

THE HONORABLE JOHN. C. COUGHENOUR

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 AVENUE MEDIA, N.V.,

11 Plaintiff,

12 v.

13 DIRECTREVENUE, LLC;
14 DIRECTREVENUE HOLDINGS, LLC;
15 BETTER INTERNET, LLC,,

16 Defendants.

No. 04-CV-2371 JCC

**DECLARATION OF JOSHUA ABRAM
IN SUPPORT OF DEFENDANT'S
OPPOSITION TO TEMPORARY
RESTRAINING ORDER**

17 I, Joshua Abram, declare as follows:

18 **The Defendants**

19 1. I am the CEO of Defendants DirectRevenue LLC ("DR") and DirectRevenue
20 Holdings, LLC ("DR Holdings"). Defendant DR is the sole member and manager of Defendant
21 BetterInternet, LLC ("BetterInternet").

22 2. DirectRevenue, LLC, DirectRevenue Holdings, LLC and BetterInternet, LLC
23 operate leading Internet businesses, headquartered in New York. Defendants' operations include
24 Offeroptimizer.com, which, as of December 4, 2004, ranks 7th among the top 100 most-trafficked
25 websites on the Internet, behind Yahoo (1st), Google (3rd) and eBay (6th) and ahead of AOL (8th)
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1 and Amazon (10th). See http://www.alexa.com/site/ds/top_500.

2 **BetterInternet**

3 3. BetterInternet develops and distributes a software product, BI, which enables it to
4 provide contextual advertising services over the Internet. Contextual advertising is a form of
5 targeted advertising which enables advertisers to direct advertisements and promotional offers to
6 particular individuals based on that individual's interests. Using no personally identifiable
7 information, (BetterInternet has no information regarding the name, address, email or identity of
8 its users) BetterInternet looks at URLs visited by a given computer to ascertain relevant
9 advertising. Just as commercials subsidize free television programming and reduce the price of
10 print media, contextual advertising has promoted the unparalleled production and distribution of
11 free substantive content on the internet.

12 4. BetterInternet's software product, "BI," is typically offered to end users in
13 connection with free access to other software (e.g., games), services, and other content available
14 on the Internet. In exchange, end users agree to receive advertisements targeted to a particular
15 consumer's interests.

16 5. End users are required to consent to the terms and conditions of the BI End User
17 License Agreement ("EULA") prior to downloading and installing BI. A true and correct copy
18 the BI EULA is attached as Exhibit A.

19 6. By accepting the BI EULA, the end user expressly authorizes BetterInternet to
20 disable other adware resident on the end user's computer:

21 you further understand and agree, by installing the Software, that
22 BetterInternet and/or the Software may, without any further prior
23 notice to you, remove, disable or render inoperative other adware
programs resident on your computer

24 Exhibit A at § 2.2.

25 7. Making BI the exclusive adware on an end user's computer is favorable to the end
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1 user. Running multiple adware products on a single computer can create an unfavorable end user
2 experience. Adware clients deliver targeted advertising and promotions to the end user based on
3 the end user's Internet browsing behavior. If more than one adware client is operating on an end
4 user's computer, the end user may receive duplicative and a high volume of advertising.
5 Running multiple adware clients may also affect system performance from compatibility and
6 capacity perspectives.

7 **The Plaintiff**

8 8. Plaintiff and its principal, Shawn Boday, are affiliated with Flying Crocodile, Inc.,
9 which describes its "flagship product" as the "SexTracker." See www.sextracker.com.

10 **The Parties' Business Relationship**

11 9. BetterInternet relies primarily on third parties, including plaintiff, to distribute BI.
12 In March 2004 and June 2004, plaintiff (through its managing director) signed Insertion Orders
13 which incorporated, by reference, a document called the Standard Distribution Agreement
14 ("Distribution Agreement"). Each Insertion Order states:

15 Company understands, acknowledges, and agrees to the
16 STANDARD DISTRIBUTION AGREEMENT TERMS posted at
17 <http://www.abetterinternet.com/terms>, which are incorporated into
18 this Insertion Order by this reference and will be deemed a part of
19 this Insertion Order.

19 True and correct copies of (1) the Insertion Orders and (2) the Distribution Agreement are
20 attached as Exhibits B & C, respectively (the Insertion Orders have been redacted to protect
21 confidential pricing information that is not relevant to the subject matter of this litigation).

22 10. Pursuant to the Distribution Agreement, Plaintiff distributes Better Internet's BI
23 software to Internet end users. Plaintiff distributes BI as part of free software "bundles" that are
24 available for download on the Internet.

25 11. BetterInternet pays plaintiff a commission on each new copy of BI it distributes
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1 worldwide. Since February 2003, BetterInternet has paid plaintiff over \$800,000.

2 12. As a BI distributor, plaintiff is contractually obligated to obtain each end user's
3 consent to the BI EULA before allowing that end user to download and install BI:

4 Company represents and warrants that the Product will not be
5 installed until after each potential Registered User has agreed to
6 (by means of legally valid affirmative consent): (a) an end-user
7 license agreement (EULA) provided by [BetterInternet] or (b) a
EULA that provides [BetterInternet] with rights, limitations or
liability and other terms and conditions that are equivalent to those
set forth in [BetterInternet's] standard EULA.

8 Exhibit C at § 2.2.

9 13. On information and belief, plaintiff no longer makes BetterInternet's software
10 available for download.

11 **The Leslie Declaration**

12 14. I have reviewed the Declaration of Moses H. Leslie, which plaintiff submitted in
13 support of its moving papers.

14 15. At paragraph 7 of his declaration, Mr. Leslie claims that he downloaded a copy of
15 BI from www.shopnav.com. In fact, www.shopnav.com is not a BI distributor. I personally
16 visited the www.shopnav.com website and could not find any reference or link to BI. Nor do I
17 think that any such download of a BI application as Mr. Leslie has described could ever have
18 happened when visiting www.shopnav.com.

