

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

MIKE HARRIS and JEFF DUNSTAN,
individually and on behalf of a class of similarly
situated individuals,

Plaintiffs,

v.

COMSCORE, INC., a Delaware corporation,

Defendant.

)
)
)
)
) Case No. 1:11-cv-5807 SI
)
)
)
)
)
)
)
)
)

**DEFENDANT COMSCORE, INC.'S FIRST SUPPLEMENTAL RESPONSES
TO PLAINTIFF HARRIS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the Memorandum and Opinion Order granting bifurcation of discovery entered March 2, 2012 ("Bifurcation Order"), Defendant comScore, Inc, ("comScore"), by its undersigned attorneys, hereby submits the following supplemental objections and responses to Plaintiff Mike Harris' ("Harris") First Set of Interrogatories ("Interrogatories"), Nos. 1-8, 11-17, 22. Pursuant to Federal Rule of Civil Procedure 26(e), comScore reserves the right to supplement its responses to these interrogatories if it learns of additional information.

OBJECTIONS AND PRELIMINARY STATEMENT

comScore incorporates by reference its general and specific objections to Harris' First Set of Interrogatories, which are hereby made part of its response to each of Harris' interrogatories. comScore's obligation to respond to these Interrogatories is limited pursuant to Magistrate Judge

Kim's Bifurcation Order issued March 2, 2012, in that comScore need only respond with respect to the Interrogatories comScore has been ordered to answer.

INTERROGATORIES

INTERROGATORY NO. 1:

IDENTIFY each PERSON that participated in the preparation of the answers to these interrogatories. For each PERSON so identified, specify each interrogatory that such PERSON assisted in answering.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1

In addition to comScore's outside legal counsel, Thomas Cushing, Yvonne Bigbee, Mariya Ilina, Debbie Bradley, and Walid Jaklis prepared the answers to these Interrogatories. Thomas Cushing assisted with answering Interrogatories 1-7 and 11-17. Yvonne Bigbee assisted with answering Interrogatories 7 and 15-17. Mariya Ilina and Debbie Bradley assisted with answering Interrogatory 7. Walid Jaklis assisted with answering Interrogatory 11.

INTERROGATORY NO. 2:

IDENTIFY the location, real or virtual, of all DOCUMENTS and ESI requested to be produced in response to Plaintiff's First Request for the Production of Documents.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2

comScore's document production to date is comprised of source code and commonly stored documents. The source code is maintained on comScore's servers in a commercially available program called SourceSafe. The commonly stored documents are available on comScore's Wiki (a searchable database available to all comScore employees through comScore's internal network), JIRA (a commercially available piece of software used to track "tickets" which are comprised of internal requests for changes to comScore's software), and

JTRAC (a commercially available piece of ticketing software).

The JIRA tickets are used by comScore's internal developers. The JTRAC tickets were used to communicate with outside developers in China, who created the initial version of comScore's Mac software.

All source code and commonly stored documents are kept in comScore's internal servers. comScore maintains redundant server farms, including one outside of Dulles, Virginia and one outside of Chicago, Illinois.

INTERROGATORY NO. 3:

IDENTIFY all code words, acronyms, synonyms, abbreviations or definitional or conceptual substitutes for all DOCUMENTS and ESI requested in Plaintiff's First Request for the Production of Documents.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3

comScore has no knowledge as to which code words, acronyms, synonyms, abbreviations or definitional or conceptual substitutes are unknown to Plaintiff. Defining all terms in the documents and ESI requested in Plaintiff's First Request for the Production of Documents and Things is unduly burdensome. comScore will provide definitions for the specific code words, acronyms, synonyms, abbreviations or definitional or conceptual substitutes requested by Plaintiff.

INTERROGATORY NO. 4:

IDENTIFY all ESI search protocols, hit rate analyses, and error testing or sampling methodologies conducted by YOU in connection with your responses to Plaintiff's First Set of Interrogatories and First Request for the Production of Documents.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4

comScore did not utilize ESI search protocols, hit rate analyses, and error testing or sampling methodologies in connection with its response to Plaintiff's First Set of Interrogatories and First Request for the Production of Documents. comScore collected all documents through human targeted searches and by gathering all portions of applicable common databases, including Wiki and JIRA.

