



## CDT Praises FTC Adware Settlement, Urges Continued Enforcement

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Contact:  
David McGuire  
(202) 637-9800 x106

WASHINGTON -- Earlier this month, the Federal Trade Commission (FTC) reached a settlement with Bellevue, Wash.-based adware distributor Zango Inc. that could become a landmark for enforcement in the downloadable software market. But for the settlement to have the desired effect the FTC must remain vigilant to ensure that Zango is living up to its terms.

The Center for Democracy & Technology (CDT) on Monday filed comments with the FTC praising the commission for its work on the landmark adware settlement, but also raising concerns that Zango -- despite its public statements to the contrary -- continues to engage in some of the same practices that necessitated the settlement in the first place. A copy of the comments is available at <http://www.cdt.org/privacy/20061120comments.pdf> [1].

"This settlement has the potential to be a landmark, both for the downloadable-software community and for the Internet as a whole. By clearly identifying the sorts of behaviors that are unacceptable for software distributors, the FTC has made it harder for bad actors to hide behind murky affiliate relationships and deliberately confusing disclosures," said CDT Policy Analyst Alissa Cooper who co-wrote the comments. "The only thing that could undermine the value of this settlement would be if Zango is permitted to openly flout its terms. The FTC must make clear that it expects Zango to follow the legally binding settlement to the letter, or face serious consequences. If the FTC cannot enforce its settlement in this case, the Commission's authority to prevent fraud on the Internet will come under heavy scrutiny."

In a press release issued on November 3, 2006, Zango claimed that it "has met or exceeded the key notice and consent standards detailed in the FTC consent order since at least January 1, 2006." In its comments to the FTC, CDT provides substantial evidence that that is simply not the case. In particular CDT documents instances in which Zango failed to properly identify the source of its advertisements as recently as November 10.

Ben Edelman and Eric Howes, two well-known anti-spyware investigators, have also filed comments today. Edelman and Howes document evidence from after the settlement showing even more pervasive compliance failures. The Edelman and Howes complaint can be found at <http://www.benedelman.org/news/112006-1.html> [2].

In January, CDT filed a lengthy complaint with the FTC against Zango, which was formerly known as 180solutions. In the complaint, CDT identifies a string of unfair and deceptive practices Zango employed in distributing its adware to millions of people over a period of two years. The full complaint is available at <http://www.cdt.org/privacy/20060123180complaint.pdf> [3] and the press release is at <http://www.cdt.org/press/20060123180release.pdf> [4].

Under the \$3 million FTC settlement, Zango was required to cease communications with Internet users who downloaded the Zango/180solutions software before Jan. 1, 2006. Not only does this provide relief for many unwitting Zango "users," it also sends a message that companies will not be permitted to retain customer bases built on patterns of unfair practices.

Two other aspects of the settlement could have far-reaching positive implications for the

downloadable software market. First, the complaint requires that Zango not install software on users' computers without first obtaining "express consent." As defined in the settlement, express consent must be clear, contain all relevant disclosures, and perhaps most importantly, be obtained separate from the end-user license agreement (EULA). Distributors of unwanted software often hide their disclosures in EULAs in hopes that users will simply click through them without reading.

Second, the settlement makes clear that Zango is responsible for the actions of affiliates on its behalf. Too many downloadable software companies, Zango included, have attempted to disavow bad practices undertaken by their affiliates on their behalf. This settlement establishes that these companies can no longer sit back and claim ignorance as their affiliates violate the trust of Internet users.

About CDT: The Center for Democracy and Technology works to promote democratic values and constitutional liberties in the digital age. With expertise in law, technology, and policy, CDT seeks practical solutions to enhance free expression and privacy in global communications technologies. CDT is dedicated to building consensus among all parties interested in the future of the Internet and other new communications media.

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**Links:**

[1] <https://cdt.org/privacy/20061120comments.pdf>

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