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CLERK, U.S. DISTRICT COURT  
NOV 17 2006  
CENTRAL DISTRICT OF CALIFORNIA  
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Attorneys for Plaintiff  
Federal Trade Commission

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

FEDERAL TRADE COMMISSION,  
Plaintiff,

vs.

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

Case No. CV06-4923 CAS (AJWx)

~~PROPOSED~~  
STIPULATED INTERIM  
AGREEMENT AND ORDER

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1 WHEREAS Plaintiff Federal Trade Commission ("Plaintiff" or  
2 "Commission") filed a Complaint against Defendants pursuant to Section 13(b) of  
3 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure  
4 permanent injunctive relief and other equitable relief against Defendants and  
5 applied *ex parte* for a Temporary Restraining Order ("TRO") and for an order to  
6 show cause why a Preliminary Injunction should not issue pursuant to Rule 65 of  
7 the Federal Rules of Civil Procedure;

8 WHEREAS the Court DENIED Plaintiff's request for a TRO and  
9 ORDERED the parties to stipulate to an order to provide for document preservation  
10 and expedited discovery and briefing in anticipation of a preliminary injunction  
11 hearing on November 17, 2006;

12 WHEREAS, in the process of attempting to negotiate such an order in good  
13 faith, Plaintiff and Defendants Alchemy Communications, Inc., a California  
14 corporation, and AccessMedia Networks, Inc., a Delaware corporation ("Stipulating  
15 Defendants") have instead reached a Stipulated Interim Agreement and Order  
16 ("Agreement and Order") to govern Plaintiff's and the Stipulating Defendants'  
17 conduct during the pendency of this litigation and thereby to make a preliminary  
18 injunction hearing unnecessary;

19 WHEREAS, Plaintiff and Stipulating Defendants, without any admission of  
20 any wrongdoing or violation of law, voluntarily have stipulated to the entry of the  
21 following Agreement and Order;

22 **The Court, having been presented with this Agreement and Order, finds**  
23 **as follows:**

24 **FINDINGS**

- 25 1. This Court has jurisdiction over the subject matter of this case and  
26 over Stipulating Defendants.  
27 2. Venue as to Stipulating Defendants in the Central District of California  
28 is proper.

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1 3. The parties to this Agreement and Order waive all rights to seek  
2 judicial review or otherwise challenge or contest the validity of this Agreement and  
3 Order.

4 4. Entry of this Agreement and Order is in the public interest.

5 **DEFINITIONS**

6 For purposes of this Agreement and Order, the following definitions shall  
7 apply:

8 1. **“Stipulating Defendants”** means: Defendants Alchemy  
9 Communications, Inc., a California corporation, and AccessMedia Networks, Inc., a  
10 Delaware corporation.

11 2. **“Defendants”** means: Digital Enterprises, Inc., a California  
12 corporation; Triumphant Videos, Inc., a California corporation; Pacificon  
13 International, Inc., a California corporation; Alchemy Communications, Inc., a  
14 California corporation; AccessMedia Networks, Inc., a Delaware corporation;  
15 Innovative Networks, Inc., a California corporation; Film Web, Inc., a Wyoming  
16 corporation; Binary Source, Inc., a California corporation; Mediacaster, Inc., a  
17 Delaware corporation; CS Hotline, Inc., a California corporation; Easton Herd; and  
18 Andrew Garroni; and each of them, by whatever names each might be known,  
19 including Movieland.com, Moviepass.tv and/or Popcorn.net.

20 3. **“Plaintiff”** means: The Federal Trade Commission.

21 4. **“Covered product”** means any desktop or laptop computer, handheld  
22 device, telephone, or other electronic product or device that has a platform on  
23 which to download, install, and run any software program, code, or other content.

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

26 6. **“Person”** means a natural person, organization, or other legal entity,  
27 including a corporation, partnership, proprietorship, association, cooperative,  
28

1 government or governmental subdivision or agency, or any other group or  
2 combination acting as an entity. A "consumer" is a person under this definition.

3 7. "Clearly and prominently" means that, in an electronic medium, the  
4 disclosures shall be: (a) unavoidable; (b) of a size and shade, and appear on the  
5 screen for a duration, sufficient for an ordinary consumer to read and comprehend  
6 them; (c) in understandable language and syntax; and (d) additionally, in  
7 connection with the distribution, download or installation of any software program,  
8 code, script or other content onto a covered product, shall be presented within the  
9 context of each advertisement or offer for such software program, code, script, or  
10 other content, and prior to the download or installation of such software program,  
11 code, script, or other content.

12 8. "This action" means FTC v. Digital Enterprises, Inc., et al., Case No.  
13 CV06-4923 CAS (AJWx), filed August 8, 2006.

14 **IT IS STIPULATED, AGREED, AND ORDERED:**

15 **I.**

16 **Prohibited Representations**

17 In connection with the advertising of, promotion of, offering of, sale of, or  
18 attempted collection of payment for goods or services, including but not limited to  
19 distributing, downloading, or installing any software program, code, script, or other  
20 content to any covered product, Stipulating Defendants, doing business through any  
21 person or entity, and anyone acting in concert or participation with any of them,  
22 shall not make, or assist others in making, any representation that:  
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- 1 A. The owner of the covered product or anyone else has any "legal"
- 2 or "contractual" duty, "legal" or "contractual" obligation, or
- 3 "legal" or "contractual" responsibility to pay Defendants any
- 4 amount unless that person provided Stipulating Defendants his
- 5 or her personal identification information and agreed to
- 6 purchase the goods or services for which payment is sought; or
- 7 B. The owner of a covered product's failure to pay Defendants may
- 8 result in collection proceedings or affect the owner's credit
- 9 status unless (1) that person provided Stipulating Defendants his
- 10 or her personal identification information and agreed to
- 11 purchase the goods or services for which payment is sought and
- 12 (2) Stipulating Defendants intend to engage in collection
- 13 proceedings.

14 In instances where Stipulating Defendants have complied with Section III  
 15 below before distributing, downloading, or installing to a particular covered product  
 16 any software program, code, script, or other content for which Defendants seek a  
 17 payment, this Section does not prohibit Stipulating Defendants' customer service  
 18 agents from stating the following, nor does it prohibit Stipulating Defendants from  
 19 permitting that covered product to access customer service webpages on Stipulating  
 20 Defendants' websites which shall state:

21 At the time of download, you, or somebody that had access to your  
 22 computer, certified that they were the owner of the computer or were  
 23 authorized by the owner of the computer to download software onto  
 24 the computer. As the computer owner, we believe you are responsible  
 25 for controlling access to the computer. By permitting others to have  
 26 access to your computer, we believe that you are responsible for  
 27 paying for the download. To resolve this issue, you may: (1) Purchase  
 28 the license that was agreed to upon installation of the software and

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1 have continued access to our service for one (1) year on either an  
2 automatically recurring or non-recurring basis; (2) Purchase a one  
3 month license for \$19.99 which will automatically recur each month  
4 until cancelled; or (3) purchase a one-time thirty day license to the  
5 software for \$29.95. Such payment will cover usage up to thirty days.  
6 One-time non-recurring licenses WILL NOT auto-renew and your  
7 access to our service will terminate at the expiration of the license  
8 period.

9 **II.**

10 **Requirement to Use Clear and Prominent Disclosures**

11 Stipulating Defendants, doing business through any person or entity, and  
12 anyone acting in concert or participation with any of them, shall not distribute,  
13 download, or install any software program, code, script, or other content to any  
14 covered product, unless, before they seek express consent in accord with Section III  
15 below, they disclose clearly and prominently the nature, frequency, and duration of  
16 any pop-up window or language that they later may cause to appear on the covered  
17 product regarding any purported obligation to pay any money to them. In addition,  
18 the Stipulating Defendants shall also disclose the same information clearly and  
19 prominently on the "Sexual Content Warning" webpages on their websites and in  
20 any version of terms and conditions, terms of use, terms of service, or end user  
21 license agreements that Stipulating Defendants present to or make accessible to  
22 consumers in connection with distributing, downloading, or installing any software  
23 program, code, script, or other content to any consumer's covered product.

24 **III.**

25 **Prohibition on Software Installations Without Express Consent**

26 Stipulating Defendants, doing business through any person or entity, and  
27 anyone acting in concert or participation with any of them, shall not distribute,  
28 download, or install any software program, code, script, or other content to any

covered product, unless a user of the covered product certifies that he is the owner of the covered product or is authorized by the owner of the covered product to download software onto the covered product and indicates assent to the distribution, download, or installation of such software program, code, script, or other content by clicking on a button (such as through a "single click") that is not pre-selected as the default option and that is clearly labeled to convey that it will activate the installation or download, or by taking substantially similar affirmative action to authorize the installation or download.

IV.

**Limitations on Use of "Pop-Up" Windows and Language**

Stipulating Defendants, doing business through any person or entity, and anyone acting in concert or participation with any of them, shall not cause, or assist others in causing any software program, code, script, or other content to display any "pop-up" window or language on a covered product, regardless of whether the covered product's Internet browser is open or closed, (1) more than five times in any calendar day or more often than once per hour, or (2) that does not enable the user of the covered product to click on a clearly labeled button to silence the pop-up window and/or accompanying audio (including voice and music) and to make the pop-up window and its content invisible until the computer user closes all other open windows.

V.

**Opting Out of "Pop-Ups"**

In connection with any software program, code, script, or other content that Defendants, doing business through any person or entity, or anyone acting in concert or participation with any of them, previously distributed to, or downloaded to, or installed on any covered product, or will distribute to, download, or install on any covered product, Stipulating Defendants shall include clearly and prominently a customer service hyperlink link in any "pop-ups" or language caused by Defendants

1 to pop up on a covered product, and on the bottom 1" of every webpage on every  
2 website ("above the fold" in the case of a home page) for which said pop-ups seek  
3 payment, that will link through by a single click to a customer service webpage  
4 with a toll-free telephone number and email utility which will enable consumers to  
5 contact Stipulating Defendants to request that such software program, code, script,  
6 or other content stop displaying any "pop-up" window or language on a covered  
7 product. Stipulating Defendants shall not fail to honor such request to stop the pop-  
8 ups from appearing, as soon as practicable, when: (1) someone under the age of 18  
9 used the consumer's covered product to agree to participate in a trial of Defendants'  
10 services; (2) the covered product is in a public venue; (3) the consumer attempted to  
11 cancel a membership for Defendants' services during the time allowed by  
12 Defendants to cancel before pop-ups would be launched, but the consumer was  
13 unable to complete the cancellation due to technical difficulties; or (4) prior to  
14 Stipulating Defendants' compliance with Section III above, someone other than an  
15 authorized user used the consumer's covered product to agree to participate in a  
16 trial of Defendants' services.

17 Stipulating Defendants shall have 15 days from the entry of this Agreement  
18 and Order to implement the provisions of Sections I-V, above.

19 **VI.**

20 **Distribution of Agreement and Order by Defendants**

21 Stipulating Defendants shall immediately provide a copy of this Agreement  
22 and Order to each of their (1) officers and directors, (2) subsidiaries, affiliates,  
23 divisions, sales entities, employees, independent contractors, agents and  
24 representatives whose duties relate to the business practices identified in this  
25 Agreement and Order; and (3) successors and assigns to the extent such successor  
26 or assign acquires or receives any portion of any business whose practices relate to  
27 the terms of this Agreement and Order. Stipulating Defendants shall maintain a list  
28 of all persons and entities to whom this Agreement and Order was provided, and



1 shall provide a sworn statement of compliance with this Section.

2 VII.

3 Preservation of Records

4 The parties to this Agreement and Order, and each such person, shall not  
5 destroy, erase, mutilate, conceal, alter, transfer or otherwise dispose of, in any  
6 manner, directly or indirectly, any documents that relate to the trial offers, the terms  
7 and conditions, terms of use, terms of service, end user license agreements, or  
8 billing or collection practices related to those offers, including "pop-up" payment  
9 reminders, that are the subject matter of this action, including, but not limited to,  
10 computerized files and storage media on which information has been saved  
11 (including, but not limited to, floppy disks, hard drives, CD-ROMs, zip disks,  
12 punch cards, magnetic tape, backup tapes and computer chips), and any and all  
13 equipment needed to read any such material; contracts; accounting data;  
14 correspondence; advertisements (including, but not limited to, advertisements  
15 placed on the World Wide Web or the Internet); FTP logs; Service Access Logs;  
16 USENET Newsgroup postings; World Wide Web pages; books; written or printed  
17 records; handwritten notes; telephone logs; telephone scripts; financial statements;  
18 balance sheets; income statements; cash flow statements; receipt books; ledgers;  
19 personal and business canceled checks and check registers; bank statements;  
20 appointment books; and copies of federal, state, or local business or personal  
21 income or property tax returns; investigative notes, memoranda or reports; recorded  
22 interviews; covered products used in the investigation or prosecution of this action;  
23 covered products obtained from consumers related to this action; transcripts  
24 regarding this action or the issues raised therein; and communications with state  
25 and federal government agencies and employees regarding the filing and  
26 prosecution of this action.

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VIII.

Minute Order Vacated

As stated above, this Agreement and Order is intended to make the FTC's application for a preliminary injunction, and related expedited discovery, unnecessary. Accordingly, Plaintiff and Stipulating Defendants agree, subject to the approval of the Court, that the Court's minute order dated August 18, 2006 respecting expedited discovery, a briefing schedule for the preliminary injunction application, and a November 17, 2006 hearing on the preliminary injunction application, shall be vacated. Discovery in this action shall not be expedited, but shall be conducted in accordance with the Federal Rules of Civil Procedure and the local rules of this Court.

SO STIPULATED:

FEDERAL TRADE COMMISSION

By James A. Trilling  
James A. Trilling  
Attorney for Plaintiff FEDERAL  
TRADE COMMISSION

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APPROVED AS TO FORM  
FULBRIGHT & JAWORSKI L.L.P.

ACCESSMEDIA NETWORKS,  
INC., a Delaware corporation

By *[Signature]*

Its *General Counsel*

By *[Signature]*  
John A. O'Malley  
Attorneys for Defendant  
ACCESSMEDIA NETWORKS, INC., a  
Delaware corporation; and ALCHEMY  
COMMUNICATIONS, INC., a  
California corporation

ALCHEMY COMMUNICATIONS,  
INC., a California corporation

By \_\_\_\_\_

Its \_\_\_\_\_

1 APPROVED AS TO FORM  
2 FULBRIGHT & JAWORSKI L.L.P.  
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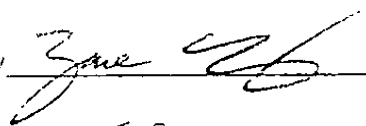
ACCESSMEDIA NETWORKS,  
INC., a Delaware corporation

By \_\_\_\_\_

Its \_\_\_\_\_

6  
7 By John A. O'Malley  
8 Attorneys for Defendant  
9 ACCESSMEDIA NETWORKS, INC., a  
10 Delaware corporation; and ALCHEMY  
11 COMMUNICATIONS, INC., a  
12 California corporation

ALCHEMY COMMUNICATIONS,  
INC., a California corporation

By 

Its CEO

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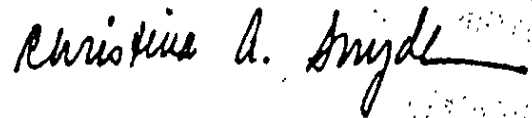
**ORDER**

Based on the foregoing Stipulated Interim Agreement of the parties and counsel, and good cause appearing therefor,

It is Ordered that Sections I through VII of the foregoing Stipulated Interim Agreement shall become the Order of the Court pending trial of this action.

The Court's Minute Order dated August 18, 2006 permitting expedited discovery and setting a briefing schedule and a hearing date for a preliminary injunction motion is vacated.

**IT IS SO ORDERED.**



DATED: 11/17/06

Christina A. Snyder  
United States District Judge

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**CERTIFICATE OF SERVICE**

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I HEREBY CERTIFY that on November 2, 2006, per party agreement, I served a true copy of the foregoing "[PROPOSED] STIPULATED INTERIM AGREEMENT AND ORDER" via (1) electronic mail to the following e-mail addresses before 5:00 PM Pacific Time and (2) via first-class mail to the following names and addresses:

Michael L. Mallow, Esq.  
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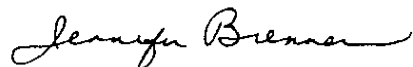
Counsel for Digital Enterprises, Inc.; Triumphant Videos, Inc.; Pacificon International, Inc.; Innovative Networks, Inc.; Film Web, Inc.; Binary Source, Inc.; Mediacaster, Inc.; CS Hotline, Inc.; Easton Herd; and Andrew Garroni

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Fax: (213) 892-9494  
jomalley@fulbright.com

Counsel for Alchemy Communications, Inc. and AccessMedia Networks, Inc.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 2, 2006

  
Jennifer Brennan