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ORIGINAL

FILED  
 CLERK, U S DISTRICT COURT  
 JUL 14 2000  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY *HT* DEPUTY

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FILED  
 CLERK, U S DISTRICT COURT  
 JUL 13 2000  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY *Klg* DEPUTY

12 ATTORNEYS FOR PLAINTIFF

10 UNITED STATES DISTRICT COURT FOR THE  
 11 CENTRAL DISTRICT OF CALIFORNIA

12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 v.

15 XPICS PUBLISHING, INC.,  
 16 a corporation, also d/b/a Xpics,  
 17 xpics.com, sex museum.com,  
 18 sexroulette.com, assawards.com,  
 19 livesexstream.com, xxxsexphotos.com,

18 and

19 MARIO G. CARMONA,  
 20 individually, also d/b/a Xpics,  
 21 xpics.com, sex museum.com, sexroulette.com,  
 22 assawards.com, livesexstream.com,  
 23 xxxsexphotos.com, and as an officer of the  
 24 corporation,

23 and

24 BRIAN M. SHUSTER,  
 25 individually, also d/b/a Xpics,  
 26 xpics.com, sex museum.com, sexroulette.com,  
 27 assawards.com, livesexstream.com,  
 28 xxxsexphotos.com, and as an officer of the  
 corporation,

Defendants.

ENTERED  
 CLERK, U S DISTRICT COURT  
 JUL 18 2000  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY *HT* DEPUTY

Civil Action No.

00-07613 *MMMM* (CTX)

STIPULATED FINAL  
 JUDGMENT AND ORDER  
 FOR PERMANENT  
 INJUNCTION AND  
 CONSUMER REDRESS

- Docketed
- Copies / NTC Sent
- JS - 5 / JS - 6
- JS - 2 / JS - 3
- CLSD

JUL 18 2000

3

1 Plaintiff, Federal Trade Commission ("FTC" or "Commission"), having filed its  
2 Complaint for permanent injunction and other relief in this matter, pursuant to Section 13(b) of  
3 the Federal Trade Commission Act ("FTC Act"), 15 U S C § 53(b), and the parties having  
4 conferred through counsel, and having agreed to settle this action without adjudication or  
5 admission of any issue of fact or law and without Defendants admitting liability for any of the  
6 violations alleged in the Complaint or for any wrongdoing whatsoever, therefore, on the joint  
7 motion of the parties, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows  
8

9 **FINDINGS**

10 1 This Court has jurisdiction of the subject matter of this case and of the parties  
11 consenting hereto

12 2 Venue is proper as to all parties in the Central District of California under  
13 28 U S C §§ 1391(b) and (c), and 15 U S C § 13(b)

14 3 The activities of Defendants are in or affecting commerce, as defined in the FTC  
15 Act, 15 U S C § 44

16 4 The Complaint states a claim upon which relief may be granted against  
17 Defendants Xpics Publishing, Inc , Mario G Carmona, and Brian M Shuster under Sections 5  
18 and 13(b) of the Federal Trade Commission Act, 15 U S C §§ 45(a) and 53(b), and under the  
19 Truth in Lending Act, 15 U S C § 1601 *et seq*

20 5 Defendants waive all rights to seek judicial review or otherwise challenge or  
21 contest the validity of this Order They also waive any claim that they may have held under the  
22 Equal Access to Justice Act, 28 U S C § 2412, concerning the prosecution of this action to the  
23 date of this Order Each settling party shall bear its own costs and attorneys' fees

24 6 This Order does not constitute, and shall not be interpreted to constitute, an  
25 admission by any Defendant that such Defendant has engaged in violations of the FTC Act or any  
26 other law, nor does it constitute evidence against, or an admission by, any Defendant with respect  
27 to any issue of law or fact herein or any alleged in the Commission's Complaint

28 7 This Order resolves all matters arising from the allegations in the Complaint

1 8 All Attachments to this Order are part of this Order and are incorporated herein,  
2 whether or not specifically referred to

3 9 Entry of this Order is in the public interest  
4

5 **DEFINITIONS**

6 1 "Defendants" means Xpics Publishing Inc , Mario G Carmona, Brian M Shuster,  
7 and each of them, and their successors, assigns, officers, agents, servants, employees, and any  
8 entity in which any of them owns, directly or indirectly, a controlling share of any business that is  
9 engaged in advertising, promoting, offering for sale, or selling adult entertainment goods or  
10 services on or through the Internet, and those persons in active concert or participation with them  
11 who receive actual notice of this Order by personal service or otherwise, whether acting directly  
12 or through any entity, corporation, subsidiary, division, or other device, unless specified  
13 otherwise

14 2 "In or affecting commerce" is as defined in Section 4 of the FTC Act,  
15 15 U S C § 44

16 3 "World Wide Web" means a system used on the Internet for cross-referencing and  
17 retrieving information A "Web site" is a set of electronic documents, usually a home page and  
18 subordinate pages, readily viewable on a computer by anyone with access to the Web, standard  
19 software, and knowledge of the Web site's location or address

20 4 "Internet" means a worldwide system of linked computer networks that use a  
21 common protocol (TCP/IP) to deliver and receive information The "Internet" includes, but is  
22 not limited to, the following forms of electronic communication electronic mail and email  
23 mailing lists, the World Wide Web ("Web"), newsgroups, Internet Relay Chat, file transfer  
24 protocols thereon, and remote computer access from anywhere in the world thereto

