

127 F.T.C. 94, 1999 WL 33912980

FEDERAL TRADE COMMISSION (F.T.C.)

IN THE MATTER OF
GEOCITIES

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-3850

Complaint, February 5, 1999

Decision, February 5, 1999

****1** This consent order, among other things, prohibits GeoCities, a corporation that operates a World Wide Web site, from misrepresenting the purpose for which it collects or uses personal identifying information from or about consumers including children. The consent order requires the respondent to: place a prominent privacy notice on its web sites; establish a system to obtain parental consent before collecting personal information from children; and notify individuals from whom it previously collected personal information and offer them an opportunity to have that information deleted. In addition, the order permits the respondent to collect or use personal information from children to the extent permitted by the Children's Online Privacy Protection Act of 1998, or by regulations or guides issued under that Act.

Participants

For the Commission: *Toby Levin, Dean Forbes, Martha Landesberg, C. Lee Peeler, Caroline Curtin and Louis Silversin.*

For the Respondents: *Ronald Plessner, Piper & Marbury, Washington, D.C. and Bart Lazar, Seyfarth, Shaw, Fairweather & Geraldson, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that GeoCities, a corporation (“respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent GeoCities is a California corporation with its principal office or place of business at 1918 Main Street, Suite 300, Santa Monica, California.

2. Respondent has operated a World Wide Web (“Web”) site located at [http:// www.geocities.com](http://www.geocities.com). This Web site is a virtual community consisting of consumers' personal home pages that are organized into 40 themed neighborhoods. Respondent “hosts” a personal home page by posting it to an address in the consumer's chosen neighborhood.

***95** 3. Respondent has provided numerous services including free and fee-based personal home pages, free e-mail service, contests and children's clubs. Respondent provides personal home pages and e-mail addresses to adults and children who reveal personal identifying and demographic information when they register with the Web site.

4. Respondent has more than 1.8 million members whom it refers to as “homesteaders.” As of December 2, 1997, approximately 200,000 GeoCities homesteaders were between the ages of 3 and 15. As of May 18, 1998, approximately 50,000 homesteaders were under age 13. Respondent's site is one of the ten most frequently visited Web sites, and was the sixth top trafficked site

in April 1998 with 14.1 million unique visitors ages 12 and up. Among visitors between the ages of 12 and 17, it was the third most frequently visited Web site in March 1998. One out of five U.S. Web users visited respondent's Web site in October 1997.

****2** 5. Respondent has created opportunities for third party advertisers to promote products in a targeted manner to its more than 1.8 million members through respondent's collection of personal identifying, demographic, and "special interest" information obtained in the registration process and through the placement of members' personal home pages in themed neighborhoods.

6. Respondent has derived its revenues from: selling third party advertising space on the Web site (including rotated ad banners, pop-up ads, and sponsorships of major areas on the Web site); selling personal identifying, demographic, and/or interest information collected from consumers who register; GeoPlus, an enhanced fee-based service that provides members extra server space for their personal home pages, among other benefits; merchandising in the Web site's GeoStore; and respondent's publishing unit (GeoPress Publishing).

7. Respondent has required consumers, including children, to complete a "New Member Application" form to become a GeoCities member. The form requests certain mandatory information and certain other information that respondent describes as "optional." The form also asks consumers to designate whether they would like to receive "special offers" from a list of topics or from specific companies. The default setting on the form for special offers is for members to receive them unless members choose otherwise.

***96** 8. Respondent has promoted on its Web site a children's neighborhood called the "Enchanted Forest" The Enchanted Forest is designated as respondent's "KIDS" area, "[a] community for and by kids ." To join the Enchanted Forest neighborhood, children must complete the New Member Application form and post personal home pages. As of May 18, 1998, there were approximately 40,300 homesteads in the Enchanted Forest neighborhood.

9. Respondent has promoted on its Web site a children's club in the Enchanted Forest neighborhood called the "GeoKidz Club." To join the GeoKidz Club, children must complete the "Official GeoCities GeoKidz Club Membership Request Form." This form requires applicants to be GeoCities members and to fill in all information requested, including name, age, e-mail address, GeoCities home page address, and gender. Respondent has also promoted on its Web site contests in the Enchanted Forest neighborhood for which children must complete the "Enchanted Forest Contest Entry Form," by providing their name, personal Web page address, and e-mail address.

10. Respondent has distributed a newsletter called the "World Report." The World Report is e-mailed at regular intervals to respondent's members and occasionally is posted on respondent's Web site. Members automatically receive the World Report but can discontinue receiving it by using respondent's "Profile Editor," a form used to revise members' registration information. The Profile Editor's default setting is for members to receive the World Report unless they request not to.

****3** 11. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

DECEPTIVE PRACTICES IN CONNECTION WITH RESPONDENT'S COLLECTION AND USE OF PERSONAL IDENTIFYING INFORMATION

Misrepresentations Involving Information Collection By GeoCities

12. Respondent has placed privacy statements on its New Member Application form [*Exhibit A*]. This form collects from consumers, including children, certain mandatory information (first and last name, zip code, e-mail address, gender, date of birth, and member name) and certain other information respondent designates as "optional" (education level, income, marital status, occupation and ***97** interests). The form also asks consumers to designate whether they wish to receive "special offers"

from advertisers, to select from a list of special offer topics, and to designate whether they wish to receive specific products or services from individual companies. Respondent has also placed privacy statements on its “GeoCities Free Member E-mail Program” Web page [*Exhibit B*] and in the September 2, 1997 issue of the World Report newsletter [*Exhibit C*], which refer to consumers' information collected on the New Member Application form. Through the privacy statements in Exhibits A, B, and C, respondent has made the following statements about the uses and privacy of the information it collects:

A. “The following section is completely optional. We will not share this information with anyone without your permission, but will use it to gain a better understanding of who is visiting GeoCities. This information will help us to build a better GeoCities for everyone. ... [The information requested is] Highest Level of Education Completed ... Household Income ... Marital Status ... Occupation ... Interests” [*Exhibit A*]

B. “When [consumers] apply to GeoCities we ask if they would like to receive information on a variety of topics. ... Before we send anything out, we deliver an orientation e-mail to explain the program, to ensure that only those people who requested topically-oriented mail receive it and to protect your privacy. ... We assure you this is a free service provided only to GeoCitizens who request this information, and we will NEVER give your information to anyone without your permission.” [*Exhibit B*]

C. “[Certain e-mail to members] came from our friends at CMG Direct Corporation. It was only sent to homesteaders who clicked a box in the topic list on the GeoCities application. The letter was meant as a heads-up to those people that information about the interests they selected would be coming from reputable companies. ... We are sorry about any confusion concerning these e-mails. We assure you that we will NEVER give your personal information to anyone without your permission.” [*Exhibit C*]

****4** 13. Through the means described in paragraph 12, respondent has represented, expressly or by implication, that the personal identifying information collected through its New Member Application form is used only for the purpose of providing to members the specific e-mail advertising offers and other products or services they request.

14. In truth and in fact, the personal identifying information collected through respondent's New Member Application form is not used only for the purpose of providing to members the specific e-mail advertising offers and other products or services they request. ***98** Respondent has also sold, rented, or otherwise marketed or disclosed this information, including information collected from children, to third parties who have used this information for purposes other than those for which members have given permission. For example, third parties have targeted unrequested e-mail advertising offers to individual members based on their chosen GeoCities neighborhoods. Therefore, the representation set forth in paragraph 13 was, and is, false or misleading.

15. Through the means described in paragraph 12, respondent has represented, expressly or by implication, that the “optional” information collected through its New Member Application form is not disclosed to third parties without the consumer's permission, and is used only to gain a better understanding of who is visiting GeoCities.

16. In truth and in fact, respondent has disclosed the “optional” information it collects through the New Member Application form is not third parties without the consumer's permission, and for purposes other than to gain a better understanding of who is visiting GeoCities. Respondent has disclosed this information, including information collected from children, to third parties who have used this information to target advertising to GeoCities' members. Therefore, the representation set forth in paragraph 15 was, and is, false or misleading.

Misrepresentations Involving Sponsorship By GeoCities Where Information Is Collected By Third Parties

17. Respondent has disseminated or caused to be disseminated Enchanted Forest Web pages [*Exhibits D, H*]. These Web pages have promoted children's activities in the Enchanted Forest, including the Official GeoCities GeoKidz Club, through print [*Exhibit D*] audio [*Exhibit E*] messages, and contests through print messages [*Exhibit H*]. Respondent has also disseminated or caused to be disseminated the July 16, 1997 issue of the World Report newsletter [*Exhibit F*], which also promotes the

Official GeoCities GeoKidz Club. These promotions have caused children to reveal personal identifying information through the Official GeoCities GeoKidz Club Membership Request Form [*Exhibit G*] and the Enchanted Forest Contest Entry Form [*Exhibit I*]. Through its Web page and e-mail promotions, respondent has made the following statements:

***99** A. "Welcome kids to this enchanting forest created by your friends for you to enjoy. . . . Join the GeoKidz Club at Enchanted Forest/3696 for fun and HTML help. Play Java games and be sure to visit Charlie, the GeoKidz Club's new dog." [*Exhibit E*]

****5** B. "JOIN THE GEOKIDZ CLUB! We all want a safe spot for our children to play and The GeoKidz Club is the perfect place. Enchanted Forest Community Leader Melange has been busy providing an HTML Center, games, message forums, a member's gallery and many more features for both parents and children to enjoy. The GeoKidz Club is always growing and expanding, so visit [http:// www.geocities.com/EnchantedForest/3696](http://www.geocities.com/EnchantedForest/3696) often . . . and make sure to say hello to our virtual dog?" [*Exhibit F*]

C. "Join us in our quest to name our Prince and Princess, the mascots of Enchanted Forest! Enter the contest to name them by June 7th, and win 25 GeoPoints." (emphasis in original) [*Exhibit H*]

18. Through the means described in paragraph 17, respondent has represented, expressly or by implication, that respondent collects and maintains the children's personal identifying information collected through the Official GeoCities GeoKidz Club Membership Request Form and Enchanted Forest Contest Entry Form.

19. In truth and in fact, respondent does not collect and maintain the children's personal identifying information collected through the Official GeoCities GeoKidz Club Membership Request Form and Enchanted Forest Contest Entry Form. In fact, the Official GeoCities GeoKidz Club and the GeoCities Enchanted Forest contests are run by third parties hosted on the GeoCities Web site, who collect the children's personal identifying information directly and maintain it. Therefore, the representation set forth in paragraph 18 was, and is, false or misleading.

20. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

http://www.geocities.com/cgi-bin/...d?EnchantedForest/Cottage&addr=14



You are about to join the largest community on the Internet. Being a member of GeoCities is fun and becoming a member is easy. All you have to do is pick a membership plan, select a GeoCities name and address and review the member terms of service. After you've completed those minor tasks - we'll even help you build your first home page.

- **Free Personal Home Page Program**
The key word is FREE. This program includes 3 megabytes of space to work with and all the tools, utilities and help you may need to succeed.

GeoPlus

You get all the free stuff listed above, PLUS a total of 15 megabytes of space, a personalized URL, a file of free trial memberships in other web-related companies, a bunch of subdirectories to help organize your files, and a cache of cool utilities to soup up your site. And, under the new plan, you can join for only \$4.95 a month. You don't have to decide now. You can always sign up for GeoPlus at <http://www.geocities.com/join/geoplus/>.

The next step is understanding our Member Terms of Service.

GeoCities Page Content Guidelines and Member Terms of Service

Specifically, we do not allow any nudity or pornography in GeoCities.

The GeoCities Page Content Guidelines and Terms of Service are available at:
<http://www.geocities.com/members/guidelines/>

Members who are in violation of these policies may be deleted and their pages, or portions of their pages, removed without warning.

The purpose of the free Personal Home Page program is to give people the ability to create a home on the World Wide Web that reflects their interests, hobbies and background.

Are you already a Netopia Virtual Office Member? No
 Yes

I Agree to these Terms and Conditions

© 1995, 1996, 1997 GeoCities. All rights reserved

EXHIBIT A

http://www.geocities.com/cgi-bin/homestead/new_a



GeoCities Membership Application Form.

You are only moments away from membership in GeoCities. This simple form will secure your home on the Web. Once we receive your registration, we'll send you a confirmation e-mail with your password and instructions for moving into your new home.

Welcome to the Neighborhood!

PERSONAL INFORMATION

* = required

Form fields for First Name, Last Name, Street Address, City, State, Postal Code, and Country.

Very Important: Please ensure you enter your E-mail address correctly so that you receive your GeoCities Registration Confirmation and password.

E-Mail Address field

Form fields for Gender, Date of Birth, and Year.

HOME PAGE INFORMATION

Neighborhood: EnchantedForest/Cottage Address: 4475

Your member name is how you will be referred to within GeoCities. It will also determine the username of your GeoCities e-mail address, and appears next to your Address in the Neighborhood Listings.

Member Name field with Click for Rules dropdown

The following is used to describe the theme of your page. It appears next to your address in the neighborhood listings. Note: You can always change these values later by using the Personal Profile Editor.