19 16. Mr. Leslie goes on to assert that "I never had to click to accept an End User
20 License Agreement, either from Shopnav or DirectRevenue." Leslie Decl., ¶7. It is
21 BetterInternet's policy to obtain valid end user consent to the BI EULA before that end user is
22 permitted to download and install BI.

23 17. Attached as Exhibits D-F are screenshots that demonstrate how the end user
24 consent process works through www.abetterinternet.com website. Exhibit D is a true and correct
25 copy of the www.abetterinternet.com homepage. When an Internet user clicks on one of the free
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1 software download links, the user is taken to a page describing the product. Exhibit E is a true
2 and correct copy of the product page for “FlashTalk.” If the user wishes to download and install
3 the product, the user clicks on the “download now!” link which takes the user to a dialogue
4 through which the user can read and accept or reject the EULA. Exhibit F is a true and correct
5 copy of this dialogue. The user is permitted to initiate the download process only if the user
6 accepts the terms and conditions set forth in the EULA by clicking on the “Yes, I accept” button.

7 Software Updates

8 18. BetterInternet periodically updates the BI software. One such update instructed
9 BI to disable other adware resident on the end user’s computer, including Internet Optimizer.

10 19. The latest update was sent to end user computers that had BI installed, without
11 regard to whether Internet Optimizer also was resident on a particular end user’s computer.
12 Some end users had Internet Optimizer installed. Some did not. BetterInternet has no way of
13 knowing whether Internet Optimizer was resident on a particular end user’s computer.

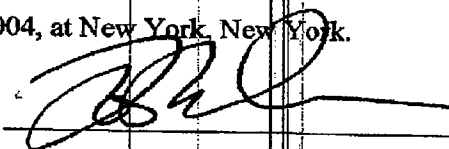
14 20. As discussed above, the BI EULA specifically discloses that this will occur and
15 obtains each end user’s consent to the same. The update code also openly discloses that it will
16 remove other adware resident on end users’ computers.

17 21. There is no way for BetterInternet to determine whether the BI update was
18 successful in disabling Internet Optimizer. There are numerous ways that Internet Optimizer is
19 disabled. Some end users may well have uninstalled Internet Optimizer themselves. There are
20 also a number of products on the market, such as offerings by Norton, that detect and uninstall
21 adware from end users’ computers.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

DATED this 7 day of December, 2004, at New York, New York.



Joshua Abram

DECLARATION OF JOSHUA ABRAM IN SUPPORT
OF DEFENDANTS' OPPOSITION TO TRO - 6
No. 04-CV-2371 JCC
Seattle-3243975.1 0054141-00001

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on December 7, 2004, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
4 following persons:

5 **Warrant Joseph Rheume**
6 **wrheume@hewm.com**

7 DATED: December 7, 2004 at Seattle, Washington.

8 /s/ Christopher N. Weiss

9 Christopher N. Weiss, WSBA #14826
10 Alfred Arthur Day, WSBA # 34926
11 Attorney for Defendants
12 Stoel Rives LLP
13 600 University Street, Suite 3600
14 Seattle, WA 98101
15 Telephone: (206) 624-0900
16 Fax: (206) 386-7500
17 cnweiss@stoel.com
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[HOME](#) [MORE DOWNLOADS](#)

BETTERINTERNET END USER LICENSE AGREEMENT

1. Acceptance of This Agreement - This BetterInternet End User License Agreement ("Agreement") is a contract between you ("you" or "your") and BetterInternet, LLC, a Delaware corporation with a mailing address of 2711 Centerville Road, Suite 400, Wilmington DE 19808-1660 ("BetterInternet"), and governs your use of BI ad targeting software ("BI") and other BetterInternet software and services provided to you (collectively, "Software"). The Agreement includes BetterInternet's Privacy Policy. Please read the terms of this Agreement carefully before installing and using the Software.

By clicking "yes" or downloading, installing or using the Software, you acknowledge that you have read and understand this Agreement and agree to be bound by its terms. If you do not agree to be bound by the terms of this Agreement, you may not download or use the Software, and shall close this window without downloading the Software or clicking yes to indicate your acceptance of this Agreement.

2. Functionality - BI delivers advertising and various information and promotional messages to your computer screen while you view Internet web pages. BetterInternet is able to provide you with BI free of charge as a result of your agreement to download and use BI, and accept the advertising and promotional messages it delivers.

By installing the Software, you understand and agree that the Software may, without any further prior notice to you, automatically perform the following: display advertisements of advertisers who pay a fee to BetterInternet, in the form of pop-up ads, pop-under ads, interstitials ads and various other ad formats, display links to and advertisements of related websites based on the information you view and the websites you visit; store non-personally identifiable statistics of the websites you have visited; redirect certain URLs including your browser default 404-error page to or through the Software; provide advertisements, links or information in response to search terms you use at third-party websites; provide search functionality or capabilities; automatically update the Software and install added features or functionality or additional software, including search clients and toolbars, conveniently without your input or interaction; install desktop icons and installation files; install software from BetterInternet affiliates; and install Third Party Software.

In addition, you further understand and agree, by installing the Software, that BetterInternet and/or the Software may, without any further prior notice to you, remove, disable or render inoperative other adware programs resident on your computer, which, in turn, may disable or render inoperative, other software resident on your computer, including software bundled with such adware, or have other adverse impacts on your computer.

3. Privacy Policy - BetterInternet, during the delivery and your use of the Software, does not collect any personally identifiable information about you, such as your surname, address, telephone number or e-mail address, nor does BetterInternet require such information from you before downloading or installing the Software. However, to enable BetterInternet to provide and operate its Software, BetterInternet collects certain types of non-personally identifiable information about individuals who install the Software. This information may include your Internet protocol (IP) address, your domain, your operating system, your browser version, type and language and your Internet Service Provider.

