

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WILLIAM BLUMENTHAL
General Counsel
JAMES A. TRILLING (*Admitted Pro Hac Vice*)
CARL SETTLEMYER (*Admitted Pro Hac Vice*)
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Room NJ-3212
Washington, DC 20580
Telephone: (202) 326-3497, 2019
Facsimile: (202) 326-3259
Email: jtrilling@ftc.gov
Email: csettlemyer@ftc.gov

FILED
CLERK, U.S. DISTRICT COURT
SEP - 5 2007
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

KENNETH H. ABBE (State Bar No. 172416)
Federal Trade Commission
10877 Wilshire Boulevard, Suite 700
Los Angeles, California 90024
Telephone: (310) 824-4318, 4343
Facsimile: (310) 824-4380
Email: kabbe@ftc.gov

172416 ENTERED
CLERK, U.S. DISTRICT COURT
SEP 11 2007
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Priority _____
Send X
Enter X
Closed _____
JS-5/JS-6 X
JS-2/JS-3 _____
Scan Only _____

Attorneys for Plaintiff
Federal Trade Commission

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,
Plaintiff,

Case No. CV06-4923 CAS (AJWx)

**SETTLEMENT AGREEMENT AND
PROPOSED
STIPULATED FINAL ORDER FOR
PERMANENT INJUNCTION AND
MONETARY RELIEF**

DIGITAL ENTERPRISES, INC.,
d/b/a MOVIELAND.COM, et al.,
Defendants.

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

LOGGED

2007 SEP 14 11:42 AM
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

62

1 U.S.C. § 2412, concerning the prosecution of This action to the date of entry of this
2 Order.

3 8. This Order was drafted jointly by Plaintiff and Defendants and reflects
4 the negotiated agreement among the parties.

5 9. The paragraphs of this Order shall be read as the necessary
6 requirements for compliance and not as alternatives for compliance and no
7 paragraph serves to modify another paragraph unless expressly so stated.

8 10. Defendants have not admitted any cause of action in the Complaint
9 and their agreement to settle and finally resolve This action shall not be interpreted
10 to constitute an admission that they have engaged in any violation of any laws or
11 regulations.

12 11. The relief set forth in this Order is remedial in nature and shall not be
13 construed as the payment of a fine, penalty, punitive assessment or forfeiture.

14 DEFINITIONS

15 For purposes of this Order, the following definitions shall apply:

16 “**Advertisement**” means any written or verbal statement, illustration, or
17 depiction that is designed to effect a sale of or create interest in the purchase,
18 acquisition, or usage of goods, services, or licenses, whether it appears via the
19 Internet or any other medium.

20 “**Anonymous free trial with a negative option feature**” means a Free trial
21 with a negative option feature for which the offeree is not required to (1) submit
22 any personal identification information, such as name, email address, phone number
23 or physical address and (2) submit or confirm a method of payment, such as a credit
24 card number, debit card number, bank account number, or phone number (if
25 separately confirmed by the offeree as a method of payment), in order to accept the
26 offer.

27
28

1 **“Assisting others”** means knowingly providing any of the following services
2 to any Person or entity: (a) developing, supplying, distributing, or publishing any
3 software program, code, script, or other content; or (b) performing advertising or
4 marketing services of any kind.

5 **“Clearly and prominently”** means:

6 (a) in textual communications (e.g., printed publications or words displayed
7 on the screen of a Covered product), the required disclosures are of a type size and
8 location sufficiently noticeable for an ordinary consumer to read and comprehend
9 them, in print that contrasts with the background on which they appear;

10 (b) in communications disseminated orally or through audible means (e.g.,
11 radio or streaming audio), the required disclosures are delivered in a volume and
12 cadence sufficient for an ordinary consumer to hear and comprehend them;

13 (c) in communications disseminated through video means (e.g., television or
14 streaming video), the required disclosures are in writing in a form consistent with
15 subparagraph (a) of this definition and shall appear on the screen for a duration
16 sufficient for an ordinary consumer to read and comprehend them;

17 (d) in communications made through interactive media such as the Internet,
18 online services, and software, the required disclosures are unavoidable and
19 presented in a form consistent with subparagraph (a) of this definition in addition to
20 any audio or video presentation of them; and

21 (e) in all instances, the required disclosures are presented prior to the
22 consumer incurring any financial obligation, in an understandable language and
23 syntax, and with nothing contrary to, inconsistent with, or in mitigation of the
24 disclosures used in any communication of them.

25 **“Covered product”** means any desktop or laptop computer, handheld
26 device, telephone, or other electronic product or device that has a platform on
27
28

1 which to download, install, or run any software program, code, script, or other
2 content.