25 5 A "banner advertisement" or "ad banner" means an advertisement on a Web site  
26 or Web page that links to the advertiser's Web site

27 6 "Hyperlink" means a link on a Web page that leads to another Web page on the  
28 same or a different Web site

1 7 "Clearly and conspicuously" means as follows

- 2 a In an advertisement communicated through an electronic medium (such as  
3 television, video, radio, and interactive media such as the Internet and  
4 online services), if the disclosure is given orally, the disclosure shall be  
5 delivered in a volume and cadence sufficient for an ordinary consumer to  
6 hear and comprehend For a disclosure given in the video portion of an  
7 advertisement, the disclosure shall be of a size and shade, and shall appear  
8 on the screen for a duration, sufficient for an ordinary consumer to read, or  
9 obtain access to, and comprehend In addition to the foregoing, in  
10 interactive media the disclosure shall be unavoidable and shall be  
11 presented prior to the consumer incurring any financial obligation
- 12 b In a print advertisement, promotional material, or instructional manual, the  
13 disclosure shall be in a type size and location sufficiently noticeable for an  
14 ordinary consumer to read and comprehend it, in print that contrasts with  
15 the background against which it appears In multi-page print documents,  
16 the disclosure shall appear on the cover or first page
- 17 c On a product label, the disclosure shall be in a type size and location on  
18 the principal display panel sufficiently noticeable for an ordinary consumer  
19 to read and comprehend it, in print that contrasts with the background  
20 against which it appears.

21 The disclosure shall be in understandable language and syntax Nothing contrary to, inconsistent  
22 with, or that otherwise interferes with a consumer's understanding of the disclosure shall be used  
23 in any advertisement or on any label

24 8 "Cancellation" means a consumer has communicated to Defendants, in any  
25 manner allowed by the cancellation provisions of the terms and conditions of Defendants' offer,  
26 the decision to discontinue his or her contractual relationship with Defendants

27 9 "Notice" means any method reasonably calculated to inform a consumer,  
28 including, but not limited to by U S mail, email, or through a Web site.

1           10     “Check-off procedure” means a process by which a consumer is required to click  
2 on an item of information, thereby indicating that the consumer has received the information or  
3 has agreed to the stated terms

4           11     “Age verification fee” means any fee charged by Defendants to verify that a  
5 consumer is of a legal age to view adult entertainment goods or services Use of an age  
6 verification fee shall not preclude Defendants from advertising, promoting, or offering a “free” or  
7 “trial” period so long as the amount of the age verification fee is clearly and conspicuously  
8 disclosed immediately prior to any “free” or “trial” offer

9           12     “Claims Administrator” means the person or business who is administering the  
10 consumer redress program established pursuant to this Order

11           13     “Eligible consumer” means any consumer who is eligible for consumer redress  
12 under this Order An “eligible consumer” is a consumer 1) who is a U S or Canadian citizen or  
13 who holds a credit, charge, or debit card issued by a U S financial institution that was charged by  
14 Xpics, and 2) who meets any of the following criteria

- 15           a     Any consumer who was a subscriber to an Xpics Web site, attempted to cancel his  
16 or her enrollment, and was subsequently billed by Xpics for membership to that  
17 Web site,  
18           b     Any consumer who was a subscriber to an Xpics Web site, canceled his or her  
19 membership, and was subsequently billed by Xpics for membership to that Web  
20 site,  
21           c     Any consumer who enrolled for a free or trial offer, canceled the enrollment in a  
22 timely manner, and was billed by Xpics for membership to that Web site,  
23           d     Any consumer who complained to Xpics that the Xpics services were purchased  
24 by a minor, requested a refund, and did not receive one, or  
25           e     Any consumer who complained to Xpics that he or she was never a subscriber to  
26 an Xpics site, was billed by Xpics, and never received a credit for the full amount  
27 for which he or she was billed  
28

### **PROHIBITED BUSINESS ACTIVITIES**

#### **I.**

**IT IS THEREFORE ORDERED** that, in connection with advertising, promoting,  
offering for sale, or selling Defendants’ adult entertainment goods or services on or through the

1 Internet, Defendants, acting directly, indirectly, or as consultants to any person engaged in such  
2 activities, are hereby permanently restrained and enjoined from making or assisting in the making  
3 of, directly or by implication, orally or in writing, any misrepresentation

4 A That a consumer who signs up for an account to access Defendants' Web sites will  
5 be allowed to view images for "free",

6 B That a consumer who signs up for an account to access Defendants' Web sites will  
7 be able to cancel his or her account without incurring any charge,

8 C That a consumer's cancellation is effective,

9 D That a consumer has purchased or agreed to purchase adult entertainment goods  
10 or services,

11 E That a request for a consumer's credit or debit card number is for age verification  
12 only, and

13 F Concerning the purpose or use for which Defendants request a consumer's  
14 payment, billing, or other personal identifying information.

