobe Systems  
17 Inc., Jan. 27, 2010, available at [http://www.ftc.gov/os/comments/privacy-  
18 roundtable/544506-00085.pdf](http://www.ftc.gov/os/comments/privacy-roundtable/544506-00085.pdf) (last accessed July 27, 2010).

19 **C. Plaintiffs' Experiences**

20           27. During the Class Period, Plaintiffs visited Publisher websites.

21           28. Subsequently, Plaintiffs examined the contents of the local storage  
22 associated with the Adobe Flash Player application on their computers. They ob-  
23 served that the objects in local storage included one object labeled with the do-  
24 main of the Publisher, for example "player.hulu.com" and another labeled with  
25 the domain for Quantcast, for example "www.hulu.com\com.quantserve.sol." It is  
26 Plaintiffs' belief that one or more of these objects is a tracking device used by De-  
27 fendants, without authorization, to monitor and profile their Internet activities.

28           29. Plaintiffs did not receive notice of the installation of these devices,

1 did not consent to the installation of these devices, and did not want these devices  
2 to be installed on their computers.

3 30. Plaintiffs believe that, if they were to visit these sites again, the  
4 tracking devices would be used as substitute cookies or to re-spawn previously set  
5 cookies.

6 31. Plaintiffs consider information about their online activities to be in  
7 the nature of confidential, trade secret information that they protect from disclo-  
8 sure, including by controlling their browser settings for acceptance or rejection of  
9 cookies.

10 32. Plaintiffs' experiences are typical of the experiences of Class Mem-  
11 bers.

12 **D. User Consequences**

13 33. Defendants manipulated their "Flash cookies" in storage areas of  
14 Plaintiffs' and Class Members' computers, which were computers used in and af-  
15 fecting interstate commerce and communication and were therefore protected  
16 computers as defined in the Computer Fraud and Abuse Act, Title 18, United  
17 States Code, Section 1030(e)(2).

18 34. Defendants' actions were surreptitious and without notice and so  
19 were conducted without authorization and exceeding authorization.

20 35. Defendants' conduct has caused economic loss to Plaintiffs and Class  
21 Members in that, in a barter economy in which users' patronage (which is the sub-  
22 ject of Quantcast's traffic measurement activities) is the currency with which us-  
23 ers acquire ostensibly no-fee web services, their patronage has independent eco-  
24 nomic value.

25 36. In addition, inasmuch as Defendants' wrongfully acquired Plaintiffs'  
26 and Class Members' patronage, Plaintiffs and Class Members were deprived of  
27 the opportunity to contribute their patronage to web entities that did not engage in  
28 such wrongful conduct.



1 used any web browsing program on any device to access one  
2 or more internet sites controlled, operated, or sponsored by  
3 Defendants or any other internet site employing any of  
4 Quantcast's technologies involving the use of HTTP "cookies"  
5 ("Cookies") or local shared objects stored in Adobe Flash Me-  
6 dia local storage ("LSOs").

7 44. Excluded from the Class are Defendants, their legal representatives,  
8 assigns, and successors, and any entity in which a Defendant has a controlling in-  
9 terest. Also excluded is the judge to whom this case is assigned and the judge's  
10 immediate family.

11 45. Plaintiffs reserve the right to revise this definition of the Class based  
12 on facts learned in the course of litigation of this matter.

13 46. The Class consists of millions of individuals and other entities, mak-  
14 ing joinder impractical.

15 47. The claims of Plaintiffs are typical of the claims of all other Class  
16 Members.

17 48. Plaintiffs will fairly and adequately represent the interests of the oth-  
18 er Class Members. Plaintiffs have retained counsel with substantial experience in  
19 prosecuting complex litigation and class actions. Plaintiffs and their counsel are  
20 committed to prosecuting this action vigorously on behalf of Class Members and  
21 have the financial resources to do so. Neither Plaintiffs nor their counsel have any  
22 interests adverse to those of the other Class Members.

23 49. Absent a class action, most Class Members would find the cost of lit-  
24 igating their claims to be prohibitive and would have no effective remedy.

