

**IN THE MATTER OF**

**ZIFF DAVIS MEDIA INC.**

### **ASSURANCE OF DISCONTINUANCE**

1. This Assurance of Discontinuance (the “Assurance”) is effective August 28, 2002.
2. This Assurance is between the Attorneys General of the States of New York, California, and Vermont (the “States”); and Ziff Davis Media Inc. (“Ziff Davis”), a Delaware corporation with main offices located at 28 East 28th Street, New York, New York (collectively, the “Parties”).
3. Pursuant to the provisions of the laws of the State of New York, Article 22-A of the General Business Law and Executive Law § 63(12); the State of California, Business and Professions Code, §§ 17200 *et seq.* and 17500 *et seq.*; and the State of Vermont, Article 9 of Vermont Statutes, §§ 2451 *et seq.*, the States have investigated certain of Ziff Davis’ practices in collecting data from and about Internet users.
4. Ziff Davis has voluntarily cooperated in the States’ inquiries.
5. At this time, the States have determined to conclude their inquiries and Ziff Davis has agreed to a set of practices regarding certain aspects of its collection and storage of data from and about Internet users.
6. Ziff Davis’ execution of this Assurance does not constitute an admission by Ziff Davis that the company has violated any law or committed any wrongful or improper act.

### **I. FINDINGS**

7. Ziff Davis is a multimedia content company whose principal business is publishing. In online and print media, the company publishes and licenses magazines, provides editorial content about technology and the Internet, and produces conferences, seminars and webcasts on Internet and technology topics. Its publications include: *CIO Insight*, *Computer Gaming World*, *Electronic Gaming Monthly*, *eWeek*, *Baseline*, *Expert Gamer Codebook*, *GameNow*, *Official U.S. Playstation Magazine*, *PC Magazine*, *Pocket Games*, and *Xbox Nation*. Ziff Davis was incorporated in the state of Delaware on November 24, 1999.
8. On or about November 15, 2001, Ziff Davis ran an online promotional offer for free subscriptions to one of its magazines. The promotion also included an option to subscribe to the magazine beyond the promotional period.

a. For the online promotion, Ziff Davis created a Web page on which consumers could submit their subscription information. Ziff Davis solicited the personally identifying information (“PII”) of name, address, and e-mail address. Should a consumer elect to subscribe beyond the free promotional offer, the consumer could provide credit card information. The design and implementation of the promotion had been used by Ziff Davis in prior online promotions for other Ziff Davis publications, although without soliciting credit card information.

b. On or about November 19, 2001, Ziff Davis learned that the promotion’s subscription data file was accessible and that this fact had been discussed on a Web bulletin board.

c. The subscription data file contained approximately 12,000 entries, of which approximately 50 included subscribers’ credit card information.

d. At least five consumers had fraudulent credit card charges made on their accounts as a result of the data exposure. Others reported that they had received e-mail messages from other Internet users to warn them of accessibility of the subscription file.

9. Ziff Davis, in the design and implementation of its online promotion:

a. coded the Web page on which subscribers provided their personal information in such a way that the name of the subscriber data file was visible in the HTML source code<sup>1</sup>;

b. transmitted the subscriber data in an unencrypted form to Ziff Davis’ server<sup>2</sup>;

c. stored the subscriber data file in the same, publicly accessible server directory as the promotion Web page itself;

d. stored the subscriber data file without authentication controls such as login name and password;

e. stored the subscriber data in an unencrypted flat file, such that an Internet user who accessed the subscriber data file could read its contents.

10. Ziff Davis ran the promotion on a third-party Web-hosting service and did not exercise control of preventive security measures such as a server intrusion detection system<sup>3</sup>.

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<sup>1</sup> HTML is an acronym for “Hypertext Markup Language.” A Website transmits HTML statements to a user’s browser to instruct the browser how it should display the requested Web page and process user input.

<sup>2</sup> A “server” is the operating system and hosted application that communicate with the users’ Web browser software.

<sup>3</sup> An “intrusion detection system” or “IDS” is a host or network-level application that monitors and reports on misuse or anomalous use of computer system resources.

