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8 Attorneys for Plaintiff
9 United States of America

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 BONZI SOFTWARE, INC., a
17 Delaware corporation,

18 Defendant.

CIVIL NO. CV-04-1048 RJK (Ex)

CONSENT DECREE FOR
CIVIL, INJUNCTIVE, AND
OTHER RELIEF

19 WHEREAS the plaintiff, the United States of America, has commenced this
20 action by filing the Complaint herein; defendant has waived service of the
21 Summons and Complaint; the parties have been represented by the attorneys whose
22 names appears hereafter; and the parties have agreed to settlement of this action
23 upon the following terms and conditions, without adjudication of any issue of fact
24 or law and without defendant admitting liability for any of the matters alleged in
25 the Complaint or that the facts as alleged in the Complaint, other than the
26 jurisdictional facts, are true;

27 THEREFORE, on the joint motion of plaintiff and defendant, it is hereby
28 ORDERED, ADJUDGED, and DECREED as follows:

Consent Decree

1 10. In the event of any default in payment, which default continues for ten
2 (10) days beyond the due date of payment, the entire unpaid penalty, together with
3 interest, as computed pursuant to 28 U.S.C. § 1961, from the date of default to the
4 date of payment, shall immediately become due and payable.

5 11. Defendant, and its successors and assigns, within five (5) days from
6 the date of entry of this Consent Decree, shall delete all personal information
7 collected from every child through the BonziBUDDY online service at any time
8 from April 21, 2000, through the date of entry of this Consent Decree.

9 12. Defendant, and its successors and assigns, within thirty (30) days from
10 the date of entry of this Consent Decree, shall provide a copy of this Consent
11 Decree and the Federal Trade Commission compliance guide entitled *How to*
12 *Comply with the Children's Online Privacy Protection Rule* (Nov. 1999)
13 ("compliance guide") (attached hereto as "Appendix B") to each of its current
14 principals, officers, directors, and managers, and to all current employees, agents,
15 representatives, and attorneys having responsibilities related to the operation of any
16 online service or Web site subject to this Consent Decree, and secure from each
17 such person a signed statement acknowledging receipt of a copy of this Consent
18 Decree and the compliance guide, and shall, within ten (10) days of complying
19 with this paragraph, submit to the Commission a signed statement setting forth the
20 fact and manner of defendant's compliance, including the name and title of each
21 person to whom a copy of the Consent Decree and compliance guide has been
22 provided. For the purposes of complying with this Paragraph, defendant shall be
23 permitted to redact the dollar amount of the civil penalty (set forth in Paragraph 8
24 above) from the copy of the Consent Decree provided to any such person.

25 13. For a period of five (5) years from the date of entry of this Consent
26 Decree, defendant, and its successors and assigns, shall provide a copy of this
27 Consent Decree and the compliance guide to each of its future principals, officers,
28 directors, and managers, and to all future employees, agents, representatives, and

1 attorneys having responsibilities related to the operation of any online service or
2 Web site subject to this Consent Decree, and secure from each such person a
3 signed and dated statement acknowledging receipt of a copy of this Consent
4 Decree and the compliance guide, within thirty (30) days after the person assumes
5 such position or responsibilities. Defendant shall maintain copies of the signed
6 statements, as well as other information regarding the fact and manner of its
7 compliance, including the name and title of each person to whom a copy of the
8 Consent Decree and compliance guide has been provided and, upon request, shall
9 make the statements and other information available to the Federal Trade
10 Commission. For the purposes of complying with this Paragraph, defendant shall
11 be permitted to redact the dollar amount of the civil penalty (set forth in Paragraph
12 8 above) from the copy of the Consent Decree provided to any such person.

13 14. Within sixty (60) days from the date of entry of this Consent Decree,
14 and at such other times as the Federal Trade Commission may require, defendant,
15 and its successors and assigns, shall file with the Commission a written report,
16 setting forth in detail the manner and form in which it has complied and is
17 complying with this Consent Decree. This report shall include but not be limited
18 to:

- 19 a. a statement setting forth in detail any process by which it collects
20 personal information from children on the Internet, and a copy of each
21 different screen or page requesting such information;
- 22 b. a copy of each different privacy notice on any of its online service(s)
23 and Web site(s);
- 24 c. a statement setting forth in detail each place where the privacy notice
25 on any online service or Web site is located and a copy of each screen
26 or page on which the online service or Web site collects personal
27 information;
- 28 d. a copy of each different privacy notice to parents;

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- 2 e. a statement setting forth in detail when and how notices to parents are
- 3 provided;
- 4 f. a statement setting forth in detail the methods used to obtain verifiable
- 5 parental consent prior to any collection, use, and/or disclosure of
- 6 personal information from children;
- 7 g. a statement setting forth in detail the means provided for parents to
- 8 review the personal information collected from their children and to
- 9 refuse to permit their further use or maintenance;
- 10 h. a statement setting forth in detail why each type of information
- 11 collected is reasonably necessary for the provision of the particular
- 12 related activity; and
- 13 i. a statement setting forth in detail the procedures used to protect the
- 14 confidentiality, security, and integrity of personal information
- 15 collected from children.