INTERROGATORY NO. 5:

IDENTIFY each PERSON who assisted in the preparation of, or who has knowledge of, the statements contained in YOUR (i) Responses to Plaintiff's First Request for the Production of Documents, (ii) Motion to Dismiss Under Rule 12(b)(3), Or, In the Alternative, Transfer Venue (Dkt. No. 15), (iii) Motion to Dismiss Under Rule 12(b)(1) and (6) (Dkt. No. 42), (iv) Federal Rule of Civil Procedure 26(a)(1) Initial Disclosures, and (v) Answer (Dkt. No. 59). For each PERSON so identified, specify each paragraph or section of each document that such PERSON assisted in answering or has knowledge of.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5

In addition to outside counsel, Thomas Cushing, Yvonne Bigbee, Mariya Ilina, Debbie Bradley, Walid Jaklis, Dave Sheedy, Leland Lowe, Randy McCaskill, Jennifer Kuropkat, and Mike Brown contributed to the preparation of comScore's (i) Responses to Plaintiff's First Request for the Production of Documents. Thomas Cushing contributed to the preparation of comScore's (ii) Motion to Dismiss Under Rule 12(b)(3), Or, In the Alternative, Transfer Venue (Dkt. No. 15), (iii) Motion to Dismiss Under Rule 12(b)(1) and (6) (Dkt. No. 42), and (iv) Federal Rule of Civil Procedure 26(a)(1) Initial Disclosures. Thomas Cushing, John O'Toole,

Yvonne Bigbee, and Mike Brown contributed to the preparation of comScore's (v) Answer (Dkt. No. 59).

INTERROGATORY NO. 6:

IDENTIFY and DESCRIBE any and all policies and procedures, both written and oral, RELATING TO document retention and destruction that were in effect during the RELEVANT TIME PERIOD. For each policy or procedure identified, IDENTIFY the date that such policy and/or procedure was implemented, and the PERSONS responsible for supervising their enforcement.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 6

comScore implemented its document retention policy in 2005. Pursuant to Federal Rule of Civil Procedure 33(d), comScore attaches as Exhibit C documents (also being produced contemporaneously herewith with Bates numbers by comScore) identifying comScore's document retention and destruction policies from August 23, 2008 to the present. This exhibit should be treated as "CONFIDENTIAL" under the Protective Order entered in this Case.

INTERROGATORY NO. 7:

IDENTIFY the total number of PANELISTS (broken down by year, and distinguishing, where applicable, between PC PANELISTS and MAC PANELISTS).

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7

comScore maintains its objection that "total number of PANELISTS" is vague and ambiguous. "Panelist" is defined as persons who had comScore's software operating on their computer. comScore has no definitive way of knowing how many people use a particular computer. comScore can make assumptions based on behavioral data if the software is maintained on a computer for a sufficient amount of time, but even in that case, the number of

actual people using that particular computer is still just an estimate.

comScore is able to count the total number of machines that are actively reporting data. To the extent that this interrogatory is seeking the number of active machines by year, comScore provides the following revised numbers for the US: at the end of 2008, comScore had 532,026 active machines, all of which were PCs; at the end of 2009, comScore had 522,294 active machines, of which, 521,697 were PCs and 597 were Macs; at the end of 2010, comScore had 429,311 active machines, of which 428,012 were PCs and 1,299 were Macs; and at the end of 2011, comScore had 342,992 active machines, all of which were PCs.

comScore is also able to count the total number of installations of the comScore software in a given year. It is important to note, however, that the number of installations does not equate to actual people or a unique number of machines, as the software could be installed on a single machine multiple times (comScore maintains an active re-contact program, where panelists who have uninstalled the software are asked to reinstall). It is also important to note that the total number of installations does not equate to the total number of panelists whose data can be used in comScore's syndicated reports. In order to be used as part of the sample from which comScore draws the data for its syndicated reports, the software must be installed and active for a fixed amount of time. Consequently, anyone who removes the comScore software within a month of having installed the software will not make the sample, and therefore that person's data will not be used in comScore's syndicated reports.

