

**ANALYSIS OF PROPOSED CONSENT
ORDER TO AID PUBLIC COMMENT**
In the Matter of Gateway Learning Corp., File No. 042 3047

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Gateway Learning Corporation ("GLC"). GLC markets and sells products designed for children who are learning math and reading under the "Hooked on Phonics" brand name and trademark.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns alleged misrepresentations about how personal information collected from consumers through the proposed respondent's Web site would be used and alleged unfair practices in connection with proposed respondent's changes to its online privacy policy. The proposed respondent collects personal information from consumers on its Web site, including information from parents who purchase Hooked on Phonics products for their children. Such information includes the parent's first and last name, address, phone number, email address, purchase history, and his or her child's age range and gender. The proposed respondent maintains a privacy policy on its Web site that describes how it handles personal information collected from consumers.

The Commission's complaint charges that the proposed respondent falsely represented that information collected from consumers through its Web site would not be sold, rented, or loaned to third parties and that personal information about children under the age of thirteen would not be provided to any third party for any purpose. In fact, the complaint alleges, proposed respondent rented to third parties information about consumers and the age range and gender of their children. This information was used to send direct mail and make telemarketing calls to consumers.

The complaint also alleges that by posting a revised privacy policy containing material changes to its practices that were inconsistent with its original promise to consumers and retroactively applying such changes to previously-collected information, the proposed respondent engaged in an unfair practice. As alleged in the complaint, the proposed respondent collected personal information under a privacy policy that specifically stated that it did not sell, rent, or loan such information to third parties. It then changed its posted privacy policy to state that it may provide such information to third parties and, without providing any additional notice to consumers, applied this change to information collected under the earlier policy. Thus, without sufficient notice to consumers, the proposed respondent adopted a new policy and practice of sharing information with third parties that directly contradicted the promise made to consumers when the information was collected. The complaint alleges that this retroactive application of proposed respondent's revised privacy policy caused or is likely to cause substantial injury to consumers by subjecting them to unwanted direct mail and telemarketing

calls. Further, such injury is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.

Lastly, the complaint alleges that the proposed respondent misrepresented that it would notify consumers of material changes to its information practices, when in fact, it did not notify consumers of material changes to its information practices. Instead, the proposed respondent posted a revised privacy policy on its Web site without any indication that the policy had materially changed or what aspects of the policy had changed.

Part I of the consent order prohibits the proposed respondent, in connection with the collection of personal information from or about an individual, from misrepresenting (1) that it will not sell, rent, or loan to third parties such personal information; (2) that it will not provide to any third party personal information about children under the age of thirteen; (3) the manner by which it will notify consumers of changes to its privacy policy; or (4) the manner in which it will collect, use, or disclose personal information.

Part II of the order prohibits the proposed respondent from disclosing to any third party any personal information collected on its Web site prior to the date it posted its revised privacy policy permitting third-party sharing (June 20, 2003), unless it obtains the express affirmative (“opt-in”) consent of the consumers to whom such personal information relates. Part III of the order prohibits the proposed respondent, in connection with the posting in the future of any privacy policy that contains a material change from the previous version of the policy, from applying such changes to information collected from or about consumers before the date of the posting, unless it obtains the express affirmative (“opt-in”) consent of the consumers to whom such personal information relates. Part IV of the order requires the proposed respondent to pay \$4,608 to the United States Treasury as disgorgement of its profits from renting customer data.

The remainder of the proposed order contains standard requirements that the proposed respondent: maintain copies of privacy statements and other documents relating to the collection, use or disclosure of personally identifiable information and to any efforts to obtain the consent of consumers and documents demonstrating such consent as required by Parts II and III of the order; distribute copies of the order to certain company officials and employees; notify the Commission of any change in the corporation that may affect compliance obligations under the order; and file one or more reports detailing its compliance with the order. Part IX of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

The proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondent. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.