Advertisements may be displayed of advertisers who pay a fee to BetterInternet and you may be provided with and/or redirected to content of other parties and/or links to third party websites or content or offered the opportunity to download software from third party software vendors. BetterInternet is not responsible for the privacy practices of such advertisers, content providers, third party software vendors or websites. BetterInternet encourages you to read the privacy policies of such advertisers, content providers, third party software vendors and websites.

BetterInternet may use invisible tracking or counting devices known as "web bugs" to register that a particular web page has been viewed and/or "cookies" or alphanumeric identifiers that BetterInternet transfers to your computer's hard drive through your web browser to enable BetterInternet's systems to recognize your web browser.

BetterInternet also collects and may use certain other types of non-personally identifiable information, including: certain of the web pages that you view, the amount of time that you spend on certain websites, your responses to ads served by BetterInternet, certain software installed to your computer and software characteristics and preferences, non-personally identifiable information on web pages and forms, software usage characteristics and preferences, and your ZIP code. BetterInternet associates this information with a randomly-generated anonymous

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identifier for your computer and may use this information to enable the functionality of the Software, to periodically update the Software, to deliver and display ads served by BetterInternet of advertisers who pay a fee to BetterInternet, provide you with or redirect you to content or websites of such advertisers or other parties and offer you the opportunity to download software from third party vendors.

BetterInternet may share non-personally identifiable aggregate information about you with third parties, including advertisers.

If you have further questions about BetterInternet's privacy practices, you may contact us at contact@abetterinternet.com.

4. Children's Privacy Policy and Use - The Software is not directed to children. Because BetterInternet cannot determine with any degree of certainty whether a child is using a computer at a given time, this "Children's Privacy Policy and Use" explains BetterInternet's practices regarding the collection and use of personally identifiable and non-personally identifiable information from children under the age of thirteen and provides important information regarding your rights under federal law with respect to such information.

BetterInternet does not knowingly collect personally identifiable information from children under the age of thirteen. If BetterInternet becomes aware that it has inadvertently received personally identifiable information and/or data from a user under the age of thirteen, BetterInternet will delete such past data from its records and will cease to collect any new data from that computer, including any non-personally identifiable data.

Since BetterInternet does not knowingly collect any personally identifiable information from children under the age of thirteen, BetterInternet also does not knowingly distribute such information to third parties. Further, because BetterInternet does not knowingly collect any personally identifiable information from children under the age of thirteen, it does not condition the participation in online activities of a child under thirteen on providing personally identifiable information.

For more information on children's privacy on-line, please visit the Kidz Privacy website, sponsored by the Federal Trade Commission at <http://www.ftc.gov/bcp/online/edcams/kidzprivacy/index.html>.

5. Age Limitation - You must be thirteen years of age or older to download or use the Software. By downloading the Software, you represent and warrant to BetterInternet that you are thirteen years or older.

6. Software License - The Software, which shall be deemed to include any enhancements or modifications thereto and any related documentation, is a copyrighted work. Subject to your compliance with all of the terms and conditions of this Agreement, and in consideration of your promises reflected in this Agreement, BetterInternet grants to you a personal, nonexclusive, non-assignable and nontransferable license to download, install and use the Software to and on a single computer and to use the Software as permitted under this Agreement for non-commercial purposes only. BetterInternet may terminate this license at any time without notice.

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Some jurisdictions do not allow for the exclusion of certain warranties or the limitation of liability for certain damages. Accordingly, some of the above limitations may not apply to you.

If any part of these warranty disclaimers or limitations of liability is found to be invalid or unenforceable for any reason or if BetterInternet is liable to you for any other reason, then BetterInternet's aggregate liability for all claims under such circumstances shall not exceed the greater of ten dollars (\$10.00) or the amount paid by you for your use of the Software.

12. Termination - By entering into this Agreement, you represent to BetterInternet that you have intentionally chosen to install the Software and that you will personally uninstall the Software from your computer if you no longer wish the application to be present on your computer by going to <http://mypctuneup.com>.

While you may choose to delete the Software from your computer at anytime by following the instructions herein, some third party applications may attempt to delete, disable or modify the Software with or without notice to you.

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You further represent to BetterInternet that BetterInternet may store a cookie, computer file or other unique identifier on your computer to identify you and automatically repair or reinstall the Software if any third party application attempts to delete, disable or modify the Software. BetterInternet may terminate this Agreement or your right to continue to use the Software at any time.

Further, you agree that you will not initiate, permit, authorize or assist any third party or application to remove the Software from your computer, or disrupt its operation or the operation of any other user. You agree that removal of the Software from your computer will only be performed by you pursuant to the instructions set forth herein.

13. Anti-Spam Policy And Acceptable Use - While BetterInternet encourages you to refer friends, family, colleagues, and others to use the Software, you may do so only through methods that are consistent with the terms and conditions of your own Internet Service Provider as well as prevailing standards of acceptable Internet use and behavior. In particular, you may not use the Software or the server, name, trademarks, or other Intellectual Property of BetterInternet in conjunction with the sending of unsolicited e-mail, or cause to be used BetterInternet equipment, network connectivity, or other resources to originate, deliver, relay, or otherwise transmit unsolicited e-mail messages. You may not engage in any of these prohibited activities by using the service of any other provider, third-party agent, re-mailing service, or address forwarding service, in such a way that BetterInternet network addresses or BetterInternet hosted Web or e-mail services are in any way identified as being associated with the sending of unsolicited e-mail. Other prohibited methods of advertising or promoting your involvement with BetterInternet include multiple postings of messages to Usenet newsgroups, mailing lists, chat rooms (including IRC, AIM, ICQ, or other interactive chat services) or other online forums. Incidents of "spamming" or similar inappropriate behavior or other violations of the terms of use of the Software should be reported to contact@abetterinternet.com.