Line 1 field with Click for Rules dropdown

Line 2 field

Line 3 field

GEOCITIES E-MAIL ACCOUNT

EXHIBIT A

http://www.geocities.com/cgi-bin/bommethead/bom_00

As part of your free membership, GeoCities offers you a free E-mail account. Your address will be "membname@geocities.com", and will be yours for as long as you remain a member of GeoCities.

Would you like to receive a free GeoCities E-mail account? Yes No

SPECIAL OFFERS

Would you like to receive special offers from advertisers based on your interests? Yes No

If yes, please check all that apply:

- | | | | | |
|-------------------------------------|---|---|------------------------------------|--------------------------------------|
| <input type="checkbox"/> Automotive | <input type="checkbox"/> Broadway | <input type="checkbox"/> College | <input type="checkbox"/> Computers | <input type="checkbox"/> Finance |
| <input type="checkbox"/> Health | <input type="checkbox"/> Movies | <input type="checkbox"/> Music | <input type="checkbox"/> Magazines | <input type="checkbox"/> Software |
| <input type="checkbox"/> Sports | <input type="checkbox"/> Stamp Collecting | <input type="checkbox"/> Telecommunications | <input type="checkbox"/> Travel | <input type="checkbox"/> Video Games |

SURPLUS DIRECT

Would you like to receive information about the best computer bargains on the Net from Egghead Computer and Surplus Direct?

Yes No

GEOPLANET

Having trouble staying in touch with friends? GeoPlanet helps you find and communicate with important people in your life. Join today, it is FREE and completely private.

Yes No

INFOBEAT

Would you like to receive NEWSpot, a FREE e-mail service from InfoBeat, delivering a daily e-mail summary of news topics, including U.S. news, international news, sports and more? Yes No

Select 1 or more products:	
<input type="checkbox"/> U.S. Front Page News	<input type="checkbox"/> U.S. Bus. & Fin. News
<input type="checkbox"/> World Front Page News	<input type="checkbox"/> Sports
<input type="checkbox"/> Entertainment	<input type="checkbox"/> Science & Medicine
<input type="checkbox"/> Technology	<input type="checkbox"/> The Environment

OPTIONAL INFORMATION

The following section is completely optional. We will not share this information with anyone without your permission, but will use it to gain a better understanding of who is visiting GeoCities. This information will help us to build a better GeoCities for everyone.

Highest Level of Education Completed	<input type="text" value="Click for options"/>
Household Income	<input type="text" value="Click for options"/>
Marital Status	<input type="text" value="Click for options"/>
Occupation	<input type="text" value="Click for options"/>
Interests:	<input type="text"/>

Once you press submit below, we'll build your initial home page for you and we'd like to include some information about you. Is it okay if we display your interests and e-mail address on your initial home page? Yes No

EXHIBIT A

GeoCities Homesteader Application

http://www.geocities.com/cgi-bin/homestead/new_ap

[Home](#) [Memberships](#) [Featured Content](#) [Members](#) [Marketplace](#) [Search](#) [Join](#) [Help](#)

EXHIBIT B

<http://www.geocities.com/members/info/email/>

GeoCities Free Member E-mail Program

Editors Note: [e-mail list info](#)

GeoCities is pleased to offer our free e-mail program for all of its members. Through the phenomenal success of our homesteading program, and the support of our advertisers and sponsors, we are able to provide a free e-mail account to everyone on the web.

This e-mail account will be your permanent e-mail address, so that even if you switch access providers, you will always have one address to call "home". You may also find it more convenient to receive your personal e-mail in your GeoCities account, to avoid the uncomfortable feeling of receiving personal e-mail at your place of business. Wherever you go to access the Internet, you can always check in on your GeoCities mailbox by configuring your Netscape Web Browser with the appropriate settings.

GeoCities recommends that you use Netscape for downloading, reading, and sending your GeoCities e-mail.

Important Notice:

Due to the overwhelming demand, we have been forced to place a few limitations on the member e-mail program. They are as follows:

- Mail left on the server over 7 days will be deleted. Please configure your Netscape browser to remove mail from server.
- All accounts are limited to 500kB of mailbox space at one time. This should be plenty for everyone, as long as mail is downloaded and removed from the server on a regular basis.

How do you sign up?

Current members:

Go to the [GeoMail Manager](#) to sign up. Be sure to check the box next to "Please add GeoMail account".

Visitors and non-members:

In order to get your own free GeoCities e-mail account, go to our [Information Page](#) and read about our free [Personal Home Page Program](#). In a matter of minutes, you'll be completing the registration form and securing your own space in one of our 40 themed [Communities](#). Once you become a GeoCities member, a free e-mail account is just one of the many benefits that you'll receive while you're here. You'll be able to sign up for it while you're

Tools

Programs

Guidelines

Info

[FTP Procedures](#)

[System Status](#)

[File types](#)

[Promote Your Page](#)

[GeoCities E-mail](#)

[Sponsorship](#)

[Banners](#)

Help

EXHIBIT B

websites info: e-mail

<http://www.geocities.com/member/info/email.htm>

completing the application form.

We also offer the most user-friendly tools, including your choice of three home page editors. We allow unlimited page modifications through either of the home page editors or via FTP. We allocate three megabytes of disk space to allow you to fully express yourself, and support an incredible number of different filetypes to encourage your creativity.

Read about all of the other benefits of becoming a "GeoCitizen" and make plans to move in to your new home today.

You too can enjoy our e-mail List Service!

When homesteaders apply to GeoCities we ask if they would like to receive information on a variety of topics. We present this option because our staff keeps an eye out for value-added opportunities that our homesteaders might enjoy.

Before we send anything out, we deliver an orientation e-mail to explain the program, to ensure that only those people who requested topically-oriented mail receive it and to protect your privacy.

We assure you this is a free service provided only to GeoCitizens who request this information, and we will NEVER give your information to anyone without your permission.

To add or delete yourself from this list, please visit the profile editor.

[Main](#) | [Neighborhoods](#) | [Featured Content](#) | [Members](#) | [Help/Feedback](#) | [Search/Join](#) | [Help](#)
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EXHIBIT C

From: world_report@list.geocities.com (GeoCities World Report)
To: world_report@list.geocities.com (GeoCities World Report)
Date: 97-09-04 13:49:02 EDT

GeoCities World Report
Vol. 2, No. 3
September 2, 1997

IN THIS ISSUE:

GeoCitizens honor Princess Di
Fun With Finance
Beat The Bookies!
Free Offers By E-mail
News You Can Choose
Get Back! Beasts Trivia

THE PEOPLE'S PRINCESS

Tragedy struck during Labor Day Weekend when Princess Diana's car crashed in Paris. People around the world are mourning and the mood in Cyberspace is no different.

"When I heard the news on Sunday night my wife and I decided to put up a page that honors Diana's accomplishments for people who would be interested in knowing more about her life," said GeoCitizen Steve Whitlock, who was interviewed for NBC's "Access Hollywood" about his Web page tribute to Diana at: <http://www.geocities.com/Heartland/Prairie/3322/>. "Since then I've been pretty overwhelmed. When I woke up in the morning I had more than 200 visits, that's more than I usually get in two months. This speaks to the power of the Internet as well as, of course, the life's work of Diana. This is unprecedented."

Here are some samples of the homesteads that have put up pages in honor of Diana:

<http://www.geocities.com/Tokyo/Temple/2742/princess.html>
<http://www.geocities.com/CollegePark/4842>
<http://www.geocities.com/Wellesley/1078/princess.html>
<http://www.geocities.com/Paris/Metro/9101>
<http://www.geocities.com/Paris/Metro/7649>
<http://www.geocities.com/Hollywood/Sat/7383>
<http://www.geocities.com/Sofia/Studios/8197>
<http://www.geocities.com/Heartland/Prairie/7600>
<http://www.geocities.com/Heartland/Meadows/9548>
<http://www.geocities.com/TheTropics/Shores/9966>
<http://www.geocities.com/Paris/LeftBank/5943/>
<http://www.geocities.com/Area51/1047/privacy.htm>

As soon as the news hit the airwaves a special Sound Off was launched at: <http://www.geocities.com/features/SoundOff/>. The amazing pace of its growth is a tribute to the people Diana

EXHIBIT C

reached. Here are a few excerpts of the hundreds of postings from around the world:

* "I live in a country which has major ties to Britain and it has saddened our entire nation. I think that it will be one of those days in history where I will remember what I was doing at the time I found out." - Kathryn, New Zealand

* "It was the one of the saddest things that I've heard in my life. I'm very sad. She wasn't happy in all her life!!! I hope now she's in a better place, living forever." - Renata Zambrano Ortiz - Brazil

* "We were all so shocked to hear of Princess Diana's death. She was such a lovely person, and very caring towards other less fortunate than herself. We are all thinking of, and praying for, her and Mr. Fayed's family at this sad time....God Bless." - Limesyone, Cancock, England

* "I only hope that her sons inherited such quality and become their own men despite their official future duties. I do believe the Queen will honor Diana with aplomb and due respect, she too is a Lady. My heart goes out to Harry, William, Charles and Sarah. God save us all. Peace." - Bermuda Onion

* "You're the queen of hearts. There will be no person can take your place. You have been thru' on so many things in life. God took you away from us because He doesn't want you to suffer again in future." - Nurha Rahman, Malaysia

FINANCE TIPS FROM A FOURTEEN-YEAR OLD?

Wall Street's Investment Center is officially open for business at: <http://www.geocities.com/WallStreet/>. This week's highlighted homestead is *Absolute Wall Street*, authored by a 14-year-old GeoCitizen. Offering everything from current stock market reviews and an investor's guide to company reports and hot stock tips, this is a must-see resource if you're considering your next stock move, or just looking to get started.

Is your page a resource for Wall Streeters looking to get ahead? Then maybe it belongs in the Investment Center. Send your GeoCities address to wallstreet@geocities.com.

BEAT THE BOOKIES!

Picture this: You open up your newspaper, yank out the Sports section and rip it apart looking for the scoop on the upcoming NFL season. There on the center of the page is a grid you know all too well. It's those sports columnists making their pro picks for the week. You browse their not-so-bold predictions and shake your head...you could do better.

Well, here is your chance to "Beat the Bookies." Each week, we're going to highlight four of our homesteaders at: <http://www.geocities.com/Colosseum/> who have published their picks (complete with comments) and Best Bet on their site. On Tuesday morning, the person with the best record is our winner for the week. The prize? Well, besides traffic to your site...and the honor of helping homesteaders with their picks...you get to take part in the following week's game! Sound kind of tempting? Write to colosseum@geocities.com for all the rules and regulations.

EXHIBIT C

FREE OFFERS BY E-MAIL

Wesley homesteader Katie posted the following question in one of our discussion forums:

"I received this e-mail this evening. It's not the normal GeoCities format that I know and I don't remember saying I was interested in getting free offers. If I'm wrong, then I'm wrong. But if it's with GeoCities, wouldn't it have a geocities.com e-mail address like the other e-mails?"

The e-mail that Katie refers to came from our friends at CMG Direct Corporation. It was only sent to homesteaders who clicked a box in the topic list on the GeoCities application. The letter was meant as a heads-up to those people that information about the interests they selected would be coming from reputable companies.

To join the list or to delete yourself from this free service, simply visit the GeoCities profile editor at: http://www.geocities.com/members/tools/profile_editor.html and change your selections.

We are sorry about any confusion concerning these e-mails. We assure you that we will NEVER give your personal information to anyone without your permission.

NEWS YOU CAN CHOOSE

You will never have to surf, sift or struggle again to stay on top of the latest news. Now, InfoBeat offers a great service to the Internet community and gives you the power to select the stories you want to see and when you want to see them for the unbelievably, low price of ... FREE!

Choose from among eight different categories and three different delivery times. You select the news that interests you the most and the time that is most convenient to you. Clear, concise and informative summaries are delivered to your e-mail address. Life's too short to miss a beat. Get InfoBeat! To sign up go to: <http://www.geocities.com/join/infobeat.html>

SEARCHING FOR BEATLES

Just how big of a Beatles fan are you? Do you know who started the Beatles? What was John Lennon's first instrument? If you can answer these and other Beatles questions (or even if you can't because we give you the URLs with the answers) come play the SunsetStrip Search Contest at: <http://www.geocities.com/SunsetStrip/>. Three people will win a \$20 gift certificate from CDnow!

FEATURES

— Keeping up with all that's new and noteworthy in today's high tech world can be a real chore. If you need quick access to latest news and information, the CMPNet Tech Center is the place for you.

EXHIBIT C

<http://www.geocities.com/features/comp/>

– GeoCities has a new Member Profile Editor. Please stop by: http://www.geocities.com/members/tools/profile_editor.html and check it out so you know where to go to update your information.

– Are you keeping track of who is visiting your home page and when? Get a GUESTBOOK at: <http://www.geocities.com/members/tools/guestbook.html> and start learning more about your guests.

– Chat this way <http://www.geocities.com/features/chat/>. We've introduced chat rooms into 10 neighborhoods and will soon be rolling out more new chat features. We have new HTML based chat and personal chat rooms on the horizon. Tell us what you think - send e-mail to chat@geocities.com with your comments about the new chat environment.

– Do you think your site deserves fame and fortune? Then apply for the Featured Page Program. Featured Pages are highlighted on the main page of every neighborhood and are eligible for our Enhanced GeoRewards program, where you can earn GeoPoints. Please go to: http://www.geocities.com/join/featured_pages.html for details, or talk to one of your Community Leaders.

