



SUNBELT SOFTWARE

WhenU

(Software Review)

Sunbelt Software
Research Center

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Overview

WhenU makes and distributes a number of applications online, including programs that display advertising on users' desktops. WhenU's programs include:

- **SaveNow / Save!:** an advertising application that displays pop-up advertising on the desktop in response to users' surfing behavior. SaveNow and Save! are in fact two versions of the same application -- the primary difference is their distribution. SaveNow is distributed from WhenU's own web site, whereas Save! is bundled with applications from WhenU's distribution partners. For the sake of consistency, this write-up will refer to both versions of this advertising application as simply "Save."
- **WhenUSearch:** a desktop search toolbar that displays links to advertised offers in response to users' surfing behavior and opens paid search results when users perform searches through the toolbar's search mechanism. More recent versions of the WhenUSearch toolbar install WhenU's UControl anti-spyware program (see below). The WhenUSearch toolbar has been re-skinned to produce "co-branded" versions of the toolbar for certain distribution partners and for WhenU's own PriceBandit toolbar (<http://www.pricebandit.com> / <http://www.pbtoolbar.com>).
- **Weathercast:** a local weather information program that sits in the desktop tray and offers current weather data, forecasts, and other weather information. Weathercast is often bundled with the Save advertising program and/or the WhenUSearch desktop toolbar.
- **ClockSync:** a program that sits in the desktop tray and periodically synchronizes the local PC system clock with standard atomic clock time available online. According to WhenU, ClockSync is being phased out and is not generally available, though it is still included in a small number of software bundles from some of WhenU's distribution partners. ClockSync has usually been bundled with either the Save advertising program or the WhenUSearch desktop toolbar.
- **UControl:** an "anti-spyware" program that uses a licensed scan engine and threat database from Aluria Software. UControl is installed with and incorporated into later versions of the WhenUSearch desktop toolbar and is accessible from the toolbar. UControl may be bundled alongside the Save advertising program. In some cases the WhenUSearch toolbar may even be labeled "UControl Toolbar." Unlike most other anti-spyware programs, including Aluria's own Spyware Eliminator, UControl does not detect any of WhenU's own programs.
- **WhenUShop:** a shopping companion program that pops out a browser sidebar when Internet Explorer users visit one of roughly 160 sites recognized by the program. The sidebar provides information, links, and coupons relevant to those recognized sites. WhenUShop is available only from WhenU's own web site. Until very recently, WhenUShop was available only as for-pay application.

Note: as part of Sunbelt's review of WhenU's software, WhenU supplied Sunbelt a list of its most heavily used distribution partners. Sunbelt tested installations of WhenU's software from the vast majority of those distribution partners. All told, Sunbelt tested 33 total unique WhenU installations.

Distribution & Installation

Over the past ten months WhenU has been overhauling the installation methods and distribution channels used to deliver its software to users' desktops. Thus, we can distinguish between current installation practices and obsolete installation practices.

Current Installation Practices

WhenU's programs are currently distributed and installed in three ways:

1. As a download and installation from WhenU's own web sites

Users can visit WhenU's own web page (<http://whenu.com>) to download and install SaveNow, Weathercast, WhenUSearch, UControl, or WhenUShop.

2. As a part of a software bundle from WhenU's partners

WhenU works with dozens of distribution partners who bundle WhenU's programs with their own software. The most significant and well known examples of software bundles that include WhenU's applications are:

BearShare
<http://www.bearshare.com/>

Freeze
<http://www.freeze.com/>

Radlight
<http://www.radlight.net/>

Free Windows Games
<http://www.free-windows-games.com/>

KiwiAlpha
<http://www.kiwialpha.com/>

MyEmoticons
<http://www.msn-emotions.com/>

WhenU uses dozens of other distribution partners beyond the partners listed above, however.

In some cases, WhenU's software may be the only software outside of the host program itself (*i.e.*, the software from WhenU's distribution partner) to be installed. BearShare, for example, bundles only WhenU's Save with its P2P file sharing program. Radlight bundles only Save and WhenUSearch with its media player program. While some distribution partners bundle only Save and WhenUSearch, others bundle a full line of WhenU products, including ClockSync, Weathercast, and UControl.

In other cases, though, WhenU's programs may be bundled as part of a package of adware programs that includes software from several advertising software vendors including WhenU. Among the adware programs with which WhenU's programs are currently bundled are New.net, RelevantKnowledge, Claria, 180search Assistant, SearchNugget/SiteError, Webhancer, CashBack Buddy, MySearch, NavExcel, and My Global Search Bar.

It should be noted that multi-adware installation bundles are especially problematic because they force users to agree to several different licenses and privacy policies -- amounting to a blizzard of legalese -- and consent to the installation of a large amount of software from multiple vendors, none of which will have been anticipated by users and very little of which users are likely to have a good understanding of, all at one time. That these multiple license agreements and programs are presented to users when they are in the process of installing another program that they explicitly requested only makes more unlikely that users will gain a good understanding of the software they are being asked to consent to.

3. As a "co-branded" toolbar through a small number of WhenU partners

WhenU also distributes its WhenUSearch desktop toolbar in co-branded versions that are offered for download by a small number of partners:

ChildSafe Network http://tb.childsafenetwork.org/whenu/	Exeem http://www.exeem.com
CrunchToolbar http://www.crunchtoolbar.com	Freeze.com (int'l only) http://www.freeze.com
Frazoo http://www.frazoo.com	PriceBandit http://www.pbtoolbar.com/

These co-branded desktop toolbars are, in actuality, merely re-skinned versions of the WhenUSearch toolbar.



Figure 1: WhenUSearch desktop toolbar (selection)

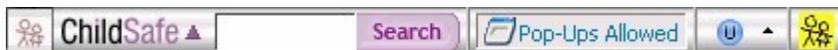


Figure 2: ChildSafe desktop toolbar (selection)

The installation directories and files for these toolbar programs are identical, with the exception of a set of HTML files that are used to skin the toolbar and which are stored in a sub-directory of the main program installation directory. Also, the functionality of these re-skinned, co-branded toolbars is largely the same as the standard WhenUSearch toolbar. All versions display links to advertised offers in response to users' web surfing, and all versions open paid search results when users perform searches through the toolbar's search facility.

It is also important to note that these co-branded, re-skinned desktop toolbars are often distributed in the same manner as the standard WhenUSearch toolbar. For example, the CrunchToolbar is bundled alongside of WhenU's Save program with the KiwiAlpha P2P file sharing program, just as the WhenUSearch toolbar is bundled to support other "freebie" programs on the Net. Several of these co-branded, re-skinned toolbars even include WhenU's Save advertising program.