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14. Access to Software - To use the Software, you must provide all your own equipment to establish a connection to the Internet and provide for your own access, including paying any fees. You represent and warrant to BetterInternet that you have the necessary rights and permissions to install the Software on the computer used herein.

15. Other Websites - The Web changes constantly, and no technique can index all pages accessible on the Web. As a result, BetterInternet cannot guarantee the completeness or accuracy of the websites or URLs to which BetterInternet's Software link or refer. Further, the process of including websites in the Software is largely automatic, if at all. BetterInternet does not screen the websites accessed through the Software, and these other websites are maintained by persons over whom BetterInternet exercises no control. For these reasons, BetterInternet assumes no responsibility for the content of any website or URL included in the Software and is not responsible for errors or omissions or for offensive or objectionable content contained on any such website or URL.

16. Third Party Software - During the process of downloading and/or using the Software, you may also be offered the possibility to download software from third party software vendors pursuant to license agreements or other arrangements between such vendors and yourself ("Third Party Software"). Please note that the Third Party Software is subject to different license agreements or other arrangements, which you should read carefully. By downloading and using this Third Party Software you accept these Third Party Software license agreements or other arrangements and acknowledge that you have read them and understand them. BetterInternet disclaims to the maximum extent permitted by applicable law, any responsibility for or liability related to the Third Party Software. Any questions, complaints or claims related to the Third Party Software should be directed to the appropriate vendor. THE THIRD PARTY SOFTWARE IS PROVIDED "AS IS" AND "WITH ALL FAULTS". BETTERINTERNET MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE QUALITY, SAFETY OR SUITABILITY OF THIS SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL BETTERINTERNET BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWEVER THEY MAY ARISE AND EVEN IF BETTERINTERNET HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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17. Illegal, Unauthorized, Or Fraudulent Content Or Activities - The Software may be used only for lawful purposes and in a lawful manner and in compliance with this Agreement. You agree to comply with all applicable laws and regulations. BetterInternet has the right, but not the obligation, to investigate any reported violation of its policies and take any action it deems appropriate, including but not limited to terminating your access to the

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Software without notice. To protect BetterInternet systems and users, to ensure the integrity and operation of BetterInternet business and systems, or in response to subpoenas, court orders, or legal requirements, BetterInternet may access and disclose any information that it considers necessary or appropriate, including user contact details, IP addressing and traffic information, copyright infringement, and Web usage paths. By using the Software, you expressly consent to the foregoing use and disclosure.

18. Applicable Law; Jurisdiction And Venue - This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any principles of conflicts of laws, and you hereby consent to the personal and exclusive jurisdiction of the state and federal courts sitting in the County of New York, State of New York.

19. Arbitration - Except as provided in the next paragraph, you and BetterInternet agree that any and all disputes, controversies and claims relating in any way to the Software, this Agreement or the breach thereof (including the arbitration of any claim or dispute and the enforceability of this paragraph) shall be submitted to and resolved by means of a confidential arbitration before a single arbitrator administered by the American Arbitration Association under its then current Commercial Arbitration Rules and conducted in the County of New York, State of New York. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. You and BetterInternet may litigate in any court of competent jurisdiction only to stay or compel arbitration under this Agreement or to confirm, modify, vacate or enter judgment on the award rendered by the arbitrators and to enforce the judgment that is entered. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby excluded. To the fullest extent permitted by applicable law, no arbitration under this Agreement shall be joined to an action involving any other current or former user of the Software, whether through class arbitration proceedings or otherwise.

However, to the extent you have in any manner violated or threatened to violate BetterInternet's rights in the Intellectual Property, BetterInternet may seek injunctive or other appropriate relief in any court of competent jurisdiction and you irrevocably consent to jurisdiction and venue in such courts.

20. Changes - BetterInternet may change any of the terms and conditions contained in this Agreement, including the Privacy Policy in Section 3 of this Agreement and other policies and guidelines governing the Software, at any time in its sole discretion. Notices of material changes to this Agreement will be posted on BetterInternet website at www.abetterinternet.com when they become effective. You are solely responsible for reviewing the notices and any applicable changes. You agree that your continued use of the Software after any changes to this Agreement, including the Privacy Policy, take effect will constitute your acceptance of such changes. If you do not wish to accept the changes to this Agreement, do not continue to use the Software after the effective date of such changes and uninstall the Software.

21. General Provisions - This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereto and supersedes and cancels all prior and contemporaneous agreements, claims, representations and understandings of the parties in connection with the subject matter hereof, oral or written. If, for any reason, an arbitrator or court of competent jurisdiction finds any provision of this Agreement, or portion thereof, unenforceable, then the remainder of this Agreement shall continue in full force and effect and the provision in question will be read, or replaced with another provision, to give maximum effect to the intention of the parties as reflected by its plain language. BetterInternet's failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of BetterInternet's right to subsequently enforce such provisions or any other provisions of this Agreement. No waiver of any provision of this Agreement shall be effective unless in writing. All provisions of this Agreement relating to ownership of Intellectual Property and proprietary rights, warranty disclaimers, limitation of liability, and indemnification shall survive the termination of this Agreement and the termination of your use or access to the Software, for whatever reason. You acknowledge that your violation of the provisions relating to Intellectual Property and proprietary rights may cause damage to BetterInternet which is unquantifiable but nonetheless real and irreparable. Accordingly, in the event BetterInternet determines in its sole discretion that you have violated or will violate any such provision, BetterInternet will be entitled to injunctive relief from a court of competent jurisdiction restraining such violation. BetterInternet's specific remedies set forth under this Agreement for any breach by you of this Agreement or otherwise shall be cumulative and shall not restrict or limit BetterInternet ability to resort to any other remedy available under law or equity. Any rights not expressly granted herein are reserved.

