PUBLIC INTEREST ADVOCACY CENTRE

LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC

ONE Nicholas Street, Suite 1204, Ottawa, Ontario, Canada K1N 7B7

Monday, January 18, 2009

Ms Jennifer Stoddart
Privacy Commissioner of Canada
Office of the Privacy Commissioner of Canada
112 Kent Street
Ottawa, Ontario
K1A 1H3

Dear Commissioner Stoddart,

**Re: Complaint under the *Personal Information Protection and Electronic Documents Act* regarding Nexopia's privacy practices**

1. This complaint is filed by the Public Interest Advocacy Centre (PIAC) in accordance with s. 11 of Part I of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) regarding the unnecessary and non-consensual use and disclosure of personal information by Nexopia, a Canadian-based social networking website.

2. PIAC is a federally incorporated non-profit organization that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services.

3. PIAC has been actively engaged in privacy issues since the early 1990s, with representatives sitting on the Canadian Standards Council Committee that led to the introduction of the Personal Information Protection and Electronic Documents Act (PIPEDA), filing complaints with your office on privacy standards in consumer transactions throughout the early 2000s and most recently publishing several reports on PIPEDA and consumers.

4. We thank you in advance for your expeditious consideration of this complaint.

## STATEMENT OF FACTS

### Background Information

5. Nexopia.com, labeled the most popular social networking utility for Canadian youth, was founded and developed in 2003.[1] The Edmonton-based company describes Nexopia.com Inc. ("Nexopia.com" or "Nexopia") as "Canada's largest youth-oriented social networking website" and "the online place to be for teens looking to express themselves."[2] Nexopia.com is being used by approximately 70% of teenagers and young adults in western Canada.[3] Nexopia boasts over 1.4 million registered users and over a billion pages served each month.[4]

6. Similar to other social networking websites, Nexopia users connect with each other by becoming friends. Users create personal profiles in order to find and communicate with friends. Nexopia helps members find friends by allowing members to search by real name, user name, age, gender, location, email addresses, school, interests, sexual orientation and to limit searches only to members with pictures. Nexopia also encourages member interaction within the network community by displaying random member profile information, including members' pictures, username and age.

7. To distinguish itself from other social networking websites, Nexopia presents itself as an alternative online community: "Nexopia is the social network that's become a lifestyle."[5] Profile pages are not restricted to the details of users' personal traits and interests; instead, the profile page represents a place where a user can publish artwork, music, poetry or any other information of interest. Nexopia is structured to promote discussion amongst its users and allow them to connect on a much higher level than other websites through the provision of blogs, forums, articles and shouts in which all users are encouraged to participate. In addition to these arenas, Nexopia is devoted to the promotion and discussion of music. The Music section of Nexopia includes news articles and reviews of bands, music videos, interviews, contests and channels that promote both known and up-and-coming artists. (For a sample of what is displayed on a user's profile page, see Figure 1.)

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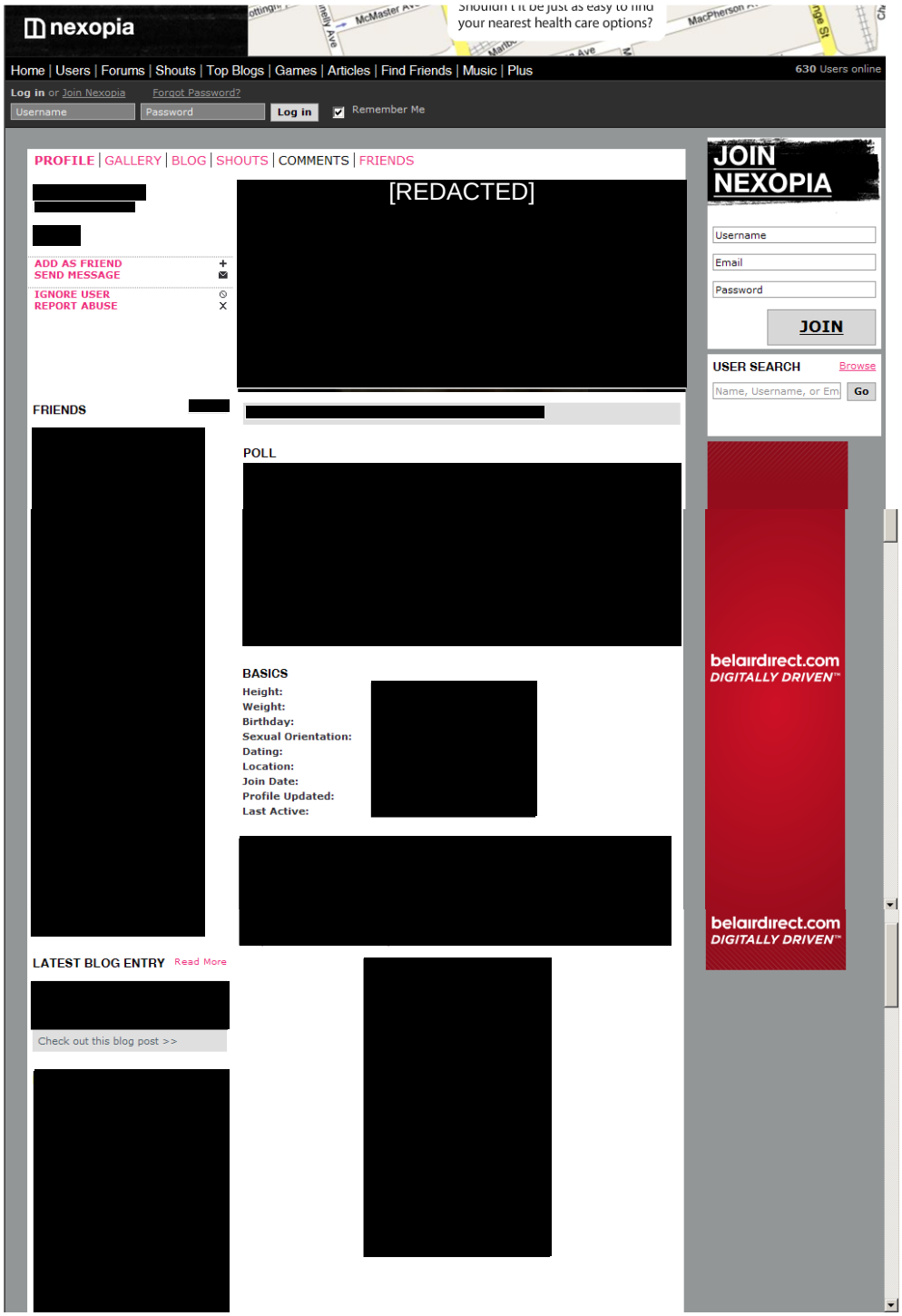
[1] "Nexopia.com Announces Major Investment from Leading European Media Company" (4 February 2008), online: <http://www.reuters.com/article/pressRelease/idUS197493+04-Feb-2008+BW20080204>.
[2] "About Nexopia", online: <http://www.nexopia.com/about>.
[3] *Supra* note 1.
[4] *Ibid.*
[5] *Supra* note 2.




[ FIGURE 1 ] Example of a User Profile Page

8. For a small fee, users can buy into Nexopia Plus, where they are provided with advanced or extended features such as more profile photos, increased photo uploads and image gallery capacity, more friends, the ability to customize their profile with skins, the option to receive fewer advertisements and the ability to create a user forum. As well, Plus members can see recent visitors to their profile, visit profiles of other members anonymously, perform advanced user searches and may be spotlighted on Nexopia's homepage. Billing options include online Interac payment, credit card, mail, landline and mobile phone bills.[6]

9. With its foot in several different cultural arenas (online and offline), Nexopia has linked up with a variety of media partners including Live Nation, 24/7, Tribal Fusion and Apple.[7] In 2008, a significant investment by Burda Digital Ventures is intended to aid in the expansion and further development of this site.

10. The information gathered below is taken from Nexopia's Privacy Policy and Terms of Use accessed by PIAC on January 7, 2010.[8] Nexopia's Terms of Use were last updated on June 4, 2008 and its Privacy Policy was last updated on November 2, 2009. Nexopia also has a separate page dedicated to safety advice for users of online communities.[9]

**User Information**

At Registration

11. At registration, users are required to provide their location, gender and age. The age limit is thirteen years old as it is not possible to choose a birth year later than 1997. The Nexopia Privacy Policy states that "when opening an account, Nexopia.com collects identifiable information submitted by you (Personal Information), including but not limited to: name, email address, username (that you create), sex (gender), location and age". The last three requirements – gender, location and birth year – can never be changed or deleted.[10]

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[6] Nexopia Plus, online: <http://www.nexopia.com/plus/plus_more_features>. Nexopia Plus costs $5 for one month, $20 for six months and $30 for one year.
[7] *Ibid.*
[8] Nexopia Privacy Policy, online: <http://www.nexopia.com/privacy>. Nexopia Terms of Use, online: <http://www.nexopia.com/termsofuse>. See appendices for copies of Nexopia's Terms of Use and Privacy Policy as seen when last accessed.
[9] "Nexopia's Advice for Users of Online Communities", online: <http://www.nexopia.com/safety>. This page is linked to at the bottom of the screen, next to links to Nexopia's Terms of Use and Privacy Policy. Notably, this page is not linked or referred to in the Terms of Use or Privacy Policy, nor does it appear during the user registration process. A copy is also included in the appendices.
[10] Nexopia Privacy Policy, online: <http://www.nexopia.com/privacy>.

12. In addition, Nexopia gives users the option to provide additional data about themselves for their profile, including but not limited to weight, height, sexuality (i.e. sexual orientation), relationship status, living situation and interests. As well, users can post photographs to their profile.

User Profile

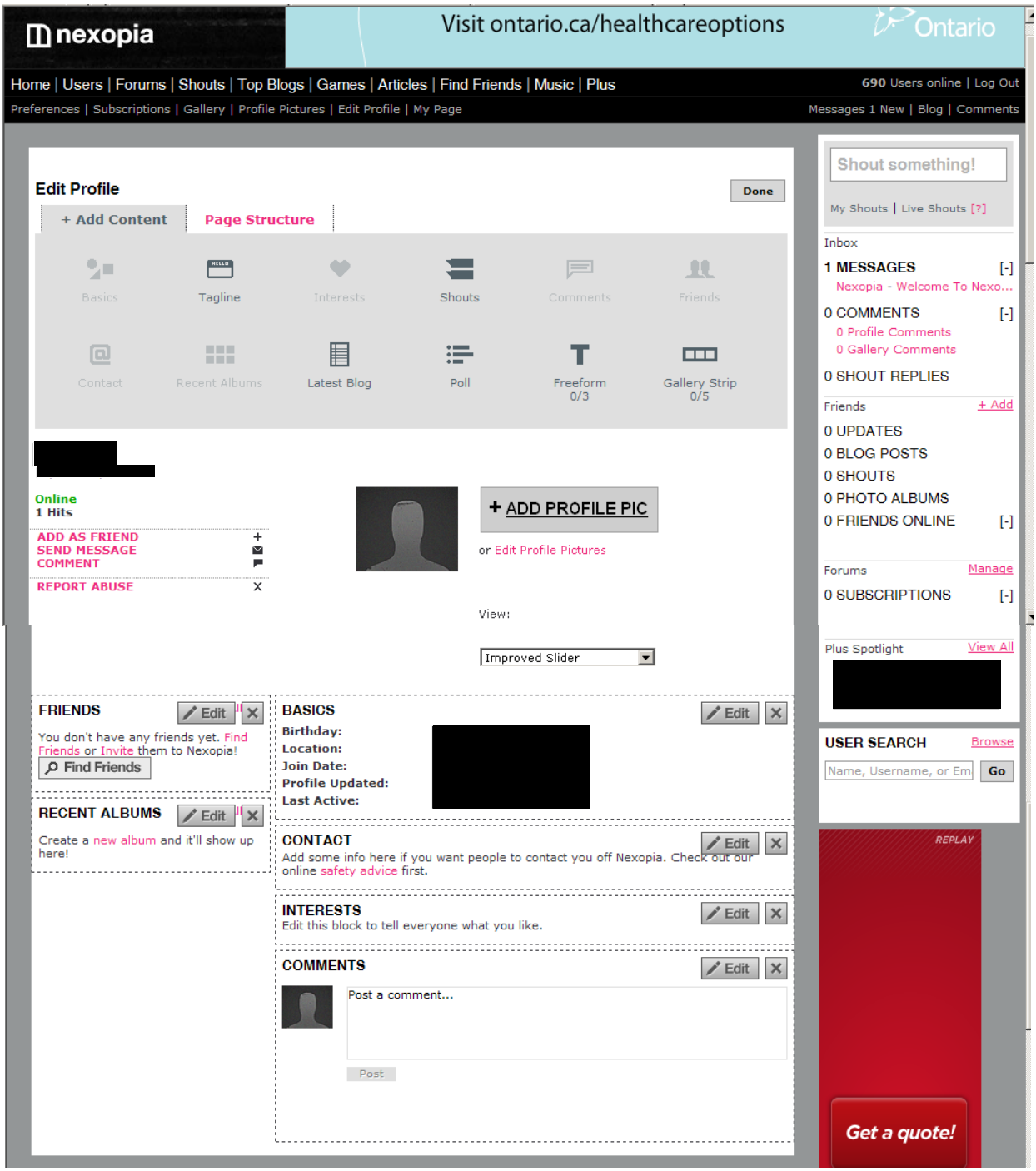
13. User profile information is divided into three sections:
    - *Basics*, which include the user's name, date of birth, location, sex, height, weight, dating status, living status and school name;
    - *Contact Information*, which include the user's online instant messaging contacts only (AOL Instant Messenger, MSN Messenger, Yahoo Messenger, ICQ); and
    - *Interests*, which are selected from a checklist divided into the following categories: activities, animals, arts, cars, computers, entertainment, lifestyle/fashion, movies, music, musical instruments, outdoor, reading, sports, and video games.

