

chance to win cash or prizes. To participate in these programs, Panelists must download and install comScore's proprietary software.

4. A prospective Panelist is presented with the opportunity to download comScore's software when they join a panel directly through the panel's website (e.g., PermissionResearch.com or OpinionSquare.com) or through one of comScore's recruitment partners. comScore's software is designed so that it will only install if a prospective Panelist affirmatively clicks to acknowledge that he or she has "read [and] agree[d] to... the terms and conditions of the Privacy Statement and User License Agreement." For Panelists that join directly through a panel website, this acknowledgement is presented on a registration page that also displays comScore's User License Agreement, which includes comScore's Privacy Policy and several other disclosures (hereinafter "ULA"). Panelists joining through recruitment partners, on the other hand, are provided with this acknowledgement on a Terms of Service dialog box that is presented before the installation process can occur.

5. Exhibit A shows four separate options presented directly underneath the language requiring a prospective Panelist to acknowledge that he or she has "read" and "agree[d] to" the terms and conditions of comScore's ULA: (1) "I Agree"; (2) "I Disagree"; (3) "Previous"; and (4) "Quit". Of these options, only the "I Agree" option will activate the "Next" button, also shown in Exhibit A, and allow the user to continue with the installation process of comScore's software. The software is designed such that, if the computer user clicks any of the other options, comScore's software will not install. Although Exhibit A shows one of the disclosure configurations comScore has used, more typically, the following four options are presented to the user: (1) "I Accept"; (2) "I Decline"; (3) "Back"; and (4) "Cancel". Although these labels are cosmetically different than the ones shown in Exhibit A, the installation process functions in the same manner.

6. The Terms of Service dialog box presented to Panelists that join through a registration partner contains an explicit reference to "the Privacy Statement and User License Agreement." This text is a hyperlink that, when clicked, takes a user to the full ULA.

Notwithstanding the above, through investigation, comScore has learned that, for a short period of time during the first half of 2010, one of comScore's registration partners employed a Terms of Service dialog box that failed to include a functioning hyperlink to the full ULA. This only affected a small number of users who installed an experimental "beta" version of software comScore was testing to gauge whether it should extend its data collection program to the Macintosh platform. Although it released a beta version of Mac-compatible software, comScore never sold, shared, or otherwise commercialized any of the data it collected from Macintosh users. comScore ultimately chose not to include Macintosh users in its data collection program. Even in the exceedingly small number of cases where comScore's Terms of Service failed to include a functioning hyperlink to the full ULA, the software was still designed to require a computer user to acknowledge that they had read and agreed to the terms of conditions of the ULA for the installation process to proceed. The acknowledgement clearly referenced the name of the panel to be PremierOpinion, and the full text of the ULA was, at all times, available at the PremierOpinion website (www.PremierOpinion.com).

7. The ULA in effect at the time the Plaintiffs allege they downloaded the comScore software contains a forum selection clause that reads as follows: "FOR ANY NON-ARBITRAL ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS PROGRAM OR THIS AGREEMENT, SOLE AND EXCLUSIVE JURISDICTION SHALL RESIDE WITH THE APPROPRIATE STATE COURT LOCATED IN FAIRFAX COUNTY, VIRGINIA OR FEDERAL COURT LOCATED IN ALEXANDRIA VIRGINIA." I have attached a true and correct copy of comScore's current ULA, which is materially indistinguishable from the ULA in effect at the time Plaintiffs allege they downloaded comScore's software, to my Declaration as Exhibit "A".

8. comScore's headquarters are located in Reston Virginia, and that is where its software was developed, and where its ULA was drafted. It is also the location from which comScore oversees the distribution of its software. Reston, Virginia is located within the jurisdictional boundaries of the Eastern District of Virginia.

9. I am informed and believe that most, if not all, of the comScore employees with knowledge related to Plaintiffs' claims reside in the Eastern District of Virginia. I am further informed and believe that, to the extent comScore possesses any documents related to Plaintiffs' claims, they are also located in the Eastern District of Virginia.

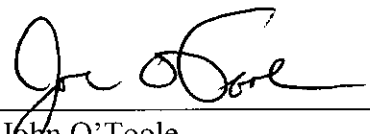
I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 27, 2011, at Fairfax, Virginia.

Dated: September 27, 2011

Respectfully submitted,

COMSCORE, INC.

By: 

John O'Toole
Vice President for Panel Operations

CERTIFICATE OF SERVICE

The undersigned attorney certifies that he or she caused a copy of the foregoing document to be served on counsel listed below via the Court's CM/ECF online filing system this 28th day of September, 2011.

/s/ Leonard E. Hudson

Attorney for Defendant comScore, Inc.

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