To the extent that this interrogatory is seeking the number of installations by year, given the considerations set out above, comScore provides the following numbers for the US: during the last five months of 2008, comScore had 1,078,242 installations, all of which were PCs; during 2009, comScore had 2,223,850 installations, of which, 2,222,836 were PCs and 1,014

were Macs; during 2010, comScore had 1,726,809 installations, of which 1,716,134 were PCs and 10,675 were Macs; and during 2011, comScore had 1,255,186 installations, all of which were PCs.

INTERROGATORY NO. 8:

IDENTIFY the total number of complaints YOU received about YOUR PANELIST SOFTWARE (broken down by year).

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8

comScore further objects to this request as outside the scope of Magistrate Judge Kim's Bifurcation Order issued March 2, 2012.

INTERROGATORY NO. 11:

IDENTIFY each PERSON with whom you share or sell PERSONAL INFORMATION from PANELISTS, who then in turn resells or shares that PERSONAL INFORMATION with third-parties (broken down by year), and identify each type of PERSONAL INFORMATION shared or sold.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11

comScore's obligation to respond to INTERROGATORY No. 11 is limited pursuant to Magistrate Judge Kim's Bifurcation Order issued March 2, 2012 in that comScore need not identify third-party purchasers. comScore further objects to this request on the grounds that it is vague and ambiguous as to the meaning of "Personal Information," it includes discrete subparts under Fed. R. Civ. P. 33(a)(1).

To the extent that "Personal Information" means information that can be attributed to a particular individual, comScore responds that comScore does not share or sell personal information from panelists with any entity who then in turn resells or shares that personal

information with third-parties.

To the extent that "Personal Information" means anonymous individual level data, then the companies to whom comScore provides Personal Information who then in turn resell or share that Personal Information are: Dillon Kane, Experian, Harte Hanks, and TransUnion. The sharing of this information for Dillon Kane, Experian, and TransUnion has occurred every year during the relevant time period. The sharing of data with Harte Hanks only occurred in 2011. The information ultimately shared with third parties is limited to internet behavioral data.

INTERROGATORY NO. 12:

IDENTIFY each PERSON who has knowledge about YOUR involvement in, and policies and procedures for, the presentment of YOUR USER INTERFACE to potential PANELISTS and the process a user must go through to install PANELIST SOFTWARE.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12

comScore further objects to this request on the grounds it includes two discrete subparts under Fed. R. Civ. P. 33(a)(1). comScore further objects to this request on the grounds that it would require comScore to identify virtually every current and former employee based upon the burdensome nature of the interrogatory. comScore replies by identifying specific employees with particularized knowledge regarding the identified process.

The following comScore employees have knowledge regarding the process a user must go through to install comScore software and the graphical interface displayed to potential panelists during the installation process: John O'Toole, Jennifer Kuropkat, Mike Brown, Yvonne Bigbee, Randy McCaskill, and Helena Barkman.

INTERROGATORY NO. 13:

IDENTIFY and DESCRIBE the different ways in which YOU obtain consent from

YOUR PANELISTS to install the PANELIST SOFTWARE. To the extent that YOUR answer to this interrogatory relies upon DOCUMENTS produced in response to Plaintiff Mike Harris' First Request for Production of Documents, IDENTIFY the corresponding bates number(s) of such DOCUMENTS.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13

comScore further objects to this request on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, harassing and oppressive; it seeks information protected by the attorney-client privilege, attorney work product privilege and/or other relevant privileges or immunities; it is vague and ambiguous with respect to "ways in which YOU obtain consent to install PANELIST SOFTWARE," and it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

There are two general methods through which a prospective panelist may be presented with the opportunity to download the comScore software: through registration web sites and through third party partners. At a registration website, prospective panelists are presented with the option to join the panel and then are walked through a registration process where they are presented with Terms of Service, must take an explicit step to agree to those terms, and only then are able to install the software.