3 **“Defendants”** means: Digital Enterprises, Inc., a California corporation;
4 Triumphant Videos, Inc., a California corporation; Pacificon International, Inc., a
5 California corporation; Alchemy Communications, Inc., a California corporation;
6 AccessMedia Networks, Inc., a Delaware corporation; Innovative Networks, Inc., a
7 California corporation; Film Web, Inc., a Wyoming corporation; Binary Source,
8 Inc., a California corporation; Mediacaster, Inc., a Delaware corporation; CS
9 Hotline, Inc., a California corporation; Frostham Marketing, Inc., a Florida
10 corporation; Longview Media, Inc., a California corporation; Easton Herd; and
11 Andrew Garroni and each of them, by whatever names each might be known,
12 including AccessMedia.tv, Movieland.com, Moviepass.tv, Popcorn.net, Vitalix,
13 and/or Webmasters Direct.

14 **“Distribution Partner”** means any Person or entity that conducts business in
15 the United States and that disseminates, distributes, or downloads on behalf of any
16 Defendant any software program, code, script, or other content or that directs traffic
17 to or displays on behalf of any Defendant any Advertisement of any offer of a free
18 trial with a negative option feature relating to the download or installation of any
19 software program, code, script, or other content.

20 **“Document”** is synonymous in meaning and equal in scope to the usage of
21 the term in Federal Rule of Civil Procedure 34(a).

22 **“Free trial with a negative option feature”** means any free or introductory
23 price trial offer through which a consumer receives a product or service for free or
24 at a nominal introductory price for an initial period of time and later incurs an
25 obligation to pay or pay a greater amount for the product or service if he or she does
26 not take affirmative action to cancel, reject, or return the product or service before
27 the end of that period.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

IT IS FURTHER ORDERED that Defendants, their successors, assigns, officers, agents, servants, employees, authorized representatives and attorneys, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any Person, corporation, partnership, subsidiary, division, trade name, or other entity, are permanently restrained and enjoined from using the Internet to distribute, download, or install (“download”) or Assisting others in using the Internet to download to any Covered product any (1) content for a fee or (2) software program (“content or software”), unless:

- A. On the principal screen or landing page of each Advertisement or offer for such content or software and prior to any download, Defendants disclose Clearly and prominently the names of any software programs being downloaded and/or for which licenses are being offered; the names of any websites for which the software programs provide content access rights; and all material terms associated with downloading the content or software, including, where applicable, a full explanation of at least one reasonable means by which the user of the Covered product may terminate participation in any Free trial with a negative option feature before the “free trial” period expires and the precise steps required to do so, the nature and extent of any financial or other consideration the user of the Covered product will be obligated to pay if the user fails to terminate participation in any Free trial with a negative option feature before the “free trial” period expires, the nature, frequency, and duration of any pop-up window or language that Defendants may later cause to appear on the Covered product, the full address of and a link to a webpage that enables a

1 consumer to cancel any recurring payment option and provides a
2 customer service telephone number, the duration of time a consumer
3 will have access to any downloaded content, and the fact that
4 downloading the content or software onto a Covered product will
5 make the Covered product part of a peer-to-peer network;

6 B. The user of the Covered product indicates assent to the downloading of
7 the content or software by clicking on a button that (1) is not pre-
8 selected as the default option; (2) clearly and unambiguously indicates
9 that the user agrees to and understands the terms and conditions for the
10 download; and (3) is simultaneously located directly below or directly
11 to the right of, and on the same screen as, the disclosures required in
12 Subparagraph II.A, above, and the link or URL required in
13 Subparagraph II.C, below; and

14 C. Defendants display Clearly and prominently prior to conclusion of the
15 process of downloading the content or software and in any confirming
16 email or text message, a link to (or, if not feasible, a URL for) the
17 complete terms and conditions, terms of use, terms of service, or end
18 user license agreement for the content or software ("complete terms").
19 The complete terms shall include (1) any information required to be
20 disclosed pursuant to Subparagraph II.A, above, and (2) the full legal
21 name of and a valid physical address in the U.S. for the Person
22 offering the content or software to consumers and for any other Person
23 who would claim any right to enforce the complete terms. In addition
24 to displaying a link to or URL for the complete terms prior to
25 conclusion of the process of downloading the content or software,
26 Defendants shall also make the complete terms reasonably available to
27 the user of the Covered product after the download.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

IT IS FURTHER ORDERED that Defendants, their successors, assigns, officers, agents, servants, employees, authorized representatives and attorneys, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any Person, corporation, partnership, subsidiary, division, trade name, or other entity, in connection with the advertising of, promotion of, offering of, sale of, or attempted collection of payment for goods or services, including but not limited to distributing, downloading, or installing ("downloading") any software program, code, script, or other content ("software") to any Covered product, are permanently restrained and enjoined from making or Assisting others in making, expressly or by implication:

- A. Any representation on a Covered product that anyone has any legal or contractual duty, obligation, or responsibility to pay Defendants any amount unless the owner or an authorized user of the Covered product (1) provided Defendants his or her personal identification information or a method of payment; (2) agreed to purchase the goods or services for which payment is sought after Defendants, consistent with Paragraph II of this Order, Clearly and prominently disclosed all material terms and a link to or URL for the complete terms associated with the download; and (3) certified, in a manner consistent with the process of indicating assent set forth in Subparagraph II.B of this Order, that he/she was at least eighteen (18) years of age and either owned the Covered product or was authorized by the owner of Covered product to download software onto it.

CLAIMED

- 1 B. Any misrepresentation that any goods or services are “Free,” “Without
- 2 Charge,” “Without Risk,” “Without Further Obligation,” or any
- 3 substantially similar misrepresentation;
- 4 C. Any misrepresentation that the owner of the Covered product is
- 5 obligated to pay Defendants and that failure to pay may result in
- 6 collection proceedings against the owner of the Covered product or
- 7 other actions that could adversely affect that Person’s credit status; or
- 8 D. Any misrepresentation that if a consumer is receiving a pop-up
- 9 window, banner or other content (“pop-up”) demanding a payment to
- 10 Defendants: (1) the Covered product’s owner or someone else who
- 11 used the Covered product knowingly consented to the installation of
- 12 software to launch the pop-up; (2) the Covered product’s owner is
- 13 obligated to pay any amount of money or other consideration; or (3)
- 14 the Covered product’s owner is responsible to satisfy any contract that
- 15 any other Person entered into while using the Covered product.

16 **IV.**

17 **IT IS FURTHER ORDERED** that Defendants, their successors, assigns,
18 officers, agents, servants, employees, authorized representatives and attorneys, and
19 those Persons or entities in active concert or participation with any of them who
20 receive actual notice of this Order by personal service or otherwise, whether acting
21 directly or through any Person, corporation, partnership, subsidiary, division, trade
22 name, or other entity, are permanently restrained and enjoined from causing or
23 Assisting others in causing any software program, code, script, or other content
24 (“software”) to display on a Covered product, regardless of whether the Covered
25 product’s Internet browser is open or closed, any pop-up window, banner, or
26 language (“pop-up”) regarding a consumer’s purported obligation to pay anyone
27 any amount of money:

28

- 1 A. more than five times in any calendar day;
- 2 B. more often than once per hour;
- 3 C. that does not contain a clearly labeled button to close the pop-up and
4 silence any audio (including voice and music) that accompanied the
5 display of the pop-up; or
- 6 D. that does not provide a toll-free telephone number and email address
7 that will enable consumers to contact Defendants to inquire about the
8 pop-up.

9 V.

10 **IT IS FURTHER ORDERED** that Defendants, their successors, assigns,
11 officers, agents, servants, employees, authorized representatives and attorneys, and
12 those Persons or entities in active concert or participation with any of them who
13 receive actual notice of this Order by personal service or otherwise, whether acting
14 directly or through any Person, corporation, partnership, subsidiary, division, trade
15 name, or other entity, in connection with distributing, downloading, or installing
16 any software program to any Covered product, are permanently restrained and
17 enjoined from (1) failing to include with the download and installation of any such
18 software program a utility that can Uninstall the software program and (2) engaging
19 in any acts or practices that prevent the user of the Covered product from readily
20 locating and removing such software program by using the Covered product's
21 operating system's standard program removal utility, including but not limited to:

- 22 A. hiding or cloaking files, folders or directories;
- 23 B. using random or misleading dates or file names that do not match the
24 way that the software program names are disclosed pursuant to
25 Subparagraph II.A above;
- 26 C. misrepresenting the purpose or effect of files, folders, formats, or
27 registry entries; and

1 D. designing or causing files automatically to be reinstalled on a Covered
2 product after a user of the Covered product has removed them.

3 This paragraph shall not prohibit the downloading of parental control
4 software that requires a user to enter a user-defined password to Uninstall such
5 software.

6 **VI.**

7 **IT IS FURTHER ORDERED** that Defendants, their successors, assigns,
8 officers, agents, servants, employees, authorized representatives and attorneys, and
9 those Persons or entities in active concert or participation with any of them who
10 receive actual notice of this Order by personal service or otherwise, whether acting
11 directly or through any Person, corporation, partnership, subsidiary, division, trade
12 name, or other entity, are permanently restrained and enjoined from using or
13 Assisting others in using any software program, code, script, or other content
14 (“software”) installed onto any Covered product prior to the date of entry of this
15 Order in connection with an Anonymous free trial with a negative option feature (1)
16 to cause pop-up windows, banners, or language to display on the Covered product;
17 or (2) to communicate with any Covered product for any purpose other than (a) to
18 provide the user of the Covered product with access to entertainment content
19 represented as being available in connection with the installation of the software,
20 (b) to provide the user of the Covered product with access to technical support, or
21 (c) to comply with the other provisions of this Order.

22 **DEFENDANTS’ DISTRIBUTION PARTNER PROGRAMS**

23 **VII.**

24 **IT IS FURTHER ORDERED** that Defendants shall take measures to
25 establish, implement, and thereafter maintain, a comprehensive program that is
26 reasonably designed to ensure that all Distribution partners comply with this Order.
27 Such measures shall include, at a minimum, the following:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- A. Obtaining contact information from any prospective Distribution partner. In the case of a natural person, Defendants shall obtain the prospective Distribution partner's first and last name, physical address, country, telephone number, email address, and complete payment information, including, where applicable, the complete bank or other account information where payments are to be made. In the case of corporations, partnerships, proprietorships, limited liability companies, organizations, associations, cooperatives, agencies, or other legal entities, Defendants shall obtain the first and last name, physical address, country, telephone number, and email address for the natural person who owns, manages, or controls the prospective Distribution partner, and complete payment information, including, where applicable, the complete bank or other account information where payments are to be made; and
- B. Prior to Defendants' acceptance of any prospective Distribution partner as a Distribution partner, (1) providing each such Person or entity a copy of this Order; (2) obtaining from each such Person or entity a signed and dated statement acknowledging receipt of this Order and expressly agreeing to comply with this Order; and (3) providing written notice that engaging in acts or practices prohibited by this Order will result in immediate termination of any Distribution partner account and forfeiture of all monies earned or owed. Any electronic signature that Defendants obtain pursuant to this paragraph must comply with the signature requirements of the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), 15 U.S.C. § 7001, et seq.

1 MONETARY RELIEF

2 VIII.

3 **IT IS FURTHER ORDERED** that:

- 4 A. In accord with directions provided by the Federal Trade Commission,
5 Defendants shall pay to the Commission by wire transfer the total sum
6 of \$501,367.95 within five (5) days after notice from the Commission
7 that the Court has entered this Order. Within ten (10) business days
8 after Defendants execute this Order, they shall deposit the sum above
9 in the client trust account maintained by Fulbright & Jaworski LLP to
10 be held until time for payment to the Commission is required
11 hereunder. If the Commission or the Court does not agree to or
12 approve this Order, the obligation to maintain funds in Fulbright &
13 Jaworski's client trust account under this Order shall terminate.
- 14 B. All funds paid pursuant to the Order shall be deposited into an account
15 administered by the Commission or its agent to be used for equitable
16 relief, including but not limited to consumer redress, and any attendant
17 expenses for the administration of such equitable relief. In the event
18 that direct redress to consumers is wholly or partially impracticable or
19 funds remain after redress is completed, the Commission may apply
20 any remaining funds for such other equitable relief (including
21 consumer information remedies) as it determines to be reasonably
22 related to the Defendants' practices alleged in the Complaint. Any
23 funds not used for such equitable relief shall be deposited to the United
24 States treasury as disgorgement. The Defendants shall have no right to
25 challenge the Commission's choice of remedies or manner of
26 distribution under this paragraph.

FILED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. The Defendants relinquish all dominion, control, and title to the funds paid into the account established pursuant to this Order, and all legal and equitable title to the funds shall vest in the Treasurer of the United States unless and until such funds are disbursed to consumers. The Defendants shall make no claim or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy, the Defendants acknowledge that the funds are not part of their estates, nor do their estates have any claim or interest therein.

D. Proceedings instituted under this paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided to the Commission by law, including any other proceedings the Commission may initiate to enforce this Order.

E. Within thirty (30) days of the date of entry of this Order, Defendants shall provide to the Commission a customer list that shows, for anyone who purchased a license Defendants offered in connection with any Anonymous free trial with a negative option feature from August 1, 2005 until the date of entry of this Order and who did not, after the expiration of the "free trial" period, obtain authorization to access content that Defendants protect or protected with digital rights management software, (1) the purchaser's name and most recently updated address and contact information and (2) the purchaser's history of payment to Defendants. The customer list shall be provided in the form of a searchable electronic Document formatted in Microsoft Excel or Microsoft Access and supplied on (1) CD-R CD-ROM disks for Windows-compatible personal computers; or (2) DVD-ROM disks for Windows-compatible personal computers.

1 IX.

2 **IT IS FURTHER ORDERED** that:

3 A. The Commission's agreement to, and the Court's approval of, this
4 Order is expressly premised upon the truthfulness, accuracy, and
5 completeness of the financial information that Defendants submitted to
6 the Commission, including the .pdf and .xls files that counsel for the
7 Defendants emailed to the Commission on April 10 and 27, 2007, on
8 May 3, 23, and 30, 2007, and on June 8, 2007, all of which the
9 Commission relied upon in negotiating and agreeing to the terms of
10 this Order. If, upon motion by the Commission to the Court, the Court
11 finds that Defendants made any material misrepresentation or omission
12 in any of the above-referenced materials, monetary judgment will be
13 entered against the Defendants in the amount of \$1,801,015.16 and
14 will become immediately due and payable, less any payments already
15 made under this Order.

16 B. Defendants agree that in a bankruptcy proceeding involving a
17 nondischargeability complaint, Defendants shall not contest any facts
18 contained in the Commission's Complaint or the amount of the
19 judgment referenced in Subparagraph IX.A above.

20 X.

21 **IT IS FURTHER ORDERED** that Defendants shall immediately terminate
22 the recurring billing program enrollment of any consumer who (1) enrolled in such
23 program after participating in an Anonymous free trial with a negative option
24 feature that Defendants offered between August 1, 2005 and the date of entry of this
25 Order and (2) has not accessed within sixty (60) days prior to the entry date of this
26 Order any content that Defendants protected with digital rights management
27 software. Notwithstanding the foregoing sentence, Defendants may re-enroll any
28

1 such consumer in a recurring billing program offered and assented to in compliance
2 with this Order.

3 **XI.**

4 **IT IS FURTHER ORDERED** that, within five (5) days of the entry of this
5 Order, Defendants shall post on the movieland.com, moviepass.tv, and popcorn.net
6 websites instructions for Uninstalling from consumers' Covered products all
7 software programs that Defendants distributed, downloaded, or installed onto
8 consumers' Covered products from August 1, 2005 to the date of entry of this
9 Order in connection with Defendants' Anonymous free trials with negative option
10 features. In addition, within thirty (30) days of the entry of this Order, Defendants
11 shall email the same instructions to all email addresses Defendants collected from
12 August 1, 2005 to the date of entry of this Order from consumers who (1) made
13 payments in connection with Defendants' Anonymous free trials with negative
14 option features and (2) have not accessed within sixty (60) days prior to the entry
15 date of this Order any content that Defendants protected with digital rights
16 management software.

17 **COMPLIANCE MONITORING**

18 **XII.**

19 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
20 investigating compliance with any provision of this Order:

- 21 A. Within ten (10) business days of receipt of written notice from a
22 representative of the Commission, each Defendant who receives such
23 notice shall submit additional written reports, sworn to under penalty
24 of perjury; produce Documents for inspection and copying; appear for
25 deposition; and/or provide entry during normal business hours to any
26 business location in such Defendant's possession or direct or indirect
27 control to permit an inspection of the business operation;

1 B. In addition, the Commission is authorized to monitor compliance with
2 this Order by all other lawful means, including but not limited to the
3 following:

- 4 1. obtaining discovery from any Person, without further leave of
5 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31,
6 33, 34, 36, and 45; or
7 2. posing as consumers and suppliers to Defendants, their
8 employees, or any other entity managed or controlled in whole
9 or in part by Defendants, without the necessity of identification
10 or prior notice; and

11 C. Defendants shall permit representatives of the Commission to
12 interview any officer, director, employee, employer, consultant,
13 independent contractor, representative, or agent who has agreed to
14 such an interview, relating in any way to any conduct subject to this
15 Order. The person interviewed may have counsel present and the
16 Commission must inform such person that they have a right to counsel
17 before any interview is commenced.

18 *Provided, however,* that nothing in this Order shall limit the Commission's
19 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15
20 U.S.C. §§ 49, 57b-1, to obtain any Documentary material, tangible things,
21 testimony, or information relevant to unfair or deceptive acts or practices in or
22 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

23 COMPLIANCE REPORTING

24 XIII.

25 **IT IS FURTHER ORDERED** that, in order that compliance with the
26 provisions of this Order may be monitored:

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- A. For a period of five (5) years from the date of entry of this Order:
1. Each individual Defendant, Easton Herd and Andrew Garroni, within ten (10) business days of any such change shall notify the Commission of any of the following changes:
 - a. Any changes in the particular individual Defendant's residences, mailing addresses, or telephone numbers;
 - b. Any changes in the particular individual Defendant's employment status (including self-employment) or any changes in the particular individual Defendant's ownership of any business entity that conducts business in the United States. Any such notice shall include the name, address, and telephone number of each business that the particular individual Defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of the particular individual Defendant's duties and responsibilities in connection with the business or employment; or
 - c. Any change in the particular individual Defendant's names; and
 2. Defendants shall notify the Commission of any changes in the corporate structure of Digital Enterprises, Inc.; Triumphant Videos, Inc.; Pacificon International, Inc.; Alchemy Communications, Inc; AccessMedia Networks, Inc.; Innovative Networks, Inc.; Film Web, Inc.; Binary Source, Inc.; Mediacaster, Inc.; CS Hotline, Inc.; Frosthram Marketing, Inc.; Longview Media, Inc.; or any business entity that conducts

1 business in the United States that Easton Herd or Andrew
2 Garroni directly or indirectly controls, or has an ownership
3 interest in, that may affect compliance obligations arising under
4 this Order, including but not limited to a dissolution,
5 assignment, sale, merger, or other action that would result in the
6 emergence of a successor entity; the creation or dissolution of a
7 subsidiary, parent, or affiliate that engages in any acts or
8 practices subject to this Order; the filing of a bankruptcy
9 petition; or a change in the corporate name or address, at least
10 thirty (30) days prior to such change, *provided that*, with respect
11 to any proposed change about which the Defendants learn less
12 than thirty (30) days prior to the date such action is to take
13 place, Defendants shall notify the Commission as soon as is
14 practicable after obtaining such knowledge.

15 B. Sixty (60) days after the date of entry of this Order, the Defendants
16 each shall provide a written report to the Commission, sworn to under
17 penalty of perjury (though the report may be submitted in a single
18 Document sworn to under penalty of perjury by each Defendant),
19 setting forth in detail the manner and form in which they have
20 complied and are complying with this Order. This report shall include,
21 but not be limited to:

22 1. For each individual Defendant:

- 23 a. His then-current residence addresses, mailing addresses,
24 and telephone numbers;
25 b. His then-current employment and business addresses and
26 telephone numbers, a description of the business activities
27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

of each such employer or business, and his title and responsibilities for each such employer or business; and

c. Any other changes required to be reported under Subparagraph XIII.A above;

2. For all Defendants:

a. A copy of each acknowledgment of receipt of this Order, obtained by each Defendant pursuant to Subparagraph XV.D below; and

b. Any other changes required to be reported under Subparagraph XIII.A above;

C. For purposes of the compliance reporting required by this Order, the Commission is authorized to communicate directly with each of the Defendants, *provided that* the foregoing shall not preclude any Defendant from referring the Commission to his or its legal counsel with respect to any communication or response.

D. For purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for the Division of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
Re: *FTC v. Digital Enterprises, Inc., et al.*, Civil Action No. 06-4923

RECORD KEEPING PROVISIONS

XIV.

IT IS FURTHER ORDERED that for a period of eight (8) years from the date of entry of this Order, Defendants, their successors, assigns, officers, agents, servants, employees, authorized representatives and attorneys, and those Persons or entities in active concert or participation with any of them who receive actual notice

1 of this Order by personal service or otherwise, whether acting directly or through
2 any Person, corporation, partnership, subsidiary, division, trade name, or other
3 entity, in connection with any business that (1) any Defendant(s) directly or
4 indirectly controls, or in which any Defendant(s) has a majority ownership interest,
5 (2) conducts business in the United States, and (3) is directly or indirectly engaged
6 in the business of advertising, promoting, marketing, offering for sale or license, or
7 selling or licensing any product or service via the Internet, are restrained and
8 enjoined from failing to create and retain the following records:

- 9 A. Accounting records that reflect the cost of products or services sold,
10 revenues generated, and the disbursement of such revenues;
- 11 B. Personnel records accurately reflecting: the name, address, and
12 telephone number of each Person employed in any capacity by such
13 business, including as an independent contractor; that Person's job or
14 position; the date upon which the Person commenced work; and the
15 date and reason for the Person's termination, if applicable;
- 16 C. Customer files containing the names, addresses, telephone numbers,
17 dollar amounts paid, quantity of products or services purchased, and
18 description of products or services purchased, to the extent such
19 information is obtained in the ordinary course of business;
- 20 D. Complaints and refund requests (whether received directly, indirectly,
21 or through any third party) and any responses to those complaints or
22 requests;
- 23 E. Copies of all Advertisements or other marketing materials, including
24 but not limited to any banner, interstitial, pop-up, pop-under, slider,
25 email, instant message, or other Advertisements capable of being
26 displayed or performed on a Covered product or the Internet, and any
27

28

1 web scripts or style sheets or other software files or code associated
2 with such Advertisements;

3 F. All Documents upon which Defendants rely to substantiate any
4 representation concerning the matters described in Paragraph III
5 above; and

6 G. All records and Documents necessary to demonstrate full compliance
7 with each provision of this Order, including but not limited to, copies
8 of acknowledgments of receipt of this Order, required by
9 Subparagraphs VII.B above and XV.D below, and all reports
10 submitted to the FTC pursuant to Paragraph XIII above.

11 **DISTRIBUTION OF ORDER BY DEFENDANTS**

12 **XV.**

13 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
14 date of entry of this Order, Defendants shall deliver copies of the Order as directed
15 below:

16 A. Corporate Defendants: Defendants Digital Enterprises, Inc.;
17 Triumphant Videos, Inc.; Pacificon International, Inc.; Alchemy
18 Communications, Inc; AccessMedia Networks, Inc.; Innovative
19 Networks, Inc.; Film Web, Inc.; Binary Source, Inc.; Mediacaster, Inc.;
20 CS Hotline, Inc.; Frostham Marketing, Inc.; and Longview Media, Inc.
21 must deliver a copy of this Order to all of their employees, agents, and
22 representatives who engage in any conduct related to any of the subject
23 matter of this Order. For current personnel, delivery shall be made
24 within five (5) business days of service of this Order upon Defendants.
25 For new personnel, delivery shall occur prior to the new personnel
26 assuming their responsibilities.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- B. Individual Defendants Easton Herd or Andrew Garroni as Control Person: For any business that conducts business in the United States and that Easton Herd or Andrew Garroni controls directly or indirectly, or in which either of them has a majority ownership interest, the individual Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. The individual Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in any conduct related to any of the subject matter of the Order. For current personnel, delivery shall be within five (5) business days of service of this Order upon the Defendants. For new personnel, delivery shall occur prior to their assuming their responsibilities.
- C. Individual Defendant as employee or non-control person: For any business that conducts business in the United States where neither Herd nor Garroni is a controlling person of the business but otherwise engages in conduct related to any of the subject matters of this Order, that individual Defendant must deliver a copy of this Order to all principals and direct managers of such business before engaging in such conduct.
- D. The Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from each Person required to receive a copy of the Order pursuant to this paragraph.

1 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

2 **XVI.**

3 **IT IS FURTHER ORDERED** that each Defendant, within five (5) business
4 days of receipt of this Order as entered by the Court, must submit to the
5 Commission a truthful sworn statement acknowledging receipt of this Order.

6 **RETENTION OF JURISDICTION**

7 **XVII.**

8 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
9 matter for purposes of construction, modification, and enforcement of this Order.

10 **SO ORDERED**, this _____ day of _____, 2007, at
11 Los Angeles, California.

13 _____
14 Honorable Christine A. Snyder
United States District Court Judge

15 STIPULATED AND AGREED TO BY

16 James A. Trilling
17 James A. Trilling
Attorney for Plaintiff
FEDERAL TRADE COMMISSION

Dated: 9/4/2007

18 _____
19 John A. O'Malley
20 FULBRIGHT & JAWORSKI LLP
Attorney for Defendants
21 ACCESSMEDIA NETWORKS, INC and
ALCHEMY COMMUNICATIONS, INC

Dated: _____

22 Michael L. Mallow
23 Michael L. Mallow
24 LOEB & LOEB
Attorney for Defendants
25 DIGITAL ENTERPRISES, INC.;
TRIUMPHANT VIDEOS, INC.;
26 PACIFICON INTERNATIONAL, INC.;
INNOVATIVE NETWORKS, INC.;
27 FILM WEB, INC.; BINARY SOURCE, INC.;
MEDIACASTER, INC.; CS HOTLINE, INC.; FROSTHAM MARKETING, INC.;
28 LONGVIEW MEDIA, INC ; EASTON HERD; and ANDREW GARRONI

Dated: 9/4/2007

1 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

2 **XVI.**

3 **IT IS FURTHER ORDERED** that each Defendant, within five (5) business
4 days of receipt of this Order as entered by the Court, must submit to the
5 Commission a truthful sworn statement acknowledging receipt of this Order.

6 **RETENTION OF JURISDICTION**

7 **XVII.**

8 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
9 matter for purposes of construction, modification, and enforcement of this Order.

10 **SO ORDERED**, this fifth day of September, 2007, at
11 Los Angeles, California.

12 *Christina A. Snyder*
13 Honorable Christine A. Snyder
14 United States District Court Judge

15 **STIPULATED AND AGREED TO BY:**

16 *James A. Trilling*
17 James A. Trilling
18 Attorney for Plaintiff
19 FEDERAL TRADE COMMISSION

Dated: 9/4/2007

18 *John A. O'Malley*
19 John A. O'Malley
20 FULBRIGHT & JAWORSKI LLP
21 Attorney for Defendants
22 ACCESSMEDIA NETWORKS, INC. and
23 ALCHEMY COMMUNICATIONS, INC.

Dated: 9/4/07

24 _____ Dated: _____

25 Michael L. Mallow
26 LOEB & LOEB
27 Attorney for Defendants
28 DIGITAL ENTERPRISES, INC.;
TRIUMPHANT VIDEOS, INC.;
PACIFICON INTERNATIONAL, INC.;
INNOVATIVE NETWORKS, INC.;
FILM WEB, INC.; BINARY SOURCE, INC.;
MEDIACASTER, INC.; CS HOTLINE, INC.; FROSTHAM MARKETING, INC.;
LONGVIEW MEDIA, INC.; EASTON HERD; and ANDREW GARRONI

1 MEDIACASTER, INC.

Dated: 6/22/07

2 
By: Daniel Brent
3 Its: VP Technology

4 CS HOTLINE, INC.

Dated: 06-22-07

5 
6 By: Jose Sanchez Campos
7 Its: CEO / President

8 FROSTHAM MARKETING, INC.

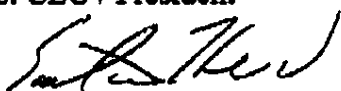
Dated: 6-21-07

9 
10 By: John Brazell
11 Its: CEO / President


12 LONGVIEW MEDIA, INC.

Dated: 6-21-07

13 
By: Andrew Garroni
14 Its: CEO / President

15 
16 EASTON HERD
17 Individually and in his capacity as
18 an officer of Digital Enterprises, Inc.,
19 Triumphant Videos, Inc.,
20 and Innovative Networks, Inc.

Dated: 6/21/07

21 
22 ANDREW GARRONI
23 Individually and in his capacity as
24 an officer of Pacificon International, Inc.,
25 Filmweb, Inc., Binary Source, Inc.,
26 and Longview Media, Inc.

Dated: 6-21-07

1 **PROOF OF SERVICE**

2 I, Martha Delgado, declare

3 I am a citizen of the United States and employed in Los Angeles County, California I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 555 South Flower Street, Forty-First Floor, Los Angeles, California 90071 On September 05,
6 2007, I served a copy of the within document(s).

7 **SETTLEMENT AGREEMENT AND [PROPOSED] STIPULATED FINAL ORDER FOR
8 PERMANENT INJUNCTION AND MONETARY RELIEF**

- 9 by transmitting via facsimile the document(s) listed above to the fax number(s) set
10 forth below on this date before 5:00 p m.
- 11 by placing the document(s) listed above in a sealed envelope with postage thereon
12 fully prepaid, in the United States mail at Los Angeles, California addressed as set
13 forth below.
- 14 by placing the document(s) listed above in a sealed FedEx envelope and affixing a
15 pre-paid air bill, and causing the envelope to be delivered to a FedEx agent for
16 delivery.
- 17 by personally delivering the document(s) listed above to the person(s) at the
18 address(es) set forth below.
- 19 by transmitting via e-mail the document(s) listed above to the e-mail address(es)
20 set forth below on this date before 5 00 p.m.

21 James A. Trilling, Esq.
 22 David K. Koehler, Esq.
 23 Carl H. Settlemyer, Esq.
 24 Federal Trade Commission
 25 600 Pennsylvania Avenue, N W.
 26 Room NJ-3212
 27 Washington, DC 20580
 28 Phone (202) 326-3497
 Fax (202) 326-3259
 Email. jtrilling@ftc.gov
 dkoehler@ftc.gov
 csettlemyer@ftc.gov

*Attorneys for Plaintiff
Federal Trade Commission*

27 I am readily familiar with the firm's practice of collection and processing correspondence
28 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same

1 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
2 motion of the party served, service is presumed invalid if postal cancellation date or postage
3 meter date is more than one day after date of deposit for mailing in affidavit.

4 I declare under penalty of perjury under the laws of the State of California that the above
5 is true and correct.

6 Executed on September 5, 2007, at Los Angeles, California.

7
8 
9 _____
Martha Delgado

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28