14. When a user posts information to their profile, a "profile editor" toolbox appears that allows the user to choose who will be able to view this information. The user can edit their profile at any time to change who will be able to view information on their profile. (See Figures 2 through 8 below.)

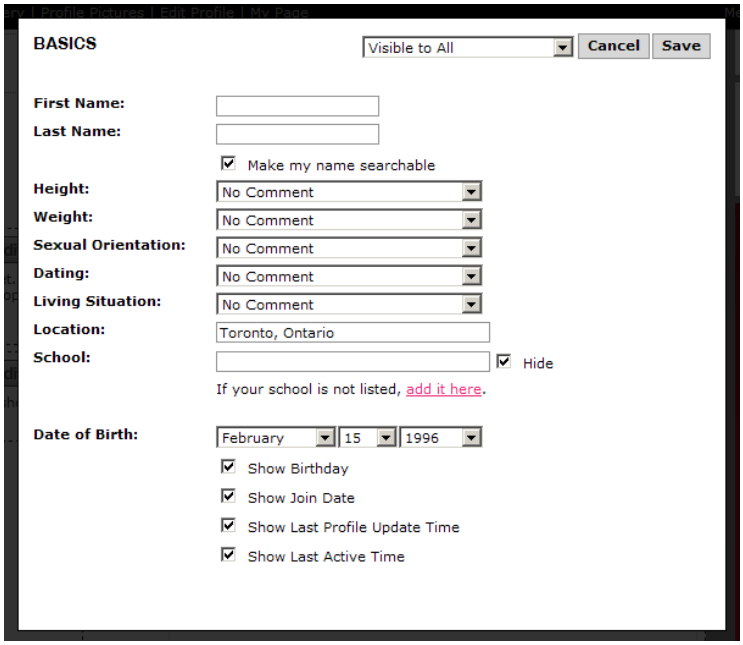
15. The default setting for *Basics*, *Contact Information* and *Interests* is "visible to all". The Nexopia Privacy Policy states "[y]ou may change or remove any of your Profile Data at any time by logging into your account and clicking on the 'Profile' and 'Preferences' tabs in the top menu, **except for your username, age, sex and location which are all publicly visible to all members and visitors** (non-members)".[11]

16. Nexopia users can also control the visibility of the comments made on their profile page and their Recent Albums. As well, users can change how their friends list is displayed and who can view their friends. The default setting for all three of these items is "visible to all".

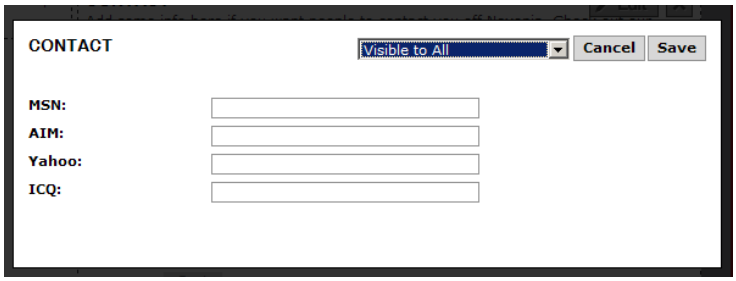
[11] *Ibid.* Emphasis added.



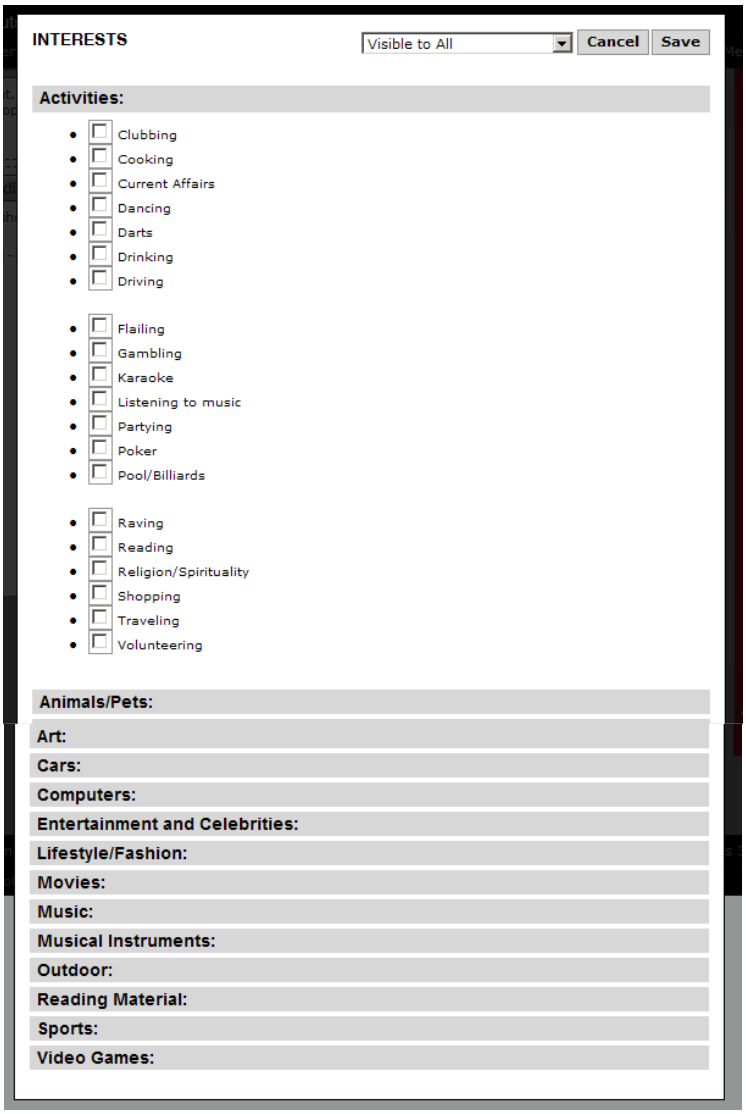

[ FIGURE 2 ] User Profile Editor Screen




[ FIGURE 3 ] Basics Editing Toolbox with default settings

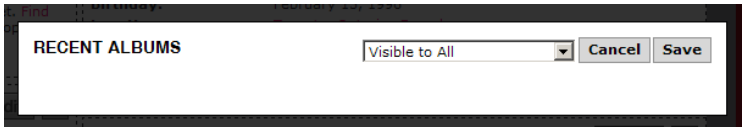



[FIGURE 4 ] Contact Information Editing Toolbox with default settings

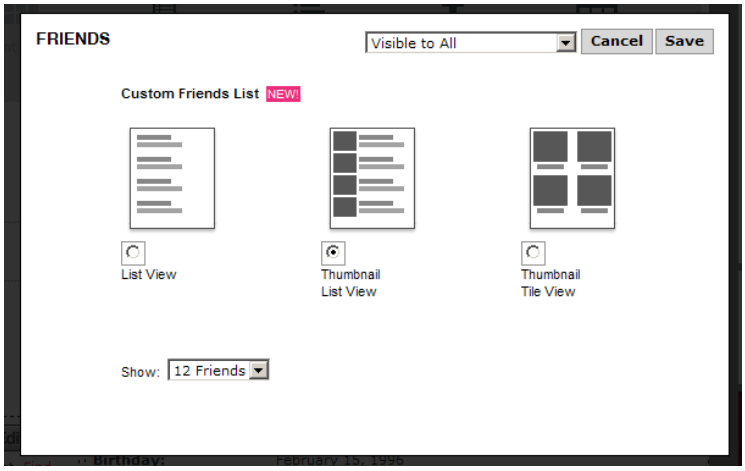



[ FIGURE 5 ] Interests Editing Toolbox with default settings

[ FIGURE 6 ] Comments Toolbox with default settings

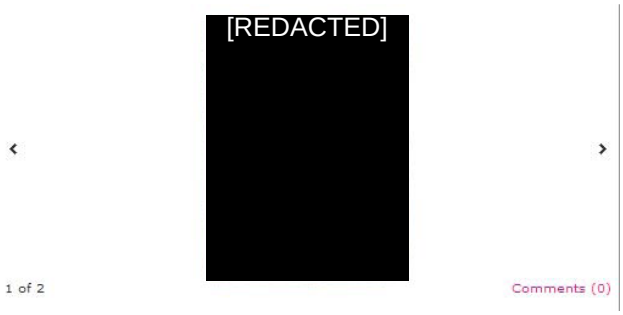



[ FIGURE 7 ] Recent Albums Toolbox with default settings




[ FIGURE 8 ] Friends Toolbox with default settings

17. Users are also given a space to upload pictures to display as their profile pictures. There is no option to hide these profile pictures from non-friends. This sliding bar of profile pictures is visible to anyone with access to the user's profile page. (See Figure 9.)

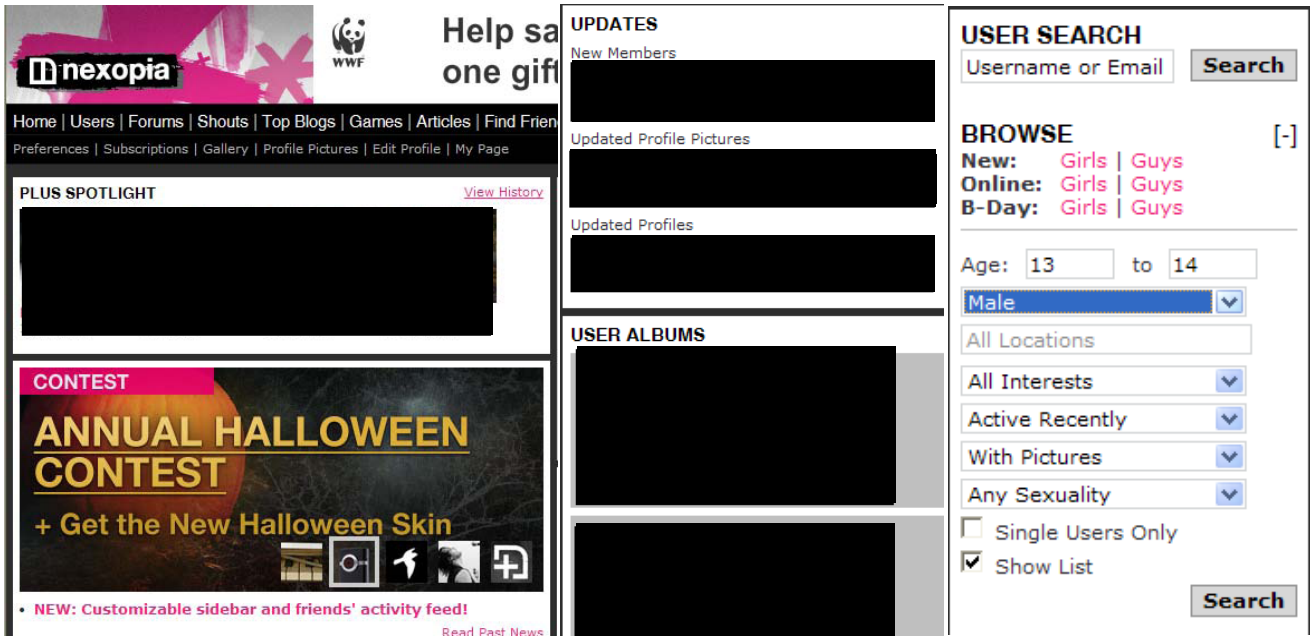



[ FIGURE 9 ] Profile Picture bar

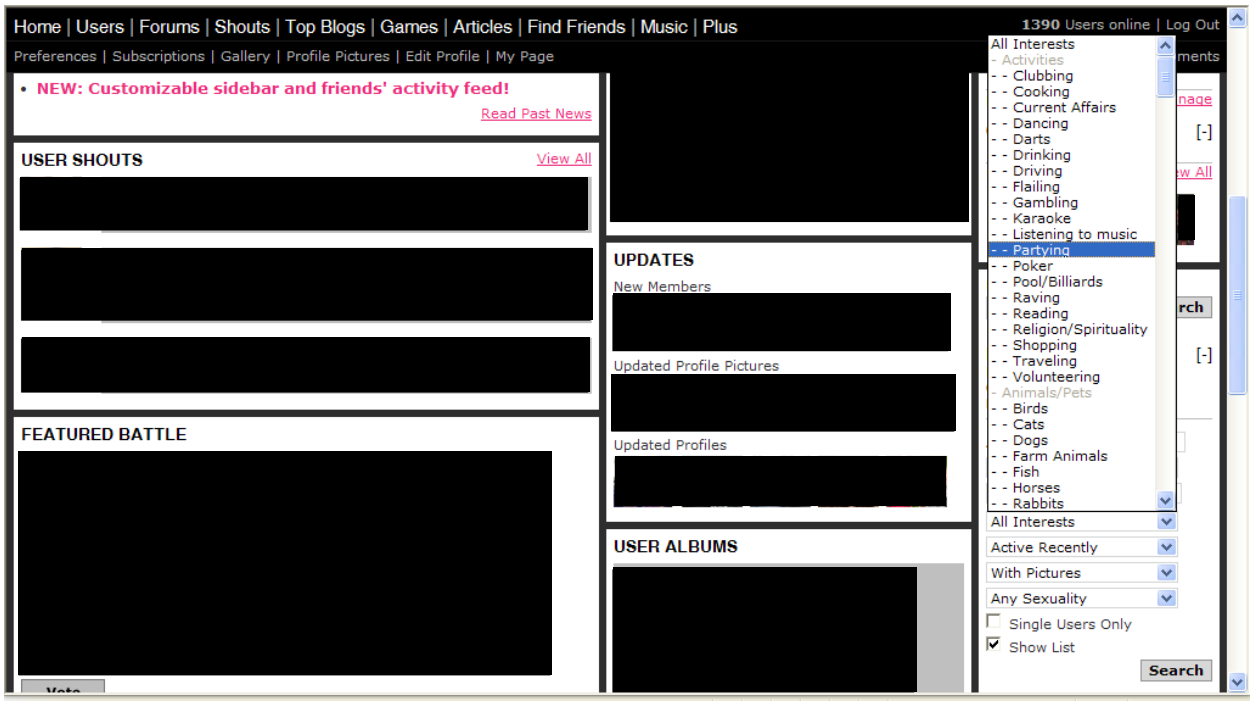
18. Users may also post “extras”, such as notes, images, songs, links, rants and surveys on their profile page. (See Figure 10.)