11. After Ziff Davis learned of the breach:
  - a. Ziff Davis deleted the subscriber data file from the server.
  - b. For up to an hour, however, Ziff Davis did not take the promotion Web page offline. Because of the way the promotion was designed, it automatically recreated the data file. During that time, new subscriptions continued to flow into the exposed subscriber data file until Ziff Davis disabled the subscription Web page.
  - c. The company then moved the data file to a more secure location on the server, began encrypting the transmission of data, and restored the promotion within a couple of days.
12. Ziff Davis had limited means of identifying the cause or assessing the extent of the intrusion because it had previously disabled server logging functions.
13. On Ziff Davis' Website, Ziff Davis had posted a privacy policy that included the following statements:
  - a. "Privacy Policy: We are committed to protecting your privacy at Ziff Davis Media. We will not collect any personal information from you that you do not volunteer, and we are the sole owner of all information collected on this site. We do not sell, share, or rent this information to others in any way that we have not mentioned in this statement."
  - b. "What we provide to third parties: While Ziff Davis Media does not provide any third-party access to your personal information, we may provide third parties with aggregate statistics about our customers, traffic patterns, and related site information."
  - c. "Security: We use reasonable precautions to keep the personal information you disclose to both our magazine and website secure and to only release this information to third parties we believe share our commitment to privacy."
14. The States find that:
  - a. with the dramatic increase in the ease and frequency with which businesses amass vast collections of electronic data from consumers' online activities, consumers are increasingly concerned about the privacy, security, and integrity of their online data;
  - b. consumers have no direct means to monitor the privacy, security, and data integrity standards and practices of online businesses;
  - c. consumers enter into online transactions expecting that an online business will take reasonable steps to guard against threats and risks that the business reasonably could be expected to anticipate.

15. Based on the foregoing:

a. The Attorney General of the State of New York finds that Ziff Davis has violated New York General Business Law §§ 349 and 350, which prohibit deceptive business practices and false advertising. Ziff Davis has thus also violated New York Executive Law § 63(12), which prohibits repeated, fraudulent and/or illegal business activities.

b. The Attorney General of the State of California finds that Ziff Davis has violated California Business and Professions Code, §§ 17200 *et seq.* and 17500 *et seq.*, which prohibit unlawful, unfair or fraudulent business practices and untrue or misleading advertising.

c. The Attorney General of the State of Vermont finds that Ziff Davis has violated Vermont Statutes, Chapter 9, §§ 2451 *et seq.*, which prohibit deceptive business practices and false advertising.

16. IT NOW APPEARS that Ziff Davis, without admitting to or conceding the foregoing Findings or any violation of law, is willing to enter into this Assurance, and the States, pursuant to New York Executive Law § 63(15) and the authority under the respective laws of California and Vermont, are willing to accept this Assurance in lieu of commencing proceedings in their respective jurisdictions, in full satisfaction of the allegations raised herein.

## II. STATEMENT BY ZIFF DAVIS MEDIA INC.

17. Ziff Davis believes that it is, and at all times has been, in compliance with all applicable laws. It is entering into this Assurance so that this matter may be resolved amicably, without further cost or inconvenience. Ziff Davis believes that the events giving rise to this Assurance reflect an isolated incident of access to the customer data at issue by a person not authorized by Ziff Davis to do so. At no time did Ziff Davis wrongfully transmit or otherwise affirmatively provide any customer data to any third party.

18. On November 14, 2001, Ziff Davis' circulation department began running a promotion for one of its magazines. It had run similar promotions, using the same code, and had never been made aware of any security concerns. This particular promotion was the first time that the option to subscribe using a credit card was included. On November 19, 2001, Ziff Davis learned that the URL, or Internet address, of the file containing the customer data had been posted on a Web bulletin board and that a person not authorized by Ziff Davis had been able to access the file containing subscriber data from the promotion.

19. On notice that there had been a breach of its customer data, Ziff Davis took immediate steps to cure the breach. Within 24 hours, Ziff Davis removed the original data file from its server, disabled the order form, and rewrote the applicable code so that the file containing customer data was retained on an area of the Ziff Davis server that is not accessible via HTTP<sup>4</sup>. Ziff Davis also ensured that any similar promotions would follow such security protocols.

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<sup>4</sup> "Hypertext Transfer Protocol," the communications protocol that forms the basis of Web interactions.

20. Ziff Davis also took immediate steps to notify affected consumers of the breach. On November 20, 2001, each of the approximately fifty (50) customers that had used a credit card to order a subscription through the promotion was notified of the breach by both e-mail and letter from Ziff Davis' Senior Vice President of Circulation sent by regular mail. In addition, a prominent notice concerning the breach was placed on the new order form for the applicable promotion.

