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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

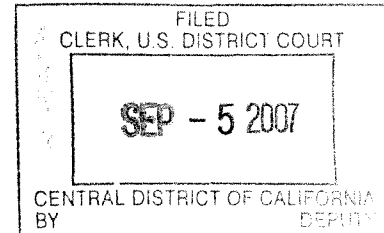
13 FEDERAL TRADE COMMISSION,

14 Plaintiff,

15 v.

16 DIGITAL ENTERPRISES, INC., d/b/a  
MOVIELAND.COM, a California  
17 corporation; TRIUMPHANT VIDEOS,  
INC., d/b/a POPCORN.NET, a  
18 California corporation; PACIFICON  
INTERNATIONAL, INC., d/b/a VITALIX,  
19 a California corporation; ALCHEMY  
COMMUNICATIONS, INC., a California  
20 corporation; ACCESSMEDIA NETWORKS,  
INC., a Delaware corporation;  
21 INNOVATIVE NETWORKS, INC., a  
California corporation; FILM WEB,  
22 INC., a Wyoming corporation; BINARY  
SOURCE, INC., d/b/a MOVIEPASS.TV, a  
23 California corporation;  
MEDIACASTER, INC., d/b/a  
24 MEDIACASTER.NET, a Delaware  
corporation; CS HOTLINE, INC., a  
25 California corporation; FROSTHAM  
MARKETING, INC., a Florida  
26 corporation; LONGVIEW MEDIA, INC.,  
a California corporation; EASTON  
27 HERD; and ANDREW GARRONI,

28 Defendants.



Case no.

**FIRST AMENDED COMPLAINT FOR  
PERMANENT INJUNCTION AND  
OTHER EQUITABLE RELIEF**

1 Plaintiff Federal Trade Commission (hereinafter "FTC" or  
2 "Commission") for its complaint alleges:

3 1. The FTC brings this action under Section 13(b) of the  
4 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to  
5 obtain preliminary and permanent injunctive relief, rescission of  
6 contracts, restitution, disgorgement and other equitable relief  
7 for Defendants' deceptive and unfair acts or practices in  
8 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9 **JURISDICTION AND VENUE**

10 2. This Court has subject matter jurisdiction over the  
11 FTC's claims pursuant to 15 U.S.C. §§ 45(a) and 53(b) and 28  
12 U.S.C. §§ 1331, 1337(a) and 1345.

13 3. Venue in the Central District of California is proper  
14 under 15 U.S.C. § 53(b), as amended by the FTC Act Amendments of  
15 1994, Pub. L. No. 103-312, 108 Stat. 1691, and 28 U.S.C. §§  
16 1391(b) and (c).

17 **PLAINTIFF**

18 4. Plaintiff **FTC** is an independent agency of the United  
19 States government created by statute. 15 U.S.C. §§ 41 et seq.  
20 The Commission is charged with, inter alia, enforcing Section 5(a)  
21 of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or  
22 deceptive acts or practices in or affecting commerce.

23 5. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),  
24 authorizes the FTC to initiate federal district court proceedings,  
25 in its own name by its designated attorneys, to enjoin violations  
26 of any provision of law enforced by the FTC, and to secure such  
27 equitable relief as may be appropriate in each case, including  
28 rescission of contracts, restitution and disgorgement, 15 U.S.C.

1 § 53(b).

2 DEFENDANTS

3 6. Defendant **Digital Enterprises, Inc.** (hereinafter  
4 "Digital Enterprises") is a California corporation incorporated in  
5 2004 that also does business as Movieland.com. Digital  
6 Enterprises transacts or has transacted business within the  
7 Central District of California. It transacts or has transacted  
8 business through a mail drop address at 23705 Van Owen St., #119,  
9 West Hills, CA 91307 that it has registered with the California  
10 Secretary of State as its principal executive office. It has also  
11 transacted business at 6300 Canoga Ave., 15th Floor, Woodland  
12 Hills, CA, a business location also used by Defendant Alchemy  
13 Communications, Inc. During some of the time period material to  
14 this complaint, Digital Enterprises has been the registrant of the  
15 movieland.com domain name.

16 7. Defendant **Triumphant Videos, Inc.** (hereinafter  
17 "Triumphant Videos") is a California corporation incorporated in  
18 2003 that also does business as Popcorn.net. Triumphant Videos  
19 transacts or has transacted business within the Central District  
20 of California. It transacts or has transacted business through a  
21 mail drop address at 7095 Hollywood Blvd., #712, Hollywood, CA  
22 90028. It also transacts or has transacted business through mail  
23 drop addresses at 10200 Mason Avenue #144, Chatsworth, CA 91311  
24 and 5482 Wilshire Blvd., #1545, Los Angeles, CA 90036. During  
25 most or all of the time period material to this complaint,  
26 Triumphant Videos has been the registrant of the moviepass.tv and  
27 popcorn.net domain names.

28 8. Defendant **Pacificon International, Inc. d/b/a Vitalix**

1 (hereinafter "Pacificon"), is a California corporation  
2 incorporated in 2000. Pacificon transacts or has transacted  
3 business within the Central District of California. It transacts  
4 or has transacted business through a mail drop address at 3940  
5 Laurel Canyon #609, Studio City, CA 91604. It has also  
6 transacted business at 2265 Westwood Blvd., Suite 197, Los  
7 Angeles, CA 90064. During some of the time period material to  
8 this complaint, Pacificon has controlled IP addresses used by the  
9 movieland.com, moviepass.tv, and mediacaster.net websites.

