



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 Digital Enterprises, Inc., a California corporation;  
14 Triumphant Videos, Inc., a California corporation; Pacificon International, Inc., a  
15 California corporation; Innovative Networks, Inc., a California corporation; Film  
16 Web, Inc., a Wyoming corporation; Binary Source, Inc., a California corporation;  
17 Mediacaster, Inc., a Delaware corporation; CS Hotline, Inc., a California  
18 corporation; Easton Herd; and Andrew Garroni ("Stipulating Defendants") have  
19 instead reached a Stipulated Interim Agreement and Order ("Agreement and  
20 Order") to govern the Plaintiff's and the Stipulating Defendants' conduct during the  
21 pendency of this litigation, thereby making a preliminary injunction hearing  
22 unnecessary;

23 WHEREAS, Plaintiff and the Stipulating Defendants, without any admission  
24 of any wrongdoing or violation of law, and without the Stipulating Defendants  
25 admitting that they have formulated, directed, controlled, or participated in or will  
26 formulate, direct, control, or participate in any of the acts or practices at issue in the  
27 Complaint, voluntarily have stipulated to the entry of the following Agreement and  
28 Order;



1 Hotline, Inc., a California corporation; Easton Herd; and Andrew Garroni; and each  
2 of them, by whatever names each might be known, including Movieland.com,  
3 Moviepass.tv, and/or Popcorn.net.

4 4. "Covered product" means any desktop or laptop computer, handheld  
5 device, telephone, or other electronic product or device that has a platform on  
6 which to download, install, and run any software program, code, or other content.

7 5. "Document" is synonymous in meaning and equal in scope to the  
8 usage of the term in Federal Rule of Civil Procedure 34(a).

9 6. "Person" means a natural person, organization, or other legal entity,  
10 including a corporation, partnership, proprietorship, association, cooperative,  
11 government or governmental subdivision or agency, or any other group or  
12 combination acting as an entity. A "consumer" is a person under this definition.

13 7. "Clearly and prominently" means that, in an electronic medium, the  
14 disclosures shall be: (a) visible; (b) of a size and shade, and appear on the screen  
15 for a duration, sufficient for an ordinary consumer to read and comprehend them;  
16 (c) in understandable language and syntax; and (d) additionally, in connection with  
17 the distribution, download or installation of any software program, code, script or  
18 other content onto a covered product, shall be presented within the context of each  
19 advertisement or offer for such software program, code, script, or other content, and  
20 prior to the download or installation of such software program, code, script, or other  
21 content.

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

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

25 **I.**

26 **Prohibited Representations**

27 In connection with the advertising of, promotion of, offering of, sale of, or  
28 attempted collection of payment for goods or services, including but not limited to



1 Defendants shall also disclose the same information clearly and prominently in any  
2 version of terms and conditions, terms of use, terms of service, or end user license  
3 agreements that Stipulating Defendants present to or make accessible to consumers  
4 in connection with distributing, downloading, or installing any software program,  
5 code, script, or other content to any consumer's covered product.

6 **III.**

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

8 Stipulating Defendants, doing business through any person or entity, and  
9 anyone acting in concert or participation with any of them, to the extent relevant to  
10 their current or future business activities, shall not distribute, download, or install  
11 any software program, code, script, or other content to any covered product, unless  
12 a user of the covered product certifies that he is the owner of the covered product or  
13 is authorized by the owner of the covered product to download software onto the  
14 covered product and indicates assent to the distribution, download, or installation of  
15 such software program, code, script, or other content by clicking on a button (such  
16 as through a "single click") that is not pre-selected as the default option and that is  
17 clearly labeled to convey that it will activate the installation or download, or by  
18 taking substantially similar affirmative action to authorize the installation or  
19 download.

20 **IV.**

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

22 Stipulating Defendants, doing business through any person or entity, and  
23 anyone acting in concert or participation with any of them, to the extent relevant to  
24 their current or future business activities, shall not cause, or assist others in, causing  
25 any software program, code, script, or other content to display any "pop-up"  
26 window or language on a covered product, regardless of whether the covered  
27 product's Internet browser is open or closed, (1) more than five times in any  
28 calendar day nor more often than once per hour, or (2) that does not enable the user

1 of the covered product to click on a clearly labeled button to silence the pop-up  
2 window and/or accompanying audio (including voice and music) and to make the  
3 pop-up window and its content invisible until the computer user closes all other  
4 open windows.

5 **V.**

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

7 In connection with the software program, code, script, and/or other content  
8 that is the subject of this action, Stipulating Defendants shall in no way interfere  
9 with Defendants Alchemy Communications, Inc.'s and AccessMedia Networks,  
10 Inc.'s efforts to comply with the Stipulated Interim Agreement and Order executed  
11 by and between such Defendants and Plaintiff.

