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**STATE OF WASHINGTON  
COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

NO. 06-2-26030-9SEA

Plaintiff,

STIPULATED AGREEMENT AND  
ORDER

v.

DIGITAL ENTERPRISES, INC., d/b/a  
Movieland.com, a California  
Corporation; ACCESSMEDIA  
NETWORKS, INC., a Delaware  
Corporation; INNOVATIVE  
NETWORKS, INC., a California  
Corporation; EASTON A. HERD,  
individually and on behalf of his marital  
community; and ANDREW M.  
GARRONI, individually and on  
individually and on behalf of his marital  
community,

Defendants.

**I. STIPULATED AGREEMENT AND ORDER SUMMARY**

- 1.1 Plaintiff: State of Washington
- 1.2 Defendants: Digital Enterprises, Inc., d/b/a  
Movieland.com, a California  
Corporation; Accessmedia, Networks,  
Inc., a Delaware Corporation; Innovative  
Networks, Inc., a California  
Corporation; Easton A. Herd,  
individually and on behalf of his marital  
community; and Andrew Garroni,  
individually and on behalf of his marital  
community
- 1.3 Amount: \$50,000.00

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1.4 Attorney for Plaintiff: Paula Selis, Senior Counsel

1.5 Attorneys for Defendants: Phillip H. Ginsberg, for Defendant  
Accessmedia Networks, Inc.; and  
Randall Steichen for Defendants Digital  
Enterprises, Inc., Innovative Networks,  
Inc., Easton Herd and Andrew Garroni

Plaintiff, State of Washington, having filed an Amended Complaint in this action on  
September 18, 2006 the Unfair Business Practices – Consumer Protection Act (“CPA”); and  
RCW 19.270, the Computer Spyware Act; and Defendants Accessmedia Networks, Inc., Digital  
Enterprises, Inc., Innovative Networks, Inc., Easton Herd and Andrew Garroni having been  
served with the Summons and Amended Complaint; and

Defendant Alchemy Communications, Inc. having been dismissed as a party from the  
lawsuit pursuant to the Court’s Order of January 16, 2007; and

Plaintiff having appeared by and through its attorneys, Robert M. McKenna, Attorney  
General; and Paula Selis, Senior Counsel; and Defendant Accessmedia Networks, Inc. having  
appeared through its attorney Phillip H. Ginsberg, and Defendants Digital Enterprises, Inc.,  
Innovative Networks, Inc., Easton Herd and Andrew Garroni having appeared through their  
attorney Randall Steichen; and

Plaintiff and Defendants having agreed on a basis for the settlement of the matters  
alleged in the Amended Complaint, and to the entry of this Stipulated Agreement and Order  
(hereinafter referred to as “Stipulated Agreement”) without the need for trial or adjudication  
of any issue of law or fact; and

Defendants recognize and state that this Stipulated Agreement is entered into voluntarily  
and that no promises or threats have been made by the Attorney General’s Office or any member,  
officer, agent or representative thereof to induce them to enter into this Stipulated Agreement,  
except as provided herein; and

1 Defendants further agree that they will not oppose the entry of this Stipulated Agreement  
2 on the grounds the Stipulated Agreement fails to comply with Civil Rule 65(d), and hereby  
3 waive any objections based thereon; and

4 Defendants waive any right they may have to appeal from this Stipulated Agreement;  
5 and

6 Plaintiff and Defendants having agreed that this Stipulated Agreement does not constitute  
7 evidence or an admission regarding the existence or non-existence of any issue, fact, or violation  
8 of any law alleged by Plaintiff, or any admission of wrongdoing; and

9 Defendants further agree that this Court shall retain jurisdiction of this action for the  
10 purpose of implementing and enforcing the terms and conditions of the Stipulated Agreement  
11 and for all other purposes; and

12 The Court having determined there is no just reason for delay in the entry of this  
13 Stipulated Agreement and all other purposes, and being fully advised; and

14 The Court finding no just reason for delay;

15 NOW, THEREFORE, it is hereby ORDERED, as follows:

16 **II. GENERAL**

17 2.1 The Court has jurisdiction of the subject matter of this action and of the parties  
18 hereto, and Plaintiff's Amended Complaint states claims upon which relief may be granted  
19 under the provisions of Chapter 19.270 RCW, the Computer Spyware Act and Chapter 19.86  
20 RCW, the Unfair Business Practices-Consumer Protection Act. Venue is proper in King  
21 County, Washington.