15  
16 **II.**

17 **IT IS FURTHER ORDERED** that, in connection with advertising, promoting, offering  
18 for sale, or selling adult entertainment goods or services on or through the Internet, Defendants,  
19 acting directly, indirectly, or as consultants to any person engaged in such activities, are hereby  
20 permanently restrained and enjoined from requesting any payment information, except for  
21 purposes of age verification, from any consumer prior to ensuring that the consumer has accessed  
22 the following material terms and conditions, which shall be stated clearly and conspicuously,  
23 separately from all other disclosures, and in a manner that requires a consumer to separately  
24 acknowledge, by a check-off procedure, having received notice of each of the following

25 A The monthly, or other applicable recurring membership cost, and the length of any  
26 free or trial membership,

27 B The way(s) in which a consumer may cancel, including any limitation on the time  
28 period during which a consumer must cancel in order to avoid charges,

C Information providing at least two means to contact Defendants, one of which shall be a street address or P O Box,

D Access to the complete terms and conditions of Defendants' offer, which may be posted on a separate Web page as long as a consumer can directly hyperlink to the page and the information is set forth clearly and conspicuously, and

E An opportunity to indicate whether a consumer authorizes Defendants to distribute, transfer, or sell to a third party any payment or billing information provided by a consumer at the Defendants' request, including but not limited to the information described in Parts III-A and III-B, by informing a consumer

- 1 What information is being collected (*e g*, "name," "home address," "email address"),
- 2 Its intended use(s), and
- 3 The third parties to whom it will be disclosed (*e g*, "advertisers of consumer products," "adult-oriented Web sites," "mailing list companies")

**III.**

**IT IS FURTHER ORDERED** that, in connection with advertising, promoting, offering for sale, or selling adult entertainment goods or services on or through the Internet, and for any initial charge to a consumer's credit or debit card, other than a charge for age verification, Defendants, acting directly, indirectly, or as consultants to any person engaged in such activities, are hereby permanently restrained and enjoined from submitting for payment a credit or charge card transaction, check, draft, or other form of negotiable paper drawn on any consumer's checking, savings, share, or similar account, unless Defendants first

A Request that the consumer provide the account holder name, zip code, card or account number, email address, and on any credit, charge, or debit card transaction, the card expiration date and billing address, and

B Using reasonably available electronic or automatic commercial means, verify the expiration date, address component, and other identifying information associated with the holder of the credit, charge, or debit card account that corresponds with the card number





1 E Failing to disclose any age verification fee;

2 F. Failing to provide at least two effective means, one of which must be through the  
3 U S. mail, by which a consumer may cancel his or her account with Defendants,

4 G Failing to cancel any consumer's account within 24 hours of receiving a  
5 cancellation notice from the consumer where the consumer has canceled using Defendants' on-  
6 line cancellation procedures,

7 H Failing to cancel any consumer's account within 72 hours of receiving a  
8 cancellation notice from the consumer where the consumer has canceled using a means other  
9 than Defendants' on-line cancellation procedures,

10 I. Failing to notify any consumer who has canceled that if the consumer is billed  
11 after the cancellation is effective, Defendants will immediately refund or credit the consumer  
12 such additional billed amounts,

13 J Refusing to allow any consumer to submit a cancellation notice at any time,

14 K Failing to acknowledge by U S mail or by email to an address supplied by a  
15 consumer, within three (3) business days of receipt, that a consumer's cancellation request has  
16 been received and that the cancellation is effective on the date stated in the acknowledgment,

17 L Failing to promptly process or transmit a credit in accordance with, or otherwise  
18 comply with, Section 226 12(c) of Regulation Z, 12 C F R §226 12(c) for any consumer who 1)  
19 is to receive a refund; or 2) states that Defendants' adult entertainment goods or services were  
20 purchased by a minor, and

21 M Failing to send by U S mail or by email to an address supplied by a consumer a  
22 response to any consumer inquiry or complaint written in English within seven (7) business days  
23 from receipt, and written in any other language within a reasonable time from receipt

24  
25 V.

26 **IT IS FURTHER ORDERED** that, in connection with advertising, promoting, offering  
27 for sale, or selling adult entertainment goods or services on or through the Internet, Defendants,  
28

1 acting directly, indirectly, or as consultants to any person engaged in such activities, are hereby  
2 permanently restrained and enjoined from

3 A Unilaterally changing any terms and conditions of Defendants' offer in a way that  
4 would increase the consumer's financial obligations to Defendants, or

5 B Materially altering the cancellation or refund procedures or terms, without first  
6 providing a consumer with fifteen (15) days' notice and an opportunity to cancel Such notice  
7 shall be clear and conspicuous

8  
9 **CONSUMER REDRESS**

10 **VI.**

11 **IT IS FURTHER ORDERED** that,

12 A Within thirty (30) days following entry of this Order, Defendants shall select a  
13 Claims Administrator, who shall be approved by the Commission and who shall have the  
14 authority to take all steps necessary to administer the consumer redress program, as set forth in  
15 this Order The Claims Administrator shall not be directly or indirectly associated with the adult  
16 entertainment industry and shall be fully compensated by Defendants and at such time intervals  
17 specified by the Claims Administrator The Claims Administrator shall enter into an appropriate  
18 and agreed-upon confidentiality order whereby any information from Defendants or from  
19 consumers will be retained as confidential, and not used for any purpose unrelated to this Order,

20 B Within forty-five (45) days following entry of this Order, Defendants shall display  
21 or cause to be displayed at its total cost of between \$20,000 and \$25,000 and for a two-week  
22 period, banner ads as described in Attachment A Such banner ads shall appear on Yahoo com at  
23 [http //dir yahoo com/Society and\\_Culture/Sexuality/Activities\\_and\\_Practices](http://dir.yahoo.com/Society_and_Culture/Sexuality/Activities_and_Practices), or a similar Yahoo  
24 location, and shall include a hyperlink to Attachment B at the Claims Administrator's Web site,