10 9. Defendant **Alchemy Communications, Inc.** (hereinafter  
11 "Alchemy") is a California corporation incorporated in 1995.  
12 Alchemy Communications transacts or has transacted business within  
13 the Central District of California. It transacts or has  
14 transacted business at 1200 West 7th St., Ste. L1-100, Los  
15 Angeles, CA 90017. It also transacts or has transacted business  
16 at 6300 Canoga Ave., 15th Floor, Woodland Hills, CA, a business  
17 location also used by Digital Enterprises. At all times material  
18 to this complaint, Alchemy has provided customer service and other  
19 management services for the other corporate defendants.

20 10. Defendant **AccessMedia Networks, Inc.** (hereinafter  
21 "AccessMedia") is a Delaware corporation incorporated in 2002.  
22 AccessMedia transacts or has transacted business within the  
23 Central District of California. It has registered 8646 Edwin  
24 Drive, Los Angeles, CA 90046 with the California Secretary of  
25 State as its California address. During some of the time period  
26 material to this complaint, AccessMedia has served both as the  
27 registrant of the movieland.com domain name and the technical and  
28 administrative contact for the movieland.com website and has

1 shared telephone numbers and customer service infrastructure with  
2 Defendant Digital Enterprises.

3 11. Defendant **Innovative Networks, Inc.** (hereinafter  
4 "Innovative Networks") is a California corporation incorporated in  
5 2001. Innovative Networks transacts or has transacted business  
6 within the Central District of California. Innovative Networks  
7 transacts or has transacted business through a mail drop address  
8 at 20841 Ventura Blvd., #357, Woodland Hills, CA 91634. During  
9 some or all of the time period material to this complaint,  
10 Innovative Networks has received the proceeds of consumers'  
11 payments to Defendant Digital Enterprises for the consumers'  
12 purported contractual obligations to movieland.com.

13 12. Defendant **Film Web, Inc.** (hereinafter "Film Web") is a  
14 Wyoming corporation incorporated in 2002. Film Web transacts or  
15 has transacted business within the Central District of California.  
16 During some or all of the time period material to this complaint,  
17 payments made by consumers via check on the movieland.com website  
18 via the payment service "ChargeMeLater" have been transferred to  
19 Film Web.

20 13. Defendant **Binary Source, Inc.** (hereinafter "Binary  
21 Source") is a California corporation incorporated in 2004 that  
22 also does business as Moviepass.tv. Binary Source transacts or  
23 has transacted business within the Central District of California.  
24 It transacts or has transacted business through a mail drop  
25 address at 4804 Laurel Canyon Blvd. #536, Valley Village, CA  
26 91607. During some or all of the time period material to this  
27 complaint, the moviepass.tv website has instructed consumers that  
28 checks written to satisfy consumers' purported contractual

1 obligations to moviepass.tv should be made payable to Binary  
2 Source.

3 14. Defendant **Mediacaster, Inc.** (hereinafter "Mediacaster")  
4 is a Delaware corporation that also does business as  
5 www.mediacaster.net. Mediacaster transacts or has transacted  
6 business within the Central District of California. During some  
7 or all of the time period material to this complaint,  
8 "www.mediacaster.net" has appeared as the merchant on consumers'  
9 credit cards statements when consumers have used credit cards to  
10 make payments to movieland.com or moviepass.tv.

11 15. Defendant **CS Hotline, Inc.** (hereinafter "CS Hotline"),  
12 is a California corporation incorporated in 2003. CS Hotline  
13 transacts or has transacted business within the Central District  
14 of California. It transacts or has transacted business through a  
15 mail drop address at 3940 Laurel Canyon Blvd., #859, Studio City,  
16 CA 91604. During most or all of the time period material to this  
17 complaint, CS Hotline has provided customer support services for  
18 moviepass.tv.

19 16. Defendant **Frosthams Marketing, Inc.** (hereinafter  
20 "Frosthams Marketing") is a Florida corporation incorporated in  
21 2003. Frosthams Marketing transacts or has transacted business in  
22 the Central District of California. During some of the time  
23 period material to this complaint, Frosthams Marketing registered  
24 8646 Edwin Drive, Los Angeles, CA 90046 with the California  
25 Secretary of State as its California address. Defendant Frosthams  
26 Marketing also transacts or has transacted business at 9201  
27 Oakdale Ave., Chatsworth, CA 91311. It also transacts or has  
28 transacted business through mail drop addresses at 3940 Laurel

1 Canyon Blvd., #191 and #609, Studio City, CA 91604. During some  
2 or all of the time period material to this complaint, Defendant  
3 Frostham Marketing has participated in or controlled marketing and  
4 advertising of trial memberships to Internet download services on  
5 the movieland.com, moviepass.tv, and popcorn.net websites.