STUFF YOU NEED TO KNOW

Want to read about the most interesting sites at GeoCities?
<http://www.geocities.com/features/slist/>

Want free advertising for your site?
<http://www.geocities.com/join/georewards/>

Want information about GeoPlus?
<http://www.geocities.com/join/geoplus/>

Want to promote your page?
<http://www.geocities.com/members/info/promote.html>

Looking for more traffic?
<http://www.geocities.com/members/info/profile.html>

Don't want to get this newsletter anymore?
http://www.geocities.com/members/tools/profile_editor.html
(While you're there, fill out the other stuff too)

Want to reach one of your Community Leaders?
Go to the main page of your neighborhood
Click on the COMMUNITY LEADERS link on the left

Need help?
<http://www.geocities.com/members/help/>

Want to provide feedback to GeoCities?
<http://www.geocities.com/main/contact/>
Anytime. Anything, complimentary or critical.
We want to hear from you.

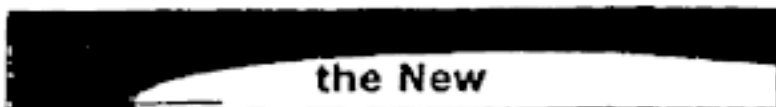
GeoCities

<http://www.geocities.com>

EXHIBIT D

GeoCities - EnchantedForest

Page 1 of 1



More features on the new GeoGuide! [Click here.](#)

[Join This Neighborhood](#)
[Chat](#)
[Forum](#)
[Audio Description](#)

- Explore the Suburbs:
- [EnchantedForest](#)
 - [Cottage](#)
 - [Glade](#)
 - [Golf](#)

Or, Browse by Topic:

- [Anime](#)
- [Babies](#)
- [Boys](#)
- [Cartoons](#)
- [Chat](#)
- [Children's Books](#)
- [Cyberpets](#)
- [Education](#)
- [Family](#)
- [Games](#)
- [Girls](#)
- [Graphics](#)
- [HTML/Web Page Help](#)
- [Pen-pals](#)
- [Pets](#)
- [Schools](#)
- [Toys](#)
- [Other](#)

[Register Your Page](#)



Spice up your site with our **NEW, Enchanted Forest Page Kit**. Great free graphics for your site are just a few clicks away!



Princess Elisabeth and Prince Christopher invite you to visit [The Castle](#) in the Enchanted Forest. Here you will find special places to go, games to play, and wonderful

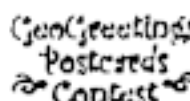
stories to read!

[Community Leaders - EnchantedForest Subsites](#)



Join the [GeoKids Club](#) for fun and HTML help. And remember... **Safety First** on the Internet!

Do you care about kids? Want to get involved in fun, safe online events for kids and families? Visit our [application page](#) to join the EnchantedForest Community Leader program!



Attention all graphic artists and designers! We want your artwork for a special series of Spring Break Postcards for [GeoGreetings](#). If you enjoy creating graphics and would

like to have your work sent out across the Web this spring, then come over to the [GeoGreetings Postcard Contest](#) for more details.

Get your bid in. Now! Auctions held daily.



[click here](#)

CDs from CDnow. [Click to Buy Tribute To Diana - Princess Of Wales.](#)



[CDnow - A Better Music Store](#)

Books from [amazon.com](#)



[The Complete Tales of Winnie-the-Pooh](#)

More books about [Children's Books](#)

ATC's POWER

Search GeoCities Search

[View The Neighborhood Forum](#)
[Send Feedback](#) [Featured Content](#) [Members](#) [Send us Email](#) [Search Us!](#)
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EXHIBIT E

(Web audio ad for Official GeoCities GeoKidz Club)

Welcome kids to this enchanting forest created by your friends for you to enjoy. . . . Join the GeoKidz Club at EnchantedForest/3696 for fun and HTML help. Play Java games and be sure to visit Charlie, the GeoKidz Club's new dog.

EXHIBIT F

The GeoCities World Report
Vol. 2 No. 15
July 16, 1997

IN THIS ISSUE

The New GeoPlus!
Vote! Flash For Cash
"People" Like Us
Join The GeoKids Club
Summer School?

GEOPLUS GETS A FACELIFT WITH NEW FEATURES

Rave reviews are pouring in about the revamped GeoPlus program. We gave the Community Leaders a sneak peak last week and now GeoPlus members are taking advantage by snagging tools like the cool CGIs from our new online library.

For those of you who aren't familiar with the program, GeoPlus gives you even more utilities, features and opportunities to take your homestead to the next level.

"Looks great!" wrote Becky, a SoHo Community Leader. "I really like the info listed down the left side. It's clean, simple and easy to navigate. And, CGIs with additional space? You've been reading our minds! I give it a big GeoPlus thumbs up."

Our new GeoPlus still includes the freedom of 10 megabytes of space, the ability to use subdirectories to manage your files, the convenience of a personalized URL, the rewards of double GeoPoints and the free trials to get great Internet products and services, but you also get FREE options like:

- *A library of great new CGI's featuring a variety of counters, a simple survey, a clock, Add-A-Link, an upgraded guestbook and many more new gadgets for your home pages

- *The ability to update your billing options at the click of a mouse

- *A powerful new GeoPlus Manager to keep on top of your current account status. The GeoPlus Manager was part of a special Community Leader contest to name our GeoPlus admin page. Several people submitted the name, but the first one was Bryan of West Hollywood. Congrats and thanks to all of our CLs for helping us critique the new GeoPlus program.

- *Direct access to the GeoCities File Manager from the GeoPlus Manager.

In addition to those great features, the new GeoPlus provides you with the option to purchase expandable disk space above the initial GeoPlus 10 megabytes in five-megabyte blocks and the option to have us help you secure a custom URL (www.anything.com).

To find out our more about the new GeoPlus or to sign up for this service, please visit <http://www.geocities.com/geoplus> .

* * * * *

VOTE: FLASH FOR CASH:

The "Flash for Cash Photo Contest" voting booth is now open for business! Browse the finalists in five categories and cast your vote for

EXHIBIT F

who should win \$500. That's a total of \$2,500 up for grabs thanks to the folks at Steem Easy Photo.

Thanks to everyone who submitted a photo (or two or three...). we will be showing our appreciation by putting up an additional gallery of YOUR photos next week.

Go find out what fine photographers your fellow homesteaders are by visiting <http://www.geocities.com/contrib/flash/>. And, by the way, it should be noted that in the "funny/Outrageous" category - the action taking place is the preliminary trials of the Turtle Hurdles for the 1998 Animal Olympics. Well, either that -- or a mean game of leap frog. Don't forget to vote!

* * * * *

PEOPLE LIKE US

GeoCitizen Steve Schalichlin and his home page (<http://www.geocities.com/Broadway/1131/>) will be featured in People Magazine next week for his inspiring "A Life of Survival Featuring A Songwriter With AIDS" site.

"They did an interview and also took photos," Steve reports. "They'll talk about the musical (Last Session) but the reporter was REALLY interested in the Web page. So, be on the lookout."

Another GeoCitizen in the news is surrealist painter J. Alden Kingston. He was recently featured in two Vancouver publications, but you don't have to find an out-of-town edition... just visit his home page at <http://www.geocities.com/Soho/1261/>

If your GeoCities home page has been featured in the news, please contact us at news@geocities.com

* * * * *

JOIN THE GEOKIDZ CLUB!

We all want a safe spot for our children to play and The GeoKidz Club is the perfect place. Enchanted Forest Community Leader Melange has been busy providing an HTML Center, games, message forums, a members' gallery and many more features for both parents and children to enjoy. The GeoKidz club is always growing and expanding, so visit <http://www.geocities.com/EnchantedForest/1696> often...and make sure to say hello to our virtual dog!

* * * * *

SUMMER IS THE PERFECT SEASON TO...

Write about your college! OK, it might sound strange, but stick with us...this is going to be fun. Don't you wish that when you went away to college someone had opened your eyes a little about what your school was really like or what kind of challenges you would actually face?

This is your chance to re-ignite those college memories, whether it was last year or last decade. All you have to do is design a page about university life and send it to us at collegepark@geocities.com. We will select cool pages to create a college catalog for prospective students to learn about college life and your academic institution.

Frat party warnings are OK, but show some school spirit and brag about your college! For a few examples that we found in our Featured Pages, please visit:

EXHIBIT F

<http://www.geocities.com/CollegePark/5014/Hb.html>
<http://www.geocities.com/CollegePark/3802/index2.html>

* * * * *

ALL ABOUT AUTOS

Hey Auto fans ... take a drive through the new GeoCities Car Center. Whether you're in the market for a new set of wheels, looking for expert advice, or just want to get the latest auto and racing news, we've got it from our friends at Auto-By-Tel. Check it out today at:

http://www.geocities.com/MotorCity/auto_center.html

* * * * *

ENJOYING THE RIDE: GEOGUIDE

The GeoGuide is now served up on more than 100,000 pages daily! And, it's not too late to win that computer, or a digital camera. To enter The Great GeoGuide Sweepstakes, please visit:

<http://www.geocities.com/homestead/geoguide/> and put a Java or GIF GeoGuide on your page.

* * * * *

GEOCITIES IS STYLIN!

Drop by our newest neighborhood Fashion Avenue. Take a tour through the world of high fashion. Get weekly fashion and beauty news, browse through some great home pages, share tips and advice with fellow GeoCitizens, and while you're there don't forget to stop by the Avon Beauty Counter at:

http://www.avon.com/shopping/drill.cgi?D=login&from_avon and order your favorite products online.

* * * * *

EXPLORE PLANET DIRECT

A while back we told you about an exciting new feature that will bring even more visitors to your GeoCities Web site. Since then, Planet Direct, one of our sister companies, has launched its enhanced and expanded personal Web service, featuring powerful, easy-to-use features and content relevant to you, your interests and your community. Visit <http://my.planetdirect.com> and you could win cool prizes like a BMW Z3 roadster.

* * * * *

FEATURES

-- The SoundOff section is growing by the second. Visit <http://www.geocities.com/SoundOff/> and speak out on Mike Tyson's punishment, the truth behind Roswell, exploring Mars and more!

-- Are you keeping track of who is visiting your home page and when? Get a GUESTBOOK at http://www.geocities.com/homestead/guest_book.html and start learning more about your guests.

-- Chat this way <http://www.geocities.com/SMI/newchat.html>. We've introduced new chat rooms into 10 neighborhoods and will soon be rolling out more new chat features. We have new HTML-based chat and personal chat rooms on the horizon. Tell us what you think -- send e-mail to chat@geocities.com with your comments about the new chat environment.

EXHIBIT F

-- Do you think your site deserves fame and fortune? Then, apply for the Featured Page Program. Featured Pages are highlighted on the main page of every neighborhood and are eligible for our Enhanced GeoRewards program, where you can earn GeoPoints for drawing traffic to your site. Go to <http://www.geocities.com/honestead/contribute.html> for details, or talk to one of your Community Leaders.

STUFF YOU NEED TO KNOW

Want to read about the most interesting sites at GeoCities?

<http://www.geocities.com/alist/>

Want to promote your page?

<http://www.geocities.com/honestead/promote.html>

Looking for more traffic?

<http://www.geocities.com/companies/profile.html>

Don't want to get this newsletter anymore?

<http://www.geocities.com/honestead/homenrof.html>

(While you're there, fill out the other stuff too)

Want to reach one of your Community Leaders?

Go to the main page of your neighborhood

Click on the COMMUNITY LEADERS link on the left

Need help?

<http://www.geocities.com/help/>

http://www.geocities.com/BHI/resource_guide.html

Want to provide feedback to GeoCities?

<http://www.geocities.com/contact/>

Anytime. Anything. complimentary or critical.

We want to hear from you.

* * * * *

GeoCities

<http://www.geocities.com>

EXHIBIT G

<http://www.geocities.com/EnchantedForests/1696/Geokidz>



Official GeoCities GeoKidz Club Membership Request Form

If you have any problems responding to this form,
or if you are not using a forms-capable browser,
you may email your response to this form to geokidz@geocities.com.
Parents can also use the above email link to email us if they'd like to.

Join the Official GeoCities GeoKidz Club!
Fill in the information here and send in the form.
Please fill in everything. Don't leave anything empty.

PLEASE GET YOUR PARENTS' PERMISSION to join!

This club is free. There is no cost to join.
All ages welcome - Kidz and Parents alike!

You *must* have a home page on GeoCities to be a member.
Please make sure you include your GeoCities home page address

Thank you!

Name

Age

Email Address:

If you don't have a GeoCities Email address yet, give us
your current email address and then let us know the GeoCities
address when you activate it. But don't leave this blank. Thanks!

Email address:

Alternate Email address:

EXHIBIT G

http://www.geocities.com/1696-Geokidz.html

You must have a home page in GeoCities to join the club.
If you don't have one already, please let us know what it is
as soon as you get it or we won't be able to sign you up.

GeoCities Home Page address:

Are you a:

- Boy
- Girl

Do you have your parents' permission to join the Official GeoCities GeoKidz Club?

- Yes
- No

Will your parents Email us and tell us we have their permission?