22. International Access. The Software is provided from the United States of America. The laws of other countries may differ regarding the access and use of the Software. BetterInternet makes no representations regarding the legality of the Software in any other country and it is your responsibility to ensure that your use complies with all applicable laws outside of the U.S.A.

EXHIBIT B

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e-MANAGEMENT N.V.
New Haven Office Center
Emancipatie Boulevard 31
P.O. Box 6052, Curacao
Netherlands Antilles
Tel: (599-9) 734 1100
Fax: (599-9) 734 1110
E-mail: info@emanagement.an

Facsimile Transmittal Sheet

Telecopier No. : +1-646-613-0386
Place : U.S.A.
To : Better Internet
Attn. Julia
From : Freddy Konings
Date : March 15, 2004
Number of pages : 2 (including this page)

This facsimile transmittal is intended only for the individual or entity named above and may contain confidential information. If you are not the intended recipient, you are hereby notified that use or review of this document is strictly prohibited. If you received this document in error, please notify us immediately by telephone at the number mentioned above. You are also requested to destroy this document immediately after notifying us. Thank you!

Re: Avenue Media N.V.

Dear Sirs,

Please find enclosed the Insertion Order #FLY001, duly signed by e-Management N.V.,
Managing Director of Avenue Media N.V.

Kindly counter-sign the IO and fax back to us.

Sincerely yours,
eManagement N.V.

Freddy Konings

HBM
entrusted management

09/15/04 16:01 FAX

002/002

Frying Ace

better internet

Telephone: 917-783-3833
www.abetterinternet.com

CONTRACT START DATE:
COMPLETE DATE:

Ongoing
Open

IO # FI-Y001

DISTRIBUTOR:

Address: Avenue Media
Address: Emancipation Blvd 31
Address: PO Box 6052
City: Curacao
State: Netherlands Antilles
ZIP:
Contact: Shawn Boddy
Phone: 206-374-0374
Email: boddy@livingcroc.com
Count Log-in URL:
Count User Name:
Count Password:

DIST ID CODES:

BDL19122

Accounting Unit:

CPM Rate

- CPM
- CPA

CFA Rates

US
UK **REDACTED**
CA
W. Europe

Special Terms

- BetterInternet (or its Agency) will pay **AFTER** each close of campaign period for Distribution to Registered Users.
- BetterInternet (or its Agency) will pay in **ADVANCE** for Distribution to Registered Users.

- Wire
- Check

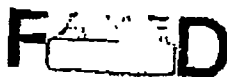
PAYMENT WILL BE MADE BASED ON BETTER INTERNET DAILY CHECKIN REPORTS

Company understands, acknowledges, and agrees to the **STANDARD DISTRIBUTION AGREEMENT TERMS** posted at <http://www.abetterinternet.com/terms>, which are incorporated into this Insertion Order by this reference and will be deemed a part of this Insertion Order.

Accepted
By: [Signature]
Printed: Management B.V.
Title: Managing Director
Date: March 15, 2004

Accepted (BetterInternet)
By: _____
Printed: _____
Title: _____
Date: _____

EXHIBIT B
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e-MANAGEMENT N.V.
New Haven Office Center
Emancipatie Boulevard 31
P.O. Box 6052, Curaçao
Netherlands Antilles
Tel: (599-9) 734 1100
Fax: (599-9) 734 1110
E-mail: info@emmanagement.ni

Facsimile Transmittal Sheet

Telecopier No. : +1-(646) 613-0386
To : Better Internet/Direct Revenue
Attn. Gurpreet Kalra
From : Freddy Konings
Date : June 15, 2004
Number of pages : 2 (including this page)

This facsimile transmittal is intended only for the individual or entity named above and may contain confidential information. If you are not the intended recipient, you are hereby notified that use or review of this document is strictly prohibited. If you received this document in error, please notify us immediately by telephone at the number mentioned above. You are also requested to destroy this document immediately after notifying us. Thank you!

Re: Avenue Media N.V.

Dear Sirs,

Please find enclosed the IO FCI-040615, duly signed by e-Management N.V., Managing Director of Avenue Media N.V.

Kindly confirm receipt.

Sincerely yours,
e-Management N.V.

Freddy Konings

HBM
entrusted management

From: 2063740374 Page: 2/3
HP LASERJET 3330

Date: 06/15/2004 9:19:20 PM

P. 2

Jun 15 2004 11:39PM

better internet

betterinternet, LLC
www.betterinternet.com

With Statement
Account Representative
848-813-0375 x 127
mailto:info@betterinternet.com

Distributor: Adrienne Balle
Contract Date: 6/15/2004

Address: Edgingdale Blvd 31
City: Edgingdale
State: New York
Zip: 11737
Fax Number: 516-216-0910

NO # : FCI-044811
Tax ID # : 02-0320063
Contract # : 0001

Contact Name: Freddy Kohnke
Phone: 848-813-0375
Email: fkohnke@betterinternet.com
Technical Contact:
Email:

- Opening Campaigns
- Testing Campaigns
- Specific Campaigns
- System Campaigns

Test Start: _____
Test Date: _____

- Basic Campaign Details:
- Model Type: MOOVER
 - AUTO
 - ONCLICK
 - RANDED
 - EMAIL

Type of Campaign: _____
Size of Creative: _____

Estimate # : YES NO
URL: _____

- CMA
- Other (Specify)
- United States
- UK
- Canada
- W. Europe
- Other

REDACTED

- CFB
- Other (Specify)
- United States
- UK
- Canada
- W. Europe
- Other

- Better Internet (or its Agency) will pay AFTER completion of campaign period for distribution to Registered Users.
- Distributor (or its Agency) will pay in ADVANCE for distribution to Registered Users.