6 17. Defendant **Longview Media, Inc.** (hereinafter "Longview  
7 Media") is a California corporation incorporated in 1999.  
8 Longview Media transacts or has transacted business in the Central  
9 District of California. It transacts or has transacted business  
10 at 6300 Canoga Ave., 15th Floor, Woodland Hills, CA. It also  
11 transacts or has transacted business at 9201 Oakdale Ave.,  
12 Chatsworth, CA 91311. During some or all of the time period  
13 material to this complaint, Defendant Longview Media has  
14 participated in or controlled marketing and advertising of trial  
15 memberships to Internet download services on the movieland.com,  
16 moviepass.tv, and popcorn.net websites.

17 18. Defendant **Easton Herd** is the sole officer and director  
18 of Defendants Digital Enterprises and Triumphant Videos. He  
19 resides in the Central District of California and transacts  
20 business there. At all times material to this complaint, acting  
21 alone or in concert with others, he has formulated, directed,  
22 controlled, or participated in the acts and practices set forth in  
23 this complaint.

24 19. Defendant **Andrew Garroni** is an officer or director of  
25 Defendants Pacificon, Alchemy, Film Web, and Binary Source. He  
26 resides in the Central District of California and transacts  
27 business there. At all times material to this complaint, acting  
28 alone or in concert with others, he has formulated, directed,

1 controlled, or participated in the acts and practices set forth in  
2 this complaint.

3 20. The foregoing entities, Digital Enterprises, Triumphant  
4 Videos, Pacificon, Alchemy, AccessMedia, Innovative Networks, Film  
5 Web, Binary Source, Mediacaster, CS Hotline, Frostham Marketing,  
6 and Longview Media operate as a common enterprise throughout the  
7 United States under the names Movieland.com, Moviepass.tv, and  
8 Popcorn.net.

9 **COMMERCE**

10 21. The acts and practices of Digital Enterprises,  
11 Triumphant Videos, Pacificon, Alchemy, AccessMedia Networks,  
12 Innovative Networks, Film Web, Binary Source, Mediacaster, CS  
13 Hotline, Frostham Marketing, Longview Media, Easton Herd, and  
14 Andrew Garroni (collectively, "Defendants") alleged in this  
15 Complaint are or have been in or affecting commerce, as "commerce"  
16 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

17 **DEFENDANTS' UNLAWFUL BUSINESS PRACTICES**

18 22. Since at least the Fall of 2005, Defendants,  
19 individually and in concert, and through the mutual assistance of  
20 one another, have engaged in a nationwide scheme to use deception  
21 and coercion to extract payments from consumers. Defendants'  
22 putative business offers consumers membership to an Internet  
23 download service with content such as news, sports, games, and  
24 adult entertainment. This service supposedly uses software called  
25 a "download manager" that, once installed on a computer, will  
26 allow access to Defendants' download service. Defendants purport  
27 to market the software and download service with a 3-day free  
28 trial offer.



1           23. Installation of Defendants' download manager is merely a  
2 smokescreen concealing Defendants' true purpose: to install  
3 software and other files onto consumers' computers that enable  
4 Defendants to launch pop-up windows on consumers' computers  
5 demanding payments to Defendants. These pop-up windows, which  
6 display both textual and audiovisual payment demands,  
7 significantly disrupt consumers' use of their computers. After  
8 Defendants cause these pop-up payment demands to display on a  
9 particular computer for the first time, they cause them to  
10 redisplay again and again with ever-increasing frequency. To get  
11 these pop-ups to stop appearing, many consumers give in to  
12 Defendants' extortionate tactics and pay the Defendants.

13           24. Defendants have carried out their scheme on the Internet  
14 using at least three names: "Movieland.com," at the URL  
15 movieland.com, since the Fall of 2005 or earlier; "Moviepass.tv,"  
16 at the URL moviepass.tv, since early 2006; and "Popcorn.net," at  
17 the URL popcorn.net, since in or around June 2006.

18           25. Defendants have identified their download manager (the  
19 software that supposedly facilitates consumers' access to  
20 Defendants' Internet download service) as "MediaPipe",  
21 "FileGrabber", and "Media Assistant." Defendants' Movieland.com  
22 site identifies its download manager as "MediaPipe." Defendants'  
23 Moviepass.tv site generally calls the download manager  
24 "FileGrabber" but also refers to it as "MediaPipe." Defendants'  
25 Popcorn.net site generally identifies the download manager as  
26 "Media Assistant" but also refers to it as "FileGrabber."

27           26. To ensure that consumers cannot free their computers  
28 from the pop-up payment demands, Defendants install programs and

1 computer code that prevent consumers from using reasonable means  
2 to uninstall Defendants' software.

3 Defendants use textual and audiovisual pop-up  
4 messages to demand payments from consumers

5 27. Many consumers report that their first encounter with  
6 the Defendants is a demand for payment that Defendants cause to  
7 appear on consumers' computer screens in a pop-up window on top of  
8 a large, dark background. The pop-up window and the text  
9 contained within it stream onto consumers' computer screens while  
10 music plays. The header line on the pop-up window reads  
11 "Movieland.com, "Moviepass.tv," or "Popcorn.net" and "3 DAY TRIAL  
12 EXPIRED." A graphic on the left of the pop-up reads "STOP THESE  
13 REMINDERS NOW" and "CLICK CONTINUE." The text inside the pop-up  
14 reads substantially the same as follows:

15 On 2006-02-18 at 13:35:44 PST our content  
16 access software was installed on your system  
17 and your 3 day free trial began.