[ FIGURE 10 ] Profile Extras – Video Clips, Notes, Images

19. Profile information is available to both members and non-member visitors depending on the privacy settings each user selects. User profiles are available through the search function, the *User* section (which upon selection brings you to the profile page of another user at random), users’ friends list, and the home page which displays different member profiles in the *Updates, User albums, User shouts* and *Spotlight* sections. Clicking on the image of another member on the home page will bring you directly to their entire profile, limited only by the privacy settings they have chosen. (See Figures 11 and 12.)




[ FIGURE 11 ] User profiles visible on homepage: Updates, Spotlight, User Albums & User Search




[ FIGURE 12 ] User Shouts, Updates, Albums & Search Options

User Interaction in Nexopia

20. Users may participate in forums — a section of the website where users can "create a thread" on any subject matter, open to all other members to respond to. Any information a user posts on a forum is visible to all members and non-members, including their default profile data (username, age, sex, location and profile picture).

21. Every profile page has a "shouts" section where a user can post a comment, thought or link. These are featured at random on the Nexopia homepage next to the user's profile picture and information.

22. Users may post freeform blog posts, photos and videos and start a poll or a "battle" (between two photos or two videos) in their personal blog. Popular blogs are then featured in the "top blogs" section of the website where the creator's user name is identified and their user profile can be accessed. Blog post are accessible by all non-members unless a user changes this setting in their preferences.

23. Finally, members may submit literature (poems, essays, jokes, rants) to be posted in the *Articles* section of the website. Only the author's username is published with the article which serves as a link to the user's profile page. All articles and comments made in response to other articles can be seen by non-members of the site.

**YOUTH PRIVACY**

24. While Nexopia welcomes users of all ages, the site is clearly used by, designed for and targeted to youth as young as thirteen years of age.

25. Nexopia in particular has garnered scrutiny from police, parents, school boards and media amid fears that it could be attracting online predators. Police are using Nexopia to track suspects.[12]

26. PIAC notes that the Privacy Commissioner has identified youth privacy issues as a priority for her office in 2010 (mentioned in 2009 PIPEDA Annual Report). We also note the recent online discussion paper, "There Ought to be a Law: Protecting Children's Online Privacy in the 21st century", by the Online Children's Privacy

[12] "Police track suspects using Nexopia website" The Star Phoenix (27 July 2007), online: <http://www.canada.com/saskatoonstarphoenix/story.html?id=aa6802d9-443f-4372-a439-e806bcc3b274&k=23218>. See also Alexandra Pope, "Everyone can practice safe online behavior" Leduc Rep (20 November 2009), online: <http://www.leducrep.com/ArticleDisplay.aspx?e=2184276>.

Working Group, comprised of Canadian federal, provincial and territorial child and youth advocates and privacy commissioners and coordinated by the Office of the Ombudsman / Child and Youth Advocate, Province of New Brunswick.[13] PIAC submits that the Privacy Commissioner of Canada has the ability to address concerns with youth privacy, by expanding upon the "reasonableness" standard in subs. 5(3) in light of the age of users of social networking sites.

27. PIAC submits that what is "reasonable" personal information collection, use and disclosure must be viewed in the context of the age of the information subject, at least when that person is under 18 years of age.

28. PIAC notes that its recommendations for age-graduated levels of consent,[14] in order to reflect the reasonableness of information processing when dealing with children's and teens' developing social and personal sense of privacy and self-worth were incorporated into the Online Children's Privacy Working Group paper as possible amendments to PIPEDA and provincial substantially-similar privacy acts.

29. Notably, Nexopia's Privacy Policy states that they are "particularly committed to protecting the privacy of minors." Their Privacy Policy goes on to state that "[f]or that reason, we will refuse to open an account for a person under the age of 13." However, this statement underlines a fundamental problem, as "minor", in law, denotes a person under the age of majority, not simply a person under the age of 13. Thus, Nexopia's refusal to open an account for a person under the age of 13 does not reflect their commitment to protecting the privacy of legal minors and is a misleading statement.

30. PIAC further submits that information that might be "non-sensitive" in the context of an adult's use of a social networking site can become "sensitive" when collected, used and disclosed in relation to a minor (Principle 4.3.4). An example is "workplace" in an adult context, which may in many cases not be considered "sensitive" personal information (although still personal information) as opposed to a minor's regular "workplace" that is, for most, their school.

31. Nexopia's solicitation of such information from legal minors without regard to its sensitivity in their hands, coupled with its open dissemination of this information to users of the Internet at large violates these minors' privacy as Nexopia has not

[13] Working Group of Canadian Privacy Commissioners and Child and Youth Advocates, "There Ought to be a Law: Protecting Children's Online Privacy in the 21st Century" Discussion Paper (19 November 2009), online: <http://www.gnb.ca/ombudsman/PDF/Children'sOnlinePrivacy-e.pdf>.
[14] See PIAC's study "All in the Data Family" (PIAC: November 2008) at pp. 69-71, online: <http://www.piac.ca/files/children_final_small_fixed.pdf> and "There Ought to be a Law", at pp. 16-18.

obtained consent in the manner required for "sensitive" personal information outlined in many previous OPCC findings and guidelines and in accordance with Principle 4.3.6.

32. PIAC therefore requests that the OPCC undertake an analysis of this complaint on the two bases described above in relation to legal minors' privacy. Should the OPCC be concerned about matters of federal and provincial jurisdiction in this area, PIAC would be pleased to provide written follow-up comments on jurisdiction.

## HOW NEXOPIA VIOLATES PIPEDA

33. We submit that Nexopia violates PIPEDA in the following six manners. PIAC has ordered them in sequence of most egregious violation of PIPEDA that merits priority for investigation.

### *1. Disclosure of Nexopia Users' Profile and Personal Information to the General Public (Non-Member Visitors)*

34. In Nexopia's Terms of Use, Nexopia defines itself as "a social networking service that allows those individuals who register to become members to receive the Nexopia Services … and to create unique personal profiles online in order to find and communicate with friends." While it is not explicitly stated in either the Privacy Policy or Terms of Use, it can be assumed that any personal information collected by Nexopia is meant to satisfy this purpose.[15]

35. Personal information collected by Nexopia through user profiles is not only accessible to other user but is also easily accessible to the general public.[16] As stated in Nexopia's Privacy Policy:

> "When you register with and use Nexopia.com, you create your own profile and privacy settings and the information you submit/post, such as personal information, comments, messages, photos, etc. **may be shared with other members and visitors** in accordance with the privacy settings you select. … **Except as described in this Privacy Policy, any information included in your Profile or posted to blogs, forums and classifieds is accessible to the general public and not just registered members.**"[17] (emphasis added)

[15] Nexopia's failure to identify its purposes for the collection of personal information will be discussed below.
[16] As well, in its Privacy Policy, Nexopia states that "Profile Data is not Personal Information collected by Nexopia." We submit that this is incorrect, as profile data does constitute "personal information" under PIPEDA. This will be discussed in greater detail below.
[17] Nexopia Privacy Policy.

36. Furthermore, even if a user sets their profile preferences to the most privacy-protective setting, certain pieces of personal information will always be disclosed to the general public:

> "You may change or remove any of your Profile Data at any time by logging into your account and clicking on the 'Profile' and 'Preferences' tabs in the top menu, **except for your username, age, sex and location which are all publicly visible to all members and visitors (non-members).**"[18] (emphasis added)

Nexopia discloses personal information for purposes beyond the purposes for which the information was collected

37. Principle 4.5 of Schedule I of PIPEDA states that "personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law."

38. Based on the purpose for collecting user personal information – to enable Nexopia users to find and connect with one another – it is not necessary for Nexopia to disclose and publish entire user profiles to the general public.

39. Even where a user has restricted their privacy settings to the most privacy-protective conditions, the user's username, age, sex and location will remain publicly visible to all members and visitors (non-members). The mandatory disclosure of this personal information goes beyond the purposes of social networking within Nexopia and therefore is in violation of PIPEDA.

Consent has not been obtained for the disclosure of user profiles to the general public

40. Principle 4.3.1 states that consent is required for the collection of personal information and the subsequent use or disclosure of this information. Typically, an organization will seek consent for the use or disclosure of the information at the time of collection. In certain circumstances, consent with respect to use or disclosure may be sought after the information has been collected but before use (for example, when an organization wants to use information for a purpose not previously identified).

41. Nexopia notifies members that their data will be visible to the general public in the Privacy Policy:

[18] Nexopia Privacy Policy.

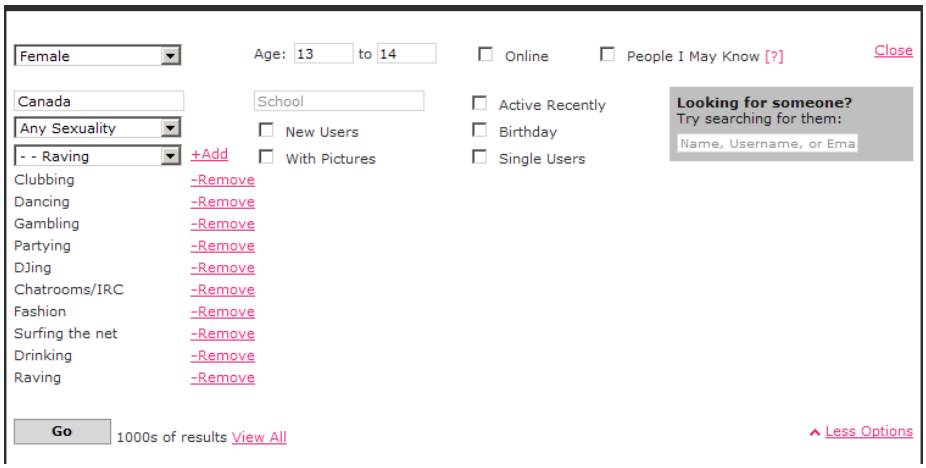
> "Except as described in this Privacy Policy, any information included in your Profile or posted to blogs, forums and classifieds is accessible to the general public and not just registered members."[19]

42. PIAC contends that this notice is inadequate to satisfy the consent requirements for the disclosure of user profiles to the general public. Nexopia's Privacy Policy is not readily available upon the collection of information during registration. During registration, a link to the Privacy Policy is provided within the Terms of Use, but this requires the user to read through the Terms, which are likely skipped over by Nexopia's young users.[20] At no other time during registration are prospective members prompted to read the Privacy Policy or advised that their personal information will be displayed to the internet public at large. In order to obtain valid consent for the disclosure of personal information to the general public, members should be made aware at registration that their profile information will be readily accessible by the public and explicit user consent should be obtained.

43. Second, while Nexopia's Privacy Policy, once found, does state that user profile information will be available and accessible to non-members, it does not explain that profiles are searchable outside of Nexopia by anyone on the internet. A user may not be aware that their personal profile can be located by a search query performed on any internet search engine. Therefore it cannot be said that members have been adequately notified and that valid consent has been obtained.

44. Further, Nexopia compounds this failure to obtain consent to disclose information gathered for social networking purposes within the site to the general public outside the site by providing its own search engine on its home page. (See Figure 13.)

[19] This sentence is posted in bold font in the Privacy Policy.
[20] Teens have been demonstrated to not read privacy policies, especially when they appear to be legalistic and are long. See PIAC, "All in the Data Family" (Ottawa: November 2008) at pp. 19-20, online: <http://www.piac.ca/files/children_final_small_fixed.pdf >. See also Jacquelyn Burkell, Valerie Steeves & Anca Micheti, "Broken Doors: Strategies for Drafting Privacy Policies Kids Can Understand," Ottawa, Privacy Commissioner of Canada, 2007. (Broken Doors). Online: <http://www.idtrail.org/files/broken_doors_final_report.pdf>.




[ FIGURE 13 ] User search

45. Nexopia's search engine searches within the site for profiles and permits any user of the Internet accessing most Nexopia pages to use pull down menus to select searches on the following categories (this is the "advanced" menu, accessible from the more simplified search), that will return full public profiles of all Nexopia users who have not restricted access (partially) to their personal information:

- Gender
- Age (range prepopulated to 14 to 60)
- Location
- School
- Sexual preference ("Any sexuality", heterosexual, homosexual, "Bi-sexual/Open-minded"
- Interests (a long list of prepopulated choices in the categories activities, animals/pets, art, cars, computers, entertainment, lifestyles/fashion, movies, music, musical instruments, outdoor, reading material, sports, video games, with many-sub categories)
- Online
- "People I may know" (based on "friends of friends")
- Active recently
- "Birthday" (meaning it is their birthday today)
- "Single users" (not explained, although this refers to relationship status, if indicated)
- New users
- With pictures

This search also contains a free text field to enter name, username or e-mail address.[21]

46. The Nexopia hosted search engine compounds the lack of consent to disclosure by allowing outside users to search on these site categories and subcategories without requiring site registration and by allowing searches on several categories that are not available to be searched from major web-based search engines. This permits a very fine-grained search of Nexopia members, which, when performed by a non-members goes beyond what users consent to in terms of disclosure and allows targeting of users.