25 50. The class treatment of common questions of law and fact is superior  
26 to multiple individual actions or piecemeal litigation in that it conserves the re-  
27 sources of the courts and the litigants, and promotes consistency and efficiency of  
28 adjudication.

1           51. Defendants have acted and failed to act on grounds generally appli-  
2 cable to Plaintiffs and the other Class Members, requiring the Court's imposition  
3 of uniform relief to ensure compatible standards of conduct toward the Class  
4 Members.

5           52. The factual and legal bases of Defendants' liability to Plaintiffs and  
6 other Class Members are the same, resulting in injury to Plaintiffs and all of the  
7 other Class Members. Plaintiffs and the other Class Members have all suffered  
8 harm and damages as a result of Defendants' wrongful conduct.

9           53. There are many questions of law and fact common to Plaintiffs and  
10 the Class Members and those questions predominate over any questions that may  
11 affect individual Class Members. Common questions for the Class include, but  
12 are not limited to the following, regarding Defendants' conduct described herein:

13           a. whether Defendants, without authorization, created and/or  
14 manipulated Adobe Flash Player local stored objects on computers to which Class  
15 Members' enjoyed rights of possession superior to those of Defendants;

16           b. for what purposes Defendants created and/or manipulated  
17 Adobe Flash Player local stored objects on Class Members' computers;

18           c. whether Defendants violated:

19               i. the Computer Fraud and Abuse Act, 18 U.S.C. § 1030;

20               ii. the California Uniform Trade Secrets Act, Civil Code §  
21               3426;

22               iii. the California Computer Crime Law, Penal Code § 502;

23               iv. the California Unfair Competition Law, Business and  
24               Professions Code § 17200;

25               v. the California Consumer Legal Remedies Act, Civil  
26               Code § 1750; and

27           d. whether Defendants misappropriated valuable information as-  
28 sets of Class Members;

1 e. whether Defendants continue to retain valuable information  
2 assets from and about Class Members;

3 f. what uses of such information were exercised and continue to  
4 be exercised by Defendants; and

5 g. whether Defendants have been unjustly enriched.

6 54. The questions of law and fact common to Class Members predomi-  
7 nate over any questions affecting only individual members, and a class action is  
8 superior to all other available methods for the fair and efficient adjudication of  
9 this controversy.

10 **COUNT I**  
11 **Violation of the Computer Fraud and Abuse Act**  
12 **18 U.S.C. § 1030 *et seq.***  
13 **Against All Defendants**

14 55. Plaintiffs incorporate the above allegations by reference as if set  
15 forth herein at length.

16 56. The Computer Fraud and Abuse Act, 18 U.S.C. § 1030, referred to  
17 as “CFAA,” regulates fraud and relates activity in connection with computers,  
18 and makes it unlawful to intentionally access a computer used for interstate com-  
19 merce or communication, without authorization or by exceeding authorized ac-  
20 cess to such a computer, thereby obtaining information from such a protected  
21 computer, within the meaning of U.S.C. § 1030(a)(2)(C).

22 57. Defendants violated 18 U.S.C. § 1030 by intentionally accessing a  
23 Plaintiffs’ and Class Members’ computers without authorization or by exceeding  
24 access, thereby obtaining information from such a protected computer.

25 58. The Computer Fraud and Abuse Act, 18 U.S.C. § 1030(g), provides  
26 a civil cause of action to “any person who suffers damage or loss by reason of a  
27 violation” of CFAA.

28 59. The Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(5)(A)(i),



1 makes it unlawful to “knowingly cause[s] the transmission of a program, infor-  
2 mation, code, or command and as a result of such conduct, intentionally cause[s]  
3 damage without authorization, to a protected computer,” of a loss to one or more  
4 persons during any one-year period aggregating at least \$5,000 in value.

5 60. Plaintiffs’ computers are “protected computer[s]...which [are] used  
6 in interstate commerce and/or communication” within the meaning of 18 U.S.C. §  
7 1030(e)(2)(B).

8 61. Defendants violated 18 U.S.C. § 1030(a)(2)(C) by intentionally ac-  
9 cessing a Plaintiffs’ computers, without authorization or by exceeding access,  
10 thereby obtaining information from such a protected computers.