To initiate the third party partner process, a prospective panelist will have selected a piece of software from one of the partner's offerings, and as the prospective panelist goes through the installation of that piece of software, the prospective panelist will be presented with the offer to join a research panel. This offer will contain a dialog box containing the comScore Terms of Service. Attached hereto as Exhibit A are screen captures for each dialog box for each third party partner. In a typical installation, underneath the Terms of Service, a prospective

panelist is presented with buttons for "Accept," "Decline," "Back," "Next," and "Cancel." The "Next" button is visible, but is not activated, meaning it cannot be clicked on. Upon being presented with this dialog box, a prospective panelist may click "Accept." This selection causes the dialog box to update such that the "Next" button is now activated (and can now be clicked on) and further shows that the prospective panelist has selected the "Accept" option (the circle next to the word "Accept" is now filled in). The prospective panelist may instead click "Decline." This selection would also cause the dialog box to update such that the "Next" button is now activated (and can now be clicked on) and further shows that the prospective panelist has selected the "Decline" option (the circle next to the word "Decline" is now filled in). In this event, the comScore software would not be installed.

If a prospective panelist clicks the "Cancel" option, a new dialog box appears which states: "Exit Setup. Setup is not complete. If you exit now, the program will not be installed. You may run Setup again at another time to complete the installation. Exit Setup?" Directly underneath this language are two buttons: "Yes" (to terminate the installation process) and "No" (to continue with the installation process and return to the previous screen). Thus, this new dialog box presents prospective Panelists with the option to terminate the entire installation process. If a prospective panelist elects to continue with the installation process by clicking "No," the prospective panelist is taken back to the dialog box containing the comScore Terms of Service, and may only install the bundled comScore software by clicking "Next" within this dialog box.

While the process above describes a typical installation routine, some third-party partners may make small changes to items like the names of the buttons (for example, "Accept" and "Decline" may be replaced with "I Agree" and "I Disagree") or the cancellation text message.

But the overall process remains the same: in all cases the prospective panelist is asked to demonstrate acceptance of the Terms of Service before the software is installed.

See also Declaration of John O'Toole in Support of comScore's Motion to Dismiss Under Rule 12(b)(1) & 12(b)(6) (Dkt. No. 40) and documents produced in response to Document Request Nos. 13, 18, and 23.

INTERROGATORY NO. 14:

IDENTIFY and DESCRIBE any and all policies and procedures, both written and oral, RELATING TO the manner in which YOU obtain consent from users to install PANELIST SOFTWARE.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14

comScore does not have a formal policy relating to the manner in which comScore obtains consent from users to install PANELIST SOFTWARE.

INTERROGATORY NO. 15:

IDENTIFY all source code control and code library retention policies and practices in place by YOU during the RELEVANT TIME PERIOD.

RESPONSE TO INTERROGATORY NO. 15

comScore does not have a formal policy relating to source code control and code library retention. During the relevant time period, comScore's practice has been to retain all source code that has been logged into comScore's source code library.

INTERROGATORY NO. 16:

IDENTIFY and DESCRIBE each type of information that YOUR WINDOWS SOFTWARE monitors, collects, retains, and/or transmits from PC PANELISTS.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16

Pursuant to Federal Rule of Civil Procedure 33(d), comScore attaches as Exhibit B documents (also being produced contemporaneously herewith with Bates numbers by comScore) identifying the types of information comScore's Windows software monitors, collects, and/or retains from PC panelists. This exhibit should be treated as "CONFIDENTIAL" under the Protective Order entered in this Case. Further, comScore states that the type of information collected can be discerned from the previously produced source code.

INTERROGATORY NO. 17:

IDENTIFY and DESCRIBE each type of information that YOUR MACINTOSH SOFTWARE monitors, collects, retains, or transmits about MAC PANELISTS.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17

To the extent that the response is strictly limited to an active tense, comScore does not collect any information about Mac panelists. To the extent that the response includes the passive tense, the Mac software was designed to collect the same types of data being collected by the Windows software. *See* comScore's Response to Interrogatory No. 16.