- Yes, my parents will Email you
- No, my parents wont email you

Some of your interests and hobbies:

Some of your favorite subjects at school:

Some subjects at school you don't like:

Some of your favorite books, magazines:

Some of your favorite television shows:

EXHIBIT G

www.geocities.com/JOYD-Cook

Some of your favorite TV shows, bands, etc:

Some of your favorite movies:

Some of your favorite games (board games, computer games, outdoor games, ALL games):

We're not putting up a whole bunch of rules and regulations, but the general Geocities guidelines, especially for the Enchanted Forest will apply here. By sending in this form, you agree to be respectful of others and not break Geocities and Enchanted Forest rules.

Thank you for joining the official Geocities GeoKidz Club!

You'll hear back from us very soon! **If you don't hear from us within 2 - 3 days, please email us.** Some people have left out their names and email addresses so we can't answer!

We're looking forward to having you in the Geocities GeoKidz Club!

This page hosted by  Get your own [Free Home Page](#)

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EXHIBIT H

Enchanted Forest Neighborhood

Page 2

[COMMUNITY LEADERS](#)

Browse Great Pages Here	Join This Neighborhood	Visit Our Commercial Sponsors
---	--	---

[SEARCH](#)

[Tell us how to improve your neighborhood](#)

[UTILITIES](#)

[HELP](#)



SAY HI TO OUR NEW PARTNERS

We're pleased to welcome [RockVillage](#), [Earwig](#), [CountrySpotlight](#) and [GroovePlanet](#) to our GeoPartners program. These sites are affiliated with over 90 radio stations around the country. Tune in today!

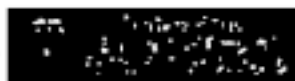


\$10 off on your first purchase of \$50 or more at [Internet Shopping Network](#)

Shop for computer products, flowers or GeoCities logo items -- or just play!

Read messages from your neighbors in the [EnchantedForest newsletter](#). Contribute your own stories, birthday wishes and more!

Have you ever given your dad an OUTRAGEOUS Father's Day gift? Tell us about it for our [Father's Day Contest](#)! All winners will get this graphic to put on their pages to show off.



Join us in our quest to name our Prince and Princess, the mascots of Enchanted Forest! [Enter the contest](#) to name them by June 7th, and win 25 GeoPoints.

Please take a moment to read the [special content guidelines](#) relating to the EnchantedForest neighborhood.

Featured Enchanted Forest Homesteaders

Reload the page to see new features

[EnchantedForest/3115](#)
Kids Kewl Picks is a site by and for kids.

[EnchantedForest/3787](#)
Castle Infinity connects kids from around the world to one magical castle.

[EnchantedForest/6864](#)
Bryan is a San Francisco 49ers fanatic.

[EnchantedForest/1534](#)
Ian's Cyber Place: a six-year-old's life.

Does your site belong here? [Tell us!](#)

[Home](#) [Neighborhoods](#) [Information](#) [What's New](#) [What's Cool](#) [Links](#)
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EXHIBIT I

http://www.geocities.com/EnchantedForest/Glades/18907/form.htm

http://www.geocities.com/EnchantedForest/Glades/18907/form.htm

ENTER THE HOLIDAY SEASON HOMEPAGE CONTEST HERE

Please tell us your name:

(Do not hit return)

Tell us the address (URL) of your special holiday page:

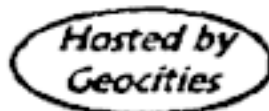
PLEASE ENTER THE URL AS
http://www.geocities.com/EnchantedForest/????/????/
Fill in your own information where the question marks are.
(Do not hit return)

What is your e-mail address?:

(Do not hit return)

PLEASE BE SURE THAT YOUR HOLIDAY SEASONS PAGE IS READY FOR DECEMBER 15TH.

ENTER ME	OOOPS - ERASE THIS PUPPY
----------	--------------------------



GET YOUR FREE HOME PAGE HERE

*121 DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

**6 The respondent, its attorneys, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent GeoCities, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office or principal place of business located at 1918 Main Street, Suite 300, Santa Monica, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

*122 ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. “*Child*” or “*children*” shall mean a person of age twelve (12) or under.
2. “*Parents*” or “*parental*” shall mean a legal guardian, including, but not limited to, a biological or adoptive parent.
3. “*Personal identifying information*” shall include, but is not limited to, first and last name, home or other physical address (e.g., school), e-mail address, telephone number, or any information that identifies a specific individual, or any information which when tied to the above becomes identifiable to a specific individual.
4. “*Disclosure*” or “*disclosed to third party(ies)*” shall mean (a) the release of information in personally identifiable form to any other individual, firm, or organization for any purpose or (b) making publicly available such information by any means including, but not limited to, public posting on or through home pages, pen pal services, e-mail services, message boards, or chat rooms.
5. “*Clear(ly) and prominent(ly)*” shall mean in a type size and location that are not obscured by any distracting elements and are sufficiently noticeable for an ordinary consumer to read and comprehend, and in a typeface that contrasts with the background against which it appears.
- **7 6. “*Archived*” database shall mean respondent's off-site “back-up” computer tapes containing member profile information and GeoCities Web site information.
7. “*Electronically verifiable signature*” shall mean a digital signature or other electronic means that ensures a valid consent by requiring: (1) authentication (guarantee that the message has come from the person who claims to have sent it); (2) integrity (proof that the message contents have not been altered, deliberately or accidentally, during transmission); and (3) non-repudiation (certainty that the sender of the message cannot later deny sending it).
8. “*Express parental consent*” shall mean a parent's affirmative agreement that is obtained by any of the following means: (1) a signed statement transmitted by postal mail or facsimile; (2) authorizing a charge to a credit card via a secure server (3) e-mail accompanied by an electronically verifiable signature; (4) a procedure that is specifically authorized by statute, regulation, or

guideline *123 issued by the Commission; or (5) such other procedure that ensures verified parental consent and ensures the identity of the parent, such as the use of a reliable certifying authority.

9. Unless otherwise specified, “*respondent*” shall mean GeoCities, its successors and assigns and its officers, agents, representatives, and employees.

10. “*Commerce*” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any online collection of personal identifying information from consumers, in or affecting commerce, shall not make any misrepresentation, in any manner, expressly or by implication, about its collection or use of such information from or about consumers, including, but not limited to, what information will be disclosed to third parties and how the information will be used.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any online collection of personal identifying information from consumers, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the identity of the party collecting any such information or the sponsorship of any activity on its Web site.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal identifying information from children, in or affecting commerce, shall not collect personal identifying information from any child if respondent has actual knowledge that such child does not have his or her parent's permission to provide the information to respondent. Respondent shall not be deemed to have actual knowledge if the child has falsely represented that (s)he is not a child and respondent does not knowingly possess information that such representation is false.

*124 IV.

****8** *It is further ordered*, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal identifying information, in or affecting commerce, shall provide clear and prominent notice to consumers, including the parents of children, with respect to respondents practices with regard to its collection and use of personal identifying information. Such notice shall include, but is not limited to, disclosure of:

- A. What information is being collected (*e.g.*, “name,” “home address,” “e-mail address,” “age,” “interests”);
- B. Its intended use(s);
- C. The third parties to whom it will be disclosed (*e.g.*, “advertisers of consumer products,” mailing list companies,” “the general public”);
- D. The consumer's ability to obtain access to or directly access such information and the means by which (s)he may do so;
- E. The consumer's ability to remove directly or have the information removed from respondent's databases and the means by which (s)he may do so; and

F. The procedures to delete personal identifying information from respondent's databases and any limitations related to such deletion.

Such notice shall appear on the home page of respondent's Web site(s) and at each location on the site(s) at which such information is collected.

Provided that, respondent shall not be required to include notice at the locations at which information is collected if such information is limited to tracking information and the collection of such information is described in the notice required by this Part.

Provided further that, for purposes of this Part, compliance with all of the following shall be deemed adequate notice: (a) placement of a clear and prominent hyperlink or button labeled **PRIVACY NOTICE** on the home page(s), which directly links to the privacy notice screen(s); (b) placement of the information required in this Part clearly and prominently on the privacy notice screen(s), followed on the same screen(s) with a button that must be clicked on to make it disappear, and (c) at each location on the site at which any personal *125 identifying information is collected, placement of a clear and prominent hyperlink on the initial screen on which the collection takes place, which links directly to the privacy notice and which is accompanied by the following statement in bold typeface:

NOTICE: We collect personal information on this site. To learn more about how we use your information click here.

V.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal identifying information from children, in or affecting commerce, shall maintain a procedure by which it obtains express parental consent prior to collecting and using such information.

**9 Provided that, respondent may implement the following screening procedure that shall be deemed to be in compliance with this Part. Respondent shall collect and retain certain personal identifying information from a child, including birth date and the child's and parent's e-mail addresses (hereafter "screening information"), enabling respondent to identify the site visitor as a child and to block the child's attempt to register with respondent without express parental consent. If respondent elects to have the child register with it, respondent shall: (1) give notice to the child to have his/her parent provide express parental consent to register, and/or (2) send a notice to the parent's e-mail address for the purpose of obtaining express parental consent. The notice to the child or parent shall provide instructions for the parent to: (1) go to a specific URL on the Web site to receive information on respondent's practices regarding its collection and use of personal identifying information from children and (2) provide express parental consent for the collection and use of such information. Respondent's collection of screening information shall be by a manner that discourages children from providing personal identifying information in addition to the screening information. All personal identifying information collected from a child shall be held by respondent in a secure manner and shall not be used in any manner other than to effectuate the notice to the child or parent, or to block the child from further attempts to register or *126 otherwise provide personal identifying information to respondent without express parental consent. The personal identifying information collected shall not be disclosed to any third party prior to the receipt of express parental consent. If express parental consent is not received by twenty (20) days after respondent's collection of the information from the child, respondent shall remove all such personal identifying information from its databases, except such screening information necessary to block the child from further attempts to register or otherwise provide personal identifying information to respondent without express parental consent.

VI.

Nothing in this order shall prohibit respondent from collecting personal identifying information from children or from using such information, as specifically permitted in the Children's Online Privacy Protection Act of 1998 (without regard to the effective date of the Act) or as such Act may hereafter be amended; regulations or guides promulgated by the Commission; or self-regulatory guidelines approved by the Commission pursuant to the Act.

VII.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall provide a reasonable means for consumers, including the parents of children, to obtain removal of their or their children's personal identifying information collected and retained by respondent and/or disclosed to third parties, prior to the date of service of this order, as follows:

****10** A. Respondent shall provide a clear and prominent notice to each consumer over the age of twelve (12) from whom it collected personal identifying information and disclosed that information to CMG Information Services, Inc., describing such consumer's options as stated in Part VII.C and the manner in which (s)he may exercise them.

B. Respondent shall provide a clear and prominent notice to the parent of each child from whom it collected personal identifying information prior to May 20, 1998, describing the parent's options as stated in Part VII.C and the manner in which (s)he may exercise them.

C. Respondent shall provide the notice within thirty (30) after the date of service of this order by e-mail, postal mail, or ***127** facsimile. Notice to the parent of a child may be to the e-mail address of the parent and, if not known by respondent, to the e-mail address of the child. The notice shall include the following information:

1. The information that was collected (*e.g.*, "name," "home address," "e-mail address," "age," "interests"); its use(s) and/or intended use(s); and the third parties to whom it was or will be disclosed (*e.g.*, "advertisers of consumer products," "mailing list companies," "the general public") and with respect to children, that the child's personal identifying information may have been made public through various means, such as by publicly posting on the child's personal home page or disclosure by the child through the use of an e-mail account;

2. The consumer's and child's parent's right to obtain access to such information and the means by which (s)he may do so;

3. The consumer's and child's parent's right to have the information removed from respondent's or a third party's databases and the means by which (s)he may do so;

4. A statement that children's information will not be disclosed to third parties, including public posting, without express parental consent to the disclosure or public posting;

5. The means by which express parental consent may be communicated to the respondent permitting disclosure to third parties of a child's information; and

6. A statement that the failure of a consumer over the age of twelve (12) to request removal of the information from respondent's databases will be deemed as approval to its continued retention and/or disclosure to third parties by respondent.

D. Respondent shall provide to consumers, including the parents of children, a reasonable and secure means to request access to or directly access their or their children's personal identifying information. Such means may include direct access through password protected personal profile, return e-mail bearing an electronically verifiable/signature, postal mail, or facsimile.

E. Respondent shall provide to consumers, including the parents of children, a reasonable means to request removal of their or their children's personal identifying information from respondent's and/or the applicable third party's databases or an assurance that such ***128** information has been removed. Such means may include e-mail, postal mail, or facsimile.

****11** F. The failure of a consumer over the age of twelve (12) to request the actions specified above within twenty (20) days after his/her receipt of the notice required in Part VII.A shall be deemed to be consent to the information's continued retention and used by respondent and any third party.

G. Respondent shall provide to the parent of a child a reasonable means to communicate express parental consent to the retention and/or disclosure to third parties of his/her child's personal identifying information. Respondent shall not use any such information or disclose it to any third party unless and until it receives express parental consent.