Disclosure of profile information to the public is disclosure beyond user reasonable expectations

47. Subsection 5(3) of PIPEDA states that an organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances. PIPEDA Principle 4.3.5 also states that in obtaining consent for the disclosure of personal information, the reasonable expectations of the individual are also relevant.

48. A user would reasonably expect that their profile information would be shared with other users of the social networking site for the purpose of connecting and communicating with other users, except where restricted by the user. The disclosure of user profile information by way of publication of user profiles to the public outside of the Nexopia community and the ability to use the Nexopia hosted search engine from the Nexopia site (without logging in) is beyond what a user would reasonably expect from a social networking site.

49. Indeed, in the Facebook decision, the Commissioner suggested that it should be left up to the individual user to decide for himself or herself whether to make information available outside the community.[22] The same standard should apply for Nexopia.

Nexopia user profiles can be searched by all users and the general public

50. As alluded to above, Nexopia user profiles are accessible by the general public, both from public Internet search engines like Google or Bing or from the Nexopia hosted search engine. This means that user profiles can be found through a

[21] Note that in the Basics Editing Toolbox (see Figure 3) there is a checkbox for "Make my name searchable" which is checked by default. In PIAC's experimentation, when unchecking this box, the profile was still found through searching by username and by other parameters.
[22] OPC Facebook decision at para. 94.

simple internet search by any internet user. For example, on Google, limiting the domain to “Nexopia” AND using the search terms “female,” “16” and “Calgary” the search engine will provide results that link to the personal profile of sixteen year-old female Nexopia members living in Calgary.

51. Likewise, on the Nexopia hosted search engine, an outside Internet surfer can search by extremely sensitive categories of personal information, such as for “homosexual” “single users” who are “online” and whose “birthday” is that day.

52. Nexopia users have no control over how they can be searched or who they can be searched by, as users cannot opt out of the search function, whether this is via general online search engines or the Nexopia hosted search engine. Users can change their settings to prevent their profiles from being viewed by users that are not logged into Nexopia, but they cannot opt out of being displayed as a result of a search query. In the search results, where a user has opted to hide their profile from non-logged in visitors, their username along with their age, gender, location and profile picture will always be displayed. (See Figure 11.)

[ FIGURE 14 ] A user profile as displayed in search after user’s privacy settings have been set to most restrictive settings

53. The Commissioner found that Facebook’s default privacy setting allowing members to be searchable by search engines did not meet users’ reasonable expectations. The Commissioner stated that it should be left up to the individual user to decide for himself or herself whether to make information available outside the community.[23] Thus, consent for the publication of profile information should be on an opt-in basis as Nexopia members should have the opportunity to decide whether they want to be searchable or not. Nexopia’s user profiles should be inaccessible to search engines by default.

[23] OPC Facebook decision at para. 94.

54. Further, Facebook has acknowledged that users under the age of 18 are vulnerable as they are minors and has put measures in place to ensure that profiles of Facebook users under the age of 18 are not publically searchable. Nexopia has made no such distinction between minors and adults. Not only are Nexopia's profiles publicly searchable, the Nexopia hosted search engine provides an easy method to search through all Nexopia users' profiles. The Nexopia hosted search engine allows all members and non-registered visitors (the public) to narrow their search by very specific criteria, such as age range, birthday, gender, location, sexuality, relationship status and pictures.

55. Nexopia's search tool is arguably the more invasive and inappropriate, given that most Nexopia users are minors and anyone from the public can use this tool to search narrowly for users based on their age. As noted, the default search age setting is set to search for users as young as 14 and does not offer better privacy protections to minors than any other age group.

<u>Nexopia's members are primarily youth, therefore express consent must be obtained for publication of profile information beyond the Nexopia network</u>

56. Principle 4.3.6 also states that the way in which an organization seeks consent may vary, depending on the circumstances and the type of information collected. An organization should generally seek express consent when the information is likely to be considered sensitive. Implied consent would generally be appropriate when the information is less sensitive. Consent can also be given by an authorized representative (such as a legal guardian or a person having power of attorney).

57. The information that a user enters into their profile can be extremely sensitive, especially if disclosed to the general public. Users may reveal information about their image, sexual orientation and specific location, including their school. It is not only beyond their reasonable expectation of privacy to have this information made available to the general public but is highly unsafe for teenagers under the age of 18. It should therefore not be the default that this information is made available to everyone on the Internet. The next section addresses more specific concerns with the default privacy settings.

### *2. Default Privacy Settings*

58. Nexopia's Privacy Policy states the following in regard to user privacy settings:

> "You may change or remove any of your Profile Data at any time by logging into your account and clicking on the "Profile" and "Preferences" tabs in the top menu, except for your username, age, sex and location **which are all publicly visible to all members and visitors (non-members).** You may restrict your Profile from being viewed by visitors (non-members) and those users placed or your ignore list. In addition, you may choose to hide your birth date. However, this information is still used to calculate your age." (emphasis added)

59. Nexopia has simplified the process for its users to edit the visibility of certain pieces of information by placing the visibility options in the profile editing page. When a member decides to post personal information about themselves on their profile, they are given the option to make this information "visible to all", "visible to logged in users", "visible to friends", or "visible to none". Members are not given the option to opt out of being searchable. The following are the default options for each section of a members' profile:

    a. **Basic:** This includes a user's first and last name, height, weight, sexual orientation, dating status, living situation, location, school and date of birth. The default setting for all of these items except "school" is visible to all. School has its own checkbox and is set to "hide". The name category also has its own checkbox that reads "make my name searchable", and is automatically checked. The user can also check a box in order to hide their date of birth, as well as details about when they joined Nexopia, the last time they updated their profile and the last time they were active in Nexopia. (See Figure 3 above.)

    b. **Contact:** This section includes online chat names for the following websites only: ICQ, AIM, Yahoo, MSN and the default is set to be "visible to all". (See Figure 4 above.)

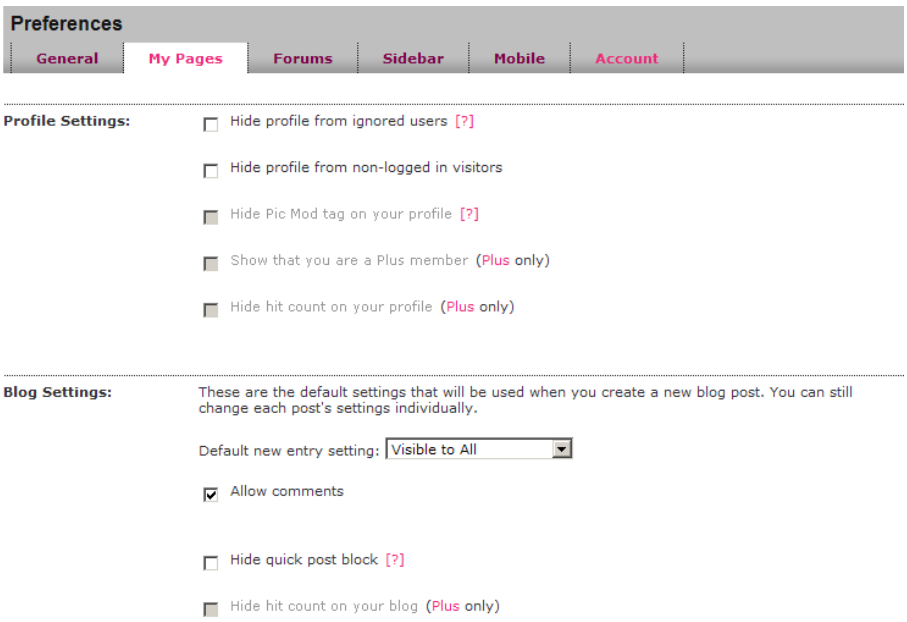
    c. **Interests:** A user may choose from a wide variety of preselected interests to post on their wall. These interests by default are set to be "visible to all". (See Figure 5 above.)

    d. **Tagline:** Users are provided with space to write a line about themselves. The default setting for this tagline is "visible to all".

e. **Photos:** A user does not have the option to edit the privacy settings in relation to their profile pictures. Thus, if they post profile pictures of themselves, all users of Nexopia and the public will see their profile pictures. However, when a user creates a photo album, they are given the same four options as all other profile information with a default setting for their album of "visible to all". (See Figure 7 above.)

60. PIAC submits that the "visible to all" default setting is beyond the reasonable expectations of Nexopia members and violates the following sections of PIPEDA.

61. Furthermore, there are additional privacy settings in the "My Pages" tab of the user's "Preferences" panel. Here, a user can hide their profile from non-logged in visitors and set default settings for who can view their new blog posts, though each post's settings can also be changed individually.




[ FIGURE 15 ] Preferences panel for a user's profile page with default settings

62. PIAC submits that it is difficult for users to change their visibility and privacy settings given that these settings do not exist in a single place. If a user wishes to edit their settings to be the most privacy protective, the user must edit their settings under several different profile editing panels and also access multiple tabs under "Preferences". Furthermore, Nexopia does not provide information to its users on how to protect their privacy on the site (Principle 4.8.1 requires the site to allow users to "acquire information about an organization's policies and practices without unreasonable effort").

Nexopia's default settings do not reflect the reasonable expectations of their members

63. Principle 4.3.5 states that in obtaining consent, the reasonable expectations of the individual are also relevant.

64. In the Facebook decision, the Privacy Commissioner stated:

> I acknowledge however that, given the sheer number of settings involved, the task of selecting each one at registration could make the registration process complicated and time-consuming and could discourage potential users from interacting with the site. Given the nature of the site, I have no serious objection to Facebook's preselection of the settings, provided that the default settings are reasonable and the users properly informed of them. In my view, the more serious and compelling privacy issues here are whether the default privacy settings meet the reasonable expectations of Facebook users, in keeping with Principles 4.3.5 and whether Facebook is making a reasonable effort, in keeping with Principles 4.2.3 and 4.3.2, to inform them how their information will be shared according to the various settings.[24]

65. In the Facebook decision, the Privacy Commissioner found that "Facebook's default settings in respect of photo albums and search engines do not meet users' reasonable expectations as envisaged in Principle 4.3.5."[25]

66. Nexopia uses the default setting of "visible to all" for their photo albums, profile pictures and search engines. As well, Nexopia uses the "visible to all" default setting for the majority of personal information fields in the "Basics" portion of the user's profile and for the user's interests. Thus, Nexopia's default privacy settings are inconsistent with the Privacy Commissioner's findings in Facebook and in violation of the reasonable expectation of the individual requirement of Principle 4.3.5 of PIPEDA.

67. PIAC submits that the default settings should be "visible to friends" in order to better align with the reasonable expectations of privacy of Nexopia users. Furthermore, this would be more privacy protective for the youth who use Nexopia.

68. PIAC further submits that in relation to legal minors who are Nexopia users, that Nexopia has a duty to prepopulate all information sharing preferences with the strictest privacy settings by default, since a reasonable person would expect that Nexopia would treat the personal information of minors as deserving of higher privacy protection than older users.

[24] OPC Facebook decision at para. 89.
[25] OPC Facebook decision at para. 95.

69. PIAC further contends that under subs. 5(3) and an interpretation of consent that takes into account the varying maturity of aging legal minors, that minors should not be permitted to choose the "visible to all" selection at all (in relation to all personal information but in particular, pictures) as their truly informed consent cannot be obtained or assumed in any real fashion until they reach the age of majority, at which time explicit consent may be obtained.[26]

Nexopia does not provide adequate notification of the default setting that member profile and personal information will be disclosed to the general public

70. Principle 4.3.2 requires "knowledge and consent" for the collection of personal information and the subsequent use or disclosure of this information. Organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. As emphasized in Principle 4.2.3, to make the consent meaningful, the identified purposes of the collection, use and disclosure must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.

71. In the drop down menu, it is not clear that "visible to all" means that the personal information on the users' profiles will be visible to the general public unless the member chooses otherwise. This wording could easily be understood to mean "all" on Nexopia, not everyone on the internet. The next option, "visible to logged in users" is also vague and does not help to clarify that "everyone" includes the general public.

72. In the Facebook decision, the Privacy Commissioner noted that Facebook needs to do more to ensure that new users can make informed decisions about controlling access to their personal information when registering. Facebook needs to ensure that users better understand the tools available to them to control their personal information.

73. Nexopia's current privacy settings are not clear enough to its users, who as noted above are generally teenagers, and do not make clear that profile information and personal information posted on Nexopia is available to the public unless the user changes his or her settings. Thus, PIAC submits that Nexopia is in violation of Principles 4.3.2 and 4.2.3 by failing to obtain knowledge and consent for the collection, use and disclosure of its users' personal information.

[26] As noted in both the "All in the Data Family" and "There Ought to be a Law" papers, PIAC's proposed interpretation of PIPEDA would allow disclosure to third parties of personal information provided both the teen (16+) AND parent or guardian both provided explicit consent to such disclosure. This also accords with Principle 4.3.6 regarding consent of a legal guardian.

Nexopia does not truly give members the option to hide their profiles from the general public, that is, Nexopia requires certain pieces of personal information to be disclosed to the public

74. Principle 4.3.3 states that an organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfill the explicitly specified and legitimate purposes.