- Wire
- Check

Wire Information:
Bank Name: Chime
Bank Address: Bank ONE CORP N.Y.

SWR Code: CIT051
Routing Number: 2120011
Account Number: 3823115
Other: 3001 OR CANCEL

PAYMENT WILL BE MADE BASED ON BETTER INTERNET, LLC REPORTING

Company hereby agrees to the **INDIA DISTRIBUTION AGREEMENT TERMS** set forth in the referenced contract, which are incorporated into this Order by this reference and will be deemed to be the entire agreement between the parties.

Accepted:
By: [Signature]
Printed: _____
Title: _____
Date: JUNE 15, 2004

Accepted (Better Internet, LLC)
By: _____
Printed: Yuhua Abram
Title: Managing Director
Date: _____

This fax was received by GFI FAXmaker fax server. For more information, visit: <http://www.gfi.com>

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EXHIBIT C

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STANDARD DISTRIBUTION AGREEMENT

The signed Insertion Order ("IO") combined with these Standard Distribution Agreement Terms (collectively, the "Agreement") by and between BetterInternet, LLC, a Delaware corporation with a mailing address of 2711 Centerville Road, Suite 400, Wilmington DE 19808-1660 ("BI") and the entity that counter-signed the IO ("Company") are effective as of the date of the IO (the "Effective Date").

WHEREAS, Company provides software distribution and/or advertising distribution via the Company Desktop (as defined below) and other products and services.

WHEREAS, BI is in the business of providing promotional offers and software downloads to online consumers; and

WHEREAS, both parties wish that the BI Product (as defined below) be distributed by Company in accordance with the terms of the Agreement;

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

Company Desktop: is the Company software and proprietary desktop.

Distribution: is the installation of the Product to the Company Desktop user base performed by Company.

Final Distribution Unit – The Product that has been integrated with the Company Desktop for release to the public; provided that if the Product is not intended to be integrated with the Company Desktop, the Final Distribution Unit shall be the Product itself.

Party: is either party to this Agreement.

Product: is the BI software product or products that are installed to the Company Desktop user base.

Registered User: is each unique computer desktop that does not currently have the Product and that receives and completes installation of the Product in connection with the Distribution by Company hereunder.

Update: is any correction update, upgrade, patch or other modification in addition to the Distribution.

2. DISTRIBUTION AND REGISTRATION

2.1 Fulfillment. Company shall bear the costs of fulfillment, including without limitation, diskette reproduction, labeling, packaging, postage and handling fees, Internet download, or other means of Distribution. Company shall use best efforts to ensure broad Distribution of the Product in accordance with this Agreement. Company will not release the Final Distribution Unit to the public until BI's written approval has been obtained in accordance with one of the following two approval processes (the applicable approval process shall be chosen by BI in each case in its sole discretion): (a) BI will provide a test mechanism to Company to enable Company to perform BI mandated tests to insure that the Final Distribution Unit will work in the public realm, and test results will be forwarded to BI with the request for releaser (b) Company will give the Final Distribution Unit to BI for testing and approval for release. If Company fails to obtain written approval from BI in accordance with one of these two processes for each new version of the Final Distribution Unit, Company understands and agrees that BI is not liable for any errors in or other failures of the Final Distribution Unit, and will not pay for any damages or costs of any kind in relation to the release of the Final Distribution Unit.

2.2 Registration. Company represents and warrants that the Product will not be installed until after each potential Registered User has agreed to (by means of legally valid affirmative consent): (a) an end-user license agreement (EULA) provided by BI or (b) a EULA that provides BI with rights, limitations or liability and other terms and conditions that are equivalent to those set forth in BI's standard EULA. Without limiting the foregoing, Company represents and warrants that each potential Registered User will be specifically informed that they are downloading the Product prior to the time such download commences and will receive any other disclosures as required by law. Each Registered User will be assigned a unique identifier that will be used as the basis for the payments to be made herein.

2.3 Reporting. EXHIBIT C shall make commercially reasonable efforts to report to Company, approximately once per day,

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the number of Registered Users created. Unless objected to by Company within five (5) days after delivery thereof, the parties shall deem such report accurate and Company shall waive its right to challenge the accuracy of that report.

2.4 Records. BI and Company shall each keep, maintain and preserve for at least one (1) year following termination or expiration of the Term, accurate records relating to its activities above and the calculation and payment of payments hereunder.

2.5 Audit Rights. BI shall maintain accurate records of the calculations of, and all data necessary to calculate the payments made hereunder. During the Term and three (3) months following expiration or termination of this Agreement, Company, at its expense, and upon fifteen (15) business days advance notice to BI, shall have the right (once during each calendar year and during standard business hours only) to audit such records in order to verify the figures reported and the amounts owed by BI under this Agreement. Any underpayment discovered (and verified by BI) shall be paid within fifteen (15) business days. Any over-payment discovered shall be deducted from the next due payment or repaid to BI within fifteen (15) business days if no payment is due.

2.6 Customer Support. As between the parties, Company will have no support obligations as to the Registered Users in connection with the Product. All support and maintenance responsibilities in connection with the Product will be between BI and each Registered User; provided that Company shall have all support and maintenance responsibilities in connection with the Company Desktop. In addition, all Updates that may be provided to Registered Users will be distributed directly to Registered Users via the Internet; provided that Company will provide reasonable cooperation to BI in connection with its efforts to distribute such Updates.

3. FEES

Fees and payment terms shall be set forth in the applicable IO. BI shall have no payment obligations other than as set forth in an IO signed by BI.

