

Exhibit 11

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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

Plaintiff,

v.

COMSCORE, INC., a Delaware corporation

Defendant.

CASE NO. 1:11-cv-5807

Judge Holderman

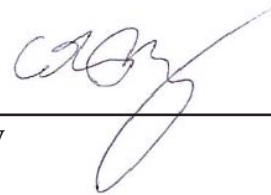
Magistrate Judge Kim

EXPERT WITNESS REPORT OF COLIN O'MALLEY

I have prepared this Expert Witness Report pursuant to Fed. R. Civ. P. 26(a)(2)(B) for the purpose of summarizing my forthcoming expert opinion testimony to be offered in the above-captioned case.

Dated: November 30, 2012

Colin O'Malley



Background:

Education:

- Stuyvesant High School, New York City
- Bachelor of Science, double major in Economics and Human & Organizational Development, Vanderbilt University

Experience:

I have been a product manager and an executive operating in the online privacy space for nine years. Over that time, I have designed best practice disclosure systems across a range of technologies and have engaged with stakeholders in industry, government, think tanks, and independent researchers around the world on this topic.

In 2003, I joined TRUSTe, the leading provider of privacy seals for websites on the internet¹ as a product manager. While at TRUSTe, I developed standards for consumer disclosure in the email marketing space for an accreditation service named Bonded Sender, which was developed in partnership with IronPort Systems. Bonded Sender was acquired by Return Path, a global leader in email services, and lives on today under a new brand as the leading whitelist program for commercial email senders that adhere to strong privacy practices.² I went on to lead the development of a seal program for email senders that could adhere to TRUSTe's strict privacy principles, called the Email Privacy Seal.³

In 2006, I led TRUSTe's development of the first privacy accreditation program for the consumer software industry, the Trusted Download Program ("TDP").⁴ This program included a broad range of stakeholders in its development, including industry (AOL, CNET, Verizon, Computer Associates, Yahoo!), independent think tanks and advocates such as the Center for Democracy and Technology. The program focused on:

1. A high bar of consumer disclosure, including key statements that would need to be elevated out of privacy policies and terms and conditions to more prominent placements in the pre-installation experience;
2. A prior consent requirement for advertising and tracking software;

¹ TRUSTe provides numerous services relating to consumer and website privacy, and has worked with companies such as Apple, AT&T, Cisco, Disney, eBay, HP and Intuit. Additional information can be found at www.truste.com. Additional information regarding privacy seals can be found at www.truste.com/products-and-services/enterprise-privacy/TRUSTed-websites.

² <http://www.returnpath.com/solution-silo/certification-eq/>

³ Additional information can be found at www.truste.com/products-and-services/enterprise-privacy/TRUSTed-email.

⁴ Additional information can be found at <http://www.truste.com/products-and-services/enterprise-privacy/TRUSTed-downloads>.

3. Tight controls for the distribution practices of program participants, including accountability for bad behavior detected across software bundling partners; and
4. A list of prohibited activities that all program participants would need to forswear.

TDP was launched to great acclaim, with Federal Trade Commissioner Jon Leibowitz appearing at the launch event, and TRUSTe quickly received applications from many of the leading advertising and research supported applications on the internet. It was in this capacity that I first became familiar with comScore applications, including their disclosures and the advanced steps the company has pursued to ensure consistent privacy practices across their distribution network.

I joined the TRUSTe executive team as Vice President of Strategic Partnerships and Programs after the launch of TDP, and the successful execution and market adoption across these privacy programs lead to TRUSTe's first round of venture capital, with Accel partners contributing \$10 million.

In 2009, I left TRUSTe and co-founded Better Advertising (now 'Evidon'), another company focused on the privacy market for companies willing to adhere to best practices in consumer disclosure online. At Evidon, I have served as Chief Strategy Officer, leading Sales, Product Design, and Policy at various stages of the company's development. The company is backed by Warburg Pincus. Over a three year period Evidon became the leading technology provider for companies that sought to come into compliance with the enhanced disclosure requirements of the Self-Regulatory Principles for Online Behavioral Advertising,⁵ and the leading provider of ePrivacy Directive compliance services, which require companies to gain full consent for a wide range of tracking purposes. Evidon's clients include many of the leading marketers, publishers, and ad networks in the industry and its consumer disclosure technologies are served on top of 2 billion advertisements online every day.