22 2.2 Unless otherwise specified, the term "Defendants" as used in this document  
23 shall mean Digital Enterprises, Inc., d/b/a Movieland.com, a California Corporation;  
24 Accessmedia, Networks, Inc., a Delaware Corporation; Innovative Networks, Inc., a  
25 California Corporation; Easton A. Herd, individually and on behalf of his marital community;  
26 and Andrew Garroni, individually and on behalf of his marital community,



1           3.4 Defendants and their successors, assigns, transferees, officers, agents, servants,  
2 directors, employees, and all other persons or entities in active concert or participation with  
3 Defendants shall not attempt to collect payment for goods or services, from a location in the  
4 State of Washington, or from another location to consumers located in the State of  
5 Washington, unless, in connection with their collection practices, Defendants enter into a valid  
6 contract with consumers for the purchase of goods or services. For purposes of this provision,  
7 if Defendants implement a collection method that includes the distribution, download, or  
8 installation of any software program, code, script or other content, a "valid contract" shall exist  
9 only if the following conditions are met:

10           a. Defendants obtain the consumer's credit card number or other method of  
11 payment, or, in the alternative, personally identifying information including name, email  
12 address and physical address; and

13           b. Defendants obtain the consumer's verification that he or she is eighteen or  
14 older; and

15           c. Defendants disclose clearly and prominently all material terms of the contract  
16 in its advertisements for goods and services, in a manner that calls attention to the material  
17 terms, in a manner that discloses the terms on the same page as any advertisement for goods  
18 or services without requiring the reader to scroll down to read the terms, and in a manner that  
19 requires that the consumer assent to those terms after being given the opportunity to review  
20 them by clicking on a button that says "I agree to the terms of my contract for services and  
21 affirm that I understand them;" and

22           d. Notwithstanding Paragraph 3.4(c), Defendants disclose clearly and  
23 prominently all terms of the contract, in any version of terms and conditions, terms of use,  
24 terms of service, or end user license agreements that Defendants present to or make accessible  
25 to consumers in connection with the distribution, download, or installation of any software  
26 program, code, script or other content on to any Washington consumer's computer.

1           3.5 Defendants and their successors, assigns, transferees, officers, agents, servants,  
2 directors, employees, and all other persons or entities in active concert or participation with  
3 Defendants shall not distribute, download, or install any software program, code, script or  
4 other content on to any Washington consumer's computer, unless, before they seek express  
5 assent to enter into a contract with consumers pursuant to Paragraph 3.4 above, they disclose  
6 clearly and prominently the nature, frequency, and duration of any pop-up window or  
7 language that they later may cause to appear on the consumer's computer regarding any  
8 purported obligation to pay any money to them. In addition, Defendants shall also disclose  
9 the same information clearly and prominently in any version of terms and conditions, terms of  
10 use, terms of service, or end user license agreements that Defendants present to or make  
11 accessible to Washington consumers in connection with distributing, downloading, or  
12 installing any software program, code, script, or other content on to any Washington  
13 consumer's computer.

14           3.6 Defendants and their successors, assigns, transferees, officers, agents, servants,  
15 directors, employees, and all other persons or entities in active concert or participation with  
16 Defendants shall not distribute, download, or install any software program, code, script or  
17 other content on to on to any Washington consumer's computer, unless a user of the computer  
18 certifies that he is the owner of the computer or is authorized by the owner of the computer to  
19 download software onto it.