25 C The Claims Administrator shall maintain an initial screening form, as described in  
26 Attachment B, on its Web site in a form that may either be completed interactively and  
27 electronically transmitted to the Claims Administrator, or in a form that may be printed by the  
28 viewer and mailed to the Claims Administrator,

1 D Within sixty (60) days following entry of this Order, Defendants shall provide to  
2 the Claims Administrator read-only access to Defendants' complete database of present and  
3 former customers, and any other additional information that Defendants believe may be helpful  
4 to the Claims Administrator in evaluating consumer claims,

5 E The Claims Administrator shall be authorized and empowered to provide refunds  
6 to eligible consumers according to the following guidelines

- 7 1 In order to be eligible for consideration for a refund, a consumer must  
8 complete and submit Attachment B to the Claims Administrator within  
9 sixty (60) days of the publication of the banner ads pursuant to  
10 Part VI- B Consumers who believe they are entitled to a refund but do  
11 not have access to Attachment B via the Internet may request Attachment  
12 B from the Federal Trade Commission by calling the FTC's Consumer  
13 Response Center at 877-FTC-HELP and requesting Attachment B The  
14 FTC shall bear the cost of mailing Attachment B to such consumers,
- 15 2 The Claims Administrator shall compare completed Attachment B forms  
16 to Defendants' database and any other additional information Defendants  
17 have provided for purposes of determining whether the consumer had at  
18 one time been in a contractual relationship with Defendants or had been  
19 billed by Defendants, and if so, whether the consumer should receive a  
20 refund application in a form containing the information in Attachment C  
21 The Claims Administrator has sole discretion whether to send the  
22 consumer a refund application
- 23 3 Within fifteen (15) days of a determination that a consumer should receive  
24 a refund application, the Claims Administrator shall send electronically or  
25 by U S mail to the consumer a form containing the information in  
26 Attachment C, including a notice that Defendants will reimburse postage  
27 costs to those consumers who receive a refund, and requesting any other  
28 information the Claims Administrator determines would be useful

1 Consumers shall have sixty (60) days after the date of the transmittal of  
2 Attachment C to mail the information requested by the Claims  
3 Administrator, with any supporting documentation

4 4 Upon receiving a completed Attachment C, the Claims Administrator shall  
5 promptly furnish a copy of it to Defendants, along with the corresponding  
6 completed Attachment B Defendants shall have up to thirty (30) days  
7 from their receipt of Attachments B and C to provide the Claims  
8 Administrator a statement and supporting documentation explaining why  
9 the consumer is not entitled to a refund, or why the amount of the refund  
10 should be less than that requested,

11 5 The Claims Administrator may seek any additional information from  
12 either Defendants or the refund applicant to assist in the evaluation of an  
13 applicant's claim,

14 6 Within forty-five (45) days following the deadline by which Defendants  
15 are allowed to submit information pursuant to Part VI-E (4), or after the  
16 Claims Administrator has requested additional information pursuant to  
17 Part VI-E (5), the Claims Administrator shall prepare a list of all  
18 consumers entitled to refunds, the amount of refund to which each is  
19 entitled, and the total refund amount This list shall be completed and  
20 transmitted to the FTC and Defendants no later than 240 days from the  
21 first publication of the banner ads under Part VI-B The Claims  
22 Administrator's decision with respect to an applicant's request for a refund  
23 shall be final and binding on all parties

24 7 The Claims Administrator shall notify Defendants to transfer, within  
25 twenty (20) business days, the total refund amount into an escrow account  
26 maintained by the Claims Administrator Defendants shall be jointly and  
27 severally liable for payment of such amount Within thirty (30) days  
28 following the transfer by Defendants of the full redress amount, the Claims

1 Administrator shall cause a refund to be issued to each consumer's credit,  
2 charge, or debit card, or shall mail a check, in the amount that the Claims  
3 Administrator has determined to which each applicant is entitled, and

4 F Within thirty (30) days after the last payment by the Claims Administrator to an  
5 eligible consumer, if any, the Claims Administrator shall provide a final accounting report to the  
6 Commission and Defendants Any redress funds remaining in the escrow account, including any  
7 accrued interest, less any unpaid expenses of the Claims Administrator, shall be returned to  
8 Defendants within ninety (90) days after the Claims Administrator's final accounting report has  
9 been submitted to the Commission and Defendants Upon approval of the final accounting  
10 report by the Commission, the Claims Administrator shall transfer all records to Defendants for  
11 safe-keeping Defendants are authorized to destroy all records relating to this matter six (6) years  
12 after the date of this Order Records shall be destroyed in accordance with disposal methods and  
13 procedures to be specified by the Commission The Commission may, in its sole discretion,  
14 require that such records, in whole or in part, be transferred, in lieu of destruction, to the  
15 Commission

16  
17 **PERFORMANCE BOND**

18 **VII.**

19 **IT IS FURTHER ORDERED** that, should the amount of consumer redress payable  
20 under this Order exceed one hundred and twenty-five thousand dollars (\$125,000), Defendants  
21 Xpics, Carmona, and Shuster, whether acting directly or through any business, entity,  
22 corporation, subsidiary, division or other device, are permanently enjoined from engaging in  
23 advertising, promoting, offering for sale, or selling adult entertainment goods or services on or  
24 through the Internet, or acting as a consultant in the above-described business, unless such  
25 Defendants collectively first obtain a Performance Bond in the principal amount of twice the  
26 amount of the consumer redress paid under this Order If any Defendant engages in any of the  
27 above-described businesses on his or its own, separate and apart from the other Defendants, then  
28

