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5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE NORTHERN DISTRICT OF IOWA**
7 **WESTERN DIVISION**

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 AMERICAN POP CORN COMPANY,
a corporation,

12 Defendant.

Civil Action No. _____

13 CONSENT DECREE AND ORDER
FOR CIVIL PENALTIES,
14 INJUNCTIVE, AND OTHER RELIEF

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

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

- 23 1. This Court has jurisdiction over the subject matter and of the parties.
24 2. The Complaint states a claim upon which relief may be granted against the
25 defendant under Sections 1303(c) and 1306(d) of the Children’s Online Privacy Protection Act
26 of 1998 (“COPPA”), 15 U.S.C. §§ 6501-6506, 6502(c), and 6505(d), and Sections 5(a)(1),
27 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§
28

1 41-58, 45(a)(1), 45(m)(1)(A), 53(b), and 56(a).

2 **DEFINITIONS**

3 3. For the purposes of this Consent Decree, the term “Rule” means the Federal
4 Trade Commission’s Children’s Online Privacy Protection Rule, 16 C.F.R. Part 312.

5 4. For purposes of this Consent Decree, the terms “child,” “collects,” “collection,”
6 “Commission,” “delete,” “disclosure,” “Internet,” “online contact information,” “operator,”
7 “parent,” “person,” “personal information,” “third party,” “verifiable consent,” and “website or
8 online service directed to children,” are defined as those terms are defined in Section 312.2 of
9 the Rule, 16 C.F.R. § 312.2.

10 5. Unless otherwise specified, “defendant” shall mean American Pop Corn
11 Company and its officers, successors and assigns, agents, representatives, and employees.

12 **INJUNCTION**

13 6. Defendant, and all persons in active concert or participation with any one or
14 more of them who receive actual notice of this Consent Decree by personal service or
15 otherwise, are hereby enjoined, directly or through any corporation, subsidiary, division,
16 website, or other device, from violating any provision of the Rule. A copy of the current Rule
17 is attached hereto as “Appendix A” and incorporated herein as if fully set forth verbatim.

18 7. In the event the Rule is hereafter amended or modified, defendant’s compliance
19 with that Rule so amended or modified shall not be deemed a violation of this injunction.

20 8. Defendant, and all persons in active concert or participation with any one or
21 more of them who receive actual notice of this Consent Decree by personal service or
22 otherwise, are hereby enjoined, in connection with the operation of any website or online
23 service, from making any misrepresentation in the website’s privacy policy or elsewhere about
24 the website’s collection, use, or disclosure of personal information of a child.

25 **CONSUMER EDUCATION REMEDY**

26 9. For a period of five (5) years from the date of entry of this Consent Decree,
27 defendant, and its successors and assigns, in connection with the operation of any website or
28 other online service directed in whole or in part to children, shall place a clear and conspicuous

1 notice (1) within the privacy policy required to be posted on its website(s) by Section 312.4(b)
2 of the Rule, 16 C.F.R. § 312.4(b); (2) within the direct notice required to be sent to parents by
3 Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c); and (3) at each location on its website(s)
4 where personal information is collected, which states as follows in bold typeface:

5 **NOTICE: Visit www.ftc.gov/kidzprivacy for information from the Federal**
6 **Trade Commission about protecting children’s privacy online.**

7 Where the above notice is posted on a website or delivered via email or other electronic service,
8 it shall be in the form of a hyperlink to www.ftc.gov/kidzprivacy. The Federal Trade
9 Commission may change the hyperlink/URL upon thirty (30) days prior written notice to
10 defendant, its successors or assigns.

11 **CIVIL PENALTY**

12 10. Defendant, and its successors and assigns, shall pay to plaintiff a civil penalty,
13 pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C.
14 § 45(m)(1)(A), in the amount of ten thousand dollars (\$10,000).

15 11. Defendant shall make the payment required by Paragraph 10 on the date of entry
16 of this Consent Decree by certified or cashier’s check made payable to the Treasurer of the
17 United States and delivered to: The Office of Consumer Litigation, Civil Division, U.S.
18 Department of Justice, Washington, D.C. 20530, for appropriate disposition.

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

23 **COMPLIANCE**

24 13. Defendant, and its successors and assigns, shall delete all personal information
25 collected from every child through the Kids Club portion of www.jollytime.com at any time
26 from April 21, 2000 through the date of entry of this Consent Decree.

27 14. Defendant, and its successors and assigns, within thirty (30) days from the date
28 of entry of this Consent Decree, shall provide a copy of this Consent Decree and the Federal

1 Trade Commission compliance guide entitled *How to Comply with the Children's Online*
2 *Privacy Protection Rule* (Nov. 1999) ("compliance guide") (attached hereto as "Appendix B")
3 to each of its current principals, officers, directors, and managers, and to all current employees,
4 agents, and representatives having responsibilities related to the operation of any website or
5 online service subject to this Consent Decree, and secure from each such person a signed
6 statement acknowledging receipt of a copy of this Consent Decree and the compliance guide,
7 and shall, within ten (10) days of complying with this paragraph, submit to the Commission a
8 signed statement setting forth the fact and manner of defendant's compliance, including the
9 name and title of each person to whom a copy of the Consent Decree and compliance guide has
10 been provided. For the purposes of complying with this Paragraph, defendant shall be
11 permitted to redact the dollar amount of the civil penalty (set forth in Paragraph 10 above) from
12 the copy of the Consent Decree provided to any such person.

