

**ORIGINAL**

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**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. 6853 (SHS)

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” both mean a web-based publication focusing on a particular subject or functioning as an online journal and typically consisting of periodic entries containing text, images, and links to other web pages.

6. For purposes of this Consent Decree, a “blog hosting service” means a website or online service that hosts blogs and often provides the software to use as a template for creating blogs.

7. For purposes of this Consent Decree, “defendants” means 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.

#### **INJUNCTION**

8. The defendants, their successors and assigns, and their officers, agents, servants, representatives, and employees, and all persons in active concert or participation with them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined, directly or through any corporation, subsidiary, division, website, or other device, from violating any provision of the Children’s Online Privacy Protection Rule, 16 C.F.R. Part 312, and as the Rule may hereafter be amended. A copy of the Rule is attached hereto as “Appendix A” and incorporated herein as if fully set forth verbatim.

#### **CONSUMER EDUCATION REMEDIES**

9. For a period of five (5) years from the date of entry of this Consent Decree, the defendants, and their successors and assigns, in connection with the operation of any website or other online service directed to children or through which it, with actual knowledge, collects, uses, and/or discloses personal information from children, shall place a clear and conspicuous





### **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



address of each business that the individual defendant is affiliated 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.

- b. Sixty (60) days after the date of entry of this Consent Decree and at such times as the Federal Trade Commission shall reasonably require, the defendants each shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Consent Decree.

This report shall include, but not be limited to:

- i. For each individual defendant:
- (1) The then-current residence addresses, mailing addresses, and telephone numbers of the individual defendant; and
  - (2) The then-current employment and business addresses and telephone numbers of the individual defendant; a description of the business activities of each such employer or business, and the title and responsibilities of the individual defendant, for each such employer or business.
- ii. For all defendants:
- (1) a statement setting forth in detail the criteria and process through which any of their websites registers visitors online for any activity requiring the submission of personal information, and a copy of each different screen or page providing or collecting registration information;
  - (2) a copy of each different privacy notice posted on any of their

websites;

- (3) a statement setting forth in detail each place where the privacy 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:



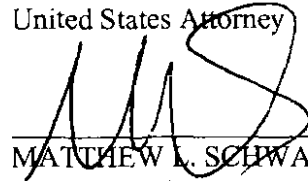


The parties, by their counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. The defendants waive any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the investigation and prosecution of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


FOR THE UNITED STATES OF AMERICA:

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FOR THE FEDERAL TRADE COMMISSION:

A handwritten signature in black ink, appearing to read 'Karen M. Muoio', written over a horizontal line.

KAREN M. MUOIO

PHYLLIS H. MARCUS

Attorneys

Federal Trade Commission

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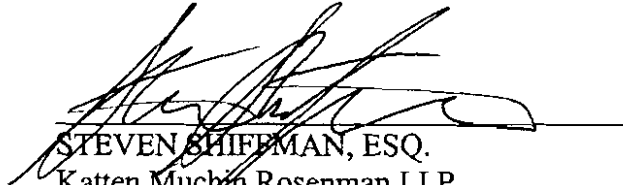
XANGA.COM, INC.

by: \_\_\_\_\_

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JOHN HILER, individually and as an officer of the  
corporation

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MARC GINSBURG, individually and as an officer of  
the corporation