1 such Defendant shall post a Performance Bond in the amount of the total redress amount paid  
2 pursuant to Part VI of this Order

3           A       Each Performance Bond shall be an insurance agreement providing surety for  
4 financial loss issued by a surety company that is admitted to do business in each of the states in  
5 which Defendants were doing business, that holds a Federal Certificate of Authority As  
6 Acceptable Surety On Federal Bond and Reinsuring, and that is rated A or better by Best  
7 Insurance Guide The Performance Bond shall cite this Stipulated Final Judgment and Order for  
8 Permanent Injunction as the subject matter of the Bond and shall provide surety thereunder  
9 against financial loss resulting from whole or partial failure of performance due, in whole or in  
10 part, to any conduct violating this Order or Section 5 of the FTC Act, 15 U S C § 45 Each such  
11 Performance Bond shall be in favor of both (1) the Federal Trade Commission for the benefit of  
12 any consumer injured as a result of any false or misleading representation made by any such  
13 business or its employees, either directly or indirectly, and (2) any consumer so injured,

14           B       The Bond shall be deemed continuous and remain in full force and effect at all  
15 times during which Defendants engage or participate in or hold any ownership interest, share, or  
16 stock in, or serves as an officer, director or trustee of, any business entity engaged, in whole or in  
17 part, in advertising, promoting, offering for sale, or selling adult entertainment goods or services,  
18 and for at least one (1) year after Defendants have ceased to engage or participate in any manner  
19 in any such activity;

20           C       The Bond required pursuant to this Part is in addition to, and not in lieu of, any  
21 other bond required by federal, state or local law,

22           D       Defendants shall provide the executed original of the Bond or Bonds required by  
23 this Part to the Associate Director of Marketing Practices of the Federal Trade Commission at  
24 least ten (10) days before commencing the event precipitating the requirement of obtaining the  
25 bond,

26           E       Proceedings instituted under this Part are in addition to, and not in lieu of, any  
27 other civil or criminal remedies as may be provided by law, including any other proceedings the  
28 Commission may initiate to enforce this Order, and

1 F Defendants shall not disclose the existence of the Performance Bond to any  
2 consumer, or other purchaser or prospective purchaser of any adult entertainment goods or  
3 services without disclosing clearly and conspicuously, at the same time "AS REQUIRED BY  
4 ORDER OF THE U S DISTRICT COURT IN SETTLEMENT OF CHARGES THAT [NAME  
5 OF DEFENDANT] ENGAGED IN FALSE OR MISLEADING REPRESENTATIONS IN THE  
6 PROMOTION AND SALE OF ADULT ENTERTAINMENT GOODS OR SERVICES "

7  
8 **GENERAL REQUIREMENTS**

9 **Recordkeeping**

10 **VIII.**

11 **IT IS FURTHER ORDERED** that, for a period of four (4) years from the date of entry  
12 of this Order, Defendants, in connection with any business advertising, promoting, offering for  
13 sale, or selling adult entertainment goods or services on or through the Internet, or any business  
14 consulting others engaged in the above-described business on or through the Internet, are hereby  
15 restrained and enjoined from failing to create and retain in the normal course of business for a  
16 period of four (4) years following the date of such creation, unless otherwise specified

17 A Books, records, and accounts that, in reasonable detail, accurately and fairly  
18 reflect the cost of adult entertainment goods or services sold, revenues generated, and the  
19 disbursement of such revenues,

20 B Records accurately reflecting the name, address, and telephone number of each  
21 person employed by such business, including as an independent contractor, who are entitled to  
22 receive an IRS Form 1099 or W-2; that person's job title or position; the date upon which the  
23 person commenced work, and the date and reason for the person's termination, if applicable  
24 The businesses subject to this Paragraph shall retain such records for any terminated employee  
25 for a period of two (2) years following the date of termination For purposes of this Paragraph,  
26 "independent contractor" shall not include webmasters, unless employed by Defendants,

1 C Records containing the names, addresses, dollar amounts paid, quantity of goods  
2 or services purchased, and description of the goods or services purchased for all consumers to  
3 whom such business sold any adult entertainment goods or services,

4 D Records that reflect, for every consumer complaint or refund request, whether  
5 received directly, indirectly, or through any third party, the following information, if available

6 1 If provided by a consumer, the consumer's name, street address, email  
7 address, and telephone number,

8 2 A description of and the quantity of adult entertainment goods or services  
9 purchased, and the dollar amount paid by a consumer,

10 3 The complaint or refund request, if any, and the date of the complaint or  
11 refund request,

12 4 The basis of the written complaint, and the nature and result of any  
13 investigation conducted concerning the complaint,

14 5 Each response by Defendants and the date of the response,

15 6 Any final resolution and the date of the resolution, and

16 7 In the event of a denial of a refund request, the reason for the denial, and

17 E Copies of all advertisements, Web pages, banner ads, or other marketing materials  
18 created and used by Defendants directly or indirectly for the promotion of adult entertainment  
19 goods or services *Provided, however,* that copies of all such materials shall be retained for three  
20 (3) years after the last date Defendants directly disseminated such materials or made them  
21 available for dissemination to others, whichever occurs last

22  
23 **Monitoring Compliance with this Order**

24 **IX.**

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

27 A For a period of four (4) years from the date of entry of this Order, Defendants  
28 shall notify the Commission of the following