H. If, in response to the notice required in Part VII.A, respondent has received a request by a consumer over the age of twelve (12) that respondent should remove from its databases the consumer's personal identifying information or has not received the express consent of a parent of a child to the continued retention and/or disclosure to third parties of a child's personal identifying information by respondent within twenty (20) days after the parent's receipt of the notice required in Part VII.B, respondent shall within ten (10) days:

1. Discontinue its retention and/or disclosure to third parties of such information, including but not limited to (a) removing from its databases all such information, (b) removing all personal home pages created by the child, and (c) terminating all e-mail accounts for the child; and
2. Contact all third parties to whom respondent has disclosed the information, requesting that they discontinue using or disclosing that information to other third parties, and remove the information from their databases.

With respect to any consumer over the age of twelve (12) or any parent of a child who has consented to respondent's continued retention and use of personal identifying information pursuant to this Part, such consumer's or parent's continuing right to obtain access to his/her or a child's personal identifying information or removal of such information from respondent's databases shall be as specified in the notice required by Part IV of this order.

***129** I. Within thirty (30) days after the date of service of this order, respondent shall obtain from a responsible official of each third party to whom it has disclosed personal identifying information and from each GeoCities Community Leader a statement stating that (s)he has been advised of the terms of this order and of respondent's obligations under this Part, and that (s)he agrees, upon notification from respondent, to discontinue using or disclosing a consumer's or child's personal identifying information to other third parties and to remove any such information from its databases.

J. As may be permitted by law, respondent shall cease to do business with any third party that fails within thirty (30) days of the date of service of this order to provide the statement set forth in Part VII.I or whom respondent knows or has reason to know has failed at any time to (a) discontinue using or disclosing a child's personal identifying information to other third parties, or (b) remove any such information from their databases. With respect to any GeoCities Community Leader, the respondent shall cease the Community Leader status of any person who fails to provide the statement set forth in Part VII.I or whom respondent knows or has reason to know has failed at any time to (a) discontinue using or disclosing a child's personal identifying information to other third parties, or (b) remove any such information from their databases.

****12** For purposes of this Part: "third party(ies)" shall mean each GeoCities Community Leader, CMG Information Services, Inc., Surplus Software, Inc. (Surplus Direct/Egghead Computer), Sage Enterprises, Inc. (GeoPlanet/Planetall), Netopia, Inc. (Netopia), and InfoBeat/Mercury Mail (InfoBeat).

VIII.

It is further ordered, That for the purposes of this order, respondent shall not be required to remove personal identifying information from its archived database if such information is retained solely for the purposes of Web site system maintenance, computer file back-up, to block a child's attempt to register with or otherwise provide personal identifying information to respondent without express parental consent, or to respond to requests for such information from law enforcement agencies or pursuant to judicial process. Except as necessary to respond to requests from law enforcement agencies or pursuant to judicial process, respondent shall *130 not disclose to any third party any information retained in its archived database. In any notice required by this order, respondent shall include information, clearly and prominently, about its policies for retaining information in its archived database.

IX.

It is further ordered, That for five (5) years after the date of this order, respondent GeoCities, and its successors and assigns, shall place a clear and prominent hyperlink within its privacy statement which states as follows in bold typeface:

NOTICE: Click here for important information about safe surfing from the Federal Trade Commission.

The hyperlink shall directly link to a hyperlink/URL to be provided to respondent by the Commission. The Commission may change the hyperlink/URL upon thirty (30) days prior written notice to respondent.

X.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying the following:

A. For five (5) years after the last date of dissemination of a notice required by this order, a print or electronic copy in HTML format of all documents relating to compliance with Parts IV through IX of this order, including, but not limited to, a sample copy of every information collection form, Web page, screen, or document containing any representation regarding respondent's information collection and use practices, the notice required by Parts IV, V and VII, any communication to third parties required by Part VII, and every Web page or screen linking to the Federal Trade Commission Web site. Each Web page copy shall be accompanied by the URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting information on the World Wide Web; and

Provided that, after creation of any Web page or screen in compliance with this order, respondent shall not be required to retain a print or electronic copy of any amended Web page or screen to the *131 extent that the amendment does not affect respondent's compliance obligations under this order.

**13 B. For five (5) years after the last collection of personal identifying information from a child, all materials evidencing the express parental consent given to respondent.

XI.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XII.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall establish an “information practices training program” for any employee or GeoCities Community Leader engaged in the collection or disclosure to third parties of consumers' personal identifying information. The program shall include training about respondent's privacy policies, information security procedures, and disciplinary procedures for violations of its privacy policies. Respondent shall provide each such current employee and GeoCities Community Leader with information practices training materials within thirty (30) days after the date of service of this order, and each such future employee or GeoCities Community Leader such materials and training within thirty (30) days after (s)he assumes his/her position or responsibilities.

XIII.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation *132 or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIV.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XV.

****14** This order will terminate on February 5, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as through the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the *133 deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

CONCURRING STATEMENT OF COMMISSIONER ORSON SWINDLE

I have voted in favor of final issuance of the consent order in this matter because its provisions are appropriate to remedy the alleged violations of the law by GeoCities, Inc. However, I want to emphasize that my support for these provisions as a remedy

for alleged law violations in this particular case does not necessarily mean that I would support imposing these requirements on other commercial Internet sites through either legislation or regulation.

FTC
127 F.T.C. 94, 1999 WL 33912980

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Ethel AUSTIN-SPEARMAN, Plaintiff,

v.

AARP AND AARP SERVICES
INC., Defendants.

Civil Action No. 14-cv-1288 (KBJ)

United States District Court,
District of Columbia.

Signed July 28, 2015

Background: Internet user who had paid membership fee for use of website, and whose personally identifiable information was then obtained by third parties from the website, filed putative class action against owner of website alleging breach of contract, unjust enrichment, intentional misrepresentation, fraud by omission, and violation of the District of Columbia Consumer Protection Procedures Act (DCCPPA). Website owner moved to dismiss.

Holdings: The District Court, Ketanji Brown Jackson, J., held that:

- (1) user did not sustain injury-in-fact, since website's privacy policy permitted sharing of personally identifiable information, but
- (2) even if website violated its privacy policy, user lacked an economic injury as a result.

Motion granted.

Opinion, 2015 WL 4036206, amended and superseded.

1. Federal Civil Procedure ⇌103.2

A showing of standing is an essential and unchanging predicate to any exercise of federal court jurisdiction. U.S.C.A. Const. Art. 3, § 2, cl. 1.

2. Federal Civil Procedure ⇌103.2

Every plaintiff in federal court bears the burden of establishing the three ele-

ments that make up the irreducible constitutional minimum of Article III standing: injury-in-fact, causation, and redressability. U.S.C.A. Const. Art. 3, § 2, cl. 1.

3. Federal Civil Procedure ⇌103.2

"Injury-in-fact," as required for Article III standing, is an invasion of a legally protected interest that is both (a) concrete and particularized and (b) actual or imminent, as opposed to merely conjectural or hypothetical. U.S.C.A. Const. Art. 3, § 2, cl. 1.

See publication Words and Phrases for other judicial constructions and definitions.

4. Federal Civil Procedure ⇌103.2

Although economic harm is a canonical example of injury-in-fact sufficient to establish Article III standing, merely asking for money does not establish an injury-in-fact; rather, a cognizable overpayment injury ordinarily relates to the harm that results from there being a difference between what plaintiff contracted for and what she actually received. U.S.C.A. Const. Art. 3, § 2, cl. 1.

5. Federal Courts ⇌2073, 2081

In reviewing a standing question in the context of a motion to dismiss for lack of subject matter jurisdiction, court must be careful not to decide the questions on the merits for or against the plaintiff, and must therefore assume that on the merits the plaintiffs would be successful in their claims. U.S.C.A. Const. Art. 3, § 2, cl. 1; Fed. R. Civ. P. 12(b)(1).

6. Federal Courts ⇌2078, 2080

On a motion to dismiss for lack of standing, court may dispose of the motion on the basis of the complaint alone, or it may consider materials beyond the pleadings as it deems appropriate to resolve the question whether it has jurisdiction to hear

the case. U.S.C.A. Const. Art. 3, § 2, cl. 1; Fed. R. Civ. P. 12(b)(1).

7. Antitrust and Trade Regulation ⌘290

Telecommunications ⌘1346

User of Internet website who had paid membership fee for use of website, and whose personally identifiable information was then obtained by third parties from the website, did not sustain injury-in-fact, as required for Article III standing to bring putative class action against website owner for breach of contract and violation of the District of Columbia Consumer Protection Procedures Act (DCCPPA); although user claimed her personally identifiable information was wrongfully obtained by third parties from the website, and as a result she received less than the bargained-for benefits, the terms of website's online privacy policy permitted website to collect users' personally identifiable information, permitted certain third parties to collect non-personally identifiable information of users, permitted social media accounts to collect data and information about users if users stayed logged into social media accounts while visiting website, and permitted website to share data and information about its members with companies that helped with advertising. U.S.C.A. Const. Art. 3, § 2, cl. 1; D.C. Code § 28-3901 et seq.

8. Antitrust and Trade Regulation ⌘290

Telecommunications ⌘1346

Even if website violated its own privacy policy prohibiting it from sharing personally identifiable information with third parties, user whose information was shared after she purchased membership to website lacked an economic injury as a result, and thus suffered no injury-in-fact, as required for Article III standing to bring putative class action against website

owner for breach of contract and violation of the District of Columbia Consumer Protection Procedures Act (DCCPPA); the promises made in website's privacy policy were offered to members and non-members alike, and so were not part of user's binding membership contract, and user had received all membership benefits or services for which she paid. U.S.C.A. Const. Art. 3, § 2, cl. 1; D.C. Code § 28-3901 et seq.

9. Contracts ⌘1.1

Not all promises rise to the level of binding contractual obligations; a promise that is offered freely and equally to all people, without regard to who has provided consideration and who has not, is not a "contract."

See publication Words and Phrases for other judicial constructions and definitions.

Alicia E. Hwang, Benjamin S. Thomasen, Jay Edelson, Rafey S. Balabanian, Edelson PC, Chicago, IL, Maria Christina Simon, The Geller Law Group, PLLC, Fairfax, VA, for Plaintiff.

Thomas E. Gilbertsen, Michael P. Bracken, Venable LLP, Washington, DC, for Defendants.

MEMORANDUM OPINION

KETANJI BROWN JACKSON, United States District Judge

Plaintiff Ethel Austin-Spearman is an internet savvy woman. According to her complaint, she became a member of Facebook's social network in 2007, and she frequently accesses that website and others through the web browser on her computer. (See Am. Compl., ECF No. 23, ¶¶ 71-72.) Moreover, whenever Austin-Spearman registers for a new online service, she diligently reads the website's

Terms of Service and the Privacy Policy. (*See id.* ¶77.)¹ It is the terms of the Privacy Policy on the AARP’s internet website that have given rise to the instant action—Austin-Spearman alleges that Defendants AARP and AARP Services Inc. (collectively, “Defendants”) have violated the Privacy Policy because the AARP’s website is configured to permit companies like Facebook and Adobe to collect personally identifiable information (“PII”) about the user.² Austin-Spearman’s class action complaint contains five counts—breach of contract, unjust enrichment, intentional misrepresentation, fraud by omission, and violation of the D.C. Consumer Protection Procedures Act (“DCCPPA”), D.C.Code §§ 28-3901 to 28-3913 (2012)—and Austin-Spearman maintains that Defendants’ breach of the AARP’s own privacy promises has injured her economically because she would not have tendered the fee to purchase an AARP membership had she known that the organization would permit the collection of her PII by Facebook and other third parties.

Before this Court at present is Defendants’ motion to dismiss the complaint for lack of Article III standing and for failure to state a claim upon which relief can be granted. For the reasons explained below, this Court finds that the complaint’s allegations are insufficient to establish that

Defendants’ practices regarding user data violate the AARP’s internet Privacy Policy, and in any event, it is entirely implausible that Austin-Spearman has suffered the injury she relies upon for standing (an economic injury) as a result of the AARP’s purported violation of its internet-usage Privacy Policy. Therefore, the Court concludes that Austin-Spearman does not have Article III standing to sue, and as a result, Defendants’ motion to dismiss the complaint will be **GRANTED**. A separate order consistent with this opinion will issue.

I. BACKGROUND

A. Plaintiff’s Allegations

In late 2010, longtime Facebook member and an experienced internet user Austin-Spearman navigated to www.aarp.org to learn about AARP membership. (*See* Am. Compl. ¶¶ 72–73.)³ The AARP is an organization that advocates for people over the age of 50; the fee that one pays to become an AARP member supports the organization’s lobbying and litigation efforts, and AARP members also have access to “discounts on shopping, dining, and travel as well as financial and insurance-related products and services.” (*Id.* ¶ 1.) A person who is 50 years of age or older can become a member of the AARP by mailing in a paper form along with the

1. A website’s Terms of Service “describe the terms and conditions that govern the relationship between the user of a Web site and its operator.” Jonathan D. Frieden, *Essential Elements of Effective Terms of Use*, 18 J. Internet L. 3 (2014). Similarly, a website’s Privacy Policy “explain[s] how the [website operator] applies specific fair information practices to the collection, use, storage, and dissemination of personal information” that website users provide to the website operator in the course of using the website. Corey A. Ciocchetti, *E-Commerce and Information Privacy: Privacy Policies As Personal Information Protectors*, 44 Am. Bus. L.J. 55, 68 (2007).

2. There is no “uniform definition” of the term “personally identifiable information,” Paul M. Schwartz & Daniel J. Solove, *The Pii Problem: Privacy and A New Concept of Personally Identifiable Information*, 86 N.Y.U. L.Rev. 1814, 1816 (2011); however, Plaintiff’s complaint lists the following examples: name, age, race, email address, state of residence, health insurance information, employment data, and family demographic information (*see* Am. Compl. ¶ 48).

3. The AARP was formerly called the American Association of Retired Persons.

requisite membership fee, or by purchasing a membership online, through the AARP's website. (*See id.* ¶¶ 19, 23.) Paid AARP members may then opt to establish an online account with the organization, which is accomplished by creating login credentials—a user name and password—and also by “enter[ing] their demographic information (first name, last name, country, zip code, and birthday) on AARP's website.” (*Id.* ¶ 23.) Notably, the AARP's website is set up such that any person can create an online AARP account without first becoming an AARP member; however, AARP members *must* register online if they wish to access certain discounts and special offers that are available to AARP members only through the member's AARP online account. (*See id.* ¶¶ 2, 20.)

Austin–Spearman purchased a three-year AARP membership for \$43 through AARP's website (*see id.* ¶ 74); then, she proceeded to create an online AARP account (*see id.* ¶ 77). To establish her account, Austin–Spearman entered the requisite registration information, and she also viewed, and agreed to, AARP's Privacy Policy. (*See id.* ¶ 77)

The terms of AARP's online Privacy Policy are central to the parties' dispute, and they are recited in detail in Plaintiffs'

4. Neither Plaintiff nor Defendants attached the entire Privacy Policy to their pleadings; however, Plaintiff notes in the complaint that “AARP's Privacy Policy is displayed” at “www.AARP.org/about-aarp/info-05-2010/privacypolicy.html” (Am.Compl. ¶ 25), and the complaint includes screenshots of paragraphs from the privacy policy document as it appears on the website (*see id.* ¶¶ 27–28; Fig. 2). Moreover, at the hearing on Defendants' Motion to Dismiss, both Plaintiff and Defendants agreed that AARP's entire Privacy Policy—and not just the portions quoted in the complaint—has been incorporated into Plaintiff's complaint and that the Court may therefore consider the entire Privacy Policy when ruling on the motion to dismiss. (*See*

complaint.⁴ The Privacy Policy is seven-pages long and is divided by subject-matter into twelve sections; as a general matter, the policy explains the types of information that are captured when people visit the AARP website. Section 3—which is entitled “Information We Collect From You”—states, in relevant part, that

[w]hen you join AARP, we collect basic information such as your name, contact information, preferences and date of birth. We collect information about your participation in AARP activities, including member services and discounts obtained by using your membership card.

AARP also collects information on our website. We collect both information that identifies you as a particular individual (“personally identifiable information”) and anonymous information that is not associated with a specific individual (“nonpersonally identifiable information”). When you visit our website, some information may be collected automatically as part of the site's operation. We also collect information we receive from you during online registration and when you complete other forms.

AARP, *Your Privacy Rights—Privacy Policy* (“AARP Privacy Policy”) at Sec. 3, *Information We Collect From You*, ¶ 2.⁵

Hr'g Tr. at 45:4–12.) *See also Equal Empl. Opportunity Comm'n v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C.Cir. 1997) (noting that, when presented with a motion to dismiss, a court may consider “documents . . . incorporated in the complaint”). Therefore, the Court will assume that the privacy policy at the web address provided by the Plaintiff is the same privacy policy that existed at the time Austin–Spearman first accessed the AARP website.

5. Available at www.AARP.org/about-aarp/info-05-2010/privacypolicy.html (last visited June 25, 2015).

(See also Am. Compl. ¶27.) The next section of the policy (Section 4) addresses “Information Collected By Third Parties”—it is the first paragraph of Section 4 that is the basis for the allegations made in Austin-Spearman’s complaint:

We may allow third-party analytics companies, research companies or ad networks to collect nonpersonally identifiable information on our website. These companies may use tracking technologies, including cookies and Web beacons, to collect information about users of our site in order to analyze, report on or customize advertising on our site or on other sites. For information about how to opt-out of the customization of advertising from many ad networks, you can visit here.

AARP Privacy Policy at Sec. 4, *Information Collected by Third Parties*, ¶1. Notably, the third paragraph of Section 4 also specifically cautions that “[i]f you stay logged into your social media accounts . . . while visiting our website[,] those social media companies may collect information about you.” *Id.* ¶3. Furthermore, in Section 5, the Privacy Policy states that AARP itself “may share your information[,] including your personally identifiable information[,] with companies we hire to provide certain [] services such as . . . improving advertising services . . . and managing databases or other technology.” AARP Privacy Policy at Sec. 5, *With Whom Your Information May be Shared*, ¶7.

Despite these disclosures, Austin-Spearman’s complaint alleges that the AARP website violates the express terms of the AARP online Privacy Policy because the AARP website is configured to permit Facebook and Adobe to collect members’ PII.

(See Am. Compl. ¶¶35–55.) Specifically, according to the complaint, “[t]he first sentence [of Section 4, paragraph 1] assures members that AARP *only* allows certain third parties to collect ‘nonpersonally identifiable information’ from its website[.]” (*Id.* ¶29 (emphasis added).) The complaint also emphasizes that “the last sentence [of the first paragraph of Section 4] presents a hyperlink to another page that, among other things, lists “the specific third party companies that collect data from the site[,]” and that “[n]either Facebook nor Adobe is found on this list.” (*Id.* ¶31.)

The technical particulars of how AARP allegedly permits Facebook to collect website users’ PII are detailed at length in the Plaintiff’s complaint and are not disputed. Suffice it to say here that Facebook’s software places “cookies” on a user’s computer when a Facebook user opts to remain logged in, and that these cookies interact with certain codes in AARP’s website to permit “data about the user’s browsing” to “be silently transmitted back to Facebook.” (*Id.* ¶¶38–41.)⁶ Austin-Spearman acknowledges that she checks the “keep me logged in” box on her Facebook account when she navigates to the AARP website, or uses a Facebook plugin to log into the AARP website, and that, as a result, Facebook captures the titles of the articles and videos that Austin-Spearman accesses and views as she browses AARP’s website. (See *Id.* ¶¶35–45, 71, 81.) However, her core contention is that *Defendants* are to blame for facilitating this “[p]rivacy [h]azard” (*id.* at 17), because, in purported contravention of the AARP’s own Privacy Policy, AARP has coded its website to permit the placement of cookies, and thus Facebook can track the activities

6. The complaint defines a “cookie” as “a simple text file placed onto a user’s computer that can be used to track browsing activity

and report said activity back to the server that originally placed the cookie.” (Am. Compl. ¶38 n. 9.)

of users who are simultaneously logged into the social media site or have arrived at the AARP site via a Facebook plugin (see *id.* ¶¶ 35–45).

Austin–Spearman also alleges that Defendants permitted Adobe to collect PII data related to people who visit the AARP website, and that this practice, too, breaches AARP’s Privacy Policy. (See *id.* ¶¶ 46–55.) According to Plaintiff, Adobe collects PII “using a code developed by Adobe that AARP has integrated into its website.” (*Id.* ¶ 46; see also *id.* ¶¶ 47–48 (explaining that “[t]he process starts with AARP placing a cookie onto the website visitor’s computer,” and “[i]f the visitor is a registered member, the cookie . . . will be populated with PII retrieved from AARP’s database.”).) “As a member navigates through the AARP website, the special Adobe code forces the member’s web browser to extract information from the cookie and transmit it, along with data revealing the online materials being accessed and viewed by the member (i.e., on the AARP website), to Adobe’s analytics servers.” (*Id.* ¶ 48.) Plaintiff asserts that, in this way, AARP has provided Adobe with “free rein [sic] to collect information from the cookies stored on members’ computers while using the AARP website[,]” and that such information ultimately is used to “display targeted advertisements to members[.]” (*Id.* ¶ 50.)

The problem with all this, according to Plaintiff, is that “Austin–Spearman did not consent, agree, or otherwise permit AARP to release her PII to any third party company (i.e., outside of those disclosures expressly provided for in AARP’s Privacy Policy),” and yet “when she used AARP’s website[,] AARP routinely permitted third parties Facebook and Adobe to collect her

PII, along with the precise materials that she viewed, the titles of articles read and videos watched on AARP’s website[.]” (*Id.* ¶ 81.) Moreover, “[h]ad AARP informed Austin–Spearman that it allows third parties to collect member PII through the AARP website at the time that she purchased her membership, she either (i) would not have paid for an AARP membership in the first place or (ii) would not have used the AARP website at all (and thus, would give up her paid-for membership benefits only accessible through the website).” (*Id.* ¶ 82.) The complaint also suggests that Defendants have an ulterior motive for this allegedly intentional and harmful violation of the constraints in their own Privacy Policy: “upon information and belief” AARP “directly profits” from these practices (*id.* ¶ 53) in at least two ways: (1) “AARP receives royalty payments when members sign up for life insurance plans through . . . targeted advertisements” that can be generated as a result of the PII collection methods described (*id.* ¶ 53), and (2) “AARP is able to sell advertising space on its website at a premium price” because its “usage of Adobe’s collection methodologies and analytics services . . . allows it to serve targeted advertising to its members” (*id.* ¶ 54).

B. Procedural History

On July 29, 2014, Austin–Spearman filed the instant lawsuit against AARP and its wholly owned subsidiary, AARP Services Inc. (“collectively, AARP”). (See *generally* Compl., ECF No. 1.)⁷ The gravamen of the complaint is Austin–Spearman’s insistence that AARP’s Privacy Policy assures users that third parties are only permitted to collect nonpersonally identifiable infor-

7. That same day, Austin–Spearman filed a Motion for Class Certification. (See Mot. to Cert. Class, ECF No. 2.) The Court stayed

consideration of that motion until further order of the Court. (See Minute Entry dated Oct. 29, 2014.)

mation from the AARP website, and that, in any event, such data and information can only be captured by certain identified third parties. (*See* Am. Compl. ¶ 29.) Austin-Spearman considers this promise to have been violated as a result of the alleged collection of PII by Facebook and Adobe, and she also believes that AARP's practice of sharing information with Facebook and Adobe lessened the value of her AARP membership (*see id.* ¶ 82), because she views compliance with AARP's Privacy Policy as part of her membership contract with the organization (*see id.* ¶¶ 75-81). Thus, Austin-Spearman's five-count amended complaint, which was filed on October 24, 2014, claims that AARP's information sharing practices violate the DCCPPA, and also constitute intentional misrepresentation, fraud by omission, unjust enrichment, and breach of contract. (*See id.* at ¶¶ 95-109 (count one: violation of the DCCPPA); 110-24 (count two: intentional misrepresentation); 125-36 (count three: fraud by omission); 137-43 (count four: unjust enrichment); 144-58 (count five: breach of contract (in the alternative to unjust enrichment)).)

On November 10, 2014, Defendants filed the instant motion to dismiss Austin-Spearman's amended complaint. (*See* Mot. to Dismiss Am. Compl. with Prejudice ("Defs.' Mot."), ECF No. 24.)⁸ Defendants primarily argue that Austin-

Spearman lacks an injury-in-fact that would support Article III standing to bring these claims, and thus, that her complaint must be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction. (*See* Def.'s Mem. in Supp. of Def.'s Mot. ("Def.'s Mem."), ECF No. 24-1, at 24-30.) Defendants also contend that Austin-Spearman has failed to state a claim upon which relief can be granted for various reasons. (*See id.* at 30-48.)⁹ This Court held a hearing on Defendants' motion on May 28, 2015. (*See* Minute Entry dated May 28, 2015.)

II. LEGAL STANDARDS

A. Article III Standing

[1, 2] Article III of the United States Constitution limits judicial power to "cases" and "controversies." U.S. Const. art. III § 2, cl. 1. "The concept of standing is part of this limitation[.]" *Simon v. E. Kentucky Welfare Rights Organization*, 426 U.S. 26, 37, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976); therefore, "[a] showing of standing 'is an essential and unchanging' predicate to any exercise of [federal court] jurisdiction[.]" *Florida Audubon Soc. v. Bentsen*, 94 F.3d 658, 663 (D.C.Cir.1996) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). *See also Allen v. Wright*, 468 U.S. 737, 752, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984) ("[T]he law of Art. III standing

8. This is the second motion to dismiss these defendants have filed. The first motion was filed October 3, 2014, in response to Plaintiff's original complaint. (*See* Mot. to Dismiss Compl. with Prejudice, ECF No. 18.) Plaintiff filed an amended complaint on October 24, 2014 (*see* Am. Compl., ECF No. 23; *see also* Resp. to Mot. to Dismiss Compl. with Prejudice and Notice of Intent to Amend Pursuant to Rule 15(a)(1), ECF No. 22), and in light of Plaintiff's filing of an Amended Complaint, the Court dismissed Defendants' original Motion to Dismiss without prejudice. (*See* Minute Entry dated Oct. 29, 2014.)

9. Specifically, Defendants maintain that the DCCPPA does not apply to AARP (*see* Mem. in Supp. of Mot. to Dismiss First Am. Compl. with Prejudice ("Defs.' Mem."), ECF No. 24, at 30-35); that Plaintiff's fraud claims are untimely (*id.* at 36-39); that Plaintiff has failed to plead any facts supporting her speculation that AARP benefits from the challenged conduct (*id.* at 39-41); and that general statements like those contained in the AARP Privacy Policy are not bargained for agreements (*id.* at 42-43).

is built on a single basic idea—the idea of separation of powers.”). Consequently, “[e]very plaintiff in federal court bears the burden of establishing the three elements that make up the ‘irreducible constitutional minimum’ of Article III standing: injury-in-fact, causation, and redressability.” *Dominguez v. UAL Corp.*, 666 F.3d 1359, 1362 (D.C.Cir.2012) (quoting *Lujan*, 504 U.S. at 560–61, 112 S.Ct. 2130).

[3, 4] It is well established that an injury-in-fact is “an invasion of a legally protected interest that is both (a) concrete and particularized and (b) actual or imminent, as opposed to merely conjectural or hypothetical.” *Humane Soc’y of United States v. Vilsack*, 19 F.Supp.3d 24, 34 (D.D.C.2013). Although “[e]conomic harm . . . is a canonical example of injury[-]in-fact sufficient to establish standing[.]” *N. Carolina Fisheries Ass’n, Inc. v. Gutierrez*, 518 F.Supp.2d 62, 82 (D.D.C. 2007), “[m]erely asking for money does not establish an injury[-]in-fact[.]” *Rivera v. Wyeth–Ayerst Labs.*, 283 F.3d 315, 319 (5th Cir.2002). Rather, a cognizable overpayment injury ordinarily relates to the harm that results from there being a “difference between what [plaintiff] contracted for and what she actually received[.]” *Sanchez v. Wal-Mart Stores, Inc.*, No. 06–cv–2573, 2008 WL 3272101, at *3 (E.D.Cal. Aug. 6, 2008); see also *Tae Hee Lee v. Toyota Motor Sales, U.S.A., Inc.*, 992 F.Supp.2d 962, 972 (C.D.Cal.2014) (“There can be no serious dispute that a purchaser of a product who receives the benefit of his bargain has not suffered an Article III injury-in-fact traceable to the defendant’s conduct.”).

B. Federal Rule of Civil Procedure 12(b)(1)

[5, 6] “In reviewing the standing question” in the context of a motion to dismiss under Rule 12(b)(1), a court “must be

‘careful not to decide the questions on the merits for or against the plaintiff, and must therefore assume that on the merits the plaintiffs would be successful in their claims.’” *In re Navy Chaplaincy*, 534 F.3d 756, 760 (D.C.Cir.2008) (quoting *City of Waukesha v. EPA*, 320 F.3d 228, 235 (D.C.Cir.2003)). The court must also accept as true all factual allegations in the complaint, and must “construe the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the facts alleged.” *Thomas v. Principi*, 394 F.3d 970, 972 (D.C.Cir.2005). However, “the court need not accept factual inferences drawn by plaintiffs if those inferences are not supported by facts alleged in the complaint, nor must the Court accept plaintiff’s legal conclusions.” *Disner v. United States*, 888 F.Supp.2d 83, 87 (D.D.C.2012) (internal quotation marks and citation omitted). Moreover, and importantly, “[u]nder Rule 12(b)(1), the Court may dispose of the motion on the basis of the complaint alone, or it may consider materials beyond the pleadings ‘as it deems appropriate to resolve the question whether it has jurisdiction to hear the case.’” *Neighborhood Assistance Corp. of Am. v. Consumer Fin. Prot. Bureau*, 907 F.Supp.2d 112, 121 (D.D.C.2012) (quoting *Scolaro v. D.C. Bd. of Elections & Ethics*, 104 F.Supp.2d 18, 22 (D.D.C.2000)).

C. Federal Rule of Civil Procedure 12(b)(6)

When evaluating a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6), a court looks for sufficient facts alleged in the complaint “to raise a right to relief above the speculative level[.]” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (internal quotation marks and citation omitted). “[D]etailed factual allegations” are not nec-

essary to withstand a Rule 12(b)(6) motion, *id.* but a plaintiff must plead enough facts to make the claim seem plausible on its face, *see Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). In evaluating the plausibility of Plaintiff's claim, the court must accept as true all factual allegations in the complaint, and the plaintiff should receive the benefit of all inferences that can be derived from the facts alleged. *See Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937; *see also Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C.Cir.2000). "While the complaint is to be construed liberally in plaintiff's favor, the Court need not accept inferences drawn by the plaintiff if those inferences are unsupported by facts alleged in the complaint; nor must the Court accept plaintiff's legal conclusions." *Kramer v. United States*, 460 F.Supp.2d 108, 110 (D.D.C.2006) (citing *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C.Cir.1994)). Accordingly, "legal conclusions cast in the form of factual allegations' are insufficient to survive a motion to dismiss." *Henok v. Chase Home Fin., LLC*, 915 F.Supp.2d 109, 114 (D.D.C.2013) (quoting *Browning v. Clinton*, 292 F.3d 235, 242 (D.C.Cir.2002)).

III. ANALYSIS

Defendants argue that, for all of Austin-Spearman's alleged surprise and outrage regarding the collection of her PII by Facebook and Adobe through AARP's website, Austin-Spearman has failed to assert any plausible way in which Defendants' information sharing practices have *injured* her, and thus she lacks Article III standing to pursue this lawsuit. (*See* Defs.' Mot. at 24-30.)¹⁰ Austin-Spearman adamantly rejects this assertion—she points

to the complaint's allegation that she paid \$43 for an AARP membership in consideration for "access to [Defendants'] exclusive online marketplace" and their promise to adhere to the Privacy Policy with respect to her internet usage (Pl.'s Opp'n to Def.'s Mot. ("Pl.'s Opp'n"), ECF No. 28, at 18; *see also* Am. Compl. ¶ 77), and she argues that "because Defendants never intended to deliver that [privacy policy] aspect of her purchase, [she] necessarily paid more than Defendants' services were worth[,] and suffered damages as a result." (Pl.'s Opp'n at 19; *see also* Am. Compl. ¶ 82 (asserting that, if Austin-Spearman had known about Defendants' practices, she "would have viewed her paid-for membership as worth less than the \$43 she paid" for it).) Thus, Austin-Spearman seeks to proceed on an "overpayment" theory of injury—*i.e.*, Austin-Spearman maintains that she suffered "concrete economic harm because she paid for access to Defendant's online services, but didn't receive the full benefit of her bargain." (Pl.'s Opp'n at 18 (emphasis omitted).)

For the two reasons explained fully below, this Court rejects Austin-Spearman's "economic injury" contention as entirely implausible, even after crediting the allegations in Austin-Spearman's complaint. In short, the Court first concludes that Defendants' alleged violation of their own Privacy Policy could not have injured Austin-Spearman because the complaint fails to establish that any such violation occurred. Moreover, and in any event, the Court finds that compliance with the Privacy Policy was not a term of Austin-Spearman's membership contract with AARP on the facts alleged in the complaint (so its alleged breach could not have given rise to any economic injury), and

¹⁰ Page numbers throughout this Opinion refer to those that the Court's electronic filing

system assigns.

even if the Privacy Policy *were* a term of the membership agreement, it was certainly not such an integral part of that contract that the alleged breach of the policy deprived Austin–Spearman of the benefit of her bargain. Consequently, Austin–Spearman lacks Article III standing to sue, and this Court lacks subject matter jurisdiction over Austin–Spearman’s complaint.

A. The Complaint Does Not Establish That Defendants Violated The Terms Of The AARP’s Online Privacy Policy

Austin–Spearman’s first hurdle in making a plausible case that she has suffered economic injury due to the Defendants’ violation of the online AARP Privacy Policy is to present allegations that permit an inference that Defendants have, in fact, violated the Privacy Policy. To this end, the complaint quotes parts of the Privacy Policy at length (*see* Am. Compl. ¶¶ 27–28), and it also describes in extraordinary detail the technical aspects of the manner in which the website permits third parties to gather information using cookies and codes (*see id.* ¶¶ 34–65). What the complaint does *not* do, however, is substantiate Plaintiff’s repeated bald assertions that AARP’s Privacy Policy promises its members that the organization “would not allow third parties to collect their PII.” (*Id.* ¶ 101; *see also id.* ¶¶ 29, 32, 79, 81–85).

Stated simply, such a promise is not even *close* to what the actual Privacy Policy says, no matter how many times Plaintiff makes this assertion. (*See, e.g.*, Am. Compl. ¶ 107 (characterizing the Policy as promising that “its members’ PII will be kept private”).) The purported basis for Plaintiff’s fervent belief that the Privacy Policy promises not to release the PII of AARP members is the first paragraph of Section 4, and in particular, the statement

that “[w]e may allow third-party analytics companies, research companies, or ad networks to collect nonpersonally identifiable information on our website[.]” (Am. Compl. ¶ 28.) According to Plaintiff, this statement “assures members that AARP *only* allows certain third parties to collect ‘non personally identifiable information’ from its website” (Am. Compl. ¶ 29 (emphasis added); *see also* Mot. to Dismiss Hr’g Tr. (“Hr’g Tr.”), at 8:22–8:24, May 28, 2015)). But that is plainly not what the first sentence of the first paragraph of Section 4 says; indeed, that language does not address the collection or distribution of PII at all.

[7] What is more, when Sections 4 and 5 are read together, and when the document is viewed as a whole, the AARP Privacy Policy tells a completely different story about what happens to member data than the narrative that appears in the allegations of Plaintiff’s complaint. This Court agrees with Defendants that, as relevant here, the AARP’s Privacy Policy clearly notifies website users of certain things regarding what the organization permits with respect to user data, to wit: (1) that the website collects users’ PII, *see* AARP Privacy Policy at Sec. 3, *Information We Collect From You*, ¶ 2; (2) that AARP permits certain third parties to collect non-PII data, *see id.* at Sec. 4, *Information Collected By Third Parties*, ¶ 1; (3) that if a person stays logged into social media accounts while visiting AARP’s website, the social media companies may collect data and information about that person, *see id.* at Sec. 4, *Information Collected by Third Parties*, ¶¶ 2–3; and (4) that AARP may share data and information about its members with companies that help AARP with advertising, *see id.* at Sec. 5, *With Whom Your Information May be Shared*, ¶ 8.

Significantly, the policy does *not* state that third parties will be prevented from gaining access to PII data entered into the AARP website under all circumstances, as Austin-Spearman argues. And given what the policy actually says about social media companies, it is entirely implausible to suggest, as Austin-Spearman does, that although she checks the “keep me logged in” box on her Facebook account or uses a Facebook plugin to log into the AARP website—thereby permitting Facebook to capture PII information about her as she navigates through the AARP website—she was surprised and upset by this practice, or that Facebook’s information collection was inconsistent with the representations in AARP’s Privacy Policy and she was injured as a result. (*See* Am. Compl. ¶¶ 35–45, 71, 81.) Similarly, this Court discerns nothing untoward about the fact that AARP allegedly has asked Adobe to collect and analyze information about people who use the AARP website so that advertising can be tailored to the individual website user (Am.Compl.¶ 46–55, 81), because the Privacy Policy expressly discloses that AARP itself “may share your information . . . with companies we hire to provide certain [] services such as . . . improving advertising services . . . and managing databases or other technology[.]” AARP Privacy Policy at Sec. 5, *With Whom Your Information May be Shared*, ¶ 8.

The bottom line is this: the facts that Austin-Spearman says support a finding that Defendants have violated the AARP’s Privacy Policy do not permit any reasonable inference that a violation actually occurred, given the plain and express terms of the Privacy Policy. And because there was no violation on the facts as alleged, Plaintiff cannot have been injured as a result of this purported breach. *Cf., e.g., In re Fruit Juice Products Marketing and Sales Practices Litig.*, 831 F.Supp.2d 507,

512 (D.Mass.2011) (rejecting the plaintiffs’ benefit of the bargain theory of standing because “[p]laintiffs received the benefit of the bargain, as a matter of law” where “[p]laintiff[s] paid for fruit juice and they received fruit juice”). For this reason alone, Austin-Spearman’s contention that she has Article III standing to sue fails.

B. It Is Not Plausible That Defendants’ Alleged Breach Of The Privacy Policy Resulted In Economic Injury To Austin-Spearman

[8] Even if one assumes *arguendo* that AARP violated its own Privacy Policy, this Court finds it entirely implausible that any economic injury to Austin-Spearman resulted from that breach for two reasons.

First of all, the complaint’s allegations simply do not establish that AARP’s online Privacy Policy was *part of* the AARP membership agreement. Although Austin-Spearman asserts that her \$43 membership fee was partly paid in consideration for the organization’s enforceable promise that her PII would be kept private (*see* Pl.’s Opp’n at 18–19), the complaint lays out a chronology that establishes that Austin Spearman did not even *see* the AARP Privacy Policy until *after* she had already become a paid member of AARP—*i.e.*, she *first* purchased her membership, *then* signed up for an online account, and *then* reviewed the Privacy Policy for the first time (*see* Am. Compl. ¶¶ 72–80). This means that, as Defendants forcefully argue, “the terms of the Privacy Policy could not possibly have factored into the value of her AARP membership (even her subjective belief of the value) when she purchased it.” (Defs.’ Mot. at 29.)

[9] Moreover, it is well established that not all promises rise to the level of binding contractual obligations. For example, a promise that is offered freely and equally

to all people—without regard to who has provided consideration and who has not—is not a contract. See *Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. 4 Wheat. 518, 612, 4 L.Ed. 629 (1819) (“There can be no contract in which the party does not receive some personal, private, individual benefit. To make . . . a private contract, there must be a private beneficial interest vested in the party who pays the consideration.”). Here, despite Austin-Spearman’s allegation that her membership fee was tendered (at least in part) as consideration for AARP’s promise to adhere to its Privacy Policy (see Am. Compl. ¶¶ 79–81), the Privacy Policy indisputably applies to both members and non-members alike. See AARP Privacy Policy at Sec. 1, *Nuts and Bolts of Our Privacy Policy*, ¶ 1 (noting that the policy applies to those who “join AARP”; those who “participate in AARP events and offerings”; and even those who simply “visit our website”). Consequently, Austin-Spearman’s payment was not provided in consideration for the promises that AARP made in the Privacy Policy, or, put another way, the promises made in AARP’s Privacy Policy were not a part of Austin-Spearman’s binding AARP membership contract. See *In re LinkedIn Privacy Litig.*, 932 F.Supp.2d 1089, 1093 (N.D.Cal.2013) (rejecting plaintiffs’ “overpayment” theory of standing because LinkedIn’s User Agreement and Privacy Policy were the same for the premium (paid) membership as they were for the basic (free) membership, and the complaint “[did] not sufficiently demonstrate that included in Plaintiffs’ bargain for premium membership was the promise of a particular (or greater) level of security that was not part of the free membership”).

Second, it is clear on the facts as alleged in Austin-Spearman’s complaint that Austin-Spearman actually received the benefit of her bargain with AARP. See *Sanchez*

v. Wal-Mart Stores, Inc., 2008 WL 3272101, at *3 (explaining that a plaintiff only has standing to bring a breach of contract action based on alleged economic injury where she can plausibly allege that she did not receive the benefit of her bargain with the defendant). The complaint explains that the AARP is a membership organization that advocates for people over the age of 50, and that website usage—including the discounts that are only available online—is but one part of the benefits that accrue to members. (See Am. Compl. ¶¶ 1–2.) The complaint does not (and apparently cannot) contend that website usage is the *primary* benefit of an AARP membership, nor that it is even an essential part of the bundle of rights that are conferred to AARP members, and this flaw is fatal to Austin-Spearman’s economic injury theory of standing. See, e.g., *Birdsong v. Apple, Inc.*, 590 F.3d 955, 961 (9th Cir.2009) (dismissing complaint partly on standing grounds because “[t]he plaintiffs’ alleged injury in fact is premised on the loss of a ‘safety’ benefit that was not part of the bargain to begin with”); *Williams v. Purdue Pharma Co.*, 297 F.Supp.2d 171, 176 (D.D.C.2003) (dismissing complaint on standing grounds because “[a]lthough the plaintiffs allege a benefit of the bargain theory of injury, they do not allege that [defendant’s pain relief drug] failed to provide them effective pain relief” and therefore “it must be assumed that [defendant’s pain relief drug] worked for plaintiffs and that consequently they got what they paid for” (internal quotation marks and citations omitted)).

To be sure, the instant complaint struggles valiantly to convey that AARP-website usage was subjectively important to Austin-Spearman herself. (See Am. Compl. ¶ 76 (“[A]t the time [Austin-Spearman] paid for her membership, Austin-Spearman valued her personal privacy

and expected that AARP would not permit third parties to collect her PII without first obtaining her permission to do so[.]”); *id.* ¶ 82 (“Had AARP informed Austin-Spearman that it allows third parties to collect member PII . . . she either (i) would not have paid for an AARP membership in the first place or (ii) would not have used the AARP website at all[.]”).) But conclusory statements regarding a plaintiff’s own beliefs and expectations are not sufficient to support an alleged “overpayment” injury; rather, a plaintiff must allege facts that demonstrate that the breached term was objectively essential to the contract at issue, such that the violation effectively robbed the plaintiff of her payment because what she received was not what the parties agreed she had purchased. In other words, a plaintiff is not entitled to demand perfect realization of every hope and dream with respect to contract performance; instead, the plaintiff has received the benefit of her bargain where the defendant has *substantially* performed on the contract. *See Schneider v. Dumbarton Developers, Inc.*, 767 F.2d 1007, 1013 (D.C.Cir.1985); *see also Sununu v. Philippine Airlines, Inc.*, 638 F.Supp.2d 35, 39 (D.D.C.2009) (noting that “[s]ubstantial performance” is generally considered to exist when a contracting party has failed to render full performance but any defects in performance are considered minor”). Thus, to sustain her claim that she has standing based on her overpayment for the AARP membership, Austin-Spearman must plausibly allege that Defendants failed to render substantial performance of the AARP membership contract. *Compare, e.g., Lozano v. AT & T Wireless Servs., Inc.*, 504 F.3d 718, 733 (9th Cir.2007) (holding that the plaintiff was denied the benefit of the bargain, and therefore had standing, where plaintiff did not receive the full number of agreed-upon minutes he purchased in a wireless cellular

phone service agreement) *with Rivera v. Wyeth-Ayerst Labs.*, 283 F.3d 315, 319–21 (5th Cir.2002) (holding that the plaintiff was not denied the benefit of the bargain, and therefore lacked standing, where plaintiff had bought a prescription painkiller that was later withdrawn from the market but plaintiff found the painkiller to be effective and did not suffer harmful side effects).

The analysis and holding of *In re Science Applications International Corp. Backup Tape Data Theft Litigation* (“S.A.I.C.”), 45 F.Supp.3d 14 (D.D.C.2014), make clear that Austin-Spearman has failed to mount this standing hurdle. After an unknown thief stole the plaintiffs’ personal information and medical records from a technology company that handles data for the federal government, the plaintiffs in S.A.I.C. (who were members of the U.S. military enrolled in certain health care plans) filed a complaint against their health insurance company, the Department of Defense, and several others. *See id.* at 19. The complaint asserted approximately 20 causes of action, including breach of contract, and with respect to Article III standing, the plaintiffs claimed that the theft had caused them to suffer an economic injury-in-fact due to the diminution in the value of their insurance premiums—in plaintiffs’ view, the premiums were tendered in part as consideration for the defendant’s promise of keeping their personal health information secure, and thus plaintiffs had paid for a service they did not receive. *See id.* at 30. The Court rejected plaintiffs’ economic injury argument, reasoning that the plaintiffs had “allege[d] that they were paying for ‘health and dental insurance[.]’” and did not “claim that they were denied coverage or services in any way whatsoever[.]” *id.* at 30, and they also “ha[d] not alleged facts that show that the market value of their

insurance coverage (plus security services) was somehow less than what they paid[.]” *id.* Consequently, despite the plaintiffs’ suggestion that “some indeterminate part of their premiums went toward paying for security measures” and that the value of their premiums were diminished as a result of the security breach, the Court concluded that the plaintiffs had failed to demonstrate that they had suffered an economic injury that gave rise to standing to sue. *Id.* (adding that “[n]othing in the [c]omplaint makes a plausible case that Plaintiffs were cheated out of their premiums[.]” and “[a]s a result, no injury lies”).

So it is here. Much like the plaintiffs in *S.A.I.C.*, Austin–Spearman alleges that she paid for an AARP membership—and also that she got one. (See Def.’s Mot. at 28 (“Plaintiff does not allege that she was denied any membership benefit or service for which she paid when purchasing her AARP membership.”).) AARP members purchase a set of benefits that includes supporting the AARP’s advocacy efforts (see Am. Compl. ¶ 1; Hr’g Tr. at 19:15–16); getting a subscription to the AARP magazine (see Hr’g Tr. at 19:19–20); and accessing “discounts on shopping, dining, and travel as well as financial and insurance-related products and services” (Am. Compl. ¶ 1). Austin–Spearman does not allege that she was denied any of these things; instead, she merely alleges that AARP’s privacy protections were not as stringent as she believed they would be. (See, e.g., Am. Compl. ¶¶ 83, 108, 123, 135, 138, 156.) This Court finds that, having

not established that she actually lost any of the value of her membership, Austin–Spearman has not plausibly claimed that she overpaid for the AARP membership agreement such that she was injured economically and now has standing to sue.

IV. CONCLUSION

In this Court’s analysis, Austin–Spearman’s “overpayment” theory of economic injury does not add up. The complaint’s allegations do not establish that Defendants’ practices regarding PII violate the organization’s online Privacy Policy; thus, no cognizable injury possibly could have resulted. Moreover, and in any event, it is entirely implausible that Austin–Spearman overpaid for the membership as a result of the AARP’s purported violation of their privacy promises for two reasons. First, the terms of the Privacy Policy—which were not even known to Austin–Spearman at the time she joined the organization—are not a part of the AARP membership contract. And second, even if adherence to the Privacy Policy was a contract term that Defendants breached, the complaint’s allegations do not establish that the privacy promises are so essential to the organization’s membership agreement that AARP did not render substantial performance such that Austin–Spearman was deprived of the benefit of her bargain. Thus, whatever the merits of Austin–Spearman’s case, she has not sufficiently alleged that she overpaid for the AARP membership and thereby suffered an injury-in-fact that gives her Article III standing to sue.¹¹

11. This Court does not opine as to whether or not some *other* theory of injury would have sufficed to provide Austin–Spearman with standing to sue. Cf. *S.A.I.C.*, 45 F.Supp.3d at 29 (noting that “disclosure of personally identifiable information alone, along with some attendant emotional distress, may constitute ‘injury enough to open the courthouse door’ in privacy actions”) (quoting *Doe v. Chao*, 540

U.S. 614, 124 S.Ct. 1204, 157 L.Ed.2d 1122, 62425 (2004)). It is a plaintiff’s burden to establish this Court’s jurisdiction, see *Clapper v. Amnesty Int’l USA*, — U.S. —, 133 S.Ct. 1138, 1148, 185 L.Ed.2d 264 (2013), and Austin–Spearman specifically and expressly disavows any other standing argument, relying solely on the “overpayment” theory of actual injury. (See Pl.’s Opp’n at 25–26 (rejecting

Accordingly, as set forth in the separate order accompanying this memorandum opinion, AARP's motion to dismiss is **GRANTED**, and Austin-Spearman's complaint is dismissed. *See Gen. Motors Corp. v. E.P.A.*, 363 F.3d 442, 448 (D.C.Cir.2004) ("As a court of limited jurisdiction, we begin, and end, with an examination of our jurisdiction.").



**UNITED STATES of America,
Plaintiff,**

v.

Esteban ORTIZ (12), Defendant.

CRIM. No. 14-505-12 PG.

United States District Court,
D. Puerto Rico.

Signed Aug. 13, 2015.

Myriam Y. Fernandez-Gonzalez, United States Attorney's Office, San Juan, PR, for Plaintiff.

Defendants' argument that "Plaintiff's theory of damages is somehow that her PII . . . was compromised, and that that alone forms the basis for her injury[.]" and clarifying that Plaintiff's damages theory "focuses on the money *she paid* to Defendants and her failure to receive what *she bargained for*." (emphasis in original).) For the reasons stated in this Memorandum Opinion, this Court concludes that Austin-Spearman's overpayment injury argument fails.

OPINION AND ORDER

JUAN M. PÉREZ-GIMÉNEZ, District Judge.

As part of his pre-trial pleadings, Defendant Esteban Ortiz filed an ex-parte motion for appointment of expert services pursuant to the Criminal Justice Act, Title 18 U.S.C. § 3006A. *See* Docket No. 236. Ortiz sought to hire a physician who specializes in drug addiction. According to the motion, Ortiz intended to submit to the doctor's evaluation from the standpoint of his alleged addiction to controlled substances to eventually present evidence at trial of drug use as a character trait.

Federal Rule of Evidence 404(a)(2)(A) allows a defendant in a criminal case to offer evidence of a "pertinent trait." Along those lines, Fed.R.Evid. 405(a) and (b) specify the methods by which character may be established. Ortiz pointed to those evidentiary rules as the conduit for introducing evidence of drug addiction as a "character trait." By his own admission, the testimony of the proposed expert regarding elements like "(the) patterns of conduct of addicted persons; things addicts do and say in order to gain access to more drugs, and consumption patterns . . ." would be an integral part of his defense. *See* Docket No. 236 at ¶¶ 2-3.

The introduction of character traits at trial is an oft confounding area of the common law of evidence. From the lack of a codified definition¹ to the commendable, albeit inconsistent, efforts by the courts to craft their own guidelines,² the

1. *See* Barret J. Anderson, Note, *Recognizing Character: A New Perspective on Character Evidence*, 121 Yale L.J.1912, 1914 (2012)("Unfortunately, the Federal Rules of Evidence do not define character, and worse still, there is no judicially manageable definition of character for courts to apply when the admissibility of evidence turns on this determination.") (footnote omitted).
2. For a survey of definitions crafted by courts, *see* 121 Yale L.J.1912, 1922-1924.