21. Ziff Davis also commenced an in-depth review of its data control practices. It determined that the coding problems that made the breach possible were limited to this one particular code, which had only been previously utilized for free promotions offered by Ziff Davis' circulation department. No such possible exposure existed before, or now, with Ziff Davis' standard subscription procedures. Ziff Davis' investigation and its remedial actions were initiated prior to any contact from the States. Once contacted by the States, Ziff Davis cooperated fully in their investigation.

### III. TERMS

22. IT IS HEREBY AGREED by and between the parties that this Assurance shall be binding on, and apply to, Ziff Davis and its successors and assigns; their principals, officers, directors, servants, and employees; and representatives and agents acting within the scope of their authority to hold themselves out as acting on behalf of or under the direction or control of Ziff Davis or its successors and assigns.

23. IT IS FURTHER AGREED that the obligations of this Assurance shall apply exclusively to Ziff Davis' practices relating to data from or about individual United States consumers and received or used in those consumers' e-commerce transactions ("Consumer Data"); and where such practices take place during the transmission of Consumer Data to, from, or within a digital network-connected system, such as an Internet server, or during the storage of Consumer Data on such a system.

24. IT IS FURTHER AGREED that Ziff Davis shall, in general:

- a. make accurate representations to consumers about its practices relating to the privacy, security, and integrity of Consumer Data;
- b. identify reasonably foreseeable internal and external risks to the privacy, security, and integrity of Consumer Data;
- c. address these risks in each relevant area of Ziff Davis' operations;
- d. address these risks by means that include: (i) management and training of personnel; (ii) monitoring of information systems that transmit, process, and store Consumer Data; and (iii) establishment of procedures to prevent and respond to attack, intrusion, unauthorized access, and other system failures that would tend to affect the privacy, security, and integrity of Consumer Data;
- e. implement standard practices relating to the privacy, security, and integrity of Consumer Data, where such standards have gained sufficient industry acceptance and adoption such that Ziff Davis' adherence to the standards would not unreasonably place Ziff Davis at a competitive disadvantage.

25. IT IS FURTHER AGREED that, in its conduct of electronic transactions with consumers, Ziff Davis shall take reasonable steps to ensure the privacy, security, and integrity of Consumer Data, including that it shall:

- a. review any e-commerce application prior to implementation to assess and document its impact on Consumer Data, in light of known risks;
- b. review the system on which any e-commerce application resides prior to implementation to assess and document the privacy, security, and integrity impact on Consumer Data of system characteristics and configuration in light of known risks, such as available server security patches;
- c. provide access only to users authorized by Ziff Davis by storing Consumer Data in a location, where reasonably available, such as a directory inaccessible via HTTP and/or protected by a firewall;
- d. implement authentication procedures to control local and remote access to Consumer Data;
- e. store Consumer Data in a database format that cannot be meaningfully interpreted if opened as a flat, plain-text file;
- f. encrypt the transmission of Sensitive Consumer Data<sup>5</sup>;
- g. detect unauthorized and suspicious activity regarding Consumer Data by enabling and monitoring automated tools such as server logging and intrusion detection systems.

26. IT IS FURTHER AGREED that, in the event Ziff Davis identifies the reasonable likelihood that an event or condition impacting the privacy, security, and integrity of Consumer Data has occurred or may occur, Ziff Davis shall take reasonable responsive actions, including that it shall:

- a. take the affected application off-line or otherwise suspend affected activity;
- b. take reasonable additional measures to secure Consumer Data from unauthorized access;
- c. investigate the causes and means of preventing the event or condition;
- d. modify the application and system to conform to industry standards and to guard against the identified risk.

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<sup>5</sup> “Sensitive Consumer Data” categorically includes but is not limited to credit card information; social security number; data related to an individual’s health or medical condition, sexual behavior or orientation, or detailed personal finances, information that appears to relate to children under 13, racial or ethnic origin, political opinions, religious or philosophical opinions or beliefs and trade union membership; and PII obtained from individuals who were children under the age of 13 at the time of data collection.