- 1           1     Any changes in any individual Defendant's business address, mailing  
2                    address, and telephone number, within thirty (30) days of the date of such  
3                    change,  
4           2     Any changes in any individual Defendant's employment status (including  
5                    self-employment) within thirty (30) days of such change. Where  
6                    Defendant's new employment involves advertising, promoting, offering  
7                    for sale, or selling adult entertainment goods or services on or through the  
8                    Internet, such notice shall include the name and address of each new  
9                    business that any such Defendant is affiliated with or employed by, a  
10                   statement of the nature of the business, and a statement of such  
11                   Defendant's duties and responsibilities in connection with the business or  
12                   employment, and  
13           3     Any proposed change in the corporate structure of the corporate  
14                   Defendant, or any proposed change in the structure of any business entity  
15                   owned or controlled by any individual Defendant, which is, or was,  
16                   involved in the business of advertising, promoting, offering for sale, or  
17                   selling adult entertainment goods or services on or through the Internet,  
18                   such as creation, incorporation, dissolution, assignment, sale, merger,  
19                   dissolution of subsidiaries, proposed filing of a bankruptcy petition, or  
20                   change in the corporate name or address, or any other change that may  
21                   materially affect compliance obligations arising out of this Order, thirty  
22                   (30) days prior to the effective date of any proposed change, *provided,*  
23                   *however,* that with respect to any proposed change in the corporation about  
24                   which any Defendant learns less than thirty (30) days prior to the date such  
25                   action is to take place, such Defendant shall notify the Commission as  
26                   soon as is practicable after learning of such proposed change,

27           B.     One hundred eighty (180) days after the date of entry of this Order, Defendants  
28 shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail

1 the manner and form in which Defendants have complied and are complying with this Order

2 This report shall include, but not be limited to

3 1 The individual Defendant's then current mailing address and telephone  
4 number,

5 2 The individual Defendant's then current employment, business addresses  
6 and telephone numbers, a description of the business activities of each  
7 such employer if related to advertising, promoting, offering for sale, or  
8 selling adult entertainment goods or services on or through the Internet,  
9 and Defendant's title and responsibilities for each employer,

10 3 A copy of each acknowledgment of receipt of this Order obtained by  
11 Defendants pursuant to Part XII of this Order,

12 4 A statement describing the manner in which each such Defendant has  
13 complied and is complying with (a) the injunctive provisions of this  
14 Order, and (b) the consumer redress provisions of this Order,

15 C Upon written request by a representative of the Commission, each Defendant shall  
16 submit additional written reports (under oath, if requested) and shall respond to any request to  
17 produce documents with respect to any conduct subject to this Order, within thirty (30) days from  
18 the date the request was received,

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

21  
22 Associate Director  
23 Division of Marketing Practices  
24 Federal Trade Commission, Room 238  
25 600 Pennsylvania Avenue, N.W  
26 Washington, D C 20580

27 and

28 E For purposes of the compliance reporting required by this Part, the Commission is  
authorized to communicate directly with Defendants, unless represented by counsel

**X.**

**IT IS FURTHER ORDERED** that the Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including, but not limited to, the following means

A The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by the Federal Rules of Civil Procedure, Fed R Civ P 26-37, including the use of compulsory process pursuant to Fed R Civ P 45, for the purpose of monitoring and investigating Defendants' compliance with any provision of this Order,

B The Commission is authorized to use representatives posing as consumers or suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice, and

C Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U S C §§ 49 and 57b-1, to investigate whether Defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U S C § 45

**XI.**

**IT IS FURTHER ORDERED** that for a period of four (4) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall permit representatives of the Commission, within seven (7) business days of receipt of written notice from the Commission

A Access during normal business hours to any office, or facility storing documents, of any business in which (1) any Defendant is the majority owner or directly or indirectly manages or controls the business, and (2) the business is engaged in advertising, promoting, offering for sale, or selling adult entertainment goods or services, or is engaged in the business of assisting others engaged in advertising, promoting, offering for sale, or selling adult entertainment goods or services, on or through the Internet In providing such access, Defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any



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XIII.

**IT IS FURTHER ORDERED** that within ten (10) business days after receipt by Defendants of this Order as entered by the Court, Defendants shall submit to the Commission a truthful sworn statement in the form shown on Attachment D, that shall acknowledge receipt of this Order

XIV.

**IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith or the punishment of violations thereof


SO ORDERED, this 14<sup>th</sup> day of July, 2000


Margaret M. Morrow  
United States District Judge


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The parties, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof Defendants waive any rights that may arise under the Equal Access to Justice Act, 28 U S C § 2412

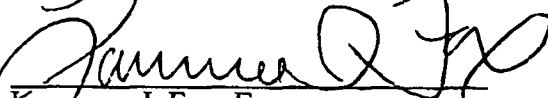
**FOR DEFENDANTS**


  
Xpics Publishing Inc by Mario G Carmona

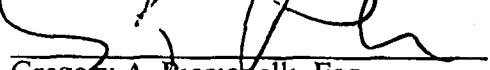
  
Mario G Carmona, individually and as an officer of Xpics Publishing, Inc

  
Brian Shuster, individually and as an officer of Xpics Publishing, Inc

**COUNSEL FOR DEFENDANTS**


  
Lawrence I Fox, Esq  
McDermott, Will & Emery  
50 Rockefeller Plaza  
New York, New York 10020