18  
19 Your I.P. address at the time was  
20 71.192.119.243. Your customer ID is 65416640.

21  
22 Click 'Continue' to purchase your license and  
23 stop these reminders.

24 The date, time, IP address and customer ID listed in the pop-up  
25 window varies from consumer to consumer. Although the Defendants  
26 have made some minor modifications to the pop-up window's text  
27 during the course of their scheme, the text has remained  
28 substantially the same.

1           28. The pop-up "reminder" (reproduced below as Figure 1)  
2 takes up much of the computer screen, obstructs consumers from  
3 working in other windows, and lacks any obvious way to permit  
4 consumers to minimize or close it, as it lacks the familiar "X" or  
5 "\_" symbols that often appear on pop-up windows. The only option  
6 this first pop-up offers to consumers is a button marked  
7 "Continue."

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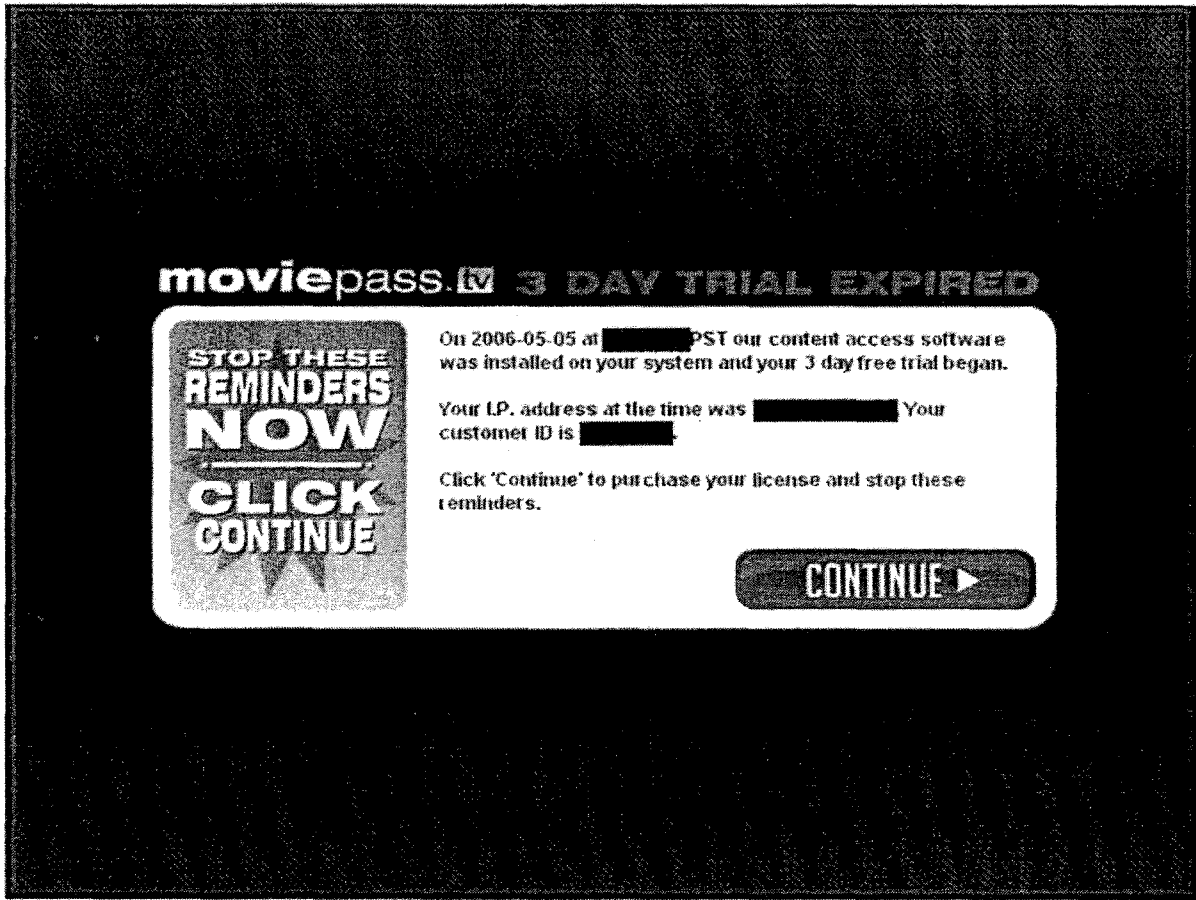
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1 Figure 1



18 29. Consumers who click on the "Continue" button find their

19 computers launching an audiovisual file that features a woman

20 speaking over background music in front of a display of the words

21 "Movieland.com," "Moviepass.tv," or "Popcorn.net." The woman who

22 speaks about "Movieland.com" or "Moviepass.tv" states the

23 following:

24 Hello, I'm Kate, your personal customer

25 service representative. I'm glad you enjoyed

26 your free trial and had a chance to experience

27 all that our service has to offer, including

28 full length movies, music, news, sports

1 scores, mature content, and our award-winning  
2 entertainment section. Because you did not  
3 cancel during your trial period, you are now  
4 legally obligated to make your payment as per  
5 the terms and conditions you agreed to when  
6 you installed our content delivery software.  
7 Just choose the payment option that's right  
8 for you and continue to enjoy the service as  
9 one of our valued customers.