27. IT IS FURTHER AGREED that Ziff Davis shall take administrative steps to ensure the fulfillment of the above-described obligations, including that it shall:

- a. designate appropriate personnel to coordinate and oversee the obligations set forth in this Assurance;
- b. develop protocols and procedures for its activities affecting the privacy, security, and integrity of Consumer Data;
- c. develop and maintain relevant training materials and train relevant employees;
- d. develop and document procedures for monitoring compliance with the terms of this Assurance;
- e. within six (6) months after execution of this Assurance, and at least annually thereafter, complete an internal review to examine its applications and system configurations, and otherwise verify compliance with the terms of the Assurance;
- f. within nine (9) months after execution of this Assurance, complete an external review by qualified persons, who shall be subject to the approval of the States, which approval shall not be unreasonably withheld; and which review shall document Ziff Davis' compliance with the terms of this Assurance, evaluate compliance effectiveness, recommend modifications, and otherwise document the conformance of Ziff Davis' practices to its representations regarding the privacy, security, and integrity of Consumer Data;
- g. report the results of such external review to the States; and
- h. adjust its standards, practices or procedures in light of the findings or recommendations resulting from the internal review, the external review, other ongoing monitoring, or any material changes to Ziff Davis' operations that impact the privacy, security, and integrity of Consumer Data.

28. IT IS FURTHER AGREED that:

- a. Ziff Davis shall, within two weeks of execution of this Assurance, pay the sum of \$500 to each subscriber who provided credit card data in the promotion, which payment shall be made by means of a check mailed to the subscription address provided by each such subscriber or to a mailing address subsequently provided by such a subscriber; should any such check be returned as undeliverable, Ziff Davis shall attempt to ascertain a valid mailing address by e-mailing or otherwise contacting the subscriber and shall attempt redelivery; and provided that the distribution procedure and related correspondence to subscribers shall be subject to the prior approval of the States, which shall not be unreasonably withheld.<sup>6</sup>

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<sup>6</sup> The letter accompanying the check to consumers shall be in the form shown in Attachment "A" to this Assurance.

b. Ziff Davis shall, upon execution of this Assurance, pay the sum of \$100,000 to the New York State Department of Law, to be divided among the States as they may agree, as and for investigative costs, consumer education, or any other purpose authorized by state law, at the discretion of each State.

29. IT IS FURTHER AGREED that:

a. This Assurance shall be governed by the laws of each of the respective States.

b. The execution of this Assurance by a State shall not be deemed or construed as an approval by the State of any of Ziff Davis' activities or practices, past or present, and Ziff Davis shall not make any representations to the contrary.

c. Ziff Davis' obligations under this Assurance shall be in addition to those imposed by the laws of the respective States, including but not limited to statutes, regulations, and court decisions; and nothing herein shall be deemed to excuse compliance with such laws.

d. Nothing in this Assurance shall be construed to authorize or require any action by Ziff Davis in violation of applicable federal, state, or other laws.

e. Nothing in this Assurance shall be construed as a waiver of any private rights of action of any person. Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

30. IT IS FURTHER AGREED that:

a. To the extent that any cause of action arises under this Assurance, Ziff Davis irrevocably submits to the personal jurisdiction of the state or federal courts of the States that are parties to the cause of action; or, at the discretion of the States that are parties to the cause of action, to the personal jurisdiction of the state or federal courts of the State of New York.

b. Ziff Davis waives all objections to the legal effect and enforceability of the terms of this Assurance.

c. Should any court of competent jurisdiction decide that any term of this Assurance is invalid, void, or unenforceable, the remaining terms shall continue to be enforceable, and that court's decision shall be interpreted to preserve the enforceability of the remaining terms as much as possible.

31. IT IS FURTHER AGREED that:

a. The Parties may execute this Assurance by signing counterpart copies of this Assurance. Each counterpart copy constitutes an original, and all counterpart copies together constitute one and the same Assurance.

b. This Assurance may not be modified, supplemented, or superseded unless the Parties document such an intent by executing and delivering a written agreement.

c. All notices, requests, demands or other communications required by this Assurance or given pursuant to its Terms must be in writing. For any such communication to be considered delivered, it must be delivered by hand; mailed by registered or certified mail, postage prepaid; or sent by a courier service such as FedEx, UPS, or Airborne Express to all Parties besides the sender of the communication, to the each of the States as listed in the signature pages of this Assurance,

or to Ziff Davis at:

Ziff Davis Media Inc.  
28 East 28th Street  
New York, New York 10016-7930  
Attention: Carolyn Schurr Levin, Esq.  
General Counsel  
Fax: (212) 503-3560

with a copy to:

Davis Wright Tremaine, LLP  
1740 Broadway  
New York, New York 10019  
Attention: Elizabeth McNamara, Esq.  
Fax: (212) 489-8340

WHEREFORE, the following signatures are affixed hereto:

ZIFF DAVIS MEDIA INC.  
28 East 28th Street  
New York, New York 10016-7930

By: \_\_\_\_\_  
ROBERT F. CALLAHAN  
Chairman and CEO

**CORPORATE ACKNOWLEDGEMENT**

STATE OF NEW YORK        )

:SS

COUNTY OF NEW YORK    )

ROBERT F. CALLAHAN, being duly sworn, deposes and says:

I am a corporate officer of Ziff Davis Media Inc., the entity described in and which executed the foregoing Assurance of Discontinuance. I have executed the aforesaid instrument with the consent and authority of Ziff Davis Media Inc. and those responsible for the acts of said entity and duly acknowledge same.

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Sworn to before me this  
26th day of August, 2002

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Notary Public

ATTORNEYS FOR ZIFF DAVIS MEDIA INC.:

DAVIS WRIGHT TREMAINE, LLP

1740 Broadway

New York, New York 10019

By: \_\_\_\_\_  
VICTOR A. KOVNER, Esq.

**FOR THE STATES**

**BILL LOCKYER**

Attorney General  
State of California

**SUSAN HENRICHSEN**

Deputy Attorney General

**ELIOT SPITZER**

Attorney General  
State of New York

**DAVID A. STAMPLEY**

Assistant Attorney General

**WILLIAM H. SORRELL**

Attorney General  
State of Vermont

**JULIE BRILL**

Assistant Attorney General

**IN THE MATTER OF ZIFF DAVIS MEDIA INC.  
ASSURANCE OF DISCONTINUANCE**

DATED: \_\_\_\_\_, 2002

**ELIOT SPITZER**  
Attorney General of the State of New York  
120 Broadway  
New York, New York 10271-0332

By: \_\_\_\_\_  
**DAVID A. STAMPLEY**  
Assistant Attorney General

**IN THE MATTER OF ZIFF DAVIS MEDIA INC.  
ASSURANCE OF DISCONTINUANCE**

DATED: \_\_\_\_\_, 2002

**BILL LOCKYER**  
Attorney General of the State of California  
110 West A Street, Suite 1100  
San Diego, California 92101

By: \_\_\_\_\_  
**SUSAN HENRICHSEN**  
Deputy Attorney General

**IN THE MATTER OF ZIFF DAVIS MEDIA INC.  
ASSURANCE OF DISCONTINUANCE**

DATED: \_\_\_\_\_, 2002

**WILLIAM H. SORRELL**  
Attorney General of the State of Vermont  
109 State Street  
Montpelier, Vermont 05609-1001

By: \_\_\_\_\_  
**JULIE BRILL**  
Assistant Attorney General

**ATTACHMENT "A"**

*[Ziff Davis Media Letterhead]*

*[date]*

*[name and address of EGM subscriber]*

Re: Explanation of Payment

Dear *[name of EGM subscriber]*:

Enclosed please find a check for \$500 from Ziff Davis Media Inc.

You are receiving this check as a result of an agreement between Ziff Davis Media and the Attorneys General of the states of California, New York, and Vermont. Any U.S. consumer who provided credit card information when subscribing to *Electronic Gaming Monthly* in the November 14, 2001 online promotion is entitled to this \$500 payment.

Ziff Davis Media and the States reached this agreement to resolve concerns that an online security breach in connection with the November 14, 2001 promotion allowed subscriber data to be accessed by unauthorized parties. This payment is in recognition of the importance of maintaining the security and privacy of your data. We have taken strong measures to ensure that all subscriber data files remain secure now and in the future.

If you have any questions, please contact any of the persons listed below.

Thank you for your ongoing support. We look forward to serving you in the months and years to come.

Sincerely,  
Ziff Davis Media

Charles Mast Senior Vice President, Circulation Ziff Davis Media Inc.	Phone: 212-503-5361 Email: <i>Charles_Mast@ziffdavis.com</i>
Susan Henrichsen Deputy Attorney General State of California	Phone: 619-645-2081 Email: <i>Susan.Henrichsen@doj.ca.gov</i>
Dave Stampley Assistant Attorney General State of New York	Phone: 212-416-8332 Email: <i>David.Stampley@oag.state.ny.us</i>
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