11 62. Defendants violated 18 U.S.C. § 1030(a)(5)(A)(i) by knowingly  
12 causing the transmission of a command embedded within their webpages, down-  
13 loaded to Plaintiffs’ computers, which are protected computers as defined in 18  
14 U.S.C. § 1030(e)(2)(B). By accessing, collecting, and transmitting Plaintiffs’  
15 viewing habits, Defendants intentionally caused damage without authorization to  
16 those Plaintiffs’ and Class Members’ computers by impairing the integrity of the  
17 computers.

18 63. Defendants violated 18 U.S.C. § 1030(a)(5)(A)(ii) by intentionally  
19 accessing Plaintiffs’ and Class Members’ protected computers without authoriza-  
20 tion, and as a result of such conduct, recklessly caused damage to Plaintiffs’ and  
21 Class Members’ computers by impairing the integrity of data and/or system  
22 and/or information.

23 64. Defendants violated 18 U.S.C. § 1030(a)(5)(A)(iii) by intentionally  
24 accessing Plaintiffs’ and Class Members’ protected computers without authoriza-  
25 tion, and as a result of such conduct, caused damage and loss to Plaintiffs and  
26 Class Members.

27 65. Plaintiffs and Class have suffered damage by reason of these viola-  
28 tions, as defined in 18 U.S.C. § 1030(e)(8), by the “impairment to the integrity or

1 availability of data, a program, a system or information.”

2 66. Plaintiffs and Class Members have suffered loss by reason of these  
3 violations, as defined in 18 U.S.C. § 1030(e)(11), by the “reasonable cost ... in-  
4 cluding the cost of responding to an offense, conducting a damage assessment,  
5 and restoring the data, program, system, or information to its condition prior to  
6 the offense, and any revenue lost, cost incurred, or other consequential damages  
7 incurred because of interruption of service.”

8 67. Plaintiffs and Class Members have suffered loss by reason of these  
9 violations, including, without limitation, violation of the right of privacy, inter-  
10 ception and disclosure of uniquely identifying, sensitive, and transactional infor-  
11 mation that otherwise is private, confidential, and not of public record.

12 68. As a result of these takings, Defendants’ conduct has caused a loss to  
13 one or more persons during any one-year period aggregating at least \$5,000 in  
14 value in real economic damages.

15 69. Plaintiffs and Class Members have additionally suffered loss by rea-  
16 son of these violations, including, without limitation, violation of the right of pri-  
17 vacy.

18 70. Defendants’ unlawful access to Plaintiffs’ and Class Members’ com-  
19 puters and electronic communications has caused Plaintiffs and Class Members  
20 irreparable injury. Unless restrained and enjoined, Defendants will continue to  
21 commit such acts. Plaintiffs’ and Class Members remedy at law is not adequate  
22 to compensate it for these inflicted and threatened injuries, entitling Plaintiffs and  
23 Class Members to remedies including injunctive relief as provided by 18 U.S.C.  
24 § 1030(g).

25 **Count II**  
26 **Violation of California’s Computer Crime Law (“CCCL”)**  
27 **California Penal Code § 502**  
28 **Against All Defendants**

71. Plaintiffs incorporate the above allegations by reference as if set

1 forth herein at length.

2 72. Plaintiffs assert this claim against each and every Defendant named  
3 herein in this complaint on behalf of themselves and the Class.

4 73. The California Computer Crime Law, California Penal Code § 502,  
5 referred to as “CCCL” regulates “tampering, interference, damage, and unauthor-  
6 ized access to lawfully created computer data and computer systems.”

7 74. Defendants violated California Penal Code § 502 by knowingly ac-  
8 cessing, copying, using, made use of, interfering, and/or altering, data belonging  
9 to Plaintiffs and Class Members: (1) in and from the State of California; (2) in the  
10 home states of the Plaintiffs and Class Members; and (3) in the state in which the  
11 servers that provided the communication link between Plaintiffs and Class Mem-  
12 bers and the websites they interacted with were located.

13 75. Pursuant to California Penal Code § 502(b)(1), “Access means to  
14 gain entry to, instruct, or communicate with the logical, arithmetical, or memory  
15 function resources of a computer, computer system, or computer network.”