10 The woman who speaks about "Popcorn.net" makes the same speech,  
11 except she identifies herself as "Maria" rather than "Kate" and  
12 mentions "mature content" before she mentions "sports scores."

13 30. As the video clip nears its conclusion (approximately 40  
14 seconds after it begins playing), a dialog box entitled "PAYMENT  
15 OPTIONS" appears next to it. A picture of the video clip and the  
16 dialog box is reproduced below as Figure 2. The dialog box  
17 includes payment options for "monthly licenses" or "annual  
18 licenses," an option labeled "Close this window," and a button  
19 labeled "Continue." A button labeled "Frequently Asked Questions"  
20 also appears above the dialog box.

1 Figure 2



31. Consumers who choose a payment option and press the "Continue" button are linked to a web page that provides instructions for the particular payment method, including: credit card, online check (electronic bank debit), or check or money order via mail.

32. Consumers who choose the "Close this window" option are freed from pop-ups temporarily; however, the sequence of pop-up payment demands soon repeats itself. In fact, as time passes, the

1 pop-up payment demands appear more and more frequently, and they  
2 remain impervious to being closed or minimized each time.

3 33. Defendants reinforce their repeated demands for payments  
4 and false statements about consumers' responsibility to pay them  
5 on the "Customer Service" and "Frequently Asked Questions"  
6 sections of their websites. For example, under the heading "I  
7 never signed up for this service, I would like to cancel," the  
8 Customer Service section of Defendants' movieland.com website  
9 states:

10 It is impossible for this software to exist on  
11 your system without a user actively following  
12 a four step installation process.

13 We understand that multiple users may access a  
14 single computer. However, the machine's owner  
15 is solely responsible for regulating access to  
16 the computer. As such, it is your  
17 responsibility to satisfy the contract entered  
18 into by way of your machine and your IP  
19 address.

20 Failure to satisfy your payment obligation may  
21 result in an escalation of collection  
22 proceedings that could have an adverse effect  
23 on your credit status.

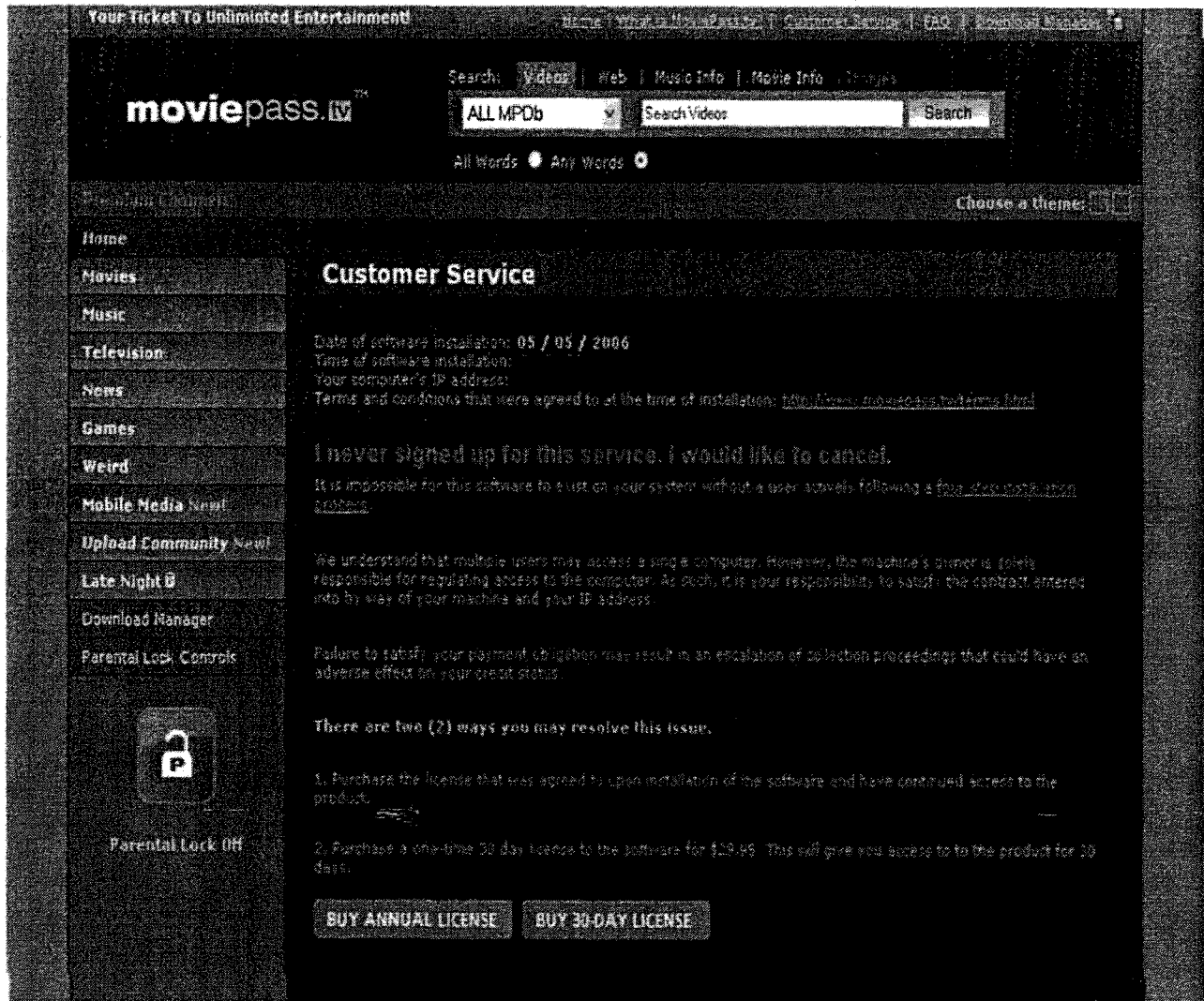
24 There are two (2) ways you may resolve this  
25 issue.