The net effect of these several similarities between the standard WhenUSearch desktop toolbar and its re-skinned, co-branded variants is to make all these various toolbar versions well nigh indistinguishable.

Obsolete Installation Practices

Until November 2004, WhenU also distributed its software (mainly ClockSync, Weathercast, and WhenUSearch) via automated ActiveX installations at third-party web sites (often called "drive-by-downloads"). These ActiveX installations are enormously problematic for users, who find these installations confusing and who can mistake software presented to them in this fashion for browser plug-ins required to view the content of those third-party web sites. Given the problems with such automated ActiveX installs, WhenU was certainly wise to discontinue their use (http://www.whenu.com/press_release_04_11_10.html).

At about the same time as it discontinued the use of ActiveX installs at third-party web sites, WhenU also overhauled its other distribution processes, ending the use of third-party affiliate networks to distribute its software, relying instead on a set of distribution partners with which WhenU has direct relationships. This decision was also a wise one, given the manifold problems that third-party affiliate distribution networks have caused for users and adware vendors (<http://www.cdt.org/testimony/20050511schwartzspyware.pdf>).

As if to illustrate the problems with ActiveX installs and third-party affiliate distribution networks, WhenU's software was involved in a widely reported episode during November 2004 in which rogue distributors used compromised web servers to force-install a bevy of adware programs, including WhenU's, on victims' PCs through security exploits (<http://www.dsreports.com/forum/remark,11904374~mode=flat>). When notified of the incident, WhenU did manage to halt the installation of its software by these rogue distributors.



Figure 3: EZ-Toolbar (PickOfTheWeb) installation

Similarly, in June 2005, Sunbelt discovered that WhenU's Save and ClockSync programs were still being installed via an ActiveX installation process at PickOfTheWeb.com along with PickOfTheWeb's own EZ-Toolbar (see Figure 3 above). As before, WhenU shut down this particular installation when notified of it, claiming that PickOfTheWeb had been terminated as a distribution partner some time ago.

Aside from the automated online installations described above, Sunbelt had seen no evidence that WhenU's software is still being distributed through ActiveX installation processes initiated at third-party web sites. Just how much of WhenU's installed user base dates from November 2004 and earlier is not known, though it is presumed to be relatively small, given the high turnover rate of adware installations generally (<http://www.pcpitstop.com/spycheck/whenu2.asp>).

Advertising

WhenU's programs display several forms of advertising on users' desktops:

1. Save - contextual pop-up advertising

The Save advertising program opens contextually targeted pop-ups on the desktop in response to users' web surfing.

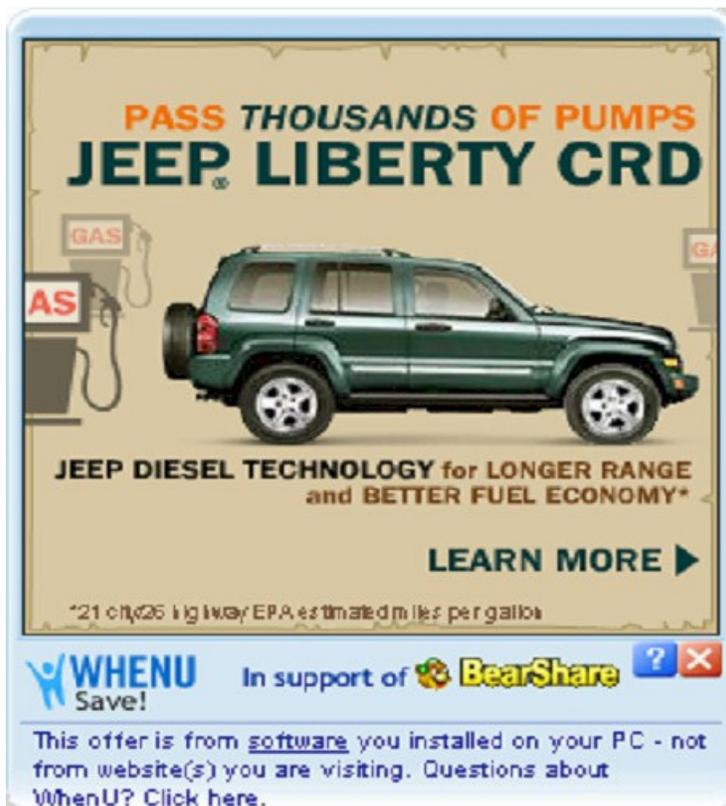


Figure 4: WhenU Save pop-up ad

This pop-up advertising is described in the Save! End User License Agreement (EULA) (http://www.whenu.com/EULAs/save!_eula.html):

WhenU.com's Save! software shows you relevant coupon offers, contextual information and services as you surf the Web. Save! attempts to display offers at the moment when they are most relevant to you. Offers and information are displayed in the form of interstitials ("pop-up ads") and various other ad formats.

The Save! software selects which ads and offers to display to individual users based on several factors, including: which Web pages you visit, search terms you use while searching online, content of the Web pages you view and your local zip code (if you have supplied it). Save! ads and offers are delivered in a separate, independent window controlled by WhenU.com, are not endorsed or affiliated with anyone other than WhenU.com and may in fact be competitive with some of the sites visited by the user while online.

This advertising is also described in notice/disclosure screens recently implemented with a number of Save installations. From the Scenic Reflections WhenU notice screen (<http://www.scenicreflections.com/free-bald-eagle-screen-saver.htm>):

Save! shows you targeted ads and coupons based on the Web content you view. Save! ads slide up in front of or behind your browser, are always branded Save! and tell you they are coming from software – not Websites.

WhenU's pop-up ads are generally well-labeled, containing information not only about the source of the advertising (both WhenU and its distribution partner), but also links to get more information.

2. WhenUSearch - text link ads

The WhenUSearch desktop toolbar displays links to advertised offers in response to users' web surfing. These text links are restricted to the toolbar itself and are generally discrete, occasionally rotating if there are multiple related text link advertisements available.