20           3.7 Defendants and their successors, assigns, transferees, officers, agents, servants,  
21 directors, employees, and all other persons or entities in active concert or participation with  
22 Defendants shall not cause or assist others in causing any software program, code, script, or  
23 other content to display any "pop-up" window or language used in connection with their  
24 collection practices, on any Washington consumer's computer, regardless of whether the  
25 computer's Internet browser is open or closed, (1) more than five times in any calendar day  
26 nor more often than once per hour, or (2) that does not enable the user of the computer to click

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

4 3.8 Defendants and all other persons or entities in active concert or participation  
5 with Defendants, including but not limited to their successors, assigns, transferees, officers,  
6 agents, servants, directors, employees, independent contractors, representatives and affiliates  
7 shall include the following features in all of their advertising, selling or billing for their online  
8 entertainment service, including but not limited to services using the Web domain names  
9 "movieland.com," "moviepass.tv" and "popcorn.net."

10 a. In the context of any free trial offer or other free software delivered by  
11 Defendants as part of the advertising or selling of their online entertainment service as defined  
12 in Paragraph 5.1 of the Amended Complaint, a dialogue box that automatically appears on the  
13 consumer's screen prior to being given the option to download the free trial program or other  
14 software that reads "Click YES if you are a Washington resident." If the consumer clicks on  
15 "YES," he or she will be presented with another dialogue box notifying him or her that the free  
16 trial is not available to Washington consumers. Clicking out of this notification will close the  
17 advertising screens completely and the consumer will not be redirected to any of Defendants'  
18 websites.

19 3.9 Defendants and all other persons or entities in active concert or participation  
20 with Defendants, including but not limited to their successors, assigns, transferees, officers,  
21 agents, servants, directors, employees, independent contractors, representatives and affiliates  
22 shall never cause a software product to be listed in the Microsoft add/remove utility unless  
23 clicking on such product listing will result in the removal of same.

24 3.10 Defendants and all other persons or entities in active concert or participation  
25 with Defendants, including but not limited to their successors, assigns, transferees, officers,  
26 agents, servants, directors, employees, independent contractors, representatives and affiliates

1 shall not represent, either directly or by implication, that any of their marketing, sales, business  
2 practices, or any of their activities have been approved, endorsed, or permitted by the Office of  
3 the Attorney General.

#### 4 IV. PAYMENT

5 4.1 Defendants shall provide \$50,000.00 to Plaintiff at the time of the execution of  
6 this Stipulated Agreement. Such funds may be used at the discretion of Plaintiff for purposes  
7 permissible under RCW 19.86 et seq.

8 4.2 Payment owing under this provision shall be in the form of a valid check paid to  
9 the order of the "Attorney General—State of Washington." Payment shall be sent to the Office  
10 of the Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager, 800  
11 Fifth Avenue, Suite 2000, Seattle, Washington, 98104-3188.

#### 12 V. ENFORCEMENT

13 5.1 Violation of any of the terms of this Stipulated Agreement and Order, as  
14 determined by the Court, shall subject violating Defendants to a civil penalty of up to \$25,000.00  
15 per violation pursuant to RCW 19.86.140, and shall constitute a violation of the Consumer  
16 Protection Act, RCW 19.86.020, for which Plaintiff may seek additional injunctive relief. .

17 5.2 This Stipulated Agreement and Order is entered pursuant to RCW 19.86.080.  
18 Jurisdiction is retained for the purpose of enabling any party to this Stipulated Agreement and  
19 Order with or without the prior consent of the other party to apply to the Court at any time for  
20 enforcement of compliance with this Stipulated Agreement and Order, to punish violations  
21 thereof, or to modify or clarify this Stipulated Agreement and Order.

22 5.3 Representatives of the Office of the Attorney General shall be permitted to access,  
23 inspect and/or copy all relevant business records or documents under control of Defendants  
24 reasonably calculated to monitor compliance with this Stipulated Agreement and Order within 14  
25 days of written request to Defendants, provided that the inspection and copying shall be done in  
26 such a way as to avoid disruption of Defendants' business activities and to avoid Defendants'

1 incurring unreasonable cost, and further provided that Defendants may assert any privileges  
2 accorded by the Civil Rules governing such business records or documents and Plaintiff may  
3 challenge such assertions. Any objections to providing access, inspection or copying shall be  
4 made to the Court within seven days of receiving Plaintiff's written request for access, inspection  
5 or copying. Refusal by one Defendant to permit access, inspection or copying shall not be  
6 construed as a violation of the Stipulated Agreement by any other Defendant, provided that the  
7 refusing Defendant has not acted in concert or participation in its refusal with the other Defendant.  
8 Failure to comply with this section will subject Defendants to a minimum civil penalty of \$2,000  
9 per day for each day beyond 14 days after the written request that the Attorney General is  
10 prevented by Defendants from accessing all records as provided by this Paragraph.