Over the course of my nine years building technical systems in the online privacy space, I have regularly reached out to many of the leading voices in the privacy community to better understand their position on the issues and to ensure that the privacy systems I have built for my companies have a full picture of their compliance requirements. I have also become a public voice and educator on these issues.

My outreach has included:

- The Federal Trade Commission, including multiple Commissioners, the Chairman, the CTO, and staff
- Members of Congress
- Center for Democracy and Technology (CDT)
- Future of Privacy Forum (FPF)

⁵ Additional information can be found at www.aboutads.info.

- Staff from the European Commission
- The Information Commissioner and staff in the UK
- Which! (Consumer advocates in the UK)
- International Chamber of Commerce
- Data Protection Commissioner of Ireland and staff
- CNIL (French DPA)
- The Spanish Data Protection Agency
- Bavarian State Office for Data Protection
- The Japanese Ministry of Internal Affairs and Communications

My industry outreach has included regular speaking appearances and training programs at industry events, including the International Association of Privacy Professionals.

Recent bylines:

- AdMonsters: 'The Pragmatist's Guide to Compliance with the ePrivacy Directive'
 - <http://www.admonsters.com/blog/pragmatist's-guide-compliance-eprivacy-directive>
- Econsultancy: 'EU e-Privacy Directive: Don't Call it a Cookie Law' (5/2012)
 - <http://econsultancy.com/us/blog/9879-eu-e-privacy-directive-don-t-call-it-a-cookie-law>
- AOP: 'The Difference Between Consent and Opt-In' (4/2012)
 - <http://www.ukaop.org.uk/news/eu-privacy-directive-consent-opt-in-cookies-evidon3549.html>
- AOP: 'Why The Cookie Audit Rush?' (3/2012)
 - <http://www.ukaop.org.uk/news/how-to-run-a-cookie-audit3502.html>

My CV is attached to this report as Appendix A. I am being compensated at a rate of \$275 per hour for my work on this matter. I have not testified as an expert witness, either at deposition or trial, in the past four years.

Bases for Opinion

A list of the documents I reviewed while preparing my report is provided in Appendix B.

Opinion

It is my opinion that comScore's practices related to privacy disclosures and obtaining consent from users meet and exceed industry standards. Although it is impossible for any company to ensure that all users carefully consider privacy disclosures, and that all such users provide their consent in considered response to those disclosures, comScore has taken all commercially reasonable steps necessary to facilitate such careful consideration.

comScore Disclosures; Background and Assessment

comScore's Relevant Knowledge is a research application that tracks consumer behavior, including the pages viewed on the internet and setting sand application use across the operating system, in order to generate aggregated reports on general consumer trends. comScore does not offer any data service that would allow clients to target an individual, but nonetheless, the fact that individuals must be tracked to generate aggregated reports has required that comScore's software to monitor and collect a large amount of data. One of the central tenets of good privacy practice, and something that I have included in all of the disclosure systems I have designed over the last nine years, is the importance of providing clear and prominent notice when a company intends to collect and use a consumer's information in material ways that a typical consumer would not expect. Only when practices are held out in the light of day can consumers properly evaluate them. comScore has understood this well throughout the time that I have engaged with them, beginning in 2006.

When TRUSTe was designing the program requirements for the Trusted Download Program, we expected that applications like Relevant Knowledge would seek certification. Early on in the policy drafting process, we decided on a model that included the following core components:

- A '**Primary Notice**,' that would include the core components of the value proposition for the consumer in an unavoidable location, and for those 'Certified Tracking Software' applications like Relevant Knowledge, the notice would also include details regarding any collection, use, or transfer of PII.
- Users must be provided with a means to provide their **consent** having seen the Primary Notice, and we itemized specific requirements to ensure that language was direct, clear, and without any marketing gimmicks that might confuse or otherwise force unintended consent. Certified Tracking Software was subjected to additional requirements to ensure that the 'accept' button would not be the default option, to ensure that impatient consumers would have to pause and evaluate the value proposition before proceeding, and that the 'decline' option would be presented with equal prominence.
- Managing a large network of marketing partners online can be challenging for any business, and many large and reputable firms have struggled to do this effectively. But in the software distribution market, with applications that have potentially broad privileges on a consumer's machine, we felt at TRUSTe that we needed application owners to take accountability for the practices of their partners, particularly where the core privacy principles of the program were concerned. To this end, we created a section of the principles that we called '**Third Party Distribution/Affiliate Practices**,' that applied specifically to 'Certified Advertising Software' and 'Certified Tracking Software.' In this section, we included unprecedented requirements, including complete transparency for TRUSTe into the