16 76. Pursuant to California Penal Code § 502(b)(6), “Data means a repre-  
17 sentation of information, knowledge, facts, concepts, computer software, comput-  
18 er programs or instructions. Data may be in any form, in storage media, or as  
19 stored in the memory of the computer or in transit or presented on a display de-  
20 vice.”

21 77. Pursuant to California Penal Code § 502(b)(8), “Injury means any al-  
22 teration, deletion, damage, or destruction of a computer system, computer net-  
23 work, computer program, or data caused by the access, or the denial of access to  
24 legitimate users of a computer system, network, or program.”

25 78. Pursuant to California Penal Code § 502(b)(10) a “Computer con-  
26 taminant means any set of computer instructions that are designed to modify,  
27 damage, destroy, record, or transmit information within a computer, computer  
28 system, or computer network without the intent or permission of the owner of the

1 information. They include, but are not limited to, a group of computer instructions  
2 commonly called viruses or worms, that are self-replicating or self-propagating  
3 and are designed to contaminate other computer programs or computer data, con-  
4 sume computer resources, modify, destroy, record, or transmit data, or in some  
5 other fashion usurp the normal operation of the computer, computer system, or  
6 computer network.”

7 79. Defendants have violated California Penal Code § 502(c)(1) by  
8 knowingly accessing and without permission, altering, and making use of data  
9 from Plaintiffs’ computers in order to devise and execute business practices to  
10 deceive Plaintiffs and Class Members into surrendering private electronic com-  
11 munications and activities for Defendants’ financial gain, and to wrongfully ob-  
12 tain valuable private data from Plaintiffs.

13 80. Defendants have violated California Penal Code § 502(c)(2) by  
14 knowingly accessing and without permission, taking, or making use of data from  
15 Plaintiff’s computers.

16 81. Defendants have violated California Penal Code § 502(c)(3) by  
17 knowingly and without permission, using and causing to be used Plaintiff’s com-  
18 puter services.

19 82. Defendants have violated California Penal Code § 502(c)(4) by  
20 knowingly accessing and without permission, adding and/or altering the data from  
21 Plaintiffs’ computers.

22 83. Defendants have violated California Penal Code § 502(c)(5) by  
23 knowingly and without permission, disrupting or causing the disruption of Plain-  
24 tiffs’ computer services or denying or causing the denial of computer services to  
25 Plaintiffs.

26 84. Defendants have violated California Penal Code § 502(c)(6) by  
27 knowingly and without permission providing, or assisting in providing, a means  
28 of accessing Plaintiffs’ computers, computer system, and/or computer network.

1           85. Defendants have violated California Penal Code § 502(c)(7) by  
2 knowingly and without permission accessing, or causing to be accessed, Plain-  
3 tiffs' computer, computer system, and/or computer network.

4           86. Defendants have violated California Penal Code § 502(c)(8) by  
5 knowingly introducing a computer contaminant into the Plaintiffs' computer,  
6 computer system and/or computer network to obtain data regarding Plaintiffs'  
7 electronic communications.

8           87. California Penal Code § 502(j) states: "For purposes of bringing a  
9 civil or a criminal action under this section, a person who causes, by any means,  
10 the access of a computer, computer system, or computer network in one jurisdic-  
11 tion from another jurisdiction is deemed to have personally accessed the comput-  
12 er, computer system, or computer network in each jurisdiction."

13           88. Plaintiffs and Class Members have also suffered irreparable injury  
14 from these unauthorized acts of disclosure, to wit: all of their personal, private,  
15 and sensitive electronic communications have been harvested, viewed, accessed,  
16 stored, and used by Defendants, and have not been destroyed, and due to the con-  
17 tinuing threat of such injury, have no adequate remedy at law, entitling Plaintiffs  
18 and Class Members to injunctive relief.

19           89. Plaintiffs and Class Members have additionally suffered loss by rea-  
20 son of these violations, including, without limitation, violation of the right of pri-  
21 vacy.

22           90. As a direct and proximate result of Defendants' unlawful conduct  
23 within the meaning of California Penal Code § 502, Defendants have caused loss  
24 to Plaintiffs and Class Members in an amount to be proven at trial. Plaintiffs and  
25 Class Members are also entitled to recover their reasonable attorneys' fees pursu-  
26 ant to California Penal Code § 502(e).