12 **VI.**

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

14 The Stipulating Defendants shall immediately provide a copy of this  
15 Agreement and Order to each of their respective (1) officers and directors, (2)  
16 subsidiaries, affiliates, divisions, sales entities, employees, independent contractors,  
17 agents and representatives whose duties relate or formerly related to the business  
18 practices that are the subject of this action, and, (3) successors and assigns to the  
19 extent such successor or assign acquires or receives or has acquired or received any  
20 portion of any business whose practices relate or formerly related to the terms of  
21 this Agreement and Order. The Stipulating Defendants shall maintain a list of all  
22 persons and entities to whom this Agreement and Order was provided, and shall  
23 provide a sworn statement of compliance with this Section.

24 **VII.**

25 **Preservation of Records**

26 The parties to this Agreement and Order, and each such person, shall not  
27 destroy, erase, mutilate, conceal, alter, transfer or otherwise dispose of, in any  
28 manner, directly or indirectly, any documents that relate to the trial offers, the terms

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

VIII.

**Minute Order Vacated**

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 23 As stated above, this Agreement and Order is intended to make the FTC's  
 24 application for a preliminary injunction, and related expedited discovery,  
 25 unnecessary. Accordingly, the parties to this Agreement and Order agree, subject  
 26 to the approval of the Court, stipulate and agree that the Court's minute order dated  
 27 August 18, 2006 respecting expedited discovery, a briefing schedule for the  
 28 preliminary injunction application, and a November 17, 2006 hearing on the



1 preliminary injunction application, shall be vacated. Discovery in this action shall  
2 not be expedited, but shall be conducted in accordance with the Federal Rules of  
3 Civil Procedure and the local rules of this Court.

4 SO STIPULATED:

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6 **FEDERAL TRADE COMMISSION**

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

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1 APPROVED AS TO FORM:

DIGITAL ENTERPRISES, INC., a California corporation

2 LOEB & LOEB

By \_\_\_\_\_

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Its \_\_\_\_\_

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TRIUMPHANT VIDEOS, INC., a California corporation

7 Michael L. Mallow  
8 Attorneys for Defendants  
9 DIGITAL ENTERPRISES, INC., a  
10 California corporation; TRIUMPHANT  
11 VIDEOS, Inc., a California corporation;  
12 PACIFICON INTERNATIONAL,  
13 INC., a California corporation;  
14 INNOVATIVE NETWORKS, INC., a  
15 California corporation; FILM WEB,  
16 INC., a Wyoming corporation;  
17 BINARY SOURCE, INC., a California  
18 corporation; MEDIACASTER, INC., a  
19 Delaware corporation; CS HOTLINE,  
20 INC., a California corporation;  
21 EASTON HERD; and  
22 ANDREW GARRONI

By \_\_\_\_\_

Its \_\_\_\_\_

PACIFICON INTERNATIONAL, INC., a California corporation

By \_\_\_\_\_

Its \_\_\_\_\_

INNOVATIVE NETWORKS, INC., a California corporation

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APPROVED AS TO FORM:  
LOEB & LOEB

DIGITAL ENTERPRISES, INC., a California corporation

By *Easton Threl*

Its *President*

By Michael L. Mallow  
Attorneys for Defendants  
DIGITAL ENTERPRISES, INC., a California corporation; TRIUMPHANT VIDEOS, Inc., a California corporation; PACIFICON INTERNATIONAL, INC., a California corporation; INNOVATIVE NETWORKS, INC., a California corporation; FILM WEB, INC., a Wyoming corporation; BINARY SOURCE, INC., a California corporation; MEDIACASTER, INC., a Delaware corporation; CS HOTLINE, INC., a California corporation; EASTON HERD; and ANDREW GARRONI

TRIUMPHANT VIDEOS, INC., a California corporation

By *Easton Threl*

Its *President*

PACIFICON INTERNATIONAL, INC., a California corporation

By *Andrew Garroni*

Its *President*

INNOVATIVE NETWORKS, INC., a California corporation

By *Easton Threl*

Its *President*

FILM WEB, INC., a Wyoming corporation

By *Easton Threl*

Its *President*

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BINARY SOURCE, INC., a  
California corporation

By Easton Herd

Its President

MEDIACASTER, INC., a Delaware  
corporation

By Easton Herd

Its President

CS HOTLINE, INC., a California  
corporation

By AK

Its President

EASTON HERD

By Easton Herd  
Easton Herd

ANDREW GARRONI

By Andrew Garroni  
Andrew Garroni

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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: 11/7/06

Christina A. Snyder  
Christina A. Snyder  
United States District Judge

**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.  
Eugenie Warner, Esq.  
Vicki Garza  
LOEB & LOEB LLP  
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Telephone: (310) 282-2287  
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mmallow@loeb.com  
ewarner@loeb.com  
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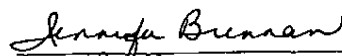
Counsel for Digital Enterprises, Inc.; Triumphant Videos, Inc.; Pacificon International, Inc.; Innovative Networks, Inc.; Film Web, Inc.; Binary Source, Inc.; Mediacaster, Inc.; CS Hotline, Inc.; Easton Herd; and Andrew Garroni

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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