- individual partners and how each of them manage the installation process, and subjecting this list of partners to deep and ongoing scrutiny.
- Our requirements also included a long list of **‘Prohibited Activities,’** including violations of the consumer’s privacy rights or security settings and a range of potentially unscrupulous business practices. No application would be permitted to engage in these activities, with or without consumer consent.

comScore Disclosures

Relevant Knowledge is typically offered to a user in connection with the downloading of a partner’s application. In this example, I will assess Relevant Knowledge as it appears in a bundle with the ‘MP3 Cutter’ application. It is my understanding and, accordingly I have assumed that, the process and disclosures are materially identical across all partner bundles.

Step 1: Consumer downloads MP3 Cutter

The consumer finds the MP3 Cutter application online and elects to download it.

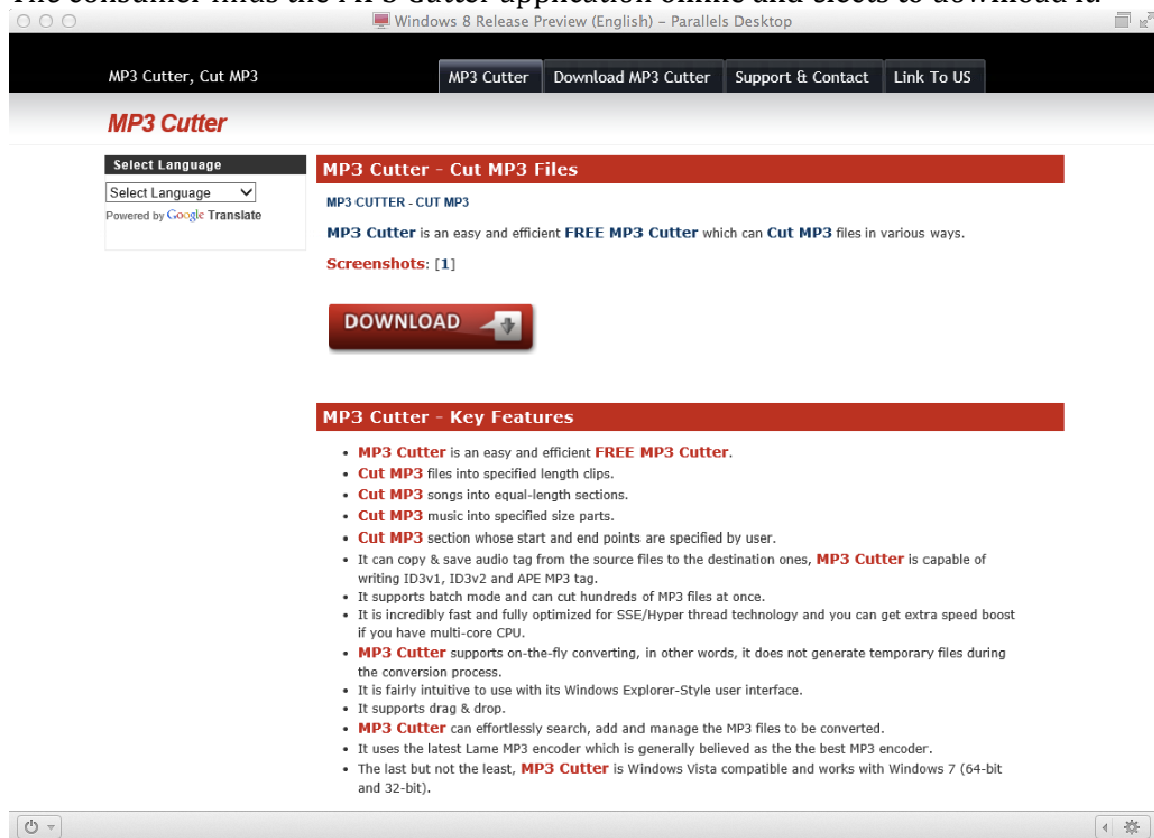


Image: MP3 Cutter download button

Step 2: Consumer begins MP3 Cutter installation

Once the download of MP3 Cutter is complete, the consumer finds the installation file and clicks to begin the installation process.