26 1. Purchase the license that was agreed to  
27 upon installation of the software and have  
28 continued access to the product.

1 2. Purchase a 30 day license to the software.

2 The corresponding text on the customer service sections of the  
3 popcorn.net website and the moviepass.tv website (reproduced below  
4 as Figure 3) are almost identical.

5 **Figure 3**



25 34. Consumers who attempt to complain about the hijacking of  
26 their computers are rarely able to communicate with Defendants'  
27 "customer service" representatives. Defendants provide scant  
28 contact information on their websites. Consumers frequently get



1 error messages when trying to use Defendants' websites to send  
2 text messages to Defendants. Moreover, Defendants seldom respond  
3 to any text messages that consumers send to them.

4 35. Defendants do not include customer service telephone  
5 numbers on their websites. The only telephone number that  
6 Defendants provide is a (900) number. When consumers call that  
7 telephone number, a recorded greeting tells consumers that they  
8 will incur a \$34.95 charge if they do not hang up within 3  
9 seconds.

10 **Defendants' purported disclosures are inadequate and deceptive**

11 36. Some consumers who have received Defendants' pop-up  
12 payment reminders did accept a free trial of Defendants' download  
13 services after seeing an advertisement on their computers.  
14 According to Defendants' websites, the advertisements consumers  
15 responded to are similar to the following sample advertisement  
16 (reproduced below as Figure 4):

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1 Figure 4



19 37. The sample advertisements that Defendants claim that  
20 consumers clicked on only mention "electronic payment reminders."  
21 The sample advertisements contain a hypertext link to "terms of  
22 use," but Defendants do not require consumers to view the terms of  
23 use before Defendants' software is loaded onto consumers'  
24 computers. Even if consumers do view the terms of use and read  
25 them in their entirety, consumers are warned only that pop-up  
26 payment reminders will appear more frequently until consumers pay  
27 Defendants. Nowhere do Defendants disclose that "electronic  
28 payment reminders" means a sequence of textual and audiovisual

1 pop-ups that will play on consumers' computers at frequent  
2 intervals for more than 40 seconds at a time, effectively causing  
3 consumers to lose control of their computers. Nor do they  
4 disclose that consumers will be unable to use commonly known means  
5 to close the pop-up payment reminders.

6 38. Furthermore, neither in Defendants' purported terms of  
7 use nor on their websites do Defendants disclose that they will be  
8 making changes to consumers' computers that will make it difficult  
9 or impossible for consumers to prevent Defendants' pop-up payment  
10 reminders from appearing.

11 **Consumers pay Defendant to stop the pop-up payment demands**

12 39. Defendants demand at least \$29.95 to stop the pop-up  
13 payment demands from appearing on consumers' computers. Faced  
14 with the onslaught of pop-up payment demands, many consumers  
15 ultimately give in and pay Defendants.

16 40. Some consumers who paid Defendants stopped receiving the  
17 pop-up payment demands almost immediately.

18 41. Other consumers found that paying Defendants was not  
19 enough to stop the pop-up payment reminders from appearing for  
20 some time after consumers paid the fee.

21 **Defendants' software cannot be uninstalled**

22 **through reasonable means**

23 42. The software and code that Defendants have placed on  
24 consumers' computers go far beyond the download manager described  
25 on Defendants' websites or in the advertisements that Defendants  
26 themselves claim enticed consumers to accept trial offers.

27 43. Much of the software and code, including programs that  
28 are required to launch the pop-up payment demands, remains