  
David Steiner, Esq  
Steiner & Saffer  
1901 Avenue of the Stars, 18<sup>th</sup> Floor  
Los Angeles, California 90067  
California Bar No 067638


  
Gregory A Piccionelli, Esq  
Brill, Piccionelli, Sarno, & Braun  
1901 Avenue of the Stars, 18<sup>th</sup> Floor  
Los Angeles, California 90067  
California Bar No 163948

**FOR THE COMMISSION**

  
Stephen L Cohen

  
Collot Guerard  
Attorneys for the Plaintiff  
Federal Trade Commission  
600 Pennsylvania Avenue, NW,  
Washington, DC 20580

**LOCAL COUNSEL**

  
Barbara Chun  
Federal Trade Commission  
10877 Wilshire Boulevard  
Suite 700  
Los Angeles, CA 90024  
(310) 824-4343

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**ATTACHMENT A**

**XPICS OFFERS REFUNDS TO ELIGIBLE FORMER CUSTOMERS OF  
XPICS.COM, SEXMUSEUM.COM, SEXROULETTE.COM,  
ASSAWARDS.COM, LIVESEXSTREAM.COM, XXXSEXPHOTOS.COM<sup>1</sup>**

[Click Here For Details](#)

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<sup>1</sup> This is a banner ad that is hyperlinked to the screening form at the Claims Administrator's Web site

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28**ATTACHMENT B**  
**FTC and XPICS**  
**REFUND ELIGIBILITY FORM**

You have reached the refund eligibility page for former customers of Xpics. This page is maintained by [Claims Administrator], an independent third party that has been authorized to receive refund applications and determine consumers' eligibility for a refund.

The Federal Trade Commission<sup>2</sup> and Xpics Publishing, Inc.<sup>3</sup> ("Xpics") together announce they have entered into an agreement whereby Xpics has agreed to offer refunds to certain former customers. This notice is being posted for sixty (60) days as a means of contacting consumers who may have been billed by Xpics without their authorization, or billed after they canceled their contractual relationship with Xpics to view certain adult entertainment sites.

The sites sponsored by Xpics were

xpics.com  
sexmuseum.com  
sexroulette.com  
assawards.com  
livesexstream.com  
xxxsexphotos.com

To be eligible, you must be U.S. or Canadian resident, or hold a credit, charge, or debit card issued by a U.S. financial institution that was charged by Xpics. You must also meet **any one** of the criteria listed below:

- a. You were a subscriber to an Xpics Web site, you attempted to cancel your enrollment, and you were subsequently billed by Xpics for membership to that Web site.
- b. You were a subscriber to an Xpics Web site, you canceled your enrollment, and you were subsequently billed by Xpics for membership to that Web site.
- c. You enrolled for a free or trial offer, you canceled the enrollment in a timely manner, and yet you were billed by Xpics for membership to that Web site.
- d. You complained to Xpics that the Xpics services were purchased by a minor, you requested a refund, and you did not receive one.
- e. You complained to Xpics that you were never a subscriber to an Xpics site, you were billed by Xpics, and you have not received a credit for the full amount for which you were billed.

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<sup>2</sup> Hyperlink to FTC press release announcing settlement

<sup>3</sup> Hyperlink to Xpics' press release regarding settlement



1 The FTC has appointed us, [name of Claims Administrator], to handle any refunds that  
2 Xpics may owe to consumers. If you believe you meet the refund criteria, please complete this  
3 form, which you can automatically send to the Claims Administrator by clicking the transmit  
button at the end of the form. If you prefer to mail the form, please print it, complete it, and mail  
it to [provide address of Claims Administrator]

4 We will compare your claim to the billing, cancellation, and refund records maintained by  
5 Xpics. If we believe you may be entitled to a refund, we will send you electronically or by U S  
mail a refund application to the address you designate in this form.

6 Do not complete the form unless you believe you are entitled to a refund. You are not  
7 entitled to a refund if you have already received a refund from Xpics, or you have received a  
credit on your credit, charge, or debit card statement. If you have received only a partial refund,  
8 you may be entitled to an additional refund.

9 **The deadline for completing and transmitting this form is [date that is sixty (60)  
days from the date of the first publication of the banner ad].**

10 To be eligible for a refund, you must affirm that the information you are submitting is  
11 truthful and accurate to the best of your knowledge. Submission of any false or misleading  
information may subject you to the penalties of perjury under 18 U S C § 1001 and 28 U S C  
§ 1746<sup>4</sup>.

12 Once you have sent us this information, we will review your form. Based on our  
13 evaluation of the information you submit, we will determine whether to send you a refund  
14 application. A copy of the information on this form may be provided to Xpics for its review.  
15 However, Xpics will not use any of the information to charge or debit your credit or debit card,  
or to contact you for purposes of advertising, promoting, offering to sell or selling adult  
entertainment goods or services. Xpics will not sell any of this information to any third party.