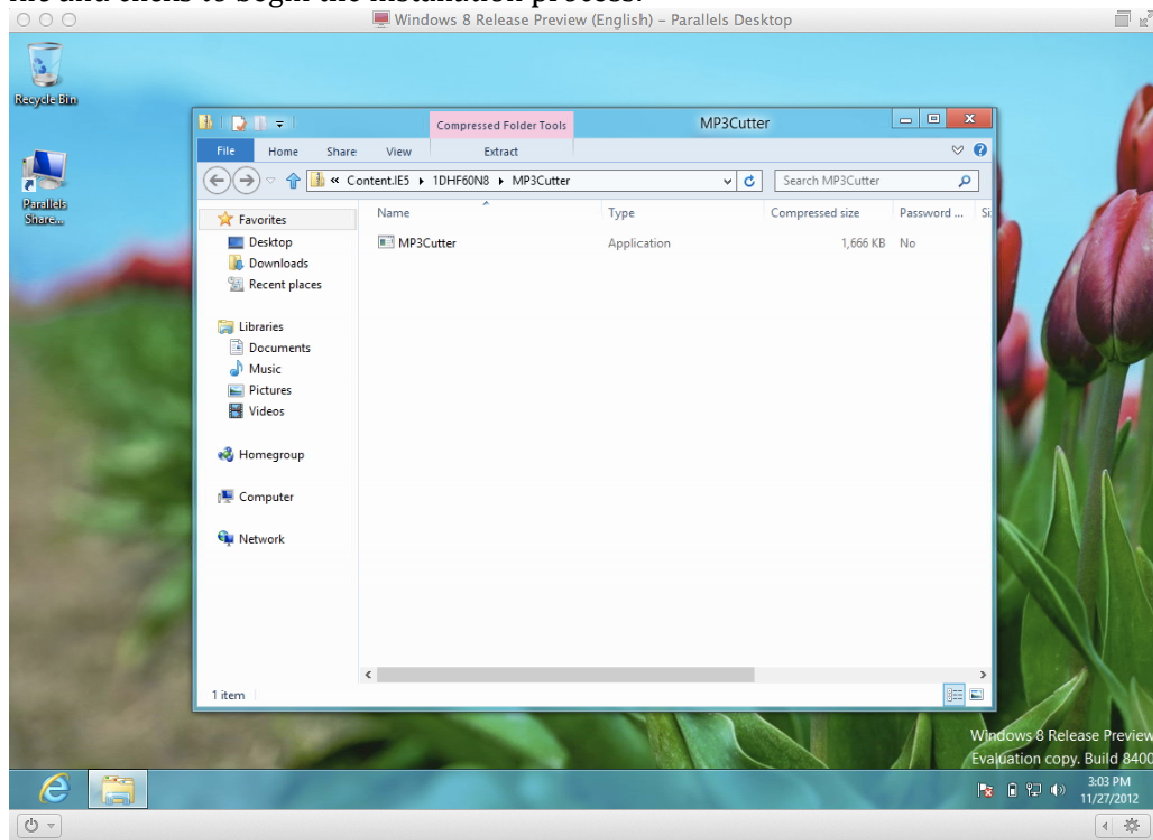


Image: MP3 Cutter installation file

Step 3: MP3 Cutter installer disclosure, including comScore 'WatchDog' reference, as explained below.