13 15. For a period of five (5) years from the date of entry of this Consent Decree,
14 defendant, and its successors and assigns, shall provide a copy of this Consent Decree and the
15 compliance guide to each of its future principals, officers, directors, and managers, and to all
16 future employees, agents, and representatives having responsibilities related to the operation of
17 any website or online service subject to this Consent Decree, and secure from each such person
18 a signed and dated statement acknowledging receipt of a copy of this Consent Decree and the
19 compliance guide, within thirty (30) days after the person assumes such position or
20 responsibilities. Defendant shall maintain copies of the signed statements, as well as other
21 information regarding the fact and manner of its compliance, including the name and title of
22 each person to whom a copy of the Consent Decree and compliance guide has been provided
23 and, upon request, shall make the statements and other information available to the Federal
24 Trade Commission. For the purposes of complying with this Paragraph, defendant shall be
25 permitted to redact the dollar amount of the civil penalty (set forth in Paragraph 10 above) from
26 the copy of the Consent Decree provided to any such person.

27 16. Within sixty (60) days after entry of this Consent Decree, and at such other times
28 as the Federal Trade Commission may require, defendant, and its successors and assigns, shall

1 file with the Commission a written report, setting forth in detail the manner and form in which
2 it has complied and is complying with this Consent Decree. This report shall include but not be
3 limited to:

- 4 a. a statement setting forth in detail the process by which
5 www.jollytime.com registers visitors to its “Kids Club,” and a copy of
6 each different screen or page providing or collecting registration
7 information;
- 8 b. a copy of each different privacy notice on the website;
- 9 c. a statement setting forth in detail each place where the privacy notice on
10 the website is located and a copy of each screen or page on which the
11 website collects personal information;
- 12 d. a copy of each different privacy notice to parents;
- 13 e. a statement setting forth in detail when and how notices to parents are
14 provided;
- 15 f. a statement setting forth in detail the methods used to obtain verifiable
16 parental consent prior to any collection, use, and/or disclosure of
17 personal information from children;
- 18 g. a statement setting forth in detail the means provided for parents to
19 review the personal information collected from their children and to
20 refuse to permit its further use or maintenance;
- 21 h. a statement setting forth in detail why each type of information collected
22 is reasonably necessary for the provision of the particular related activity;
23 and
- 24 i. a statement setting forth in detail the procedures used to protect the
25 confidentiality, security, and integrity of personal information collected
26 from children.

27 17. For a period of five (5) years from the date of entry of this Consent Decree,
28 defendant, and its successors and assigns, shall maintain and make available to the Federal

1 Trade Commission for inspection and copying within fourteen (14) days of the date of receipt
2 of a written request, a print or electronic copy in HTML format of all documents demonstrating
3 compliance with the terms and provisions of this Consent Decree, including, but not limited to,
4 a sample copy of every different information collection form, web page, or screen, and a sample
5 copy of each different document containing any representation regarding defendant's collection,
6 use, and disclosure practices pertaining to personal information of a child. Each web page copy
7 shall be accompanied by the URL of the Web page where the material was posted online.

8 Electronic copies shall include all text and graphics files, audio scripts, and other computer files
9 used in presenting information on the Internet. Provided, however, that defendant shall not be
10 required by this paragraph to retain a document for longer than two (2) years after the document
11 is created; or retain a print or electronic copy of any amended web page or screen to the extent
12 that the amendment does not affect defendant's compliance obligations under this Consent
13 Decree.

14 18. For a period of twenty (20) years from the date of entry of this Consent Decree,
15 defendant, and its successors and assigns, shall notify the Commission at least thirty (30) days
16 prior to any change in its business that may affect compliance obligations arising under this
17 Consent Decree, including, but not limited to, any merger, incorporation, dissolution,
18 assignment, sale or other action that would result in the emergence of a successor corporation;
19 the creation or dissolution of a subsidiary, parent, or affiliate; the proposed filing of a
20 bankruptcy petition; or a change in the corporate name or address. Provided, however, that,
21 with respect to any proposed change in the corporation about which defendant, its successors
22 and assigns, learn less than thirty (30) days prior to the date such action is to take place, it shall
23 notify the Commission as soon as is practicable after obtaining such knowledge.

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

28 20. All reports, submissions, and notices required by Paragraphs 14 - 19 of this

1 Consent Decree shall be sent by certified mail to:

2 Regional Director
3 Western Region-San Francisco
4 Federal Trade Commission
5 901 Market Street, Suite 570
6 San Francisco, CA 94103
7 Attention: United States v. American Pop Corn Company

8 **CONTINUING JURISDICTION**

9 21. This Court shall retain jurisdiction of this matter for the purposes of enabling
10 any of the parties to this Consent Decree to apply to the Court at any time for such further
11 orders or directives as may be necessary or appropriate for the interpretation or modification of
12 this Consent Decree, for the enforcement of compliance therewith, or for the punishment of
13 violations thereof.

14 JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against defendant,
15 pursuant to all the terms and conditions recited above.

16 Dated this _____ day of _____, 2002.

17
18 _____
19 UNITED STATES DISTRICT JUDGE

20 The parties, by their counsel, hereby consent to the terms and conditions of the Consent
21 Decree as set forth above and consent to the entry thereof. Defendant waives any rights that
22 may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the
23 investigation and prosecution of this action.

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