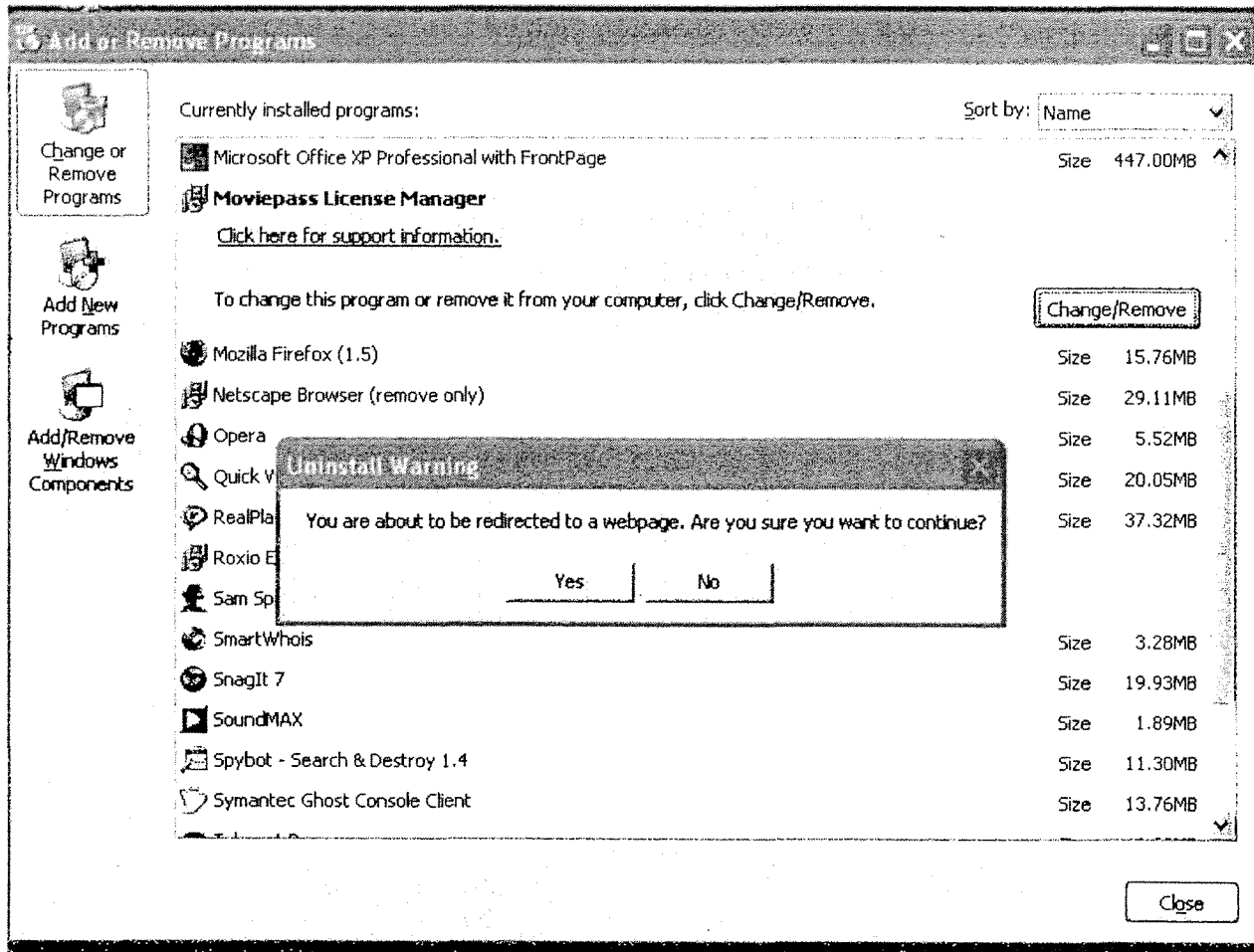
1 resident on consumers' computers even after Defendants have  
2 stopped causing the pop-up payment demands to appear.

3 44. When Defendants install their software on consumers'  
4 computers, they also make changes to consumers' Windows operating  
5 system registry and prevent consumers from using the Windows  
6 Control Panel to uninstall Defendants' software.

7 45. At least since Spring 2006, consumers who try to use the  
8 Windows Control Panel to uninstall one of Defendants' programs,  
9 called "license manager," receive a dialog box that reads  
10 "Uninstall Warning: You are about to be redirected to a webpage.  
11 Are you sure you want to continue? Yes/No." The dialog box is  
12 reproduced below as Figure 5.

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1 **Figure 5**



19 46. Selecting "No" terminates the uninstall process

20 immediately. Selecting "Yes" launches an Internet browser window

21 that presents the same payment options that Defendants' pop-up

22 payment demands present to consumers. If the consumer chooses not

23 to pay, the uninstall process cannot continue.

24 47. Because Defendants' software appears to allow Defendants

25 to access and make changes to consumers' computers, even those

26 consumers who have ceased receiving Defendants' pop-up payment

27 demands often feel compelled to restore their hard drives to the

28 condition they were in before they encountered Defendants.

1 48. For consumers with advanced computer skills, finding and  
2 removing all of Defendants' software components costs significant  
3 time. For other consumers, this process instead requires  
4 assistance from a service technician.

5 **VIOLATIONS OF THE FTC ACT**

6 49. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),  
7 prohibits unfair or deceptive acts or practices in or affecting  
8 commerce. Misrepresentations or omissions of material fact  
9 constitute deceptive acts or practices pursuant to Section 5(a) of  
10 the FTC Act. Acts or practices are unfair under Section 5(a) of  
11 the FTC Act if they cause substantial injury that consumers cannot  
12 reasonably avoid and that is not outweighed by countervailing  
13 benefits to consumers or competition.

14 **COUNT I**

15 **Defendants misrepresent that consumers are obligated to pay them**

16 50. In numerous instances, Defendants represent, expressly  
17 or by implication, that if a computer is receiving Defendants'  
18 pop-up payment demands:

- 19 (a) the computer owner or someone else who used the  
20 computer knowingly consented to the installation of  
21 software that would repeatedly launch Defendants'  
22 lengthy pop-up payment demands;
- 23 (b) the computer owner is obligated to pay the  
24 Defendants at least \$29.95; and
- 25 (c) the computer owner is responsible to satisfy any  
26 contract that any other person entered into while  
27 using the computer.