16 15. For a period of five (5) years from the date of entry of this Consent

17 Decree, defendant, and its successors and assigns, shall maintain and make

18 available to the Federal Trade Commission for inspection and copying within

19 seven (7) days of the date of receipt of a written request, a print or electronic copy

20 in HTML format of all documents demonstrating compliance with the terms and

21 provisions of this Consent Decree, including, but not limited to, a sample copy of

22 every different information collection form, Web page, or screen, and a sample

23 copy of each different document containing any representation regarding

24 defendant's collection, use, and disclosure practices pertaining to personal

25 information of a child. Each Web page copy shall be accompanied by the URL of

26 the Web page where the material was posted online. Electronic copies shall

27 include all text and graphics files, audio scripts, and other computer files used in

28 presenting information on the Internet. Provided, however, that defendant shall not

1 be required by this paragraph to retain a document for longer than two (2) years
2 after the document is created; or retain a print or electronic copy of any amended
3 Web page or screen to the extent that the amendment does not affect defendant's
4 compliance obligations under this Consent Decree.

5 16. For a period of five (5) years from the date of entry of this Consent
6 Decree, defendant, and its successors and assigns, shall notify the Commission at
7 least thirty (30) days prior to any change in their business that may affect
8 compliance obligations arising under this Consent Decree, including, but not
9 limited to, any merger, incorporation, dissolution, assignment, sale or other action
10 that would result in the emergence of a successor corporation; the creation or
11 dissolution of a subsidiary, parent, or affiliate; the proposed filing of a bankruptcy
12 petition; or a change in the corporate name or address. Provided, however, that,
13 with respect to any proposed change in the corporation about which defendant, its
14 successors and assigns, learn less than thirty (30) days prior to the date such action
15 is to take place, they shall notify the Commission as soon as is practicable after
16 obtaining such knowledge.

17 17. Defendant is hereby required, in accordance with 31 U.S.C. § 7701, to
18 furnish to the Federal Trade Commission each of its taxpayer identifying numbers
19 (social security number or employer identification number), which shall be used
20 for purposes of collecting and reporting on any delinquent amount arising out of its
21 relationship with the government.

22 18. All reports, submissions, and notices required by Paragraphs 12 - 17
23 of this Consent Decree shall be sent by certified mail to:

24 Associate Director
25 Division of Advertising Practices
26 600 Pennsylvania Avenue
27 Washington, D.C. 20580
28 Attention: United States v. Bonzi Software, Inc.
CONTINUING JURISDICTION

1 19. This Court shall retain jurisdiction of this matter for the purposes of
2 enabling any of the parties to this Consent Decree to apply to the Court at any time
3 for such further orders or directives as may be necessary or appropriate for the
4 interpretation or modification of this Consent Decree, for the enforcement of
5 compliance therewith, or for the punishment of violations thereof.
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9 JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against
10 defendant, pursuant to all the terms and conditions recited above.
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12 Dated this _____ day of _____, 2004.
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15 _____
16 UNITED STATES DISTRICT JUDGE
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1 The parties, by their counsel, hereby consent to the terms and conditions of
2 the Consent Decree as set forth above and consent to the entry thereof. Defendant
3 waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C.
4 § 2412, concerning the investigation and prosecution of this action.
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7 FOR THE UNITED STATES OF AMERICA:

8 PETER D. KEISLER
9 Assistant Attorney General
10 Civil Division
11 U.S. Department of Justice

12 DEBRA W. YANG
13 United States Attorney

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15 By: _____
16 GARY PLESSMAN
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28 EUGENE M. THIROLF
Director
Office of Consumer Litigation

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By: _____
ELIZABETH STEIN, Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 307-0092 (voice)
(202) 514-8742 (facsimile)

FOR THE FEDERAL TRADE
COMMISSION:

By: _____
LAURA M. SULLIVAN
Attorney
Federal Trade Commission
600 Pennsylvania Avenue
Washington, D.C. 20580
(202) 326-3327 (voice)
(202) 326-3259 (facsimile)

1 FOR THE DEFENDANT:

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3 BONZI SOFTWARE, INC.

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5 _____
6 Joseph Bonzi
7 President
8 3000 Broad Street
9 Suite 115
10 San Luis Obispo, CA 93401

11 _____
12 Saro G. Rizzo, Esq.
13 1022 Mill Street
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15 San Luis Obispo, CA 93401
16 (805) 783-2050 (voice)
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18 Attorney for Defendant
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