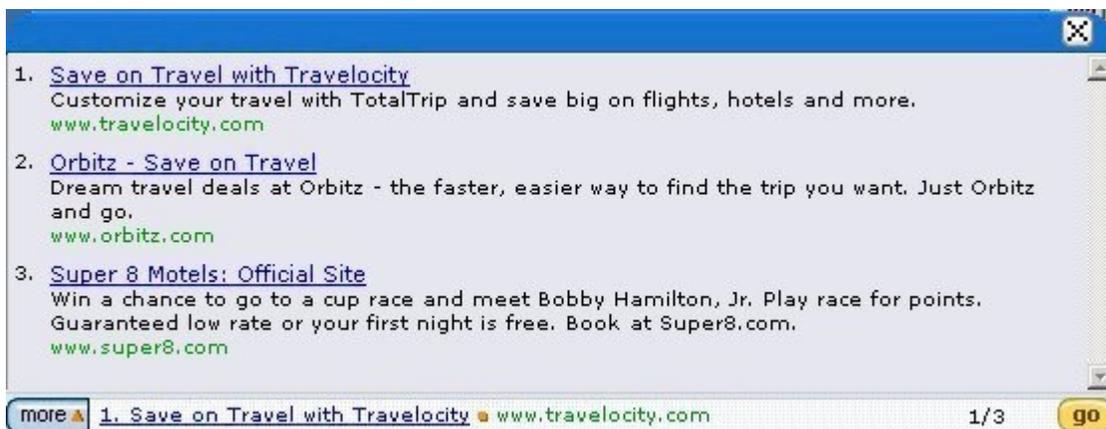


Figure 5: WhenUSearch toolbar text link advertising

Users can click these text links to open more detailed descriptions of the advertised offers. This functionality is described in the WhenU Search EULA (http://www.whenu.com/EULAs/searchbar_uc_eula.html):

Functionality

SearchBar gives you easy access to powerful Internet search capabilities while presenting relevant paid listings, offers and links right inside the toolbar. SearchBar results are generated automatically based on the terms you type into search engines, the websites you visit and the Web content you view. No personally identifiable information is collected and your privacy is always protected.

Similar text is presented to users in the notice screen for WhenU Search during installation.

3. WhenU Search - paid/sponsored search results

The WhenU Search desktop toolbar opens paid (sponsored) search results from Overture (syndicated through Infospace.com) when users use the toolbar's search facility.

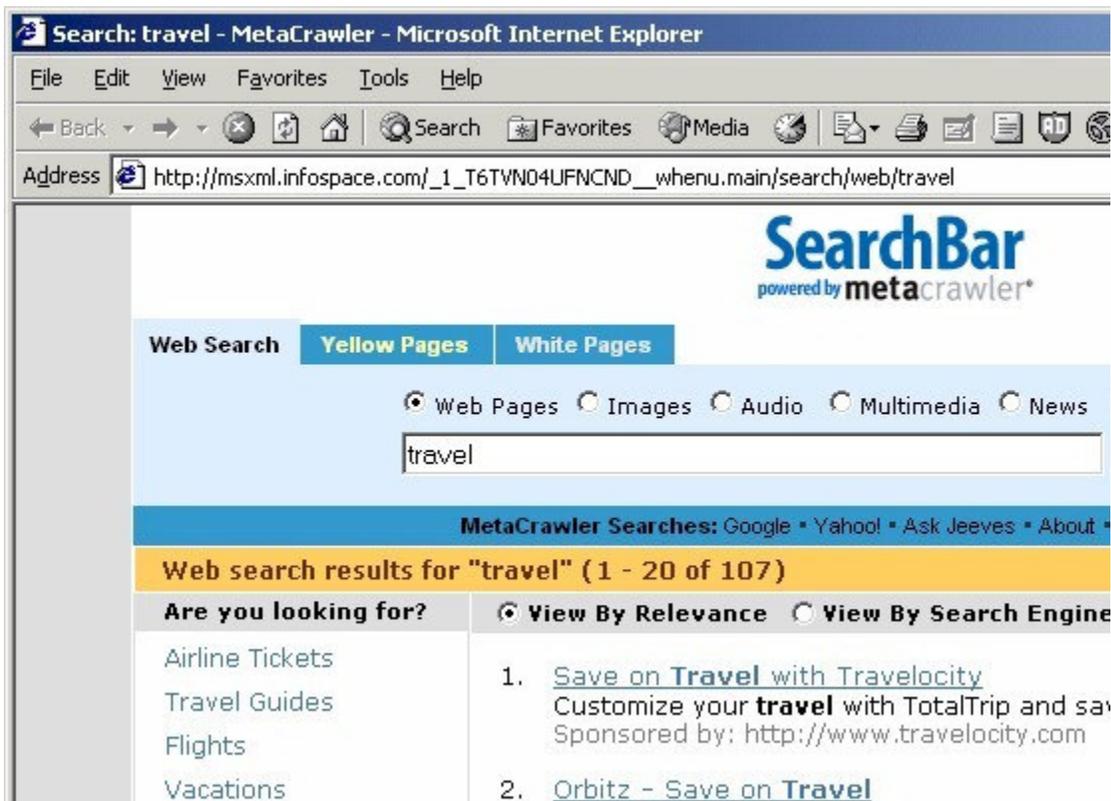


Figure 6: WhenU Search paid/sponsored search results

4. Weathercast - text link advertising

The Weathercast application displays discrete text link advertising at the bottom of the main Weathercast window in response to users' surfing activity (see Figure 7 below).

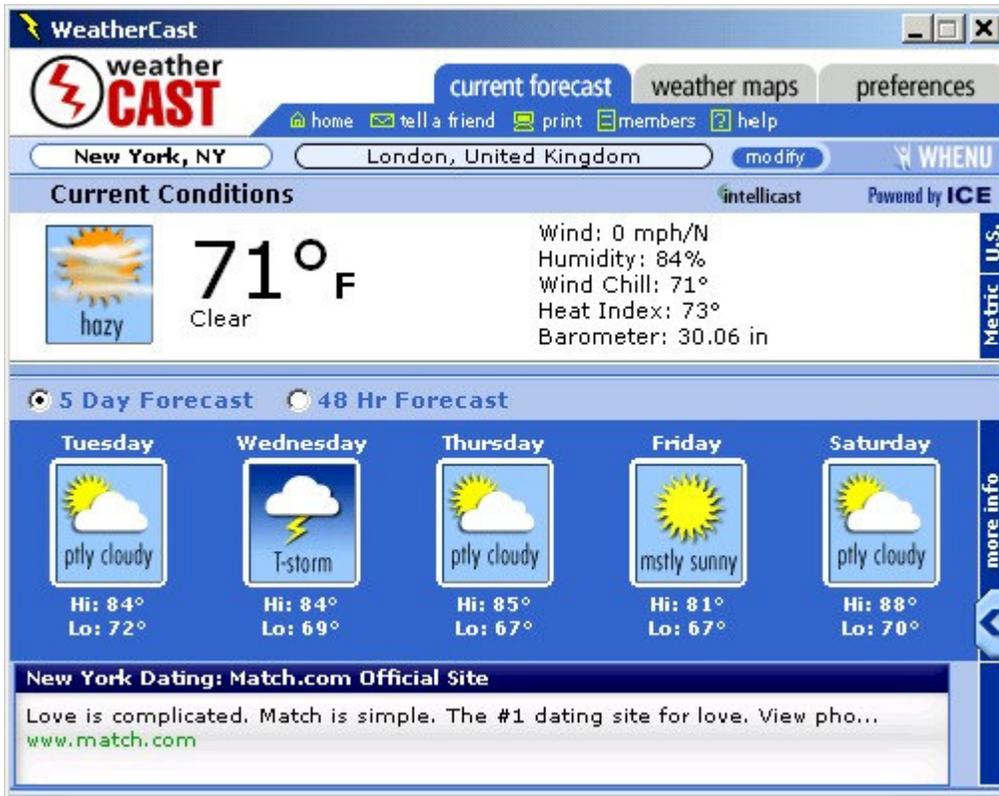


Figure 7: Weathercast text-link advertising

5. WhenUShop - coupons & special offers

The WhenUShop sidebar application offers discretely presented coupons, special offers, and WhenU affiliate links (among other related information) when users visit one of the sites recognized by the program.



Figure 8: WhenUShop sidebar

This functionality is clearly announced on the WhenUShop download page (http://www.whenu.com/products_whenushop.html) as well as the introduction page that opens after installation (http://www.whenu.com/first_time.html)

Note on ClockSync and UControl

ClockSync and UControl do not display advertising of any kind, but these programs are almost always bundled with Save and/or WhenUSearch.

System Reconfiguration

Depending on the particular programs installed, WhenU does make some changes to the user's system configuration. WhenU's Save, Search, Weathercast, and ClockSync programs are configured to start automatically with Windows via entries in the HKEY_LOCAL_MACHINE\...\Run Registry key. The WhenUSearch/UControl toolbar is added to the desktop, displaying just above the Windows task bar. The ClockSync, Weathercast, and WhenUShop programs add program icons to the system tray next to the clock. The WhenUShop program adds a contextual browser sidebar to Internet Explorer. Most of these changes are fairly innocuous, relatively transparent, and easily reversed or disabled by the user.

WhenU's software does employ an auto-update mechanism over which users have no control, however, allowing WhenU to arbitrarily install new software -- from the Save! EULA (http://www.whenu.com/EULAs/save!_eula.html):

WhenU reserves the right to periodically update and/or upgrade the Software at WhenU's discretion. Your installation of the Software indicates your acceptance of potential future updates and/or upgrades to the Software. For any material change to the privacy protective nature of the Software, WhenU will request your permission prior to making such change.

Data Collection, Transmission, & Sharing

As discussed above, WhenU's software does display contextually targeted advertising on users' desktops based on the web sites that users visit. Although this advertising is contextually targeted through monitoring of users' web surfing, the data collected and transmitted to WhenU to facilitate the delivery of this targeted advertising is comparatively limited and should not represent a serious privacy concern to users.

1. WhenU's advertising software collects no personally identifiable information (PII) from or about users.
2. Data regarding users' surfing habit is transmitted to WhenU only in certain, limited contexts (for example, to identify the web page users were visiting when they clicked on an ad) and is not tied to a personally identifiable profile or used to build a profile history of their surfing habits.

3. The determination of what ads to display is performed entirely on users' desktops using a locally stored "trigger" words database, without sending data about users' surfing history to WhenU's servers.
4. Although WhenU does assign each installation a unique ID number to distinguish between and count installations, this ID number is anonymous and not tied to any PII. Moreover, this unique ID is not used to anchor a profile of users' surfing history.

This model for delivering contextually targeted advertising while collecting and transmitting only a limited amount of data regarding users' online behavior is sometimes called the "data-on-the-desktop" contextual advertising model and is described in WhenU's Privacy Policy (http://www.whenu.com/pc_savenow.html):

The Software protects your privacy by uploading a database of content in small chunks to your desktop and then determining on your desktop whether to retrieve information from WhenU or third-party servers. To protect your privacy, the same database of content is sent to all desktops. Decisions regarding which ads to retrieve to an individual desktop are all processed on the individual user's desktop - and isolated from WhenU servers. In this way, WhenU is able to deliver to you relevant coupons, information and advertisements without sending all of your browsing activity back to WhenU and without establishing any profile about you (even anonymously) on WhenU servers.

Your privacy is also protected in the following manner:

1. Your personally-identifiable information is not required in order to use the Software. WhenU does not know your individual identity and does not attempt to discern it in any way.
2. As you surf the Internet, your "clickstream data" (i.e. a log of all the sites you visit) is not transmitted to WhenU or any third party server.
3. WhenU does not assemble any personally-identifiable browsing profiles of you or your individual machine.
4. WhenU does not assemble any anonymous machine-identifiable browsing profile of you or your machine.
5. WhenU does not track which ads and offers you see as an individual user - all of our analysis and tracking of ads is done in the aggregate.

The Software does send back a limited amount of information from your desktop in order to count the number of users in our network and optimize the performance and relevance of the ads. For example, the Software may send WhenU a communication that includes information about the webpage you were viewing when you saw or clicked on a particular ad. WhenU has intentionally designed these communications back to WhenU to be highly protective of user privacy, in the following ways:

1. Each individual desktop is assigned an anonymous, unique machine ID. This machine ID is used only to enable WhenU to count unique, active desktops in the network. The machine ID is not used to determine which ads to serve individual users or to create browsing profiles of users.
2. When ads are requested and/or displayed by the Software, impressions and click-throughs, including the factor (e.g., the URL, keyword, search term, or some combination

thereof) that caused the ad to be displayed are reported to WhenU. To protect your privacy and prevent WhenU or any third party from assembling individual user profiles or knowing which websites you visit, your unique machine ID is intentionally excluded from these limited ad-optimization communications sent back to WhenU.

WhenU's Searchbar Privacy Policy (http://www.whenu.com/pc_whenusearch.html) contains similar language.

Uninstallation

All of WhenU's programs can be uninstalled via the "Add/Remove Programs" Control Panel applet. In most cases, the uninstallations performed by WhenU's software are clean and reasonably complete. In its testing with WhenU's software, however, Sunbelt did encounter some problems with WhenU's uninstallation practices and, in a few cases, WhenU's uninstallers.

1. Some adware are not removed with host program

In some cases WhenU's adware programs are not automatically removed when the host program itself -- that is, the "freebie" program ostensibly being "sponsored" by WhenU's advertising application -- is uninstalled by the user. In such cases, users must locate and uninstall WhenU's advertising programs separately.

2. Save & Weathercast uninstallers nag the user

The uninstall routines for Save and Weathercast do briefly nag the user to keep the programs. Save uses a confusingly worded prompt to verify the user's intent: "Do you want to keep these valuable features?" (the correct answer to continue uninstallation is "No," where most uninstall prompts require a "Yes" to complete the uninstall).



Figure 9: Save uninstall nag

The Weathercast uninstaller, by contrast, uses a more straightforwardly worded prompt.



Figure 10: Weathercast uninstall nag

3. Some conditional uninstalls fail

With some distributions of WhenU's programs, the uninstallation of Save is conditioned upon the removal the host program being sponsored by Save.



Figure 11: Save uninstall refusal

Until the user uninstalls the host program (be it one of WhenU's own "freebie" programs or a program from a third-party), Save will refuse to uninstall itself.

In most cases this conditional uninstallation process works flawlessly. Indeed, some Save uninstallers will automatically offer to uninstall when the host program is removed through "Add/Remove Programs."

In its testing of WhenU's software, Sunbelt did encounter at least three instances in which the Save uninstaller refused to uninstall even after the host program had been removed appropriately through "Add/Remove Programs":

BearShare
<http://www.bearshare.com/>

Freedownloadcenter (Vicman products)
http://www.freedownloadcenter.com/Multimedia_and_Graphics/Graphics_Editors/VCW_VicMan_s_Photo_Editor.html

NufSoft (Water Illusion Greeting Screensaver)
<http://www.nufsoft.com/download.php>

In one other instance involving ETEXchange's "Lord of the Search" (<http://www.etexchange.com/home/mp3tool.htm>), the Save! uninstaller refused to uninstall, claiming somewhat bizarrely that SaveNow itself had to be uninstalled first.

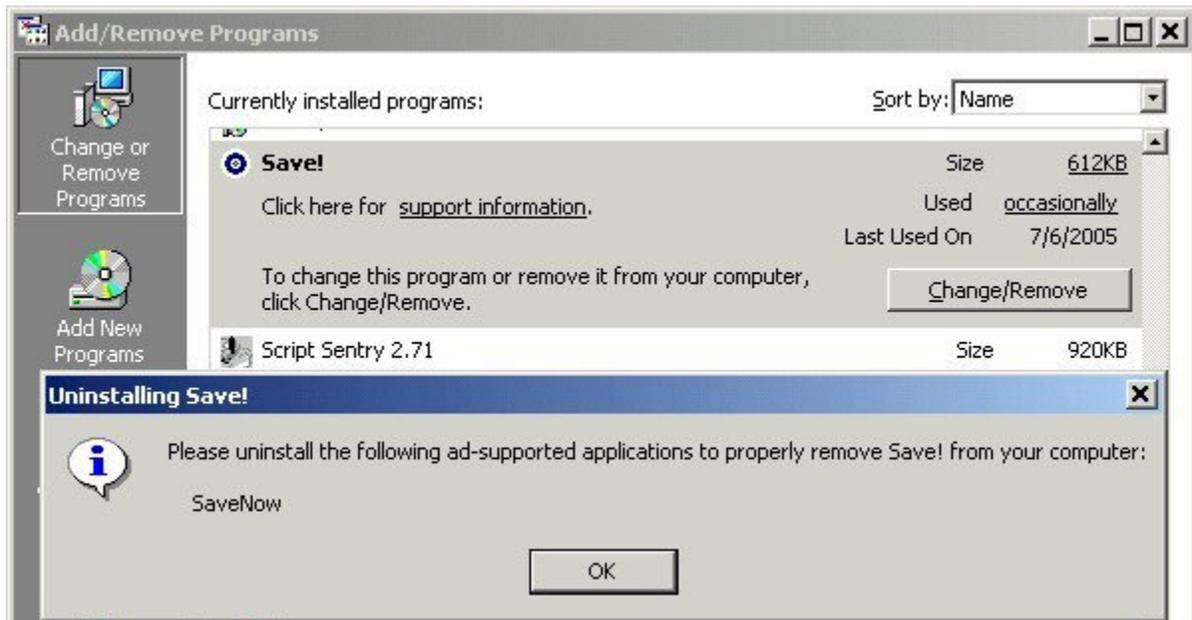


Figure 12: Erroneous Save uninstall refusal

This uninstallation was finally completed after we closed and re-opened "Add/Remove Programs" and attempted the uninstall again.

When WhenU's conditional uninstallers refuse to remove WhenU's software after falsely claiming that the host program is still installed, users may have no other option but to turn to an anti-spyware program such as Sunbelt CounterSpy to remove WhenU's programs.

4. WhenU induces reinstallation after uninstallation

At the end of uninstallation most WhenU products open a "exit survey" page (example: http://web.whenu.com/uninstall_weather.html) on WhenU's web site to announce the completion of uninstallation and to request feedback. This survey page includes an offer to install the UControl anti-spyware application.



Figure 13: Exit survey page offer for UControl (selection)

Users who accept the offer will end up installing (or reinstalling) the WhenU Search application, which displays some forms of contextual advertising.

Malware (Virus, Trojans, Worms)

WhenU's software programs are not malware, nor are any of WhenU's programs known to install malware.

Notice, Disclosure, Choice, & Consent

Current Installations

WhenU's notice and disclosure practices have been undergoing revision for a number of months now. At present, WhenU's ongoing installations can be grouped into two types (newer installations and older installations).

1. Newer installations

Over the past few months (at least since February 2005) WhenU has been revamping the notice and disclosure offered in many installations of its software, especially bundled installs from distribution partners. The first bundled installation package to receive this updated notice and disclosure regime was BearShare.

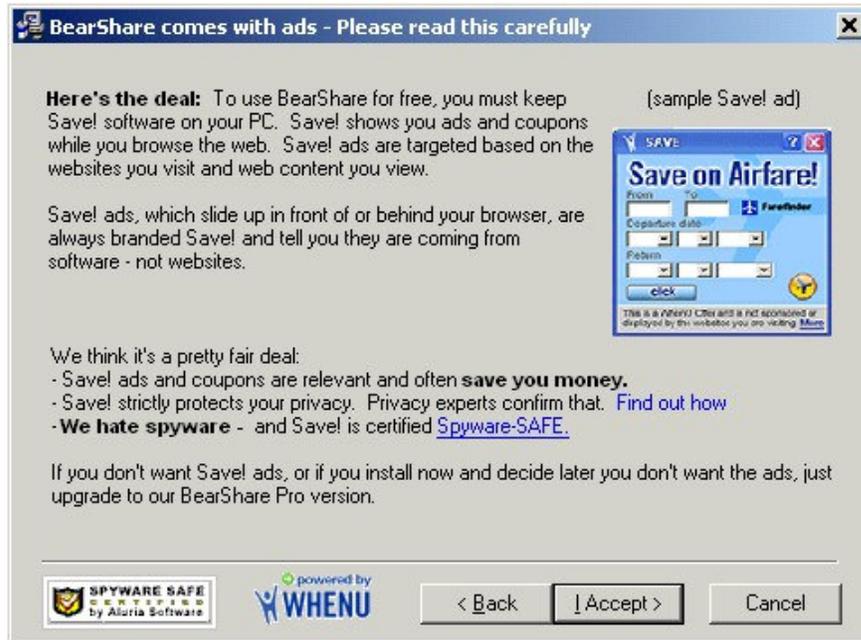


Figure 14: WhenU notice screen (BearShare)

Other installation packages have been similarly revamped in recent months, such that around two-thirds of the installations Sunbelt tested (out of 33 total) employed notice and disclosure mechanisms similar to those used in the BearShare install.

This new notice and disclosure regime presents users during installation with a separate, unique notice screen for Save and, if applicable, WhenUSearch. The language used in these notice screens is relatively clear and straightforward, forthrightly disclosing the programs' advertising functionality.

Here's the deal: To use BearShare for free, you must keep Save! software on your computer. Save! shows you ads and coupons while you browse the web. Save! ads are targeted based on the websites you visit and web content you view.

Save! ads slide up in front of or behind your browser, are always branded Save! and tell you they are coming from software - not Websites.

We think it's a pretty fair deal:

- * Save! ads and coupons are relevant and often save you money.
- * Save! strictly protects your privacy. Privacy experts confirm that. Find out how [link].
- * We hate spyware -- and Save! is certified "spyware free."

If you don't want Save! ads, or if you install them now and decide later on you don't want the ads, just upgrade to our BearShare Pro version.

Other "updated" installations use very similar, though not always exactly identical, notice screens and text. These notice screens even includes a screenshot of an example advertisement.

Some of these new notice screens include a link to the Save or WhenU Search EULA. In cases where these new notice screens do not include a link to the Save or WhenU Search EULA, the next screen in the installation process presents the EULA to users.

Combined with the well-labeled advertising, this new notice and consent regime greatly reduces the possibility that users could complete an installation and not be aware of the presence of WhenU's software or its main functionality. Moreover, when downloaded directly from WhenU's own web site (<http://whenu.com>), WhenU's applications are presented and disclosed to users in a fairly transparent fashion, with the latest notice screens, EULAs, and Privacy Policies.

2. Older installations

Not all of WhenU's current installations employ this new notice and disclosure regime, however. Roughly one-third of the installs we tested still used WhenU's older notice screens and text, which are decidedly less effective at communicating to users the information they need to know in order to make informed decisions about installing WhenU's software. A good example of these older notice screens is the one used in the installation process for MTHreeDev's "MP3 to WAV Decoder" (<http://www.mthreedev.com/>).



Figure 15: older WhenU notice screen (Lord of the Search)

Save is mentioned only briefly, and the advertising is disclosed using vague, euphemistic language that few users will connect with pop-up advertising ("contextually relevant offers and information"). The majority of this notice screen is devoted to selling the benefits of WhenU's software to users, not actually disclosing functionality or features that may be of concern to

them. Still worse, as illustrated in Figure 12 above, some of these older notice screens present WhenU's EULA and Privacy Policy in a keyhole scroll box that prevents all but the most patient and determined users from actually reading the document.

Another installation we encountered, NufSoft's Water Illusion Greeting Screensaver (<http://www.nufsoft.com/download.php>), did a poor job disclosing the presence of WhenU's Save advertising application in the software package, devoting most of the notice screen to promoting Weathercast and the "UControl Toolbar," which many users will likely regard merely as innocuous "freebies." Mention of Save advertising was relegated to the end of the text, in the middle of a bulletpoint ostensibly devoted to the WhenU Search bar.

With installations that employ these older, flawed notice and disclosure regimes, it is entirely possible that users could click through and install WhenU's software without fully understanding the fact that they were effectively consenting to the installation of advertising software. Indeed, PC Pitstop has published survey gathered from visitors to its web site that suggest WhenU continues to have problems with user awareness of WhenU software on their systems. PC Pitstop reported in April 2004 that its surveys indicated that 87 percent of WhenU users were unaware of the presence of WhenU's software on their systems. In follow-up one year later, PC Pitstop reported that WhenU's "unawareness level" in their surveys was still hovering just above 70 percent, which is much too high. Whether WhenU's recent efforts to revamp all of its installations to improve notice and disclosure will significantly reduce that "unawareness level" remains to be seen. (For WhenU's response to PC Pitstop's research, see: <http://www.ftc.gov/os/comments/spyware/040521whenu-comrepycomments.pdf>.)

Obsolete Installations

As noted earlier, WhenU employed automated ActiveX installations for its software at third-party web sites until November 2004. These now obsolete ActiveX installations were plagued with all the notice and disclosure problems that are endemic to these types of installs.

These ActiveX installs prompts are typically sprung on users in confusing and even misleading circumstances -- at third-party web sites unrelated to the software itself. As a result, not all users understand that the ActiveX "Security Warning" boxes that pop up for adware programs at third-party sites are not for browser plug-ins required to view content at the sites themselves, and still fewer are inclined or savvy enough to click the link in those boxes to view the EULA. Consequently, many users end up clicking through these "Security Warning" boxes and consenting to the installation of software that they never requested and don't understand, want, or need.

During the time it used ActiveX installs at third-party web sites, WhenU did attempt to offer more information about its software in the program name field reserved for vendors within the "Security Warning" box, however, even this small bit of additional information usually failed to usefully disclose the key terms and functionality of the software (see Figure 16 below).

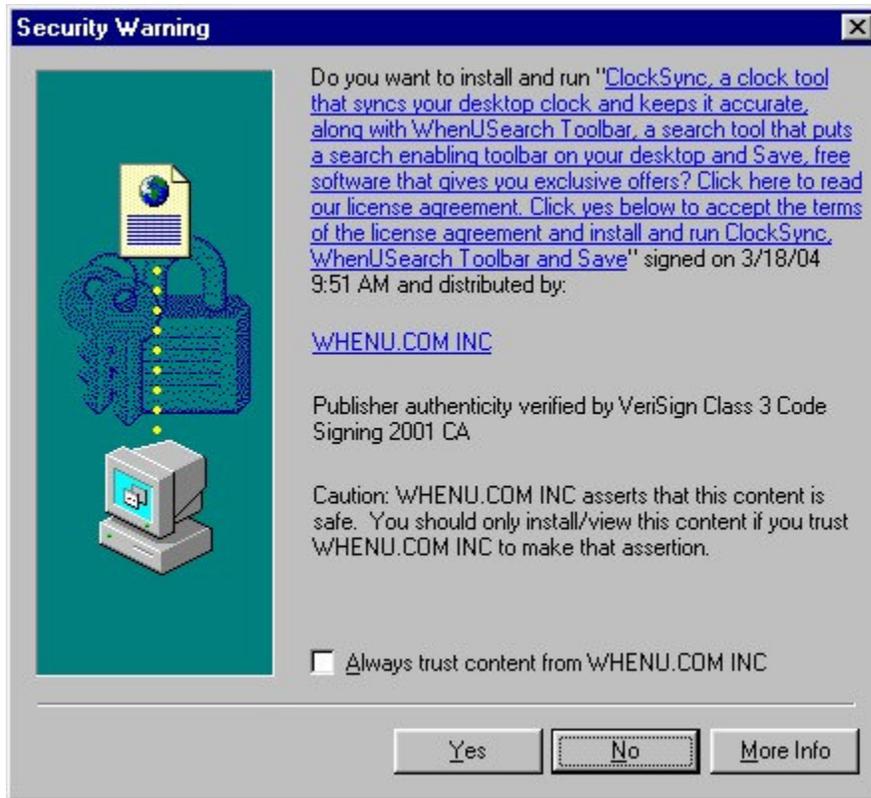


Figure 16: WhenU ActiveX "Security Warning" install prompt

In the "Security Warning" prompt depicted above, for example, WhenU stuffed mention of three different programs (ClockSync, WhenU Search, and Save) into a 65 word text. Not surprisingly, no mention is made of pop-up advertising at all -- functionality that many users would be concerned about.

Rightly so, WhenU ended the use of ActiveX installations at third-party web sites in November 2004.

Other Notice & Disclosure Problems

In its testing of WhenU's software, Sunbelt encountered other problems with notice and disclosure in some installations.

1. Certain components not disclosed

In a small number of installs, the notice screens failed to disclose all the various WhenU programs to be installed. The installation for the "MP3 to WAV Decoder" from AudioBliss (<http://www.audiobliss.net/>), for example, disclosed only the presence of Save in the WhenU notice screen, making no mention at all of ClockSync, which was also installed with AudioBliss's free program.

Similarly, the Scenic Reflections "Bald Eagle Screensaver" (<http://www.scenicreflections.com/free-bald-eagle-screen-saver.htm>) WhenU notice screen disclosed only Save, failing to note that

three other WhenU programs (Weathercast, WhenUSearch, and ClockSync) would also be installed.

Finally, the Weathercast program available from WhenU's own web site fails to disclose that it also installs the WhenUSearch desktop toolbar.

2. Obsolete Privacy Policy language

One final problem still plaguing some of WhenU's installations is the inclusion of an outdated Privacy Policy that offers an inaccurate representation of WhenU's data collection and transmission practices. This older Privacy Policy makes the following claim:

2) As the user surfs the Internet, URLS visited by the user (i.e. the user's "clickstream data") are NOT transmitted to WhenU.com or any third party server

Some older installation notice screens make similar claims:

```
SaveNow protects your privacy! It
requires NO personal information
and doesn't collect or send your
browsing activity anywhere.
```

In fact, as Ben Edelman has demonstrated with packet logs from WhenU network traffic, some URLs visited by users *are* transmitted to WhenU.com in certain circumstances (for example, when a user clicks a WhenU ad), making this absolute denial false (<http://www.benedelman.org/spyware/whenu-privacy/>, <http://www.benedelman.org/spyware/ftc-031904.pdf>). Even though this data is not tied to a user profile of any kind, the transmission of some URLs does occur.

In response to Edelman's public criticism, WhenU revised its Privacy Policy to make clear that a "log of all the sites you visit" is not transmitted, while still admitting in its Privacy Policy that some URLs are transmitted when "ads are requested and/or displayed by the Toolbar." (For WhenU's full response to Edelman, see <http://www.ftc.gov/os/comments/spyware/040521whenu-comrepycomments.pdf>.)

Although WhenU has updated most of its installations to use the newer, corrected version of its EULA and Privacy Policy, some WhenU installation packages continue to present the older version of the EULA and Privacy Policy to users, thus giving the false impression that no URLs whatsoever are transmitted by the application.

Sunbelt's Listing Criteria

Although WhenU has made impressive strides in cleaning up its installations over the past ten months, WhenU's software continues to trip a number of Sunbelt Software's published Listing Criteria:

Distribution & Installation

- is bundled with a functionally unrelated, separate host application actually sought by users (i.e., as an "adware" bundle) and installs without first providing sufficient notice and choice to users and without securing their full, meaningful, and informed consent
- installs on users' PCs after providing only substandard, inadequate notice and disclosure, and thus failing to secure users' full, meaningful, and informed consent
- installs as part of a package or collection of multiple "adware" (advertising) programs, "spyware" programs, or other similar programs that are not directly and explicitly requested by the user
- is bundled with a functionally unrelated, separate host application actually sought by users (i.e., as an "adware" bundle) and installs without first providing sufficient notice and choice to users and without securing their full, meaningful, and informed consent

Advertising

- displays third-party advertising in pop-ups and windows that the software opens on the users' desktops and which are not part of internet content that users directly choose to visit or view without first providing sufficient notice and choice to users and securing their full, meaningful, and informed consent, or without offering users a means for permanently removing or opting out of the advertising short of purchasing a "pro" version of the product and/or incurring a fee
- embeds third-party advertising banners or messages within itself or other programs or within elements of the operating system itself without first providing sufficient notice and choice to users and securing their full, meaningful, and informed consent, or without offering users a means for permanently removing or opting out of the advertising short of purchasing a "pro" version of the product and/or incurring a fee.