4. TERM & TERMINATION

4.1 Unless terminated earlier pursuant to this Section or otherwise specified in the IO, this Agreement shall continue for a one (1) year term commencing on the Effective Date (the "Initial Term"), and, unless either Party provides written notice of termination to the other at least sixty (60) days' prior to the end of the Initial Term, this Agreement shall automatically renew for successive one (1) year terms (each, a "Renewal Term" and collectively with the Initial Term, the "Term").

4.2 Notwithstanding any other provision hereof, this Agreement may be terminated as follows:

- a) By Company for any reason by providing written notice to BI at least sixty (60) days in advance of the date of such desired termination.
- b) At any time for any reason by BI upon not less than 24 hours written notice;
- c) By either Party at any time if the other Party has materially breached the provisions of this Agreement and such material breach is not cured within thirty (30) days of written notice; and,
- d) Immediately by either Party in the event that the other Party files or is forced to file any petition in bankruptcy, or makes an assignment for the benefit of its creditors.

5. CONFIDENTIALITY

Each Party shall treat as proprietary and shall maintain in strict confidence all Confidential Information of the other and shall not, without the express prior written consent of such other Party, disclose such Confidential Information or use any such Confidential Information other than in furtherance of its obligations hereunder. "Confidential Information" shall mean any information of Company or BI which is, or should reasonably be understood as, confidential or proprietary to the disclosing party, including, but not limited to, any information concerning or relating to:

- (i) The disclosing Party's proprietary technology and products, including without limitation, software, technical data, trade secrets, know-how, research, product plans, ideas or concepts, products, services, software, inventions, patent applications, techniques, processes, developments, algorithms, formulas, technology, designs, schematics, drawings, engineering, and hardware configuration information; and
- (ii) The disclosing Party's proprietary information relating to the disclosing Party's operations and business or financial plans or strategies, including but not limited to the terms and existence of this Agreement, customers, customer lists, markets, financial statements and projections, product pricing and marketing, financial or other strategic business plans or information disclosed to the receiving Party by the disclosing Party, either directly or indirectly, in writing,

EXHIBIT 0
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orally, electronically, or by drawings or inspection of samples, equipment or facilities.

"Confidential Information" shall not include information, which the receiving Party can demonstrate:

- a) Is known to the receiving Party at the time of the disclosure by the disclosing Party, as evidenced by written records of the receiving Party;
- b) Has become publicly known and made generally available through no wrongful act of the receiving Party;
- c) Has rightfully been received by the receiving Party from a third party who is authorized by the disclosing Party to make such disclosures;
- d) Was independently developed by the receiving Party without any use of the Confidential Information of the disclosing Party and by employees of the receiving Party who have not had access to the Confidential Information, as demonstrated by files created at the time of such independent development;
- e) Is disclosed generally to third parties by the disclosing Party without restrictions similar to those contained in this Agreement; or
- f) Is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving Party shall provide prompt notice of such court order or requirement to the disclosing Party to enable the disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.

Notwithstanding any of the foregoing, it is expressly agreed and understood that Company shall not use and shall treat as Confidential Information, any and all data and information relating to (a) which users of the Company Desktop are Registered Users; (b) the interactions between the Product and Registered Users; and (c) any other information relating to the use, distribution or deletion of the Product by Registered Users (collectively, the "User Data"). The User Data shall be deemed the sole and exclusive property of BI and BI's Confidential Information.

6. LICENSE

BI hereby grants to Company

- (i) The limited, non-exclusive, non-transferable, world-wide and revocable right and license to distribute the Product (including without limitation the software therein) in accordance with the terms of this Agreement;
- (ii) The limited, non-exclusive, non-transferable, world-wide royalty-free and revocable right and license to use the BI Product trademark and logo, in accordance with BI branding guidelines and subject to BI prior written approval, solely for the purpose of marketing and promoting the Product during the term of this Agreement. Nothing in this Agreement shall be construed to transfer any rights to the other Party not expressly granted herein. All use of the Product trademark and logo shall inure to the benefit of BI.

7. OWNERSHIP

The Parties shall retain all right, title and interest in and to their respective products/services, patents, copyrights, trade secrets, trademarks, service marks, and trade names worldwide, as well as any and all intellectual property rights and all modifications and enhancements thereto, subject to the licenses necessary to enter into this Agreement.

8. LIMITED WARRANTIES

Each Party hereby represents and warrants to the best of its knowledge that as of the Effective Date its products and/or software do not infringe any U.S. patents issued, or any copyright, trademark, or other intellectual property rights, and that its performance hereunder will not conflict with any duties owed to, or rights held by, third parties. Company further represents and warrants that it shall perform hereunder (a) in a competent and professional manner with due care; (b) in accordance with all applicable laws; and (c) shall make no representations, warranties or other communications concerning the Product other than as expressly authorized in writing by BI.

9. LIMITATIONS OF LIABILITY - NO OTHER WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS RESPECTIVE SOFTWARE OR SERVICE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN NO EVENT SHALL BI BE LIABLE FOR ANY LOSS OF DATA, LOST PROFITS, OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR

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EXEMPLARY DAMAGES, EVEN IF BI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN NO EVENT SHALL BI BE LIABLE IN ANY MANNER FOR ANY DAMAGES OR OTHER LIABILITIES OF ANY KIND: (A) ARISING IN CONNECTION WITH OR OTHERWISE RELATING TO ANY THIRD PARTY ADVERTISING SERVED THROUGH THE PRODUCT OR (B) IN AN AMOUNT IN EXCESS OF THE TOTAL FEES PAID BY BI TO COMPANY UNDER THIS AGREEMENT IN THE SIX MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

10. INDEMNIFICATION

Company hereby agrees to indemnify and hold harmless BI, its employees, directors, officers, agents and representatives for all claims, damages, loss, liability and expenses (including reasonable attorney's fees) arising out of or relating to Company's performance or nonperformance under this Agreement or Company's breach of this Agreement.

