

United States Attorney for the
Southern District of New York
By: MATTHEW L. SCHWARTZ (MS-8159)
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel.: (212) 637-1945
Fax: (212) 637-2750

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

XANGA.COM, INC.,
a corporation,

JOHN HILER,
individually and as an officer of
the corporation, and

MARC GINSBURG,
individually and as an officer of
the corporation,

Defendants.
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**CONSENT DECREE AND
ORDER FOR
CIVIL PENALTIES,
INJUNCTION, AND
OTHER RELIEF**

06 Civ. _____

WHEREAS the plaintiff, the United States of America, has commenced this action by filing the complaint herein; the defendants have waived service of the summons and complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without the defendants admitting liability for any of the matters alleged in the complaint or that the facts as alleged in the complaint, other than the jurisdictional facts, are true;

5. For purposes of this Consent Decree, the terms “blog” and “weblog

the Rule, 16 C.F.R. § 312.4(b); (2) within the direct notice required to be sent to parents by Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c); and (3) at each location on its website(s) where personal information is collected, which states as follows in bold typeface:

NOTICE: Visit www.ftc.gov/privacy for information from the Federal Tr

to the plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), in the amount of One Million Dollars (\$1,000,000) as follows:

- a. The defendants shall pay the penalty required by this paragraph by paying Six Hundred Thousand Dollars (\$600,000) within five (5) business days following entry of this Consent Decree, followed by payment of the remaining Four Hundred Thousand Dollars (\$400,000) in two (2) equal installments of Two Hundred Thousand Dollars (\$200,000) plus interest, as calculated pursuant to 28 U.S.C. § 1961, due within six (6) and twelve (12) months, respectively, of the date of entry of this Consent Decree; *provided*, however, that at any time, and without penalty, the defendants may pay the balance due, make more frequent payments, make advance payments, or make larger payments than scheduled;
- b. The defendants shall make all payments required by this paragraph by electronic fund transfer in accordance with procedures specified by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, for appropriate disposition.

12. In the event of any v)in accvT79u754d(d Td(e)Tj0.44 0 Td(na)Tj0.94 00 Td(n)Tj0.5 4 dsd>>BDTd(n)

DELETION OF CHILDREN'S PERSONAL INFORMATION

13. The defendants, and their successors and assigns, within five (5) days from the date of entry of this Consent Decree, shall delete all personal information collected and maintained in violation of the Rule through the date of entry of this Consent Decree.

DISTRIBUTION OF ORDER AND COMPLIANCE GUIDE BY THE DEFENDANTS

14. The defendants, and their successors and assigns, within thirty (30) days from the date of entry of this Consent Decree, shall provide a copy of this Consent Decree and the Federal Trade Commission compliance guide entitled *How to Comply with the Children's Online Privacy Protection Rule* (Nov. 1999) ("compliance guide") (attached hereto as "Appendix B") to each of its current principals, officers, directors, and managers; and to all current employees and agents having responsibilities related to the operation of any website or online service subject to this Consent Decree; and to all current representatives having responsibilities related to compliance with this Consent Decree; and secure from each such person a signed statement acknowledging receipt of a copy of this Consent Decree and the compliance guide. The defendants shall, within ten (10) days of complying with this paragraph, submit to the Commission a signed statement setting forth the fact and manner of the defendants' compliance, including the name and title of each person to whom a copy of the Consent Decree and compliance guide has been provided.

15. The defendants, and their successors and assigns, for a period of five (5) years from the date of entry of this Consent Decree, shall provide a copy of this Consent Decree and the compliance guide to each of its future principals, officers, directors, and managers; and to all future employees and agents having responsibilities related to the operation of any website or

online service subject to this Consent Decree; and to all future representatives having responsibilities related to compliance with this Consent Decree; and secure from each such person a signed and dated statement acknowledging receipt of a copy of this Consent Decree and the compliance guide, within thirty (30) days after the person assumes such position or responsibilities. The defendants shall maintain copies of the signed statements, as well as other information regarding the fact and manner of their compliance, including the name and title of each person to whom a copy of the Consent Decree and compliance guide has been provided and, upon request, shall make the statements and other information available to the Commission.

COMPLIANCE REPORTING BY THE DEFENDANTS

16. In order that compliance with the provisions of this Consent Decree may be monitored:

a. For a period of three (3) years from the date of entry of this Consent Decree,

i. Each individual defendant shall notify the Commission of the following:

(1) Any changes in residence addresses, mailing addresses, and telephone numbers of such individual defendant, within ten (10) days of the date of such change;

(2) Any changes in employment status (including self-employment);

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with, employed by, creates, forms, or performs services for; a statement of the nature of the business; and a statement of the individual defendant's duties and responsibilities in connection with the business or employment; and

- (3) Any changes in the individual defendant's name or use of any aliases or fictitious names; and
 - ii. Each defendant shall notify the Commission of any changes in corporate structure of the corporate defendant, or any business entity that an individual defendant directly or indirectly controls or has an ownership interest in, that may affect compliance obligations arising under this Consent Decree, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Decree; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which a defendant learns less than thirty (30) days prior to the date such action is to take place, such defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

notice on any website is located and a copy of each screen or page on which the website collects personal information;

- (4) a copy of each different privacy notice sent to parents;
- (5) a statement setting forth in detail when and how each notice to parents is provided;
- (6) a statement setting forth in detail the methods used to obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children;
- (7) a statement setting forth in detail the means provided for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance;
- (8) a statement setting forth in detail why each type of information collected from a child is reasonably necessary for the provision of the particular related activity; and
- (9) a statement setting forth in detail the procedures used to protect the confidentiality, security, and integrity of personal information collected from children.

- c. For the purposes of this Consent Decree, the defendants shall, unless otherwise directed by the Commission's representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: *U.S. v. Xanga.c*

number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of their relationship with the government.

CONTINUING JURISDICTION

19. This Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of the plaintiff and against the defendants, pursuant to all the terms and conditions recited above.

Dated: New York, New York
September ____, 2006

HON. _____
UNITED STATES DISTRICT JUDGE

The parties, by their counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. The defendants waive any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the investigation and prosecution of this action.

FOR THE UNITED STATES OF AMERICA:

PETER D. KEISLER
Assistant Attorney General
Civil Division
U.S. Department of Justice

FOR THE FEDERAL TRADE COMMISSION:

KAREN M. MUOIO
PHYLLIS H. MARCUS
Attorneys
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580
(202) 326 -2491, -2854 (voice)
(202) 326-3259 (fax)

FOR THE DEFENDANTS:

XANGA.COM, INC.

by: _____

MARC GINSBURG, President
Xanga.com, Inc.
555 Eighth Avenue, Suite 21F
New York, NY 10018

ROGER P. FUREY, ESQ.
Katten Muchin Rosenman LLP
1025 Thomas Jefferson Street, NW
Washington, D.C. 20007
(202) 625-3630 (voice)
(202) 298-7570 (fax)
Attorney for defendant Xanga.com, Inc.

STEVEN SHIFFMAN, ESQ.
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022
(212) 940-6785 (voice)
(212) 940-8776 (fax)
Attorney for defendant Xanga.com, Inc.

JOHN HILER, individually and as an officer of the
corporation

MARC GINSBURG, individually and as an officer of
the corporation