As the MP3 Cutter installation begins, MP3 Cutter has a chance to provide a disclosure to the consumer. In this case, comScore has worked with their partner to include a reference to their WatchDog application. WatchDog was created by comScore in order to meet the requirements of TDP. The sole purpose of WatchDog is to ensure that all consumers see the same comScore disclosures, that they are never hidden from view, and that consent is always properly obtained across their partner network. This purpose is accomplished through the use of a small application that is able to monitor the disclosure being presented—to assure that the approved disclosure is being presented in its entirety—and that each consumer selects the “accept” option. If WatchDog detects that either of these events did not occur, then the comScore software will not be installed. The WatchDog thus acts as a privacy security offering, and is one example of comScore going beyond TRUSTe requirements.

The MP3 Cutter reference does not mention WatchDog or comScore by name, as this would likely confuse the consumer, but it mentions that the application is from a partner, that its purpose is to verify acceptance of disclosures, and that it will be promptly removed. This disclosure is presented wherever possible before WatchDog is installed, in keeping with best practices.

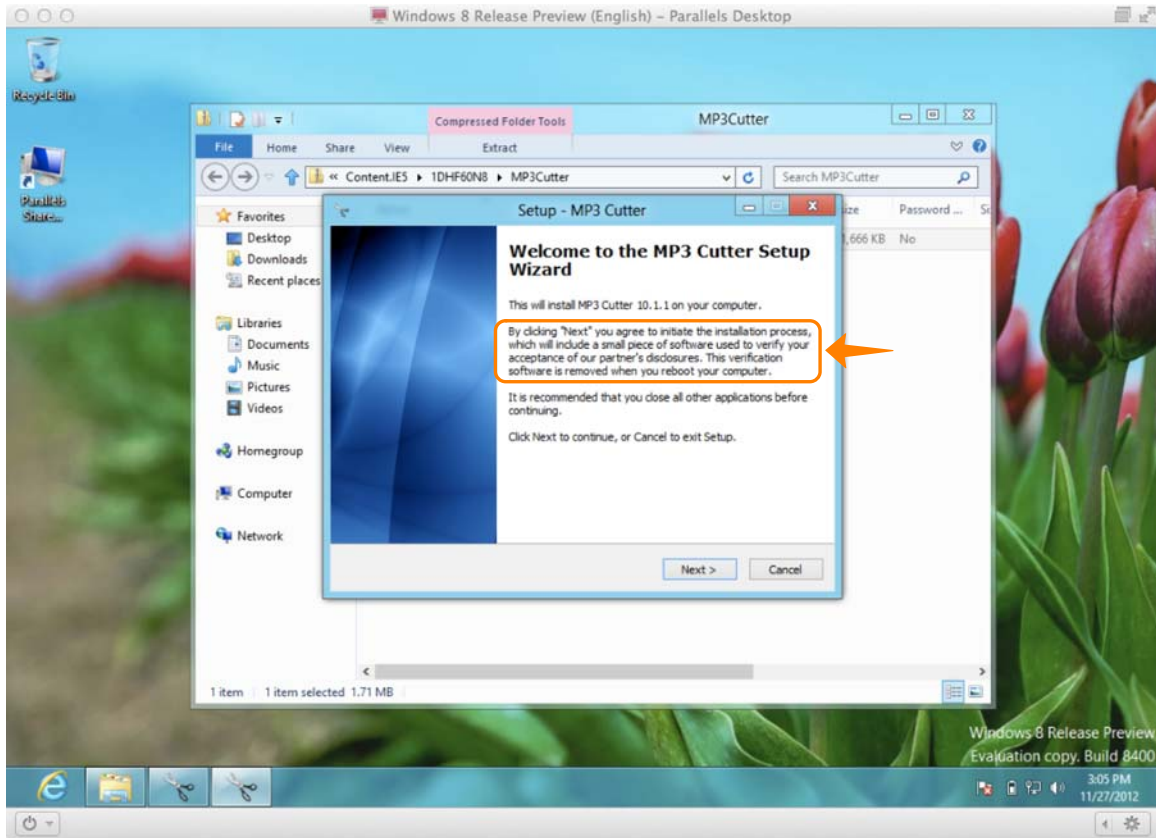


Image: MP3 Cutter disclosure with comScore WatchDog reference (orange highlights for effect, not in original)

Step 4: MP3 Cutter Terms

MP3 Cutter then presents it's terms of service to the consumer and requests consent.