INTERROGATORY NO. 22:

IDENTIFY and DESCRIBE each and every fact and/or document that supports YOUR position that class certification is inappropriate in this case.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 22

Plaintiffs have failed to show they will fairly and adequately represent the interests of the class. First, Plaintiffs have failed to allege facts to show that they personally suffered an "injury-in-fact" as needed to establish standing under Article III of the Constitution. In a putative class action, the named plaintiffs purporting to represent the class must allege and show

that they personally have been injured. When Plaintiffs' generalized allegations of theoretical harm are set aside, the only individualized injury stated in the Complaint is that Plaintiff Dunstan purportedly paid \$40 to buy an antivirus program to remove comScore's software. Plaintiff Harris does not allege that he incurred such costs or that he suffered any other injury of any kind. As a matter of law, these paltry allegations are insufficient to establish the injury-in-fact that Article III demands, and Plaintiffs' claims thus fail for lack of constitutional standing.

Even if the Court were to conclude that Plaintiff Dunstan has proper standing due to the alleged costs he incurred to remove the comScore software, Plaintiffs' class claims should be dismissed because the proposed class, by its express terms, includes individuals with no possible standing. Plaintiffs' allegations pertain to a class of "[a]ll individuals and entities in the United States that have had comScore's Surveillance Software installed on their computer(s)." (Compl. ¶ 74.) The proposed class would sweep together all individuals who downloaded comScore's software, including individuals (i) whose computers experienced no performance issues of any kind, (ii) who never incurred any costs to remove comScore's software, (iii) who unequivocally consented to the installation of comScore's software, and (iv) whose demographic information was never collected or sold by comScore. As a matter of law, Plaintiffs cannot proceed with a proposed class that on its face includes these individuals with no conceivable standing.

Moreover, Plaintiffs' individual and class claims also fail because they consented to the very acts that form the basis for their lawsuit. As Plaintiffs acknowledge, to become a comScore panelist, an individual must affirmatively agree to comScore's Terms of Service ("TOS"), which explain in unambiguous terms that the "online browsing and purchasing behavior" of panelists will "be monitored, collected, and . . . used" by comScore (among other disclosures). (Compl. Exh. A.) As former panelists, Plaintiffs were necessarily bound to the

TOS and the disclosures therein. Plaintiffs' cannot purport to impose liability for the very conduct that they agreed to.

Plaintiffs' causes of action are also deficient for numerous claim-specific reasons. First, Plaintiffs do not meet the \$5,000 damages threshold needed to bring a civil claim under the Computer Fraud and Abuse Act ("CFAA"), and they cannot aggregate the speculative damages that other putative class members may have suffered to circumvent this basic limitation of the CFAA. Second, the Stored Communications Act claim fails for the simple reason that Plaintiffs do not allege that comScore accessed any of their electronic communication, much less accessed such communications while "in electronic storage" as defined in the statute. Third, Plaintiffs' Illinois Consumer Fraud and Deceptive Practices Act and Unjust Enrichment claims fail because they are derivative of Plaintiffs' other claims. Moreover, because the ICFA claim sounds in fraud, it must be pled with particularity under Rule 9(b), which Plaintiffs have failed to do. Finally, class certification is inappropriate there are not sufficient common questions of law or fact that predominate over any individual class member's questions and a class action is not superior to other methods of adjudication.

DATED: April 13, 2012

By /s/ Robyn M. Bowland

Andrew Schapiro
Email: andrewschapiro@quinnemanuel.com
Stephen Swedlow
Email: stephenswedlow@quinnemanuel.com
Amanda Williamson
amandawilliamson@quinnemanuel.com
Robyn Bowland
robynbowland@quinnemanuel.com

QUINN EMANUEL URQUHART &
SULLIVAN, LLP
500 West Madison Street, Suite 2450
Chicago, Illinois 60661
Telephone: (312) 705-7400
Facsimile: (312) 705-7499

Paul F. Stack
pstack@stacklaw.com
Mark William Wallin
mwallin@stacklaw.com
Stack & O'Connor Chartered
140 South Dearborn Street
Suite 411
Chicago, IL 60603
Telephone: (312) 782-0690
Facsimile: (312) 782-0936

Attorneys for Defendant comScore, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of **DEFENDANT COMSCORE, INC.'S FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFF HARRIS' FIRST SET OF INTERROGATORIES** has been caused to be served on April 13, 2012 to all counsel of record via email.

/s/ Robyn M. Bowland

Robyn M. Bowland