28 51. In truth and in fact, in numerous instances:

1 (a) neither the computer owner nor anyone else provided  
2 knowing consent to the installation of software  
3 that would launch Defendants' lengthy pop-up  
4 payment demands;

5 (b) the computer owner is not legally obligated to pay  
6 the Defendants at least \$29.95; or

7 (c) the computer owner is not responsible to satisfy  
8 contracts that other people entered into while they  
9 were using the computer.

10 52. Therefore, Defendants' representations as set forth in  
11 Paragraph 50 above constitute deceptive acts or practices, in or  
12 affecting commerce, in violation of Section 5(a) of the FTC Act,  
13 15 U.S.C. §§ 45(a).

14 **COUNT II**

15 **Defendants unfairly take control of consumers'**

16 **computers to extort payments**

17 53. In numerous instances, Defendants have caused software  
18 to be installed onto consumers' computers that enables Defendants  
19 repeatedly to launch textual and audiovisual pop-up payment  
20 demands on the computers. Consumers cannot use reasonable means  
21 to close or minimize the textual pop-up payment demands and must  
22 wait approximately 40 seconds for the audiovisual pop-up payment  
23 demand to play to completion before they can close or minimize it.  
24 The pop-up payment demands reappear after they initially appear on  
25 consumers' computers. They reappear more and more often as time  
26 passes. Defendants demand that consumers pay the Defendants at  
27 least \$29.95 to stop the pop-ups from appearing.

28 54. Defendants' course of conduct causes substantial

1 consumer injury by causing consumers to pay Defendants to stop the  
2 pop-up payment demands from appearing. Consumers cannot  
3 reasonably avoid this injury because Defendants do not permit  
4 consumers readily to cancel or to minimize the pop-up payment  
5 demands and have taken steps to prevent consumers from using their  
6 Windows Control Panels to remove software that enables the pop-up  
7 demands to appear. Thus, Defendants' practices cause or are  
8 likely to cause substantial injury that consumers cannot  
9 reasonably avoid, and this injury is not outweighed by  
10 countervailing benefits to consumers or competition.

11 55. Therefore, Defendants' practices, as described in  
12 Paragraphs 53-54 above, constitute an unfair practice in violation  
13 of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

14 **COUNT III**

15 **Defendants unfairly install software onto consumers' computers**  
16 **that consumers cannot remove**

17 56. In numerous instances, Defendants have caused to be  
18 installed onto consumers' computers software that enables  
19 Defendants to launch pop-up payment demands repeatedly on the  
20 computers. Consumers cannot locate this software and remove it  
21 through the use of reasonable efforts. Furthermore, Defendants'  
22 software makes changes to consumers' computers that actively  
23 prevent consumers from using the Windows Control Panel to  
24 uninstall the software.

25 57. Defendants' course of conduct in installing software  
26 that is described in Paragraph 56 above, causes substantial  
27 consumer injury by requiring consumers to spend substantial time  
28 or money to remove this software from their computers and to stop



1 its effects on them. Consumers cannot reasonably avoid this  
2 injury because Defendants do not provide an effective means for  
3 consumers to locate the software and remove it from their  
4 computers. Thus, Defendants' practices cause or are likely to  
5 cause substantial injury that consumers cannot reasonably avoid,  
6 and this injury is not outweighed by countervailing benefits to  
7 consumers or competition.

8 58. Therefore, Defendants practices, as described in  
9 Paragraphs 56-57 above, constitute an unfair practice in violation  
10 of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

11 **CONSUMER INJURY**

12 59. Consumers throughout the United States have suffered and  
13 continue to suffer substantial injury, including monetary loss, as  
14 a result of Defendants' unlawful acts or practices. In addition,  
15 Defendants have been unjustly enriched as a result of their  
16 unlawful practices. Absent injunctive relief by this Court,  
17 Defendants are likely to continue to injure consumers, reap unjust  
18 enrichment, and harm the public interest.

19 **THIS COURT'S POWER TO GRANT RELIEF**

20 60. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),  
21 empowers this Court to grant injunctive and such other relief as  
22 the Court may deem appropriate to halt and redress violations of  
23 the FTC Act. The Court, in the exercise of its equitable  
24 jurisdiction, may award other ancillary relief, including but not  
25 limited to, rescission of contracts and restitution, and the  
26 disgorgement of ill-gotten gains, to prevent and remedy injury  
27 caused by Defendants' law violations.

PRAYER FOR RELIEF

61. Wherefore, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court:

- (a) award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective final relief;
- (b) permanently enjoin Defendants from violating the FTC Act as alleged herein;
- (c) award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of Section 5(a) of the FTC Act, including but not limited to rescission of contracts and restitution, and the disgorgement of ill-gotten gains by the Defendants; and
- (d) award Plaintiff such other equitable relief as the Court determines to be just and proper.

1 Dated: September 7, 2007

Respectfully submitted,

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3 WILLIAM BLUMENTHAL  
General Counsel

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