

**THE CENTER FOR DEMOCRACY & TECHNOLOGY'S PUBLIC COMMENTS  
MARCH 20, 2007**

***In the Matter of DirectRevenue LLC, DirectRevenue Holdings LLC, Joshua Abram,  
Daniel Kaufman, Alan Murray, and Rodney Hook, FTC File No. 052 3131***

We would like to thank the Federal Trade Commission for the opportunity to comment on its recently announced settlement agreement with DirectRevenue LLC. We are hopeful that our comments will provide the FTC with helpful feedback as you finalize this crucial case.

The Center for Democracy & Technology would like to commend the FTC for once again obtaining a strong, precedent-setting settlement from a spyware company that has burdened millions of consumers with unwanted software. As in the Commission's settlement with Zango, Inc., several of the requirements in the DirectRevenue settlement set impressive standards. These include requiring DirectRevenue to take responsibility for its affiliates' actions, to cease advertising to legacy users, and to obtain "express consent" prior to installing software on consumers' computers.

Additionally, the FTC has included important new language in its definition of "Uninstall." Section (e) of the definition, "preventing the reinstallation" of software without consumer consent, strikes at the core of one of the most frustrating behaviors that spyware exhibits. Forcing users to go through all the trouble to uninstall a software program only to have it automatically reinstalled is not an acceptable practice. We applaud the FTC for including this language, and we hope that this standard will be applied more broadly to the software industry.

Although CDT appreciates the value of the settlement's injunctive relief, we find that the settlement's monetary relief is substantially inadequate. The FTC is well aware that DirectRevenue's owners personally earned over \$20 million by surreptitiously infecting consumers' computers and bombarding them with advertisements. Internal DirectRevenue documents also reveal the company's egregious endeavors to aggravate consumers in its quest for profits – sending "torpedoes" to remove anti-spyware software, popping one ad *every minute*, and forming a department of "Dark Arts" are just a few examples. CDT understands that litigation is risky, but with behaviors so extreme and profits so large, we believe that seeking greater monetary relief is worth the risk.

The contrast between DirectRevenue and Zango is useful to consider in this respect. It appears as though DirectRevenue has made significant cuts to its distribution partners, with perhaps only a small handful remaining. In fact, it is not currently even possible to download DirectRevenue software from the DirectRevenue or BestOffers Web sites. Thus, whereas Zango continues to operate as a software distributor under constant threat of repercussions should it violate its settlement in the course of business, the threat to DirectRevenue and its owners is slim, and may be reduced to nothing if they exit the software distribution business altogether. After paying back \$1.5 million, a small fraction of what they earned by deceiving and frustrating millions of consumers, they may essentially be off the hook.

CDT and the FTC both understand that pursuing spyware cases would be easier if the Commission had greater civil penalty authority in this realm. We know this is something that the FTC has been pushing for and CDT continues to be supportive of that effort. But the lack of civil penalty authority should not deter the Commission from seeking maximum damages in a case where such egregious behavior is so well documented.

The FTC has an opportunity to make its strongest statement yet in spyware enforcement. We hope that the Commission will seize this opportunity by matching the amount of monetary relief to the strength of the injunctive provisions.

Sincerely,

Ari Schwartz  
Deputy Director

Alissa Cooper  
Policy Analyst