75. Even where a Nexopia user sets all of the sections of their profile to be "visible to friends" or "not visible", some pieces of personal information can never be hidden from the public. The Nexopia Privacy Policy states that members may restrict their profiles from visitors, however, personal information regarding their age, gender, location and profile picture can never be hidden.

76. The availability of this personal information enables non-members to search and locate restricted members since they may be identified through these specific categories. Making this personal information available to the public is not necessary to meet the legitimate purposes of collection and should not be a condition of becoming a member.

77. Nexopia users should be given the opportunity to opt-in to the publication of their personal information, as all of their personal information, including registration data such as age, gender, location and profile picture, should be kept hidden from anyone they so desire.

### *3. Collection of Personal Information at Registration*

78. To become a Nexopia member, one must register by providing a username, email address, date of birth, sex and location. Without this information a user is not able to join the Nexopia community. At this time, Nexopia does not direct individuals to its Privacy Policy nor does it inform its potential members of the ways in which their information will be used or disclosed during the registration process. A link to the Terms of Use is provided (in which the Privacy Policy is referred to and linked) but it is not mandatory that the page be opened before joining the site.

Nexopia fails to adequately notify prospective members of the reasons for collection of registration information

79. Principle 4.2.1 states that an organization shall document the purposes for which personal information is collected in order to comply with Principle 4.8 (Openness) and Principle 4.9 (Individual Access).

80. Principle 4.2.3 states that the identified purposes should be specified at or before the time of collection to the individual from whom the personal information is collected.

81. Subsection 5(3) of PIPEDA states that an organization may collect, use, or disclose personal information only for purposes that a reasonable person would consider appropriate in the circumstances.

82. In the Facebook decision, the Privacy Commissioner asserts that collecting users' date of birth for the purposes of "enforcing the site's age minimum so as to protect the safety of minors and … ensuring that users use their real identities on the site so as to lessen the incidence of inappropriate content and behaviour and promote a safe and respectful environment for all users"[27] is a reasonable purpose and appropriate given the circumstances.

83. Nexopia has not stated any of these purposes for the collection of date of birth information.

84. Nexopia's Privacy Policy explains that it is "committed to protecting the privacy of minors" and that "for persons between the ages of 13 and 18, [they] require parental or guardian consent prior to opening an account". However, the registration page does not indicate reasons for the collection of date of birth information, nor has any mechanism been set up to verify parental consent. Prospective Nexopia members should be given more notification and explanation of the purposes for which their date of birth is collected prior to registration.

85. Nexopia's Privacy Policy states:

> "When opening an account, Nexopia.com collects identifiable information submitted by you (Personal Information), including but not limited to: name, email address, username (that you create), sex (gender), location and age."

86. There is no indication as to why this information must be collected in order to make use of the site. However, further into the Privacy Policy, it states that "to facilitate

[27] OPC Facebook decision at para. 48.

searching for and finding friends on the service, Nexopia.com allows members to search by name, age, gender, location, school, interests, sexuality", and that while it can later be hidden, date of birth "is still used to calculate your age". Nexopia makes no additional effort to inform members of its purpose for collecting this information or of the condition that this information is available to and cannot be restricted from the entire Nexopia network or any visitor to the site.

Nexopia's definition of "personal information" does not align with the definition in PIPEDA

87. In Nexopia's Privacy Policy, they define "personal information" to include the user's name, email address, username, sex, location and age. The Privacy Policy then goes on to define "Profile Data" as including but not limited to a user's weight, height, sexuality (i.e. sexual orientation), dating and living situation and information regarding interests. Nexopia states that "Profile Data is not Personal Information collected by Nexopia."

88. This attempt to exclude "profile data" from the definition of "personal information" demonstrates a grave misunderstanding of how "personal information" is defined under PIPEDA, which defines "personal information" as "information about an identifiable individual." A user's weight, height, sexual orientation and interests are information about an identifiable individual and when linked to a particular user, they meet the definition of "personal information."

Without adequate notice of the purposes of collection, Nexopia members cannot give proper consent to the collection and disclosure of registration information

89. Principle 4.3.2 states that organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the personal information will be used. To make the consent meaningful, the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.

90. Nexopia's Privacy Policy does not identify specific purposes for which user personal information is collected, used and disclosed. While Nexopia is clearly explained as a service where members create personal profiles to share with other members of Nexopia and visitors to Nexopia, whereby members can identify each other and expand their network of friends. However, an explanation of their service is not a reasonable effort to ensure that the individual is advised of the purposes for which their personal information is collected, used and disclosed.

91. Without adequate notification, as outlined above, Nexopia members cannot be said to have given consent to the collection, use or disclosure of their personal

information. Given that the majority of Nexopia members are 18 years old or younger, it is important that the language used to notify members be appropriate for this age group in order to obtain valid consent.

Nexopia members should not have to disclose their registration information to make use of this site

92. Principle 4.3.3 states that an organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfill the explicitly specified, and legitimate purposes

93. As a prerequisite to obtaining a Nexopia membership, individuals must consent to the public disclosure of their registration information. This information will be displayed in search results, the home page and the user's profile.) You may modify your preferences to hide your date of birth though your age will still be published. This may be justified given the social networking purposes of the site, however, Nexopia members do not have the option to opt-out of the disclosure of this information to advertising, parent or affiliate companies. Even if the privacy policy were modified so that members were aware of the purposes for this disclosure, it should still not be a condition of using this website (Principle 4.3.3). Third parties will be discussed in more details below.

### *4. Advertising*

94. In the Facebook decision, the Privacy Commissioner accepted that in order to provide their services for free, social networking sites require revenues from advertising. "From that perspective, advertising is essential to the provision of the service, and persons who wish to use the service must be willing to receive a certain amount of advertising."[28]

95. While Nexopia does offer a Plus service of additional features that its users can pay to access, the majority of Nexopia members do not pay to use the Plus service.

96. In regards to its use of targeted advertising, Nexopia says the following in its Privacy Policy:

[28] OPC Facebook decision at para. 131.

> "Nexopia also use[s] Personal Information of members included in a member's Profile to deliver advertising content that we believe may be of interest or use to a member."
>
> "Nexopia.com uses personal information from your Profile to deliver targeted advertisements that we think will most interest you. Nexopia.com does not provide Personal Information to advertisers"
>
> "Aggregated information may be shared with third parties to provide more relevant services and advertisements to members."

Nexopia does not adequately explain its advertising practices

97. Principle 4.1.4(d) states in part that organizations shall implement policies and practices to give effect to the principles, including developing information to explain the organization's policies and procedures.

98. Principle 4.2.3 states in part that the identified purposes should be specified at or before the time of collection to the individual from whom the personal information is collected.

99. Principle 4.3.2, noting that Principle 4.3 requires both knowledge and consent, states that organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. It goes on to say that, to make the consent meaningful, the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.

100. Principle 4.8 states that an organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

101. While Nexopia is open about its use of targeted advertising, it does not provide members with enough detail on this practice and therefore fails to meet the standards of knowledge and consent outlined above. Nexopia does not adequately describe what targeted advertising is, how it works (such as whether a cookie is placed on the user's browser in order to collect information about the user's IP address), who manages the process, and what information is given to advertisers to fulfill this purpose. It is not clear whether Nexopia partners with networking advertisers, however when PIAC checked the homepage landing, it found Google Adsense, Google Analytics and Chartbeat cookies.[29] When PIAC

[29] PIAC used free Firefox add-on "Ghostery" to obtain this information.

clicked on an advertisement, it appeared that Nexopia uses DoubleClick in order to serve relevant advertisements.

102. The description provided in the Privacy Policy is confusing as it identifies the use of personal information to target advertisements, but claims that this personal information is not given to advertisers. Nexopia is also not clear whether "Profile Data" as defined in the Privacy Policy, such as a user's interests, sexual orientation and relationship status, are used to target advertisements.

103. In order to secure meaningful consent, Nexopia needs to document and explain in its Privacy Policy its use of advertising and its use of users' personal information for the purposes of targeted advertising. In its current form, Nexopia's Privacy Policy lacks sufficient detail in its discussion of advertising. This is particularly important as advertising is an essential role of Nexopia's operations and its advertisements are a condition of service, as users cannot opt out of receiving targeted ads. Greater transparency regarding their advertising practices is required.

Nexopia does not give its users the ability to opt out of targeted advertising

104. Principle 4.3.3 states that an organization shall not, as a condition of service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfill the explicitly specified and legitimate purposes.

105. While some form of advertising may be necessary in order for Nexopia to provide "free" social networking services, targeted advertisements are more privacy invasive, given that that they use personal information in order to serve more relevant advertisements.

106. Nexopia does not currently offer its users the ability to opt out of receiving targeted advertisements. Thus, Nexopia requires users to consent to the use of their personal information for the purpose of targeted advertising as a condition of using Nexopia in violation of Principle 4.3.3.

Nexopia should follow the Canadian Marketing Association Code of Ethics and Standards of Practice for advertising to teenagers

107. The Canadian Marketing Association (CMA) published a Code of Ethics and Standards of Practice that puts in place special considerations for marketing to children. The Code of Ethics puts into place special consent provisions for the collection, use and disclosure of personal information from children and teenagers for the purpose of advertisements.

108. For teenagers aged 13, 14 and 15, the collection, use and disclosure of the youth's contact information requires the opt-in consent of the teenager. For personal information beyond contact information, both the teenager and the parent or guardian must consent by opt-in. For teenagers ages 16 and older, the opt-in consent of the teenager must be obtained. However, a parent or guardian can withdraw consent to use or disclose personal information for teenagers of all ages, including 16 years or older.[30]

109. Nexopia should respect the CMA Code of Ethics and Standards of Practice with respect to the collection, use and disclosure of personal information of its teenage users and require the opt-in consent of the teenager. As stated above, no verification of parental consent is requested at any point in the registration process. Furthermore, it is unclear from the Nexopia website how a user's parent or guardian might withdraw consent to the use or disclosure of personal information of a teenager on Nexopia.

110. PIAC submits that the CMA Code of Conduct is largely convergent with PIAC's own proposed interpretation of consent requirements for minors under PIPEDA when viewed through the lens of subs. 5(3) reasonableness.[31]

### *5. Transferring & Sharing of Members' Personal Information to Third Parties*

111. Nexopia needs to be more transparent with regards to its information sharing practices with third parties. In the Privacy Policy, Nexopia states that they "may share some or all of your Personal Information with any parent company, any subsidiaries, joint ventures, or other companies under a common control we may have". This broad description is insufficient to meet the standards set out in the following PIPEDA principles.

Nexopia does not adequately notify members of its information sharing practices

112. Principle 4.8 states that an organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

113. Nexopia is unclear about its practices and policies with regards to the disclosure and management of its users' personal information. The Privacy Policy does not effectively identify how and with whom it discloses users' personal information, nor

[30] CMA Code of Ethics and Standards of Practice at L3.3, online: <http://www.the-cma.org/?WCE=C=47%7CK=225849#12>.
[31] See PIAC, "All in the Data Family", *supra*, at at pp. 69-71.

does it explain the purposes for which this is required. Further into the Policy, Nexopia explains that "[s]ome Personal Information may be stored or processed by third parties, including contractors, business partners and affiliates located in the United States." Nexopia does not define who these third parties are and what personal information will be provided to them. Nexopia fails to disclose why it is necessary that member information be processed and stored in the United States. For these reasons, PIAC contends that Nexopia does not comply with PIPEDA's openness principle.

Nexopia's disclosure of personal information to third parties is beyond the reasonable expectations of its members and requires a stronger form of consent

114. Principle 4.3 states that the knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

115. Principle 4.5 states that personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law.

116. Nexopia's disclosure of member personal information to third parties violates Principles 4.3 and 4.5. As illustrated above, Nexopia does not effectively notify its members of what user personal information will be disclosed and with which parties this personal information will be shared. Without doing so, it cannot deem that its users have consented to this disclosure.

117. It is beyond the reasonable expectations of Nexopia members that upon registration for Nexopia's social networking service, they are providing consent for the disclosure, processing and storage of their personal information to unidentified third parties in Canada and the United States. This disclosure does not fall within Nexopia's identified purposes for collection and leaves open the possibility that its users' sensitive personal information may be delivered indiscriminately to a host of unknown organizations. Seeing as there is no ability to opt-out of this disclosure, it forms a condition to the use of Nexopia's service.

118. PIAC submits that Nexopia has failed to gain proper consent for this disclosure. Nexopia needs to explicitly identify what its information sharing practices are and provide members with the option to opt-in to this disclosure where it is not mandatory for the proper functioning of the website. Moreover, it cannot be presumed that members under the age of 18, who simply wish to use the site for its social networking purposes, are aware of the consequences of consenting to this disclosure. Whether these individuals have even read the privacy policy is

questionable, and any consent to such broad disclosure should not be considered valid without a more detailed description of these practices and express parental consent.

### *6. Retention of Personal Information*

119. Nexopia's Privacy Policy with regards to the retention of member and non-member personal information violates the following PIPEDA principles.

120. Principle 4.3 states that the knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

121. Principle 4.5.2 states that organizations should develop guidelines and implement procedures with respect to the retention of personal information. These guidelines should include minimum and maximum retention periods. Personal information that has been used to make a decision about an individual shall be retained long enough to allow the individual access to the information after the decision has been made. An organization may be subject to legislative requirements with respect to retention periods.

122. Principle 4.5.3 states that personal information that is no longer required to fulfill the identified purposes should be destroyed, erased, or made anonymous. Organizations shall develop guidelines and implement procedures to govern the destruction of personal information.