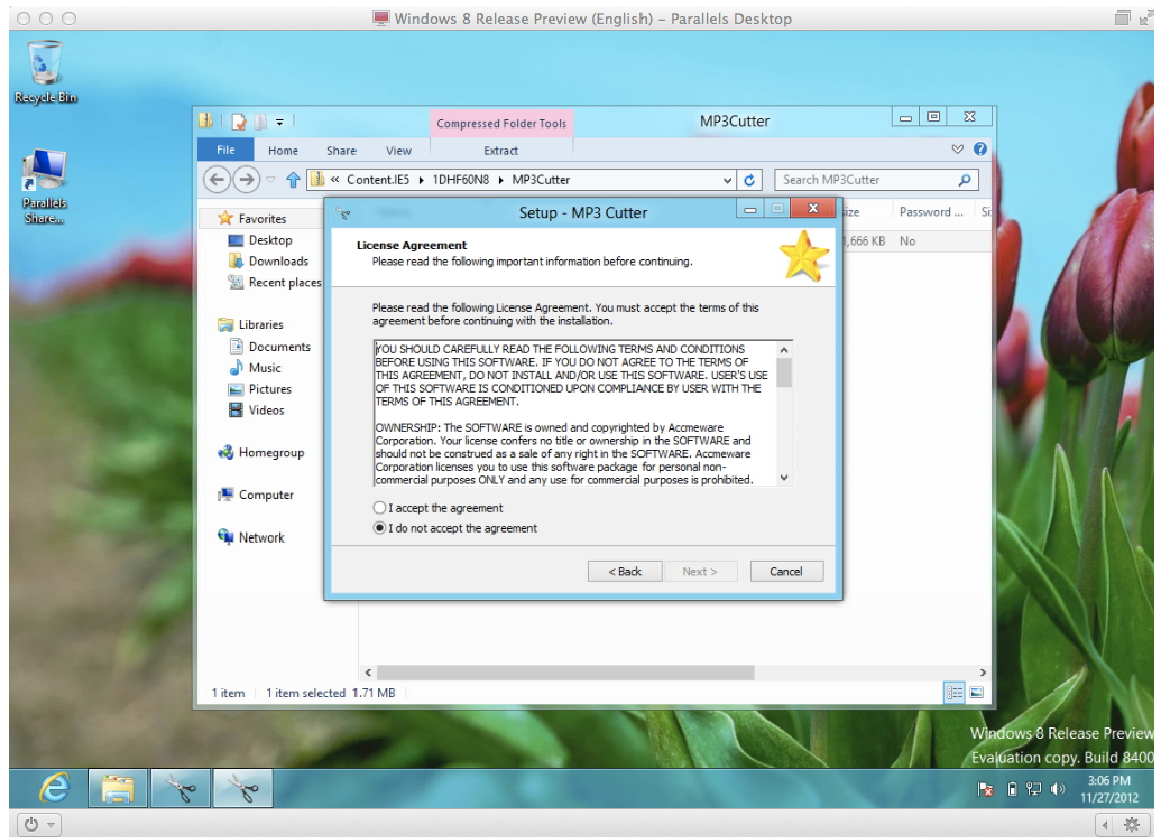


Image: MP3 Cutter terms of service with consent dialogue

Step 5: Relevant Knowledge Primary Notice

With the MP3 Cutter disclosures complete, Relevant Knowledge now presents its Primary Notice, which is the most important dialogue to the user. This notice was originally drafted in conjunction with TRUSTe, and as such is fully compliant with TRUSTe's Trusted Download Program requirements, and accomplishes several important things:

1. **Headline:** The consumer is informed that MP3 Cutter is part of a software bundle.
2. **Value Proposition Presented:** Relevant Knowledge is described, including the company behind the application and the core business model and value proposition.
3. **Tracking Disclosed:** A complete description of the tracking that will take place is provided, including how the data will be used.
4. **All Essential Information Immediately Visible:** Enough information is provided to outline the core value proposition without requiring the

consumer to advance to any secondary screen or having to scroll to see additional information beyond that which is immediately visible in the Primary Notice.