11. GENERAL

11.1 This Agreement shall not be construed to create a joint venture or partnership between the Parties hereto and neither shall have the right, power or authority at any time to act on behalf of, to impose any obligation on or to represent the other, except as expressly set forth herein.

11.2 No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving Party.

11.3 This Agreement shall immediately terminate if, and to the extent that, any term or condition of this Agreement is specifically determined by any court to be, in whole or in part, invalid or unenforceable. Such termination, however, will not operate to discharge either Party from the obligation to pay the other Party any sum due such other Party or discharge any liability that had been incurred prior thereto.

11.4 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DELAY IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS HEREUNDER DUE TO ANY CAUSE BEYOND SUCH PARTY'S REASONABLE CONTROL OR DUE TO ACTS OF GOD, ACTS OF CIVIL OR MILITARY AUTHORITIES, FIRES, LABOR DISTURBANCES, FLOODS, EPIDEMICS, GOVERNMENTAL RULES OR REGULATIONS, WAR, RIOT, DELAYS IN TRANSPORTATION, SHORTAGES OF RAW MATERIALS, SHORTAGES OF SERVICES, POWER OUTAGES, OR UNAUTHORIZED HACKING ON OR THROUGH THE INTERNET.

11.5 The laws of the State of New York without regard to its conflict of interest principles shall govern this Agreement. The parties agree to submit to the exclusive jurisdiction of the state and federal courts in New York, New York.

11.6 In no event shall either Party be required to perform any obligation under this Agreement if it is determined that performance of such obligation violates any US or foreign law, rule, or regulation.

11.7 Company shall at all times during the Term maintain in effect a general liability policy of insurance, including errors and omissions/professional liability, with coverage and limits no less than \$1,000,000 per occurrence/\$2,000,000 annual aggregate. The insurance shall be primary over any other insurance covering BI and shall remain in effect continuously for the Term of this Agreement and for one (1) year thereafter. Company will name BI as an additional insured to such insurance policies. Company will promptly provide to BI certificate(s) from its insurers indicating the amount of insurance coverage, the nature of such coverage and the expiration date of each applicable policy. No such insurance policy will be cancelled, expired or otherwise terminated during the Term without the express prior written consent of BI.

11.8 The rights and obligations of each Party hereunder shall inure to the benefit of the successors of the Parties hereto, provided any rights or obligations hereunder shall not be assigned without the prior written approval of the other Party that shall not be unreasonably withheld; provided, however, either Party may assign this Agreement to an acquirer of all or substantially all of such Party's assets, whether by merger, operation of law or otherwise, without the other Party's prior written approval.

11.9 This Agreement (including the IO) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement, specifically referring to this Agreement, and signed on behalf of both Parties by their respective duly authorized representatives.

[Contact Us](#)

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EXHIBIT D

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a better internet

HOME



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Featured Download

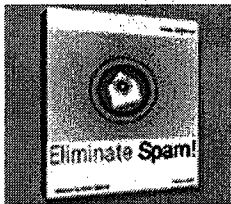
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download now

Cool New Stuff!

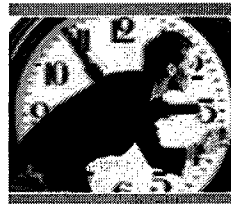


more info

Eliminate Spam!

Tired of spam-filled mailboxes? Download **Eliminate Spam!** - a free anti-spam software - and get a clean mailbox today!*

download now!



more info

Bad Internet connectivity

Download **NetTurbo** today and optimize your connection to the Internet with 200%! Get what you want faster!*

download now!



more info

Clean Get-Away

Want to erase your Internet trail? Get a "Clean Get Away" now. It will remove all your internet history after each session.*

download now!

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FLASH TALK

Download FlashTalk to your computer – and call anyone – anywhere in the world, at NO COST!

Speak and be heard:

Presenting **FlashTalk**, the easiest way to actually talk with friends, family members and co-workers over the Internet, with sound so real it's as if you're in the same room. Featuring the instant access and easy communication of instant messaging, but without any typing! No more typing!

With NO per Minute or Per Call Costs. And NO restrictions!

With **FlashTalk**, you can talk to anyone, anytime, anywhere, and talk for as long as you want, as often as you want, without per minute or per call charges. And, it's not just broadband Internet users – **FlashTalk** works perfectly over normal, dial-up modem connections. If you say it here, they will hear you there. It's that simple. It just works.

What's more, **FlashTalk** is easy to use. It downloads and installs in moments, and sort of "Figure things out". It does almost all the work automatically. And there are no annoying ads, pop-ups, or weekly e-mails. Just amazing voice communication.

And for business users, **FlashTalk** tames even the most difficult networks. You'll be amazed at how **FlashTalk** works on almost all corporate networks, traversing firewalls, supporting DHCP, NAT and supporting SOCKS proxy environments. What does all that mean? Try it – you'll be amazed.



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HOME

BETTERINTERNET INSTALLATION

Flash Talk! comes bundled with Better Internet's Search Assistant as well as Better Internet's ad-serving software.

The Search Assistant includes several functionalities that make searching easier and more efficient. The Search Assistant consists of a Search Panel Assistant that provides the user with instant access to built-in search features and search directories within Internet Explorer's Search Panel. The Search Panel Assistant also allows the user to perform a search while simultaneously viewing the resulting pages - all from within the same Internet Explorer browser. The Search Assistant also comes with an Address Bar Assistant, which enables users to perform natural searches via Internet Explorer's Address Bar and returns helpful search results or a search directory page to users who would have otherwise received a generic error page, which contains no useful information. Another feