



Lack of Consent: A Survey of GAIN Users

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Executive Summary

Companies that make "adware" or "spyware" often claim that users agree to install the software and they know they will receive pop-up advertising and/or have their browsing habits recorded. PC Pitstop's anecdotal experience with users contradicted this claim, so we created a survey to get a more accurate picture. From September 2003 through January 2004, PC Pitstop surveyed 34,672 PC's with software from Claria Corporation (formerly The Gator Corporation) running in memory. More than 75 percent of the respondents were unaware that this software had been installed on their PC. We believe that consumers do not benefit in any significant way from this software, and it can compromise their privacy and PC stability. These results show that users are not getting the information they need to make an informed decision. Companies making this type of software need to provide users with a clear disclosure of their intentions.

About the Gator/Claria Corporation

Founded in 1998, The Gator Corporation distributes several advertising-supported applications ("adware") as part of its Gator Advertising Information Network (GAIN). In late September 2003, the company changed its name to Claria Corporation. As part of that change, Claria's software applications are now distributed by their GAIN Publishing division. We will refer to these applications as "GAIN" throughout the rest of this paper.

Claria's business model depends on having PC users install GAIN software. It is often bundled with "free" applications, but is also offered on some web sites via a confusing process called a "drive-by download." The license agreement for a GAIN application is typically about 20 pages long, and gives Claria extensive rights to control and monitor a user's PC. GAIN can extract extensive data about the PC, install new software without asking the user for permission, and track the user's visits to web sites.

Once GAIN software is installed, it delivers advertising based on the user's geographic location, the PC's configuration, or the web sites the user visits. Advertising revenue comes from Claria's direct sales force, or as a result of agreements with pay-per-click advertisers such as Overture, now a part of Yahoo, Inc. Claria also touts its access to user information in its Feedback Research group, which sells information that has been collected from users with GAIN software.

Claria is not alone in using these tactics, but it is a major player in this market. Officials of the company have made several public statements indicating their belief that users are choosing to install GAIN applications, which made it a logical choice for our survey.



Methodology

PC Pitstop operates a free and popular PC diagnostic web site. After running a quick five-minute diagnostic of their system, users are presented with a detailed analysis and recommendations on how to improve system performance and stability. Beginning in September 2003, the tests showed the following questions to GAIN users after the tests had run, and before the test results were displayed.

We have detected one or more programs installed on your PC that were created by the Gator Corporation and are using the GAIN ad network. These programs display advertising based on the web sites you visit. Which of the following matches your Gator installation experience?

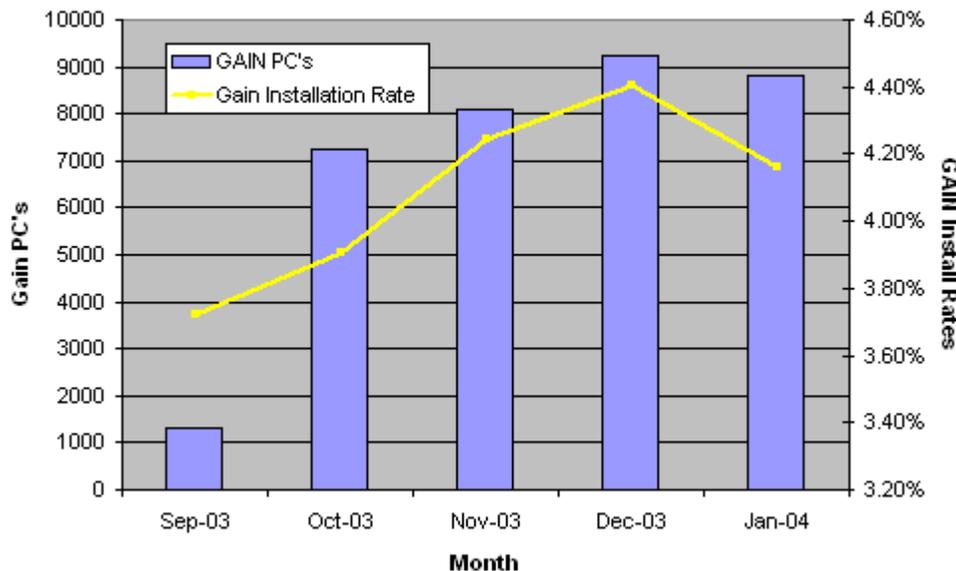
- *I do not recall installing any Gator or GAIN application.*
- *I did not read the Gator license agreement.*
- *I spent five minutes or less reading the Gator license.*
- *I spent five to fifteen minutes reading the Gator license.*
- *I spent more than fifteen minutes reading the Gator license.*

Once the user responded, the response was logged in our database. The question was only presented once per computer tested, even if the computer was tested multiple times.

Survey Results

The survey results from September 2003 through January 2004 are shown below. The chart below shows the total GAIN respondents and the percent of the total population testing at PC Pitstop.

GAIN Installation Rates and Respondents

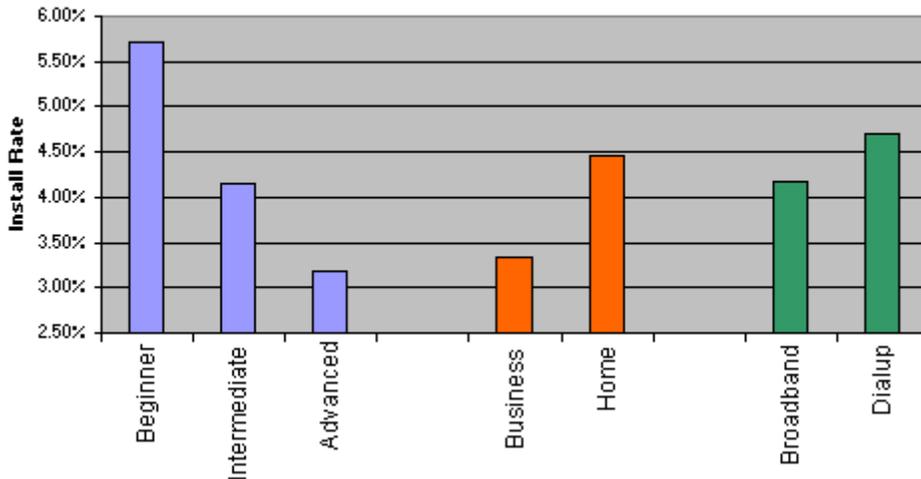




The large number of visitors to the PC Pitstop site, combined with the automated detection of GAIN applications, allows us to gather a large and statistically valid set of data. Most single-layer surveys sample somewhere between 600 and 700 data points to get a 95 percent confidence level with a 5 percent margin of error. In contrast, this report has 34,672 respondents, leaving little doubt to the statistical validity of the survey.

A cross tab analysis shows some stark differences in GAIN installation rates. PCs owned by novice or beginner users are almost twice as likely to have GAIN as an expert user. Home users are also significantly more likely to have GAIN applications installed as compared to business users. Still, more than three percent of the PC's in business use have GAIN installed. Interestingly enough, dialup users have a better chance than broadband users of having Gator installed.

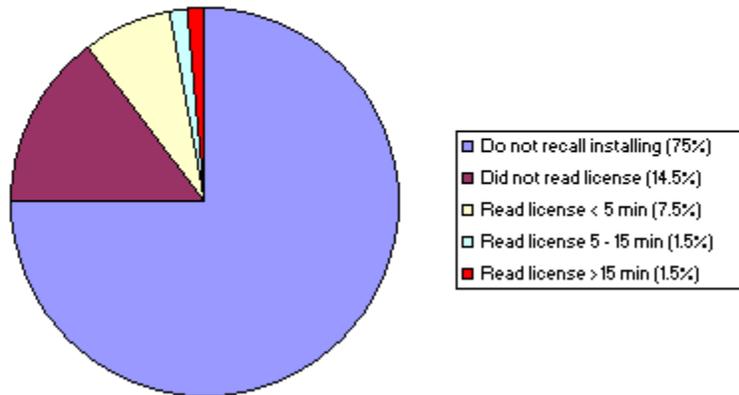
Gator Installation Rates



The most important finding is that 75 percent of the respondents did not even recall installing a GAIN application on their PC. Of the remainder, 14 percent did not read the license agreement at all, which is unfortunate but understandable given the length and legalese it contains. Adding the tally for users that did not know GAIN was installed to those that read the 20-page license for less than five minutes, an incredible 97 percent of GAIN users are largely unaware of what the application is doing on their system.



GAIN Survey



PC Pitstop's Position

Claria Corporation has been involved in numerous lawsuits including Holiday Inn, the Washington Post, The New York Times, The Gannet Company, and United Postal Service. These companies are trying to protect their web sites from GAIN displaying ads over their web site. In all cases, Claria has taken a similar position. Their CEO Jeff McFadden was quoted in November 2002 as saying the litigants are “attempting to undermine consumers' rights to decide for themselves what is displayed on their own computer screens, and what software is on their own computers.”

We agree with McFadden that consumers should decide. Our survey seems to indicate that Claria is undermining consumer rights by inadequate disclosure. PC users have the right to run software to enhance their PC experience, including GAIN, but our survey shows that the vast majority of users did not knowingly install GAIN; most of the remaining GAIN users are unaware of the far-reaching rights they have supposedly granted this software since they have not seen the license terms.

We believe there should be clear rules to protect the consumer from accidentally installing unwanted and intrusive software. Important facts should not be buried in lengthy online legal documents, particularly when it involves constantly monitoring a consumer's PC for profit. Software such as GAIN should be marketed with clear up-front disclosures about what the software does once it is installed on the system.

Notes

PC Pitstop's site registration process allows users to self-report their level of expertise in computers, but not all users answer this question. User expertise analysis reflects a smaller sample size of 14,538.

On September 11, 2003, Gator Corporation filed a lawsuit against PC Pitstop in U.S. District Court, Northern District of California (C03-04167RS). PC Pitstop and Gator have settled this lawsuit; the settlement precludes us from discussing the terms of the agreement.

Further information about PC Pitstop and our Gator research can be found at our web site, <http://www.pcpitstop.com>. To contact us, please go to <http://www.pcpitstop.com/contact.asp>.