5. **Additional Legal Documents Immediately Accessible:** Links are provided to the Privacy Policy and User License Agreement for more detailed information.⁶
6. **No Bias Towards ‘Accept’:** ‘Accept’ is NOT highlighted as a default option or otherwise marketed in any way as a more desirable option than ‘Decline.’
7. **User Must Make an Active Decision:** The ‘Next’ button is not active until the user selects Accept or Decline, so the impatient consumer that simply wants to hit ‘Enter’ will not be able to proceed without making a decision.
8. **Decline is a Viable Option:** If the consumer elects to Decline, Relevant Knowledge will not be installed, and MP3 Cutter will remain on their machine. They are not forced to agree to Relevant Knowledge terms to obtain MP3 Cutter. This again exceeds the requirements of TRUSTe’s Trusted Download Program.

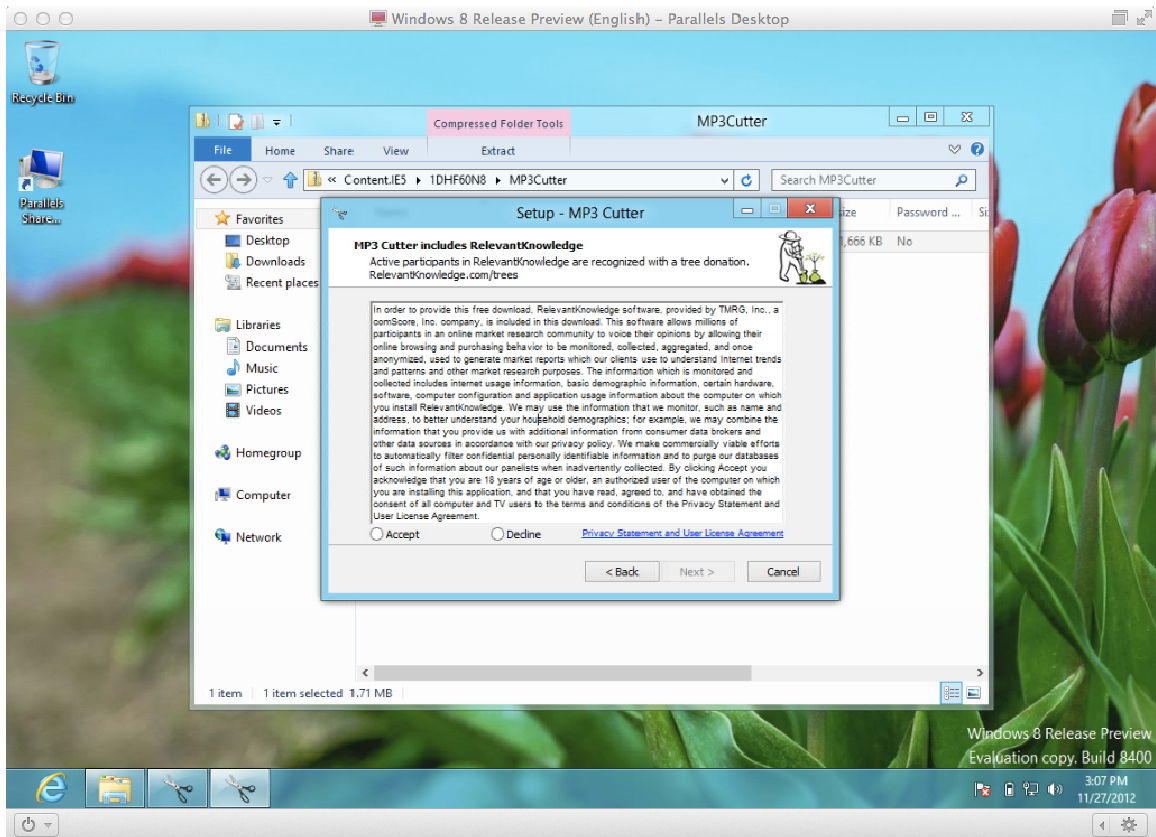


Image: Relevant Knowledge Primary Notice⁷

⁶ It is my understanding that one of comScore's partners inadvertently failed to include a link to comScore's Privacy Policy and User License Agreement in the Primary Notice for a short period of time. Such a link is not required to obtain adequate consent from a user, and comScore corrected the issue in partnership with its partner as soon as it was made aware of the issue.

⁷ The notice as reproduced here is smaller than actual size.