

February 12, 2010

Mr. Trevor Yeo
Senior Privacy Investigator
Investigations & Inquiries Branch
Privacy Commissioner of Canada
112 Kent Street
Place de Ville, Tower B, 3rd Floor
Ottawa, Ontario K1A 1H3

BY MAIL AND E-MAIL

**Re: Nexopia Complaint, Your Files: 6100-010062 to 610066
Additional Matters**

Dear Mr. Yeo:

Thank you for your letter of February 4, 2010 acknowledging our complaint against Nexopia.com Inc. and dividing our complaint into several complaint issues.

We wish to inform you of two developments that we wish to have you consider that we were not aware of prior to filing the complaint.

First, it has come to our attention that some time during the summer of 2008, Nexopia lowered its lowest age category to 13 from 14 without notice to present users. That is, as of then, 13 year-olds could create profiles and now do so regularly. We would like you to consider this fact in your consideration of the whole complaint, but in particular your first two categories of appropriate purposes and consent.

Second, we have discovered a requirement of Nexopia that a user is required to post an actual pictorial representation of him or herself for their profile picture. This is stated in the Terms. In the rules regarding pictures, the Terms state that the "user must be in the picture," otherwise, the picture is unacceptable. The Terms go on to state that

the picture “must display a recognizable portion of the user” which is defined as “a clear portion of the user’s face and/or a sizable portion of the torso.”¹ Thus, non-pictorial representations are not allowed as profile pictures. We understand that Nexopia recruits volunteers to become “Pic Mods” to moderate the profile pictures being uploaded onto profiles and to remove pictures that do not meet their “requirements”.² We would like you to consider if this is an appropriate practice in general, in respect of those users under 18, and whether the requirement violates Principle 4.3.3 of *PIPEDA*.

Should you have any questions regarding these additions to the complaint please contact the undersigned.

Sincerely,

Original signed

John Lawford
Counsel
Public Interest Advocacy Centre

Original signed

Janet Lo
Counsel
Public Interest Advocacy Centre

cc Dr. Boris Wertz, CEO
Nexopia.com Inc.

¹ See Terms of Use, “Why were my pictures deleted or denied?” online: <http://www.nexopia.com/wiki/SiteText/pictures>.

² Nexopia Staff and Plus, online: <http://www.nexopia.com/users/NexopiaHelp>.