11           5.4   Representatives of the Office of the Attorney General may be permitted to  
12 question Defendants, or any officer, director, agent, employee or independent contractor of any  
13 corporation affiliated with Defendants, in deposition, pursuant to the provisions and notice  
14 requirements of CR 30, in order to monitor compliance with this Stipulated Agreement and Order.  
15 Any depositions taken pursuant to this Paragraph shall be calculated to avoid Defendants'  
16 incurring unreasonable cost.

17           5.5   Under no circumstances shall this Stipulated Agreement and Order or the name of  
18 the State of Washington, the Office of the Attorney General, Consumer Protection Division, or  
19 any of their employees or representatives be used by any Defendants named in the Amended  
20 Complaint in connection with any selling, advertising, or promotion of products or services, or as  
21 an endorsement or approval of Defendants' acts, practices or conduct of business.

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1 **VI. DISMISSAL AND WAIVER OF CLAIMS**

2 6.1 Upon entry of this Stipulated Agreement and Order, all claims in this matter, not  
3 otherwise addressed by this Stipulated Agreement and Order are dismissed with prejudice.

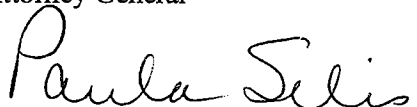
4 DONE IN OPEN COURT this \_\_\_\_\_ day of April, 2007.

5  
6 \_\_\_\_\_  
7 THE HONORABLE DOUGLAS MCBROOM

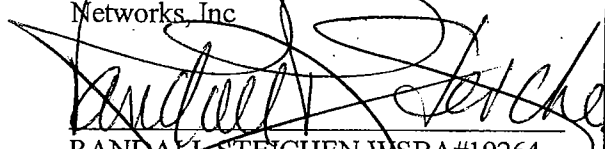
8 Approved for Entry and Presented by:

Approved for Entry, Notice of Presentation  
Waived:

9 ROBERT M. MCKENNA  
10 Attorney General

11   
12 PAULA SELIS, WSBA #12823  
13 Assistant Attorney General  
14 Attorney for Plaintiffs  
15 State of Washington

16 \_\_\_\_\_  
17 PHILLIP GINSBERG, WSBA#00164  
18 Attorney for Defendant Accessmedia  
19 Networks, Inc

20   
21 RANDALL STEICHEN WSBA#19264  
22 Attorney for Defendants Digital  
23 Enterprises, Inc., Innovative Networks,  
24 Inc., Easton Herd and Andrew Garroni  
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**VI. DISMISSAL AND WAIVER OF CLAIMS**

6.1 Upon entry of this Stipulated Agreement and Order, all claims in this matter, not otherwise addressed by this Stipulated Agreement and Order are dismissed with prejudice.

DONE IN OPEN COURT this 19 day of April, 2007.

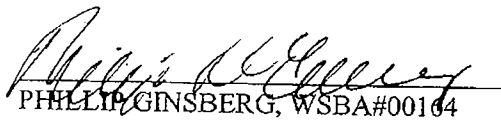
**DOUGLAS MCBROOM**

THE HONORABLE DOUGLAS MCBROOM

Approved for Entry and Presented by:

Approved for Entry, Notice of Presentation  
Waived:

ROBERT M. MCKENNA  
Attorney General

  
PHILLIP GINSBERG, WSBA#00104  
Attorney for Defendant Accessmedia  
Networks, Inc

PAULA SELIS, WSBA #12823  
Assistant Attorney General  
Attorney for Plaintiffs  
State of Washington

RANDALL STEICHEN WSBA#19264  
Attorney for Defendants Digital  
Enterprises, Inc., Innovative Networks,  
Inc., Easton Herd and Andrew Garroni