

March 20, 2007

Federal Trade Commission
Office of the Secretary, Room 135-H
600 Pennsylvania Avenue, NW.
Washington, DC 20580

RE: DirectRevenue LLC, et al., FTC File No. 052 3131

I write in response to the FTC's call for comments as to *In the Matter of DirectRevenue LLC, DirectRevenue Holdings LLC, Joshua Abram, Daniel Kaufman, Alan Murray, and Rodney Hook*, FTC File No. 052 3131.

I commend the injunctive relief provisions of the proposed settlement. The proposed settlement appropriately requires that Direct Revenue cease showing ads to users whose installations occurred, in most or all cases, without informed consent. The proposed settlement requires that Direct Revenue obtain users' express consent for any future installations, and the proposed settlement defines express consent with appropriate rigor. Finally, the proposed settlement confirms Direct Revenue's responsibility for the actions of its distributors.

That said, I struggle to understand the size of the proposed payment to be made by Direct Revenue. The proposed settlement contemplates a payment of just \$1.5 million. Yet publicly-available documents demonstrate that this amount is far less than Direct Revenue's profits to date. Relevant documents:

- Direct Revenue's statements to the New York Attorney General (available at <http://www.benedelman.org/spyware/nyag-dr/e2.pdf#page=4>, Bates number DR349500) report 2004 revenues of \$39.3 million and Q1-Q3 2005 revenues of \$33.5 million.
- Direct Revenue's statements to the New York Attorney General (available at <http://www.benedelman.org/spyware/nyag-dr/e2.pdf#page=6>, Bates number 349502) report 2004-2005 "distribution" payments to Direct Revenue's principals totaling more than \$27.4 million.
- These distributions of profits are consistent with Direct Revenue's contemporaneous profit projections. See e.g. Direct Revenue's January 8, 2004 projections for 2004 (available at <http://www.benedelman.org/spyware/nyag-dr/e47.pdf#page=4>, Bates number DR183955), projecting 2004 profits of \$29.2 million. The preceding page, DR183954, reports 2003 profits of \$2.6 million on 2003 revenue of \$5.0 million – confirming that \$29.2 million is a reasonable estimate of 2004 profits, consistent with Direct Revenue's known 2004 revenues.