<u>Nexopia's retention policies in regards to non-Nexopia members violate PIPEDA</u>

123. Nexopia's Privacy Policy explains that *"*[u]sing our automated invitation system, Nexopia members can send emails to invite friends to join the service. Nexopia.com stores the email addresses that members provide so that the respondents may be added to the friend's list of the member sending the invitations, and also to send reminders of the invitations."

124. This action violates the consent provisions in PIPEDA since non-members cannot consent to the collection and use of their emails for this purpose. Unlike Facebook, Nexopia does provide non-members with an option to unsubscribe from Nexopia invitations or emails and to request the removal of their email address from the Nexopia database. However, it is unclear whether non-members are notified of the latter option or if they are expected to do so on their own. The Facebook decision outlines that the "retention of non-users" email addresses

beyond the initial use warrants a "much higher degree of responsibility on the company's part."[32] Nexopia must take all measures to notify non-members of the purposes for which their emails are used and implement a more active deletion procedure.

Nexopia retains the personal information of its members indefinitely

125. Nexopia explains through its Privacy Policy that:

> "An individual may also request that Nexopia delete an individual's Personal Information from Nexopia's system and records. However, due to technical constraints and the fact that Nexopia backs up its systems, Personal Information may continue to reside in Nexopia's systems after deletion. Individuals, therefore, should not expect that their Personal Information would be completely removed from Nexopia systems in response to an accepted request for deletion."

126. Nexopia records personal and sometimes sensitive information belonging to its members. Members of Nexopia would not reasonably expect, as per section 5(3) of the *Act* that this information may be stored on Nexopia's databases in spite of any requests for it to be deleted. Nexopia should be able to ensure the timely deletion of its members' personal information, especially after the user has requested its removal.

## CONCLUSION

127. To summarize, PIAC submits that Nexopia is in violation of *PIPEDA* in the following regard:
    - **Disclosure of Nexopia user profiles to the public.** Nexopia discloses its user profiles and user personal information to the general public for purposes beyond the purposes for which the information was collected (violating Principle 4.5) and without obtaining consent for this disclosure (violating Principle 4.3.1). Nexopia's disclosure is beyond its user's reasonable expectations (violating subs. 5(3) and Principle 4.3.5).
    - **Nexopia's default privacy settings.** Nexopia's default privacy settings do not reflect the reasonable expectations of their members (violating Principle 4.3.5) and does not provide adequate notification of the default setting for public disclosure (violating Principle 4.3.2). Nexopia also fails to give its

[32] OPC Facebook decision at para. 315.

members the ability to hide their personal information from the general public (violating Principle 4.3.3).

- **Nexopia's collection of personal information at registration.** Nexopia's definition of "personal information" does not align with the legal definition in *PIPEDA*. Nexopia fails to adequately notify prospective members of the purposes of collecting registration information (violating Principles 4.2.1 and 4.2.3). Without adequate notice, Nexopia members cannot give proper consent to the collection and disclosure of their registration information (violating Principle 4.3.2). Furthermore, Nexopia requires its users to disclose certain pieces of personal information collected at registration in order to use the site (violating Principle 4.3.3).
- **Advertising.** Nexopia does not adequately explain its advertising practices, particularly to what extent users' personal information is shared with advertisers and marketers (violating Principles 4.1.4 and 4.8). Nexopia does not give its users the ability to opt out of targeted advertising (violating Principle 4.3.3).
- **Transferring and sharing of Nexopia users' personal information to third parties.** Nexopia does not notify its users about its information sharing practices (violating Principle 4.8) and the disclosure of user personal information to third parties is beyond the reasonable expectations of its members (violating Principle 4.3).
- **Nexopia's retention of personal information.** Nexopia retains the personal information of non-members without their knowledge and consent (violating Principle 4.3). As well, Nexopia retains the personal information of its members indefinitely (violating Principles 4.5.2 and 4.5.3).

128. PIAC requests that the Office of the Privacy Commissioner of Canada investigate Nexopia's practices with a view to its compliance with *PIPEDA*, with special consideration to how Nexopia handles the privacy of minors. Should you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

[original signed] [original signed]

John Lawford Janet Lo
Counsel Counsel

Attached - Appendices

Appendix 1

## PRIVACY POLICY

*Last updated November 2, 2009*

### Our Commitment to Your Privacy

Nexopia.com is an online service where members create personal profiles that can be shared with other members of and (non-member) visitors to Nexopia.com. To allow our members to identify each other and expand their network of friends, members can display personal and other information to other members of and visitors to Nexopia.com.

Your privacy is important to us. To better protect your privacy, we provide this Privacy Policy to explain our information practices and the choices you can make about the way your information is collected, used and disclosed. This Privacy Policy is accessible by a link at the bottom of every page on Nexopia.com and applies to all information collected through or submitted to the Nexopia website.

We are particularly committed to protecting the privacy of minors. For that reason, we will refuse to open an account for a person under the age of 13. If you are under 13, please do not attempt to register for Nexopia.com or send any information about yourself to us. If we learn that information from a child under the age of 13 has been submitted to us, we will delete that account and information as soon as possible.

For persons between the ages of 13 and 18, we require parental or guardian consent prior to opening an account and we reserve the right to verify the existence of that consent.

We will fully cooperate with any request to release information to any law enforcement agency when a proper request is received. We may also take steps to protect the health and well being of members, visitors and other parties if we have reason to believe that any of these persons are in danger.

### Collection and Use of Personal Information by Nexopia.com

When you register with and use Nexopia.com, you create your own profile and privacy settings and the information you submit/post, such as personal information, comments, messages, photos, etc. may be shared with other members and visitors in accordance with the privacy settings you select. Therefore, it is important that you understand what information is displayed to the public. **Except as described in this Privacy Policy, any information included in your Profile or posted to blogs, forums and classifieds is accessible to the general public and not just registered members.** We encourage you to view your Profile as others would view it by clicking on the Profile link in the top menu. All posting and sharing is done at your own risk.

When opening an account, Nexopia.com collects identifiable information submitted by you (Personal Information), including but not limited to: name, email address, username (that you create), sex (gender), location and age. In addition, to help members find and communicate with each other, you may submit and post additional profile data ("Profile Data"), including but not limited to the following: weight, height, sexuality (i.e. sexual orientation), dating and living situation and information regarding your interests through the "Profile" tab. In addition, you have the ability to post photographs. Profile Data is not Personal Information collected by Nexopia.

You may change or remove any of your Profile Data at any time by logging into your account and clicking on the "Profile" and "Preferences" tabs in the top menu, except for your username, age, sex and location which are all publicly visible to all members and visitors (non-members). You may restrict your Profile from being viewed by visitors (non-members) and those users placed or your "ignore list". In addition, you may choose to hide your birth date. However, this information is still used to calculate your age.

If you submit details in your Profile for MSN Messenger, AOL Instant Messenger (AIM) or ICQ, these are accessible by registered members on your friends list.

Members communicate on Nexopia.com with each other through the Nexopia.com service, without revealing their email addresses. To facilitate searching for and finding friends on the service, Nexopia.com allows members to search by name, age, gender, location, school, interests, sexuality and to limit searches only to members with pictures.

In addition, Nexopia.com allows searches by real names, usernames, and email addresses of members. The default will be that your username and email address are searchable, however, you may disable this option through your Preferences. If you allow your username and/or email address to be searchable, the user performing the search will be able to access your profile.

Nexopia.com also encourages member interaction within the network community by displaying random member profile information, including members' pictures, usernames and age.

We may use your external email address to respond to your inquiries or send updates or other news regarding the Nexopia service. We also use Personal Information of members included in a member's Profile to deliver advertising content that we believe may be of interest or use to a member.

From time to time, Nexopia.com may hold a promotion, sweepstake or contest on Nexopia.com. Members may be asked to provide Personal Information such as name, email address or home address or to answer questions in order to participate. If you participate, Nexopia.com may collect and use Personal Information to administer the promotion, sweepstake or contest. What information is being collected and how it may be used or disclosed (and to whom) will be made evident at the time of collection

through the relevant promotion, sweepstake or contest rules.

Nexopia.com also logs non-personally-identifiable information of members and visitors to the site, including IP address, aggregate user data, and browser type. This information helps us manage the website, track usage and improve the website services. Aggregated information may be shared with third parties to provide more relevant services and advertisements to members. For example, we may tell an advertiser that X number of individuals visited a certain area on our website or that Y number of men or Z number of women filled out our registration form. Nexopia.com also records user IP addresses for the purposes of security and monitoring.

While we do not generally, or undertake any obligation to do so, we may monitor content, messages and other exchanges if we suspect members of being under the age of 13 or using our services in violation of our Terms of Use or Privacy Policy. Postings that appear on the public area of the site may be edited, deleted or removed in accordance with our Terms of Use.

**Disclosure of Personal Information**

Nexopia will disclose Personal Information about payment and member Profile Data to our third party credit card process provider for billing and payment purposes and where there is suspicious credit card use or a dispute concerning a charge. We may also contact financial institutions directly to verify credit card information provided. In doing so, we may share the information we received about the credit card and member.

We sometimes receive calls from and/or attempt to call parents or guardians about a minor's use of a credit card belonging to someone other than the member. Where a credit card belonging to a person other than the member has been submitted, we will first attempt to verify the identity of the caller as being the credit card holder and, if this is verified, we may release the name of the member who submitted the credit card information to us. It is important that you have the full consent of the credit card holder before submitting their card number to us to pay for services. We reserve the right to cancel your account at any time and prohibit your future use of the Nexopia.com site if you attempt to use a credit card without prior authorization.

We may share some or all of your Personal Information with any parent company, any subsidiaries, joint ventures, or other companies under a common control we may have (collectively, "Affiliates"), in which case we will require our Affiliates to honor this Privacy Policy.

In the event Nexopia goes through a business transition such as a merger, acquisition by another company, or sale of all or a portion of its assets, your Personal Information will likely be among the assets transferred. You acknowledge that such transfers may occur, and that any acquirer of Nexopia or its assets may continue to use your Personal Information as set forth in this Privacy Policy.

Nexopia expressly reserves the right, and in some states may be legally required, to report certain materials, such as, but not limited to, child pornography or terror plans, that we may become aware of in the course of providing the Services to the authorities in charge.

Some Personal Information may be stored or processed by third parties, including contractors, business partners and affiliates located in the United States. Therefore, your information may be processed and stored in the United States. As a result, the governments, courts, or law enforcement or regulatory agencies may be able to obtain disclosure of your information through laws applicable in the United States.

Except as otherwise described in this Privacy Policy, Nexopia.com will not disclose Personal Information to any third party unless we believe that disclosure is necessary for one of the following reasons: (1) as required by law, including to respond to a subpoena, search warrant or other legal process received by Nexopia.com; (2) to enforce the Nexopia.com Terms of Use or to protect our rights; or (3) to protect the safety of the public and members of and visitors to the service.

**Notification of Changes**

If we decide to change our Privacy Policy, we will post any changes on our site and provide notification so that users will always be aware of what changes have been made to how information is collected, used and disclosed, and continued use of Nexopia.com shall constitute consent to the changes in the Privacy Policy.

**Cookies**

A "cookie" is a small piece of information/text sent by a web server to be stored on a user's web browser so it can later be read back from that browser on subsequent visits to a website. Nexopia.com uses cookies to store visitors' preferences and to record session information, and allows communications, advertising, and Web page content to be customized according to browser type and member profile information. You may be able to configure your browser to accept or reject all or some cookies, or to notify you when a cookie is set, however, cookies must be enabled in order to access most functions on the site. Since each browser is different, check the "Help" menu of your browser to learn how to change your cookie preferences.

**Links**

Nexopia.com contains links to other sites. Nexopia.com is not responsible for the privacy policies and/or practices on other sites. A member should read the privacy policy stated on any site being accessed. The Nexopia Privacy Policy only governs the privacy policies and practices of Nexopia.com.

**Advertising**

Ads that appear on Nexopia.com may be sent to members and visitors by us. Nexopia.com uses personal information from your Profile to deliver targeted advertisements that we think will most interest you. Nexopia.com does not provide Personal Information to advertisers, however, if you click on an ad appearing on Nexopia.com, you may be taken to an advertiser's or other third's party web-site. Your use of these other web-sites is subject to the privacy policies of those web-sites and Nexopia.com expressly disclaims all representations and responsibilities in relation to those web-sites.

**Communications with Non-Members**

Using our automated invitation system, Nexopia members can send emails to invite friends to join the service. Nexopia.com stores the email addresses that members provide so that the respondents may be added to the friend's list of the member sending the invitations, and also to send reminders of the invitations. Nexopia.com does not sell these email addresses or use them to send any communication except for invitations and invitation reminders. Recipients of invitations from Nexopia.com may request the removal of their information from our database by contacting Nexopia.com. Non-members may stop Nexopia.com email invitations and other messages from being sent to any email address you control by clicking the unsubscribe link in the invitation email.

**Blogs, Forums, Message Boards and Classifieds**

When you voluntarily post comments, including your personally identifiable information to blogs, forums, classifieds or any other public forums, the information can be accessed by the public. In turn, the information can be used by those people to send you unsolicited communications. These posted comments are not Personal Information collected by Nexopia.

**Security**

Nexopia.com uses physical and electronic precautions to protect member Personal Information stored within our database, and we restrict access to member information to those employees who need access it to perform their job functions, such as our customer service personnel and technical staff.

Nexopia.com uses member-created passwords to assist in the security of member accounts. It is your responsibility to protect your password as disclosure of it allows anyone to access your account, including all of your sent and received messages. You should also take precautions to protect your email account as anyone can request that your password be sent to your email address. As such, if you allow someone else to use or control your email account, that person may be able to gain access to your Nexopia account. To protect your Nexopia account, please ensure that you do not use the "Remember Me" feature or set your browser to remember your details on any public or shared computers.

