

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

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In the Matter of)			FILE NO. 042-3047
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GATEWAY LEARNING CORP.,)			AGREEMENT CONTAINING
a corporation.)			CONSENT ORDER
)			

The Federal Trade Commission has conducted an investigation of certain acts and practices of Gateway Learning Corporation, a corporation, (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Gateway Learning Corporation, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Gateway Learning Corporation is a Delaware corporation with its principal office or place of business at 2900 South Harbor Boulevard, Suite 202, Santa Ana, CA 92704.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Personally identifiable information" or "personal information" shall mean individually identifiable information from or about an individual including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual's email address; (d) a telephone number; (e) a Social Security number; (f) a persistent identifier, such as a customer number held in a "cookie" or processor serial number, that is combined with other available data that identifies an individual; or (g) any other information from or about an individual that is combined with any of (a) through (f) above.

2. Unless otherwise specified, “Respondent” shall mean Gateway Learning Corporation and its successors and assigns and its officers, and its agents, representatives, and employees.
3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of personal information from or about an individual, shall not misrepresent in any manner, expressly or by implication:

- A. That Respondent will not sell, rent, or loan to third parties such personal information;
- B. That Respondent will not provide to any third party personal information about children under the age of thirteen;
- C. The manner by which Respondent will notify consumers of changes to its privacy policy; or
- D. The manner in which Respondent will collect, use, or disclose personal information.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, shall not disclose to any third party any personal information collected on the www.hop.com Web site prior to the date Gateway posted its revised privacy policy permitting third-party sharing (June 20, 2003), unless Respondent obtains the express affirmative (“opt-in”) consent of the consumers to whom such personal information relates.

III.

IT IS FURTHER ORDERED that Respondent, in connection with the posting of any privacy policy that contains a material change from the previous version of the policy, shall not apply such changes to information collected from or about consumers before the date of the posting, unless Respondent obtains the express affirmative (“opt-in”) consent of the consumers to whom such personal information relates.

IV.

IT IS FURTHER ORDERED that within five (5) days of the date of service of this order, Respondent, its successors and assigns, shall pay \$4,608 to the United States Treasury as disgorgement. Such payment shall be by cashier's check or certified check made payable to the Treasurer of the United States. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, Respondent shall also pay interest as computed under 28 U.S.C. § 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

V.

IT IS FURTHER ORDERED that respondent Gateway Learning Corporation and its successors and assigns shall, for a period of five (5) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying a print or electronic copy of all documents demonstrating their compliance with the terms and provisions of this order, including, but not limited to:

- A. a sample copy of each different privacy statement or communication relating to the collection of personally identifiable information containing representations about how personally identifiable information will be used or disclosed. Each Web page copy shall be dated and contain the full URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting the information on the Web; provided, however, that after creation of any Web page or screen in compliance with this order, Respondent shall not be required to retain a print or electronic copy of any amended Web page or screen to the extent that the amendment does not affect Respondent's compliance obligations under this order;
- B. a sample copy of each different document relating to any attempt by Respondent to obtain the express affirmative ("opt-in") consent of consumers and copies of any documents demonstrating such consent provided by consumers, as required by Parts II and III of this order; and
- C. all invoices, communications, and records relating to the disclosure of personally identifiable information to third parties.

VI.

IT IS FURTHER ORDERED that respondent Gateway Learning Corporation and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after the

date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that respondent Gateway Learning Corporation and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which a respondent learns less than thirty (30) days prior to the date such action is to take place, the respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondent Gateway Learning Corporation and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IX.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that a respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint

had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2003.

GATEWAY LEARNING CORPORATION

By: _____
JEAN MCKENZIE,
President

D. REED FREEMAN, JR.,
Collier Shannon Scott, PLLC
Counsel for Respondent Gateway Learning
Corporation

FEDERAL TRADE COMMISSION

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APPROVED:

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