16 Your name

17 Mailing address

18 Current Email address

19 Email address you used to join Xpics, if different from current email address

20 Type of credit or debit card used to access Xpics' Web site

21 Credit, charge, or debit card number

22 Bank account number if your bank account was debited by Xpics, and name of bank

23 Web site to which you subscribed, if you recall

24 Your user name, if you recall

25 Your Password, if you recall

26 \_\_\_\_\_  
27  
28 <sup>4</sup> Hyperlink to statutory language on Claim Administrator's Web site

- 1 Date and method of cancellation, to the best of your recollection
- 2 Amount and date of refund or chargeback you have received, if any
- 3 Amount of refund you believe you are entitled to
- 4 Were you charged by Xpics even though you never visited any of their sites? If so, please explain

5

6 By submitting this form, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge

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Executed on [date] Your name

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ATTACHMENT C

REFUND APPLICATION FOR FORMER CUSTOMERS OF  
XPICS PUBLISHING, INC.'S WEB SITE OR WEB SITES

The Federal Trade Commission<sup>5</sup> and Xpics Publishing, Inc<sup>6</sup>, together announce they have entered into an agreement whereby Xpics has agreed to offer refunds to eligible consumers who were customers of one of Xpics' adult entertainment sites

The sites sponsored by Xpics were

- xpics com
- sexmuseum com
- sexroulette com
- assawards com
- livesexstream com
- xxxsexphotos com

To be eligible for a refund, you must be U S or Canadian resident, or hold a credit, charge, or debit card issued by a U S financial institution that was charged by Xpics. You must also meet **any one** of the criteria listed below

- a You were a subscriber to an Xpics Web site, you attempted to cancel your enrollment, and you were subsequently billed by Xpics for membership to that Web site
- b You were a subscriber to an Xpics Web site, you canceled your enrollment, and you were subsequently billed by Xpics for membership to that Web site
- c You enrolled for a free or trial offer, you canceled the enrollment in a timely manner, and yet you were billed by Xpics for membership to that Web site
- d You complained to Xpics that the Xpics services were purchased by a minor, you requested a refund, and you did not receive one
- e You complained to Xpics that you were never a subscriber to an Xpics site, you were billed by Xpics, and you have not received a credit for the full amount for which you were billed

The FTC has appointed us, [name of Claims Administrator], to handle any refunds that Xpics may owe to consumers. If you believe you meet the refund criteria, please provide us with [information to be determined by Claims Administrator], and any supporting documentation including credit card and bank statements evidencing charges or debits by Xpics, so we can evaluate your claim that you are entitled to a refund. The more information and documentation you can provide to us, the more quickly we can evaluate your claim

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<sup>5</sup> Hyperlink to FTC press release announcing settlement

<sup>6</sup> Hyperlink to Xpics press release regarding settlement

1 **You have sixty (60) days to submit your claim for a refund.** To expedite  
2 consideration of your claim, please return your completed form, and all supporting  
3 documentation to the following address

4 **Address Designated by Claims Administrator**

5 Please understand that if you have already received a full refund from Xpics, or a credit to  
6 your credit, charge, or debit card, then you are not entitled to a refund because you have been  
7 fully compensated. If you have received only a partial refund, you may be entitled to an  
8 additional refund amount.

9 Please also understand that we will provide a copy of your claim to Xpics. However,  
10 Xpics will not use any of the information to charge or debit your credit or debit card, or to  
11 contact you for purposes of advertising, promoting, offering to sell or selling adult entertainment  
12 goods or services. Xpics will not sell any of this information to any third party. Xpics may  
13 submit documentation to the Claims Administrator showing that you have already received a  
14 refund or dispute your claim.

15 Please print, complete, sign, and date this form and send it with the supporting document  
16 to the above address. If the Claims Administrator determines that you are entitled to a refund,  
17 the postage costs of returning the information requested on this form will be added to your refund  
18 amount.

19 To be eligible for a refund, you must affirm that the information you are submitting is  
20 truthful and accurate to the best of your knowledge. Submission of any false or misleading  
21 information may subject you to the penalties of perjury under 18 U.S.C. § 1001 and 28 U.S.C.  
22 § 1746<sup>7</sup>.

23 [Claims Administrator to list items of information Claims Administrator needs]

24 By submitting this form, I declare under penalty of perjury that the foregoing is true and  
25 correct to the best of my knowledge

26 \_\_\_\_\_  
27 Signature

28 \_\_\_\_\_  
Print your name

\_\_\_\_\_ Date Signed

<sup>7</sup> Hyperlink statutory language on Claim Administrator's Web site

012 P/E

012 P/E

ATTACHMENT D

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

XPICS PUBLISHING, INC., a corporation, also d/b/a Xpics, xpics.com, sex museum.com, sexroulette.com, assawards.com, livesexstream.com, xxxsexphotos.com,

and

MARIO G. CARMONA, individually, also d/b/a Xpics, xpics.com, sex museum.com, sexroulette.com, assawards.com, livesexstream.com, xxxsexphotos.com, and as an officer of the corporation,

and

BRIAN M SHUSTER, individually, also d/b/a Xpics, xpics.com, sex museum.com, sexroulette.com, assawards.com, livesexstream.com, xxxsexphotos.com, and as an officer of the corporation,

Defendants.

Civil Action No.

Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress

[Name of defendant], being duly sworn, hereby states and affirms as follows:

1 My name is \_\_\_\_\_ My current residence address

24 is \_\_\_\_\_ I am a citizen of the United States and am over the age of eighteen I have personal knowledge of the facts set forth in this Affidavit

26 2 I am a defendant in FTC v Xpics Publishing, Inc., et al (United States District Court for the Central District of California)

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On \_\_\_\_\_, I received a copy of the Order, which was signed by  
 the Honorable \_\_\_\_\_ and entered by the Court on \_\_\_\_\_ 1999  
 A true and correct copy of the Order I received is appended to this Affidavit  
 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
 and correct

Executed on \_\_\_\_\_, at \_\_\_\_\_

\_\_\_\_\_  
 [Full name of defendant]