27           91. Plaintiffs and the Class Members seek compensatory damages, in an  
28 amount to be proven at trial, and injunctive or other equitable relief.



1           98.     On information and belief, each Plaintiff and each Class Member,  
2 during one or more of their interactions on the Internet during the Class period,  
3 communicated with one or more web entities based in California, or with one or  
4 more entities whose servers were located in California.

5           99.     Communications from the California web-based entities to Plaintiffs  
6 and Class Members were sent from California. Communications to the California  
7 web-based entities from Plaintiff and Class Members were sent to California.

8           100.  Plaintiffs and Class Members did not consent to any of the Defend-  
9 ants' actions in intercepting, reading, and/or learning the contents of their com-  
10 munications with such California-based entities.

11          101.  Plaintiffs and Class Members did not consent to any of the Defend-  
12 ants' actions in using the contents of their communications with such California-  
13 based entities.

14          102.  Defendants are not a "public utility engaged in the business of  
15 providing communications services and facilities . . ."

16          103.  The actions alleged herein by the Defendants were not undertaken:  
17 "for the purpose of construction, maintenance, conduct or operation of the ser-  
18 vices and facilities of the public utility."

19          104.  The actions alleged herein by the Defendants were not undertaken in  
20 connection with: "the use of any instrument, equipment, facility, or service fur-  
21 nished and used pursuant to the tariffs of a public utility."

22          105.  The actions alleged herein by the Defendants were not undertaken  
23 with respect to any telephonic communication system used for communication  
24 exclusively within a state, county, city and county, or city correctional facility.

25          106.  The Defendants directly participated in the interception, reading,  
26 and/or learning the contents of the communications between Plaintiffs, Class  
27 Members and California-based web entities.

28          107.  Alternatively, and of equal violation of the California Invasion of

1 Privacy Act, the Defendants aided, agreed with, and/or conspired with Quantcast  
2 to unlawfully do, or permit, or cause to be done all of the acts complained of  
3 herein.

4 108. Plaintiffs and Class Members have additionally suffered loss by rea-  
5 son of these violations, including, without limitation, violation of the right of pri-  
6 vacy.

7 109. Unless restrained and enjoined, Defendants will continue to commit  
8 such acts. Pursuant to Section 637.2 of the California Penal Code, Plaintiffs and  
9 the Class have been injured by the violations of California Penal Code section  
10 631. Wherefore, Plaintiffs, on behalf of themselves and on behalf of a similarly  
11 situated Class of consumers, seek damages and injunctive relief.

12 **COUNT IV**  
13 **Violations of the Consumer Legal Remedies Act**  
14 **(“CLRA”) California Civil Code § 1750, et seq.**  
15 **Against All Defendants**

16 110. Plaintiffs incorporate the foregoing allegations as if fully set forth  
17 herein.

18 111. In violation of Civil Code section 1750, et seq. (the “CLRA”), De-  
19 fendants have engaged and is engaging in unfair and deceptive acts and practices  
20 in the course of transactions with Plaintiffs, and such transactions are intended to  
21 and have resulted in the sales of services to consumers. Plaintiffs and the Class  
22 Members are “consumers” as that term is used in the CLRA because they sought  
23 or acquired Defendants’ good or services for personal, family, or household pur-  
24 poses. Defendants’ past and ongoing acts and practices include but are not limited  
25 to:

26 a) Defendants’ representations that their services have  
27 characteristics, uses, and benefits that they do not have, in  
28 violation of Civil Code § 1770(a)(5);

b) Defendants’ representations that their services are of a particular



1 standard, quality and grade but are of another standard quality  
2 and grade, in violation of Civil Codes § 1770(a)(7); and  
3 c) Defendants’ advertisement of services with the intent not to sell  
4 those services as advertised, in violation of Civil Code §  
5 1770(a)(9).

6 112. Defendants’ violations of Civil Code § 1770 have caused damage to  
7 Plaintiffs and the other Class Members and threaten additional injury if the viola-  
8 tions continue. This damage includes the losses set forth above.

9 113. At this time, Plaintiffs seek only injunctive relief under this cause of  
10 action. Pursuant to California Civil Code, Section 1782, Plaintiffs will notify De-  
11 fendants in writing of the particular violations of Civil Code, Section 1770 and  
12 demand that Defendants rectify the problems associated with their behavior de-  
13 tailed above, which acts and practices are in violation of Civil Code § 1770,  
14 though Plaintiffs contend that they have already met this notification burden by  
15 filing their original complaints.

16 114. If Defendants fails to respond adequately to Plaintiffs’ above de-  
17 scribed demand within 30 days of Plaintiffs’ notice, pursuant to California Civil  
18 Code, Section 1782(b), Plaintiffs may amend the complaint to request damages  
19 and other relief, as permitted by Civil Code, Section 1780.

20 **COUNT V**  
21 **Violations of the Unfair Competition Law (“UCL”) California**  
22 **Business and Professions Code § 17200, et seq.**  
23 **Against All Defendants**

24 115. Plaintiffs incorporate the foregoing allegations as if fully set forth  
25 herein.

26 116. In violation of California Business and Professions Code § 17200 et  
27 seq., Defendants’ conduct in this regard is ongoing and includes, but is not lim-  
28 ited to, unfair, unlawful and fraudulent conduct.

117. By engaging in the above-described acts and practices, Defendants

1 have committed one or more acts of unfair competition within the meaning of the  
2 UCL and, as a result, Plaintiffs and the Class have suffered injury-in-fact and  
3 have lost money and/or property—specifically, personal information and/or regis-  
4 tration fees.

5 118. Defendants’ business acts and practices are unlawful, in part, be-  
6 cause they violate California Business and Professions Code § 17500, et seq.,  
7 which prohibits false advertising, in that they were untrue and misleading state-  
8 ments relating to Defendants’ performance of services and with the intent to in-  
9 duce consumers to enter into obligations relating to such services, and regarding  
10 statements Defendants knew were false or by the exercise of reasonable care De-  
11 fendants should have known to be untrue and misleading.

12 119. Defendants’ business acts and practices are also unlawful in that they  
13 violate the California Consumer Legal Remedies Act, California Civil Code, Sec-  
14 tions 1647, et seq., 1750, et seq., and 3344, California Penal Code, section 502,  
15 and Title 18, United States Code, Section 1030. Defendants are therefore in viola-  
16 tion of the “unlawful” prong of the UCL.

17 120. Defendants’ business acts and practices are unfair because they  
18 cause harm and injury-in-fact to Plaintiffs and Class Members and for which De-  
19 fendants has no justification other than to increase, beyond what Defendants  
20 would have otherwise realized, their profit in fees from advertisers and their in-  
21 formation assets through the acquisition of consumers’ personal information. De-  
22 fendants’ conduct lacks reasonable and legitimate justification in that Defendants  
23 have benefited from such conduct and practices while Plaintiffs and the Class  
24 Members have been misled as to the nature and integrity of Defendants’ services  
25 and have, in fact, suffered material disadvantage regarding their interests in the  
26 privacy and confidentiality of their personal information. Defendants’ conduct of-  
27 fends public policy in California tethered to the Consumer Legal Remedies Act,  
28 the state constitutional right of privacy, and California statutes recognizing the

1 need for consumers to obtain material information that enables them to safeguard  
2 their own privacy interests, including California Civil Code, Section 1798.80.

3 121. In addition, Defendants' modus operandi constitutes a sharp practice  
4 in that Defendants knew, or should have known, that consumers care about the  
5 status of personal information and email privacy but were unlikely to be aware of  
6 the manner in which Defendants failed to fulfill their commitments to respect  
7 consumers' privacy. Defendants are therefore in violation of the "unfair" prong of  
8 the UCL.

9 122. Defendants' acts and practices were fraudulent within the meaning  
10 of the UCL because they are likely to mislead the members of the public to whom  
11 they were directed.

12 **Count VI**  
13 **Trespass to Personal Property / Chattels**  
14 **Against All Defendants**

15 123. Plaintiffs incorporate by reference and reallege all paragraphs previ-  
16 ously alleged herein.

17 124. The common law prohibits the intentional intermeddling with per-  
18 sonal property, including a computer, in possession of another that results in the  
19 deprivation of the use of the personal property or impairment of the condition,  
20 quality, or usefulness of the personal property.

21 125. By engaging in the acts alleged in this complaint without the author-  
22 ization or consent of Plaintiffs and Class Members, Defendants dispossessed  
23 Plaintiffs and Class Members from use and/or access to their computers, or parts  
24 of them. Further, these acts impaired the use, value, and quality of Plaintiffs' and  
25 Class Members' computers. Defendants' acts constituted an intentional interfer-  
26 ence with the use and enjoyment of the computers. By the acts described above,  
27 Defendants have repeatedly and persistently engaged in trespass to personal prop-  
28 erty in violation of the common law.

126. Without Plaintiffs' and Class Members' consent, or in excess of any

1 consent given, Defendants knowingly and intentionally accessed Plaintiffs' and  
2 Class Members' property, thereby intermeddling with Plaintiffs' and Class Mem-  
3 bers' right to possession of the property and causing injury to Plaintiffs and the  
4 members of the Class.

5 127. Defendants engaged in deception and concealment in order to gain  
6 access to Plaintiffs and Class Members' computers.

7 128. Defendants undertook the following actions with respect to Plain-  
8 tiffs' and Class Members' computers:

- 9 a) Defendants accessed and obtained control over the user's  
10 computer;
- 11 b) Defendants caused the installation of a new code onto the hard  
12 drive of the user's computer;
- 13 c) Defendants programmed the operation of its code to function and  
14 operate without notice or consent on the part of the owner of the  
15 computer, and outside of the control of the owner of the  
16 computer.

17 129. All these acts described above were acts in excess of any authority  
18 any user granted when he or she visited the Publishers' websites and none of the-  
19 se acts was in furtherance of users' viewing content on or utilizing the Publishers'  
20 websites. By Defendants' engaging in deception and misrepresentation, whatever  
21 authority or permission Plaintiff and Class Members may have granted to Pub-  
22 lishers was rendered ineffective.

23 130. Defendants' installation and operation of its program used, inter-  
24 fered, and/or intermeddled with Plaintiffs' and Class Members' computer sys-  
25 tems. Such use, interference and/or intermeddling was without Class Members'  
26 consent or, in the alternative, in excess of Plaintiffs' and Class Members' consent.

27 131. Defendants' installation and operation of its program constitutes  
28 trespass, nuisance, and an interference with Class Members' chattels, to wit, their

1 computers.

2 132. Defendants' installation and operation of its program impaired the  
3 condition and value of Class Members' computers.

4 133. Defendants trespass to chattels, nuisance, and interference caused re-  
5 al and substantial damage to Plaintiffs and Class Members.

6 134. As a direct and proximate result of Defendants' trespass to chattels,  
7 nuisance, interference, unauthorized access of and intermeddling with Plaintiffs'  
8 and Class Members' property, Defendants has injured and impaired in the condi-  
9 tion and value of Class Members' computers, as follows:

- 10 a) By consuming the resources of and/or degrading the performance  
11 of Plaintiffs' and Class Members' computers (including hard  
12 drive space, memory, processing cycles, and Internet  
13 connectivity);
- 14 b) By diminishing the use of, value, speed, capacity, and/or  
15 capabilities of Plaintiffs' and Class Members' computers;
- 16 c) By devaluing, interfering with, and/or diminishing Plaintiffs' and  
17 Class Members' possessory interest in their computers;
- 18 d) By altering and controlling the functioning of Plaintiffs' and  
19 Class Members' computers;
- 20 e) By infringing on Plaintiff's and Class Members' right to exclude  
21 others from their computers;
- 22 f) By infringing on Plaintiffs' and Class Members' right to  
23 determine, as owners of their computers, which programs should  
24 be installed and operating on their computers;
- 25 g) By compromising the integrity, security, and ownership of Class  
26 Members' computers; and
- 27 h) By forcing Plaintiffs and Class Members' to expend money, time,  
28

1 and resources in order to remove the program installed on their  
2 computers without notice or consent.

3 **Count VII**  
4 **Unjust Enrichment**

5 135. Plaintiffs incorporate the above allegations by reference as if set  
6 forth herein at length.

7 136. A benefit has been conferred upon all Defendants by Plaintiffs and  
8 the Class. On information and belief, Defendants, directly or indirectly, have re-  
9 ceived and retain information regarding online communications and activity of  
10 Plaintiffs, and Defendants have received and retain information regarding specific  
11 purchase and transactional information that is otherwise private, confidential, and  
12 not of public record, and/or have received revenue from the provision of such in-  
13 formation.

14 137. Defendants appreciate or have knowledge of said benefit.

15 138. Under principles of equity and good conscience, Defendants should  
16 not be permitted to retain the information and/or revenue that they acquired by  
17 virtue of their unlawful conduct. All funds, revenues, and benefits received by  
18 Defendants rightfully belong to Plaintiffs and the Class, which Defendants have  
19 unjustly received as a result of its actions.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly  
22 situated, prays for judgment against Defendants as follows:

23 1. Certify this case as a Class action on behalf of the Classes defined  
24 above, appoint Plaintiffs as Class representatives, and appoint their counsel as  
25 Class counsel;

26 2. Declare that the actions of Defendants, as set out above, violate the  
27 following:

28 a. Computer Fraud and Abuse Act, 18 U.S.C. § 1030;

- 1                   b. California’s Computer Crime Law, Penal Code § 502;
- 2                   c. California’s Invasion Of Privacy Act, California Penal Code §
- 3                         630;
- 4                   d. California’s Consumer Legal Remedies Act, Civil Code §
- 5                         1750;
- 6                   e. California’s Unfair Competition Law, Business and
- 7                         Professions Code § 17200;
- 8                   f. Trespass to Personal Property / Chattels;
- 9                   g. Unjust Enrichment

10           3.     As applicable to the Classes mutatis mutandis, awarding injunctive  
11 and equitable relief including, inter alia: (i) prohibiting Defendants from engaging  
12 in the acts alleged above; (ii) requiring Defendants to disgorge all of its ill-gotten  
13 gains to Plaintiffs and the other Class Members, or to whomever the Court deems  
14 appropriate; (iii) requiring Defendants to delete all data surreptitiously or  
15 otherwise collected through the acts alleged above; (iv) requiring Defendants to  
16 provide Plaintiffs and the other Class Members a means to easily and  
17 permanently decline any participation in any data collection activities; (v)  
18 awarding Plaintiffs and Class Members full restitution of all benefits wrongfully  
19 acquired by Defendants by means of the wrongful conduct alleged herein; and  
20 (vi) ordering an accounting and constructive trust imposed on the data, funds, or  
21 other assets obtained by unlawful means as alleged above, to avoid dissipation,  
22 fraudulent transfers, and/or concealment of such assets by Defendants;

23           4.     Award damages, including statutory damages where applicable, to  
24 Plaintiffs and Class Members in an amount to be determined at trial;

25           5.     Award restitution against Defendants for all money to which  
26 Plaintiffs and the Classes are entitled in equity;

27           6.     Restrain Defendants, their officers, agents, servants, employees, and  
28 attorneys, and those in active concert or participation with them from continued

1 access, collection, and transmission of Plaintiffs and Class Members' personal  
2 information via preliminary and permanent injunction;

3 7. Award Plaintiffs and the Class Members:

- 4 a. their reasonable litigation expenses and attorneys' fees;
- 5 b. pre- and post-judgment interest, to the extent allowable;
- 6 c. restitution, disgorgement and/or other equitable relief as the  
7 Court deems proper;
- 8 d. compensatory damages sustained by Plaintiffs and all others  
9 similarly situated as a result of Defendants' unlawful acts and  
10 conduct;
- 11 e. statutory damages, including punitive damages;
- 12 f. permanent injunction prohibiting Defendants from engaging in  
13 the conduct and practices complained of herein;

14 8. For such other and further relief as this Court may deem just and  
15 proper.



1 Respectfully, submitted

2 DATED: December 3, 2010

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1 **JURY TRIAL DEMAND**

2 Plaintiff hereby demands a trial by jury of all issues so triable.

3 Respectfully, submitted

4 DATED: December 3, 2010

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