

measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all.

In this connection, we reaffirm the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.

5. Accordingly and in the light of paragraph 4 above, while maintaining our commitments in the TRIPS Agreement, we recognize that these flexibilities include:
 - (a) In applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.

- (b) Each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted.
- (c) Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.
- (d) The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each Member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.

CASES

CASE 1. *Privacy Pressures: The Use of Web Bugs at HomeConnection*

As Matthew Scott, president of HomeConnection, sat in his office waiting for several members of his executive team to arrive, he grew more worrisome about a story featuring his company in the morning paper. His impulse was to fight back and go on the defensive, but Scott knew that he had to be careful. However, he did not accept the article's implicit conclusion that HomeConnection had no regard for the privacy rights of its customers, and he was anxious to hear what his colleagues had to say about the matter.

HomeConnection was an Internet Service Provider (ISP) with several million customers, primarily clustered in the mid-West. An ISP links people and businesses to the Internet, usually for a monthly fee. HomeConnection was much smaller than the industry leader, America OnLine (AOL), but it was still seen as a formidable player in this industry. Thanks to Scott's management, the company had recorded increasing profits for the past 3 years, 1999 through 2002. One feature that attracted customers was the opportunity to create their

own personal Web page. HomeConnection made this process easy and convenient.

In the past year HomeConnection had devised an innovative promotion to help increase its subscriber base. The company encouraged its users with their own personal Web pages to carry an ad for HomeConnection. The ad would offer new subscribers a heavily discounted rate for the first year of membership. In addition, as an incentive to display the ad on their personal Web pages, the company agreed to pay its users \$25 for any new members who signed up for a subscription by clicking on the ad. The response to the promotion was stronger than expected, and HomeConnection's membership had risen by over 6.5 percent since the program's inception 8 months ago. Scott was quite enthused about the results, and he did not anticipate that one aspect of the program would attract some negative attention.

In consultation with his marketing manager, Scott had authorized the use of Web bugs so that when users placed the ad on their Web pages they would also get a Web bug. A Web bug is embedded as a minuscule and invisible picture on the screen and it can track everything one does on a particular Web site. Web bugs, also called "Web beacons," are usually deployed to count visitors to a Web site or to gather cumulative data about visitors to those sites without tracking any personal details. In this case the Web bug transmitted information to a major online ad agency, DoubleDealer. DoubleDealer would collect data about those who visited these Web pages, which ads they clicked on, and so forth.

The newspaper report cited HomeConnection as well as other ISPs and e-commerce sites for using this protocol without the permission of their customers. They quoted a well-known privacy expert: "It's extremely disturbing that these companies are using technology to gather information in such a clandestine manner; I don't see how it can be morally justified." The article had clearly

resonated with some of HomeConnection's users, and the switchboard had been busy most of the afternoon with calls from irate customers. Some wanted to cancel their subscription.

Scott felt that the company had done nothing wrong but was a victim of a pervasive paranoia about privacy. HomeConnection was not using these bugs for any untoward purposes—its purpose was to track the results of the advertising promotion, that is, how many people were clicking on these ads. Also, Scott himself had modified the company's privacy policy to indicate that Web bugs might be used sometimes. (However, there was no indication that Web bugs would be placed on the personal Web pages of its user base.)

As several of his managers made their way into the conference room adjoining his office, Scott made one last check with customer service. By now it was late in the day and the volume of calls and e-mails was dying down. It was now up to Scott to determine a response—did the company face a serious problem or was this just a tempest in a teapot?

Questions*

1. Has HomeConnection's use of the Web bug violated the privacy of those who agreed to display the ad on their personal computers? Has the privacy of those who visit the site and click on the ad been violated?
2. Should those who display the ad on their personal computers have the right to refuse to have the Web bugs attached? In other words should they be allowed to have the right to opt-out of this arrangement?
3. Suppose a person who displays the ad agrees to the Web bug. Should that person be required to place a statement on his or her personal Web site indicating that persons clicking on the ad may receive further advertisements from a number of sources?

*Questions added by the editor.