System Reconfiguration

- installs new advertising-related add-ons (e.g., toolbars, searchbars, et al) to browser and/or desktop without first providing sufficient notice and choice to users and without securing their full, meaningful, and informed consent
- configures advertising-related programs to start automatically with the operating system without first providing sufficient notice and choice to users and without securing their full, meaningful, and informed consent
- installs or uses an auto-updater or similar mechanism without providing a readily accessible means for users to configure or disable that auto-update mechanism

Data Collection, Transmission, & Sharing

- collects and transmits data regarding user's internet connection, viewing, and communication habits and behavior for the purposes of advertising and marketing without first providing sufficient notice and choice to users and without securing their full, meaningful, and informed consent

Uninstallation

- when bundled with a functionally unrelated, separate host application (i.e., as an "adware" bundle), does not automatically uninstall when the host application is uninstalled
- uses an uninstaller that badgers, coerces, or tricks the user into refusing or canceling the uninstallation

Notice, Disclosure, Choice, & Consent

- discloses key terms related to advertising, system reconfiguration, and data collection / transmission practices only in an End User License Agreement (EULA) or Privacy Policy or in locations and documents that users are not likely to read during the installation of the software
- discloses key license terms and software functionality in language that is not simple, plain, straightforward, direct, unvarnished, and free of euphemisms

It is important to note that most of the advertising-specific criteria apply only to Save and, in some cases, the WhenU Search bar and Weathercast. ClockSync and UControl, which don't display advertising, do not trip any of the advertising-specific listing criteria.

Moreover, many of the listing criteria detailed above are tripped only by WhenU installations that use WhenU's older, flawed notice and disclosure regime, thus failing to gain users' meaningful, informed consent to the installation of WhenU's software. Were WhenU to eliminate or overhaul these remaining, sub-standard installations, the number of listing criteria tripped by WhenU's software would be significantly reduced.

Recommendations

As noted previously, WhenU has made substantial progress in improving the notice and disclosure offered to users during installation. It has also taken other steps to improve user awareness of its applications' existence and performance on users' PCs -- for example, by more clearly branding its Save pop-up ads and offering information links at the bottom of those ads. Moreover, despite the several problems we encountered in testing, WhenU's applications are generally easy to remove via the "Add/Remove Programs" Control Panel applet. Finally, WhenU's programs are, for the most part, comparatively non-intrusive and do not represent serious privacy threats to users. Only Save opens pop-up advertising on the desktop -- advertising displayed by WhenU's other programs is confined to the applications' own GUIs and windows -- and WhenU's contextual advertising is performed with only a limited data transfer to WhenU itself, none of which includes Personally Identifiable Information (PII).

As much progress as WhenU has made over the past ten months, problems remain. Roughly one-third of its distributions still use poor notice and disclosure regimes. In a small number of cases, not all of WhenU's programs are fully disclosed during installation. Finally, the conditional uninstallers for the Save advertising program can fail in some instances.

Given this mixed bag of commendable improvements and lingering problems, the Sunbelt Research team recommends making changes to some but not all of WhenU's programs within Sunbelt's CounterSpy detections database:

SaveNow / Save: this pop-up advertising program should remain classified as "Adware" with a Threat Level of "Moderate risk" and a Recommended Action of "Quarantine."

WhenUSearch: this desktop toolbar program should be reclassified as "Low Risk Adware" with a Threat Level of "Low risk" and a Recommended Action of "Ignore." This re-classification should, as a practical matter, encompass all of WhenU's re-skinned, co-branded toolbars, including WhenU's own PriceBandit toolbar (<http://www.pricebandit.com> / <http://www.pbtoolbar.com/>).

Weathercast: this weather information program should be reclassified as "Low Risk Adware" with a Threat Level of "Low risk" and a Recommended Action of "Ignore."

ClockSync: this system clock synchronization program should be reclassified as "Adware Bundler" with a Threat Level of "Low risk" and a Recommended Action of "Ignore."

UControl: this anti-spyware program should be treated as part of the WhenUSearch desktop toolbar and handled accordingly.

WhenUShop: this shopping companion program is currently not included in the CounterSpy detections database. As it was only recently made a free program (previously it was available only for a fee), WhenUShop will be reviewed over the near future for possible inclusion in a future version of the CounterSpy database.

By classifying WhenUSearch (with UControl), Weathercast, and ClockSync as "Low Risk Adware" with a Recommended Action of "Ignore," Sunbelt continues to offer these programs as detections to its customers and users, providing them the opportunity to remove this software if they so choose.

Notes:

CDT - Testimony of Ari Schwartz before The Senate Committee on Commerce, Science , and Transportation on "Spyware" (May 11, 2005)

<http://www.cdt.org/testimony/20050511schwartzspyware.pdf>

Ben Edelman - WhenU Violates Own Privacy Policy (July 1, 2004)

<http://www.benedelman.org/spyware/whenu-privacy/>

Ben Edelman - Methods and Effects of Spyware (March 19, 2004)

<http://www.benedelman.org/spyware/ftc-031904.pdf>

Major Exploit Underway...

<http://www.dsreports.com/forum/remark,11904374~mode=flat>

PC Pitstop - Eighty-Seven Percent of WhenU Users Are Unaware They Are Using It

<http://www.pcpitstop.com/spycheck/whenu.asp>

PC Pitstop - WhenU Awareness, One Year Later

<http://www.pcpitstop.com/spycheck/whenu2.asp>

WhenU - PR: Announces Elimination of Active X Marketing

http://www.whenu.com/press_release_04_11_10.html

WhenU - Reply Comments (May 21, 2004)

<http://www.ftc.gov/os/comments/spyware/040521whenu-comrepycomments.pdf>

WhenU - Save! EULA & Privacy Policy

http://www.whenu.com/EULAs/save!_eula.html

WhenU - SaveNow Privacy Policy

http://www.whenu.com/pc_savenow.html

WhenU - Searchbar EULA & Privacy Policy

http://www.whenu.com/EULAs/searchbar_uc_eula.html

WhenU - WhenU Search Privacy Policy

http://www.whenu.com/pc_whenusearch.html

WhenU - WhenU Shop First Time Users (Introduction)

http://www.whenu.com/first_time.html

Eric L. Howes et al
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About Sunbelt Software

Headquartered in Tampa Bay (Clearwater), Fla., Sunbelt Software was founded in 1994 and offers products to protect and secure systems from costly inefficiencies including spam and spyware; as well as enterprise solutions to protect against system downtime and security vulnerabilities.

Sunbelt Software is part of the Sunbelt International Group, which includes Sunbelt Software, Inc. and Sunbelt System Software in Europe. The Sunbelt System Software group has offices in the UK, France, Netherlands, Sweden and Germany.

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