While we take measures to attempt to protect your Personal Information and privacy, we cannot guarantee the absolute security of Personal Information due to actions of other members with whom you share your pages and information and factors such as unauthorized third party entry or use, or hardware or software failure which may compromise security.

For any additional information about the security measures we use on Nexopia.com, please contact us at privacy@nexopia.com.

**Access to Personal Information**

As set out below, Nexopia permits requests for access to and review of Personal Information collected by Nexopia about an individual by the individual concerned. An individual can request to access and/or update Personal Information collected about them by Nexopia by sending an email request to privacy@nexopia.com. Nexopia reserves the right not to change any Personal Information but may append any alternative text the individual concerned believes appropriate. An individual may also request that Nexopia delete an individual's Personal Information from Nexopia's system and records. However, due to technical constraints and the fact that Nexopia backs up its systems, Personal Information may continue to reside in Nexopia's systems after deletion. Individuals, therefore, should not expect that their Personal Information would be completely removed from Nexopia systems in response to an accepted request for deletion.

Nexopia reserves the right to decline access to Personal Information where the information requested:

a. Would disclose the Personal Information of another individual or of a deceased individual;
b. Was not collected by Nexopia from the individual;
c. Would disclose business confidential information that may harm Nexopia or the competitive position of a third party;
d. Is subject to solicitor-client or litigation privilege;
e. Could reasonably result in:
    i. serious harm to the treatment or recovery of the individual concerned;
    ii. serious emotional harm to the individual or another individual; or
    iii. serious bodily harm to another individual;
f. May harm or interfere with law enforcement activities and other investigative or regulatory functions of a body authorized by statute to perform such functions;
g. Is not readily retrievable and the burden or cost of providing would be disproportionate to the nature or value of the information; or
h. Does not exist, is not held, or cannot be found by Nexopia.

Where information will not or cannot be disclosed, the individual making the request will be provided with the reasons for non-disclosure.

Where information will be disclosed, Nexopia will endeavor to provide the information in question within a reasonable time and no later than 30 days following the request. Nexopia will not respond to repetitious or vexatious requests for access. In determining whether a request is repetitious or vexatious, it will consider such factors as the frequency with which information is updated, the purpose for which the information is used, and the nature of the information.

To guard against fraudulent requests for access, Nexopia will require sufficient information to allow it to confirm the identity of the person making the request before granting access or making corrections.

**How to Contact Us**

If you have any questions about this privacy policy, the practices of this site, or your dealings with this Web site, please contact our privacy officer at: privacy@nexopia.com, or by mail at: PO Box 47177, 62 Edmonton City Centre RPO, Edmonton, Alberta, T5J 4N1.

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Appendix 2

**ABBREVIATED TERMS OF USE (the "Terms")**

The following is provided as a summary of Nexopia.com Inc.'s Terms and is not legally binding. If you intend to access this site or use the Services you must read the legally binding version of the Terms immediately following these Abbreviated Terms of Use or alternatively you can view them at www.nexopia.com/wiki/SiteText/termsofuse#legal.

You must agree to abide by the following Terms to use the Services.

You must be at LEAST 18 YEARS OF AGE, OR BE AT LEAST 13 YEARS OF AGE AND HAVE EITHER YOUR PARENT'S OR GUARDIAN'S PERMISSION, to access the Nexopia.com website or use the Services of Nexopia.com Inc. ("Nexopia").

Protect your password. You should not give it to anyone, directly or indirectly, other than to a parent or guardian. Nexopia will not be held responsible for anything that happens to your account due to a shared, lost or stolen password.

The Services offered by the site are intended for personal use only and not for commercial use (without the express written permission from Nexopia).

Only post content that you have the rights to display or use. All content you post remains your property, although, in order to use the Services offered on the site, you give both Nexopia, and other users of the site, the right to use your content.

All other content is the property of Nexopia or our suppliers or licensors. Nexopia content can be used for personal use when on the site, but not anywhere else without Nexopia's written permission.

Nexopia does not monitor your content or that of a third party, but reserves the right to refuse or remove any content that violates these Terms. Nexopia can also, at its sole discretion, take any steps it deems necessary to deal with a violation of these Terms.

Nexopia will assist law enforcement personnel with suspected or alleged illegal user content, including, but not limited to private messaging.

Engaging in any illegal or objectionable behaviour or posting of any illegal or prohibited material (i.e. harassment, racist comments, violent messages, nudity...) on the site may result in the termination of your membership, or result in possible legal action.

Nexopia has no control over content hosted on other Internet sites. Just because a link, for example, appears on our site does not mean Nexopia approves or endorses that content.

Nexopia cannot be held responsible for what others do with the information you post on the Service, so be cautious about the information, especially personal information, you post about yourself or others.

You may delete your own account from your preferences page at any time. We reserve the right to delete your account at any time for any violation of these Terms.

NEXOPIA SERVICES ARE PROVIDED ON AN 'AS AVAILABLE' AND 'AS IS' BASIS WITH USERS MAKING USE OF THE SERVICES AT THEIR OWN RISK.

Any user found in violation of these Terms may have their account terminated and if appropriate, that user may face legal action.

**TERMS OF USE FOR NEXOPIA.COM**

These Terms of Use ("Terms") were last updated on June 4, 2008.

**Acceptance of Terms**

By accessing the Nexopia.com Inc. ("Nexopia.") website (including all Content available on or through the Nexopia.com domain name, the "Website" or "Nexopia.com Website") or using the features, applications and services offered by Nexopia.com on the Website (the "Nexopia Services" or "Services") you agree and acknowledge to be bound by these Terms of Service ("Terms") and the terms and conditions of Nexopia.com's privacy policy, which are published at www.nexopia.com/privacy.php (the "Privacy Policy"), and which are incorporated into these Terms by this reference. If you do not agree to these Terms or to our Privacy Policy, please do not access the Website or use the Services. Nexopia.com reserves the right to change these Terms at any time. Nexopia.com reserves the right to amend the Terms at any time. Your continued access to and use of the Website or the Services, or both, after we amend the Terms will mean that you agree with the Terms as amended. We recommend that you periodically check this Website for amendments to the Terms.

**Membership and Eligibility**

Nexopia.com is a social networking service that allows those individuals who register to become members to receive the Nexopia Services (the "Members") and to create unique personal profiles online in order to find and communicate with friends. If you wish to become a Member, communicate with other Members and make use of the Nexopia Services, you must read these Terms and

communicate your acceptance of these Terms (which also includes any other terms and conditions associated with your use of the Nexopia Services for which you have subscribed during or any time following the Member registration process).

In order to register as a Member of Nexopia.com or access and use this Website you must be OVER THE AGE OF 18 OR BE OVER THE AGE OF 13 AND OBTAIN PERMISSION FOR USE OF THE SERVICES FROM A PARENT OR LEGAL GUARDIAN WHO ACCEPTS THE TERMS AND CONDITIONS OF THESE TERMS. By using the Website or the Services you represent and warrant that you are at least 18 years old or that you are the parent or legal guardian of a person that is 13 years of age or older that is accessing the Nexopia Website or receiving Nexopia Services, and you have the right, authority and capacity to enter into and abide by all of these Terms. Your profile may be deleted and membership may be terminated without warning, if we have reason to believe that you are less than 13 years of age.

Throughout these Terms the terms "us", "we" and "our" refer to Nexopia.com Inc., including its successors and assigns; the terms "your" and "you" refer to the individual that has accepted these Terms, and includes any user operating under your Membership ID and password, or in the case where the person accessing the Nexopia Website or receiving Nexopia Services is 13 or older, but younger than 18, "you" refers to such person and his or her parent or legal guardian. As a parent or legal guardian, you agree to be responsible for any act or omission of any user older than 13 but younger than 18 that you permit to access and use the Nexopia Website or receive the Nexopia Services, or both.

Ontario

Visit ontario.ca/healthcareoptions

**Password**

When you sign up to become a Member, you will be asked to choose a username and password. You are entirely responsible for maintaining the confidentiality of your password. You agree not to use the account, user name or password of another Member at any time or to disclose your password to any other person (except a parent or guardian if you are a user 13 years of age or older and less than 18 years old). You agree to notify Nexopia.com immediately if you suspect any unauthorized use of your account or access to your password. You agree to hold Nexopia.com harmless for any damage arising from a third party accessing the Services using a password you disclosed, lost, had stolen, etc.)

**Non-Commercial Use by Members**

The Nexopia Services are for personal use of Members only and may not be used in connection with any commercial purposes except those that are specifically endorsed or approved by Nexopia.com, such as the Marketplace forum. Illegal or unauthorized use, or both, of the Nexopia Services, including collecting user names, e-mail addresses or other personally identifiable information of Members, or both, by electronic or other means for the purpose of sending unsolicited e-mail or unauthorized framing of or linking to the Nexopia Website is prohibited. Commercial advertisements, affiliate links, and other forms of solicitation may be removed from Member profiles without notice and may result in termination of Membership privileges. Appropriate legal action will be taken for any illegal or unauthorized use of the Nexopia Services.

**Proprietary Rights in Content on Nexopia.com**

***Your Content***

Nexopia.com does not claim any ownership rights in the text, files, images, photos, video, sounds, musical works, works of authorship, or any other materials and information that you post to the Nexopia Website (collectively, "Your Content"). After posting Your Content to the Nexopia Website, you continue to retain all ownership rights in Your Content, and you continue to have the right to use Your Content in any way you choose. By posting, displaying or publishing any of Your Content on or through the Nexopia Services or the Nexopia Website, you hereby grant to Nexopia.com a non-exclusive, fully paid, royalty free, sub-licensable, transferable and worldwide license and right (the "License") to use, modify, create derivative works of, perform, display, reproduce, incorporate into other works and distribute Your Content solely on and through the Nexopia Services or Nexopia Website, and allow access to Your Content to other users or Members of the Nexopia Services or Nexopia Website. You also hereby grant each user of the Nexopia Website a non-exclusive license to access Your Content through the Nexopia Website, and to use, reproduce, distribute, prepare derivate works of, display and perform Your Content as permitted through the functionality of the Nexopia Website, the Nexopia Services and under these Terms.

This License will terminate at the time you remove Your Content from the Nexopia Services or Nexopia Website, except that you grant us a continuing perpetual license and right to maintain a copy of Your Content for archival purposes. This archival copy is not posted publicly on the Nexopia.com system; it is maintained only for the purpose of recovering Your Content and restoring accounts (in case of errors or system failure) or to cooperate with law enforcement agencies in order to make the Nexopia Website safer. Although we will use reasonable efforts to delete Your Content that you inform us in writing to remove, we can not warrant that all of Your Content can be successfully removed from the Nexopia Website or Nexopia Services or that other users of the Website or Nexopia Services will not have copied and distributed some or all of Your Content.

You represent and warrant to Nexopia.com that:

- You own Your Content posted, displayed or published by you on or through the Nexopia Services and Nexopia Website or you otherwise have the right to grant to us the License set forth in this section; and
- The posting, displaying or publishing of Your Content on or through the Nexopia Services or Nexopia Website does not violate the privacy rights, publicity rights, copyright, trade-mark, patent, trade secret, other intellectual property rights, contractual rights or any other rights of any person. You agree to pay for all royalties, fees, and any other monies owing to any person by reason of any of Your Content posted, displayed or published by you on or through the Nexopia Services or Nexopia Website.

***Nexopia.com Content***

The Nexopia Services and Nexopia Website contain text, files, images, designs, graphics, photos, video, sounds, musical works, page layouts, works of authorship, or any other materials created by or for, or otherwise owned by Nexopia.com ("Nexopia.com Content"). Nexopia.com Content is protected by copyright, trade-mark, patent, trade secret and other intellectual property rights, as Nexopia.com owns or has a license to use and it retains all rights in the Nexopia.com Content, the Nexopia Services and the Nexopia Website. Nexopia.com reserves all rights not expressly granted in and to the Nexopia.com Content.

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***Third Party Content***

The Nexopia Services and Nexopia Website may also contain text, files, images, designs, graphics, photos, video, sounds, musical works, page layouts, works of authorship, or any other materials of other Nexopia.com licensors, suppliers or advertisers ("Third Party Content"). Except for Your Content and as otherwise expressly stated in these Terms, you may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, or sell or otherwise distribute, any Content appearing on or through the Nexopia Services. For the purpose of these Terms, "Content" refers to Your Content, Nexopia.com Content and Third Party Content.

**Copyright Policy**

Nexopia.com respects the intellectual property rights of others and we prohibit users from uploading, posting or otherwise transmitting on the Nexopia Website or Nexopia Service any text, files, images, designs, graphics, photos, video, sounds, musical works, page layouts, works of authorship, or any other content that violates another party's intellectual property rights. According to the Digital Millennium Copyright Act, all notifications of alleged copyright infringements will result in the immediate removal of the content and the termination of the account of repeat offenders. You may submit any notice of alleged copyright infringement by contacting our Designated Agent.

**Monitoring Content**

You acknowledge and agree that Nexopia.com has no responsibility for monitoring, filtering or pre-screening Your Content or Third Party Content, but that we shall have the right (but not the obligation) in our sole discretion to refuse or remove any Content that violates these Terms. Nexopia.com may previews a users's content before it is posted on the Website to ensure conformance with these Terms.

You are solely responsible for Your Content and for your interactions with other Members or others using the Web Site or the Nexopia.com Services (including but not limited to interactions with other users) and Nexopia.com does not and has no obligation to monitor any Member's use of the Services. Nexopia.com does not endorse and has no control over Your Content or Third Party Content. That Content is not reviewed by Nexopia.com prior to its posting and does not reflect the opinions or policies of Nexopia.com. Nexopia.com makes no warranties, express or implied, as to Your Content or Third Party Content or as to the accuracy and reliability of that Content or any material or information that you transmit to other Members or others accessing and using the Nexopia Website, Content or Nexopia Services.

Nexopia.com further reserves the right to submit any of Your Content and Third Party Content posted or distributed on the Website to law enforcement authorities in the case of alleged criminal activities. This includes any of Your Content and Third Party Content distributed in areas identified as private under the Privacy Policy such as, but not limited to, private messages.

**Code of Conduct**

Posting by you of any illegal or prohibited Content or engaging in certain illegal or objectionable conduct may, in our sole discretion, result in termination of your Membership. In addition, we reserve the right to investigate and take appropriate legal action, in our sole discretion, against anyone who violates this provision, including without limitation, removing the offending Content from the Nexopia Website and, if necessary, reporting violators to the appropriate law enforcement authorities. Content and conduct that is prohibited includes, but is not limited to, Content and conduct that, in our sole judgment:

- is patently offensive to the online community, such as Content that promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
- harasses or advocates harassment of another person;
- involves the transmission of "junk mail," "chain letters," "spam," or any other unsolicited mass mailing, e-mailing, or other communication;
- results in the falsification of IP address information, modification of message headers to conceal your identity or to impersonate others, or is for the purpose of circumventing this Code of Conduct;
- interferes with or disrupts the Services or the servers or networks used to provide or receive the Services or you disobey any requirement, procedure, policies and regulation of any networks used to provide and receive the Service;
- includes any information that (1) you know is false or misleading, (2) promotes illegal activities or conduct that is abusive, or (3) is threatening, obscene, defamatory, or libelous;
- constitutes or includes any illegal or unauthorized copy of another person's copyrighted or copyrightable work, including, but not limited to (1) pirated computer programs or links to them, (2) information that circumvents manufacturer-installed copy-protect devices, or (3) pirated music or links to pirated music files;
- displays pornographic or sexually explicit material of any kind;
- includes material that exploits people under the age of 18 in a sexual or violent manner, or is intended to solicit personal information from anyone under 18;
- provides instructional information about illegal activities such as making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses or other harmful code;
- solicits passwords or personally identifying information for commercial or unlawful purposes from other Members;
- covers or obscures the banner advertisements on your personal profile page, or any Nexopia.com web page via HTML/CSS or any other means;
- constitutes or includes any promotion, sales or other commercial activity such as contests, sweepstakes, barter, advertising, or pyramid schemes; or
- solicits people you don't know to add you or accept you as a friend on the Service.

Even though all of the Content and conduct that is described above is strictly prohibited, you might nonetheless become exposed to prohibited Content while using the Website or the Services. If so, because we do not control the posting of such Content, neither we, nor any of our officers, directors, employees, shareholders, advertisers, or licensors will in any way be responsible for any damages (to or from any party) related to any such exposure.

**Privacy and Use of Information**

You acknowledge that (a) we cannot ensure the security or privacy of Content you provide through the Internet and your private messaging, and you release us from any and all liability in connection with the use of such Content by other parties; (b) we are not responsible for, and cannot control, the use by others of any Content which you post on the Services or provide to them and

you should use caution in selecting the personal information posted or provided to others through the Services; and (c) we cannot assume any responsibility for the Content sent by other users of the Services, and you release us from any and all liability in connection with the Content of any communications you may receive from other users.

**External Links**

The Services, Content, or Member profiles may from time to time contain links to other Internet sites and resources ("External Links"). You acknowledge that we have no control over the External Links and that we are not responsible for, and have no liability as a result of, the availability of External Links or their contents. We recommend that you review the terms of use and privacy statements of such External Links prior to use of them.

Inclusion of an External Link on the Nexopia Services does not imply approval or endorsement of that website by Nexopia.com. Furthermore, Nexopia.com is not responsible for third party advertisements which are posted on this Nexopia Website or through the Nexopia Services, nor is it responsible for the goods and services provided by its advertisers.

**Term**

These Terms shall remain in full force and effect while you access and use the Website and during the time that you are a Member using the Nexopia Services. You may terminate your Membership at any time, for any reason, by following the instructions on the Members' account page. Nexopia.com may terminate your membership for any reason, at any time. Where possible, we will use reasonable efforts to give Members fair notice of termination of their access to the Services. If you are using a paid version of a Service (such as Plus), and we terminate your membership in the Service because you have breached these Terms, you will not be entitled to any refund of unused subscription fees. Even after your Membership is terminated, certain sections of these Terms will remain in effect.

**Disclaimer of Warranties**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT:

- YOUR USE OF THE WEBSITE AND SERVICES IS AT YOUR SOLE RISK. THE WEBSITE AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEXOPIA.COM EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- NEXOPIA.COM MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICES OR ANY SOFTWARE PROVIDED TO YOU THROUGH THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS, AND (V) ANY ERRORS IN SOFTWARE AND ANY SOFTWARE PROVIDED TO YOU THROUGH THE SERVICES WILL BE CORRECTED.
- ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA OR OTHER LIABILITY THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM NEXOPIA.COM OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

**Limitation of Liability**

IN NO EVENT SHALL NEXOPIA.COM, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO YOU FOR ANY DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS INTERRUPTION, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES), WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH YOUR USE OF, OR INABILITY TO USE, THE NEXOPIA WEBSITE OR THE NEXOPIA SERVICES, WHETHER ONLINE OR OFFLINE, EVEN IF SUCH DAMAGES ARE FORESEEABLE OR NEXOPIA.COM IS EXPRESSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL NEXOPIA.COM'S AGGREGATE LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, EXCEED THE AMOUNT OF FIVE HUNDRED DOLLARS ($500.00).

BY PARTICIPATING IN ANY OFFLINE NEXOPIA EVENT, YOU AGREE TO RELEASE AND HOLD NEXOPIA.COM HARMLESS FROM ANY AND ALL LOSSES, DAMAGES, RIGHTS, CLAIMS, AND ACTIONS OF ANY KIND INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES, DEATH, AND PROPERTY DAMAGE, EITHER DIRECTLY OR INDIRECTLY RELATED TO OR ARISING FROM YOUR PARTICIPATION IN ANY SUCH OFFLINE NEXOPIA.COM EVENT.

**Internet Access**

Nexopia.com shall not be responsible for any connection or access to the Website by you or the quality of the transmission of any information passing between you and the Website. You will be responsible for providing your own communications equipment to access the Website via the Internet, and the Internet access charges thereon.

**Indemnity**

You agree to defend, indemnify and hold harmless, Nexopia.com, our officers, directors, employees and agents, suppliers, licensors, sponsors and advertisers from and against any and all claims, damages, obligations, losses, costs and expenses, including without limitation reasonable legal fees and disbursements which we may suffer from your activities on or access to and use of the Website or the Service, including without limitation, any infringement or misappropriation of a third party's intellectual property rights or other proprietary rights by Your Content, any breach by you of these Terms including, but not limited to, the Code of Conduct or any charges or complaints made by other parties against you regarding Your Content or otherwise. You shall cooperate as fully as reasonably required in the defence of any claim. We reserve the right to assume the exclusive defence and control of any matter otherwise subject to indemnification by you; provided, however, that you shall remain liable for any such claim, includeing the associated defense costs. This defense and indemnification obligation will survive your use of the Nexopia

Website, Services and the Terms.

**Fees and Payment**

THE PURCHASE OF OPTIONAL SERVICES IS NON-REFUNDABLE.

We offer an optional Premium Membership ("Plus") service for a fee. Plus is purchased for a specific time frame and is a non refundable service. Once activated Plus will run for the duration of the time period purchased, regardless of whether or not you are using the Service or if your account has been de-activated.

You agree to pay the published price for Nexopia Services and all applicable taxes in connection with the purchase of the Nexopia Services. We reserve the right to change our pricing policy at any time at our sole discretion. We also reserve the right to change the method of payment which is acceptable to us, at our sole discretion. As well we reserve the right to refuse payment.

For a service charge "Plus" time may be transferred to your new account, although some restrictions do apply. Time may not be transferred from one Member to another Member. We reserve the right in our sole discretion to refuse the transfer of Plus. If your usage of the Services is terminated because of a breach of the Terms by you, any unused Plus time is automatically and immediately forfeited.

**Credit Card Payments**

Nexopia may screen for Credit Card Fraud, including, but not limited to, unauthorized payments by family members. Nexopia cooperates with the card holder and/or the authorities regarding questionable and/or unrecognized or otherwise fraudulent payments.

**Advice Columnists**

The Services may from time to time include messages from advice columnists who respond to "lifestyle" questions. Any statements made by advice columnists are provided for entertainment purposes only, and are not intended, and should not be taken, as specific advice in any particular circumstance and the statements provided by advice columnists are strictly the views of the columnists and not of Nexopia.com. Such statements do not constitute counselling of any kind.

**Jurisdiction**

This Website originates in Canada. Any claim or dispute arising from, or in relation to the Terms shall be governed by and construed in accordance with the laws of the Province of Alberta, Canada, and the federal laws of Canada applicable therein, without giving effect to its conflict of laws provisions or your actual province or country of residence. You agree to submit to the exclusive jurisdiction of the courts of the Province of Alberta and the Federal Courts located within the Province of Alberta. Additionally, you agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms and is strictly excluded.

**Trade-marks**

NEXOPIA, NEXOPIA.COM and the design marks of Nexopia.com displayed or published on the Nexopia Website and the Nexopia Services are trade-marks or trade dress of Nexopia.com Inc. and Nexopia.com's marks may not be used in connection with any product or service that is not Nexopia.com's, in any manner that is likely to cause confusion among customers or in any manner that disparages or discredits Nexopia.com.

**Assignment**

You do not have the right to assign these Terms or any of your rights to the Services to anyone. Nexopia.com has the right to assign any or all of its rights and obligations under these Terms or to the Services to any third party. At the election of Nexopia.com, if Nexopia.com's obligations hereunder are assumed by a third party, Nexopia.com shall be relieved of any and all liability under these Terms.

**General**

These Terms constitute the entire agreement between you and Nexopia.com regarding the use of the Nexopia Services and the Website. The failure of Nexopia.com to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in the Terms are for convenience only and have no legal or contractual effect. If any provision of these Terms is unlawful, void or unenforceable, that provision is deemed severable from the Terms and does not affect the validity and enforceability of any remaining provisions.

Please contact us at webmaster@nexopia.com with any questions you may have regarding these Terms.



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Appendix 3

ACCIDENTS HAPPEN.



## NEXOPIA'S ADVICE FOR USERS OF ONLINE COMMUNITIES

**+ Anyone can be anything on the internet!**
Just because someone says they are a cute 15-year-old girl does not mean that they are in fact - cute - 15 - or a girl. For all you know, they may in fact be a 45-year-old man.

**+ Don't ever post personal information on your profile or in areas visible to the general public and strangers.**
Profiles are publicly visible, so don't include your last name, phone numbers, addresses, or anything else that can lead someone to you. Comments are also visible to the public and are not the place to share any personal information -- use private messages instead.

**+ Don't record yourself in a compromising fashion.**
Be cautious exposing your private life online. Never give out personal information to people you don't know and never send pictures or do things on webcam that you wouldn't want anyone else to see. Remember -- just because someone seems nice and genuine at first doesn't mean they will keep that stuff to themselves, and once they have a copy of it you have no control over where it goes!

**+ If you're uncomfortable with the way a conversation is progressing, JUST GET OUT!**
Don't worry about offending anyone. Utilize the "Ignore User" feature as well as the "Report Abuse" buttons. If necessary, report the matter to your local police or www.cybertip.ca.

**+ Take precautions when meeting people you have only met online -- DON'T GO ALONE!**
Always take someone with you, a friend or preferably an adult, and plan to meet in an open and public place. Be sure someone you trust knows where you're going and when you'll be back. Taking a cell phone helps provide extra security.

**+ If at anytime you need someone to talk to, contact Kids Help Phone.**
Kids Help Phone is toll-free and totally anonymous. Teens contact Kids Help Phone about issues including all variety of physical, emotional, and cyber abuse; drugs and suicide. To get counseling, call 1-800-668-6868 or go online at www.kidshelpphone.ca.

## NEXOPIA'S ADVICE TO PARENTS OF TEENS

- Be aware of what your child is doing online.
- Place the computer in a common family area -- this way you can easily keep an eye on what they're doing.
- Have a talk with your child about the dangers associated with any communication medium.
- Educate yourself. If you understand how the internet works, you can better understand the dangers and risks.

## WHAT NEXOPIA DOES TO PROTECT ITS USERS

- Every official picture hosted on the site (pictures on the top of profiles and in galleries) are checked for content before going on your profile -- if you can't wear it in the street or at the beach, it's not allowed.
- Users can block anyone from sending them messages and can choose to only receive messages from friends.
- Over 800 volunteers check content on the site and remove anything inappropriate.
- We do not knowingly allow anyone under the age of 13 to join.
- We regularly liaise with the police on issues of legality and safety, and do everything we can to co-operate with any investigation involving the site.
- There is a "Report Abuse" button on every profile. This means that if there is any perceived offense by anyone, that comment or picture can, and if needed, will be removed promptly.

We're proud to work with the Edmonton Police Service and Calgary Police Service to help keep our users safe. Any suggestions are welcome.

We would also like to take this opportunity to mention that Nexopia is probably the largest site of its type in Canada, and also one of the most responsible. A lot of other sites do not have any safe guards in place to protect their users.

Your online experience with sites like Nexopia can be safe, as long as you follow common sense rules like those listed above. For more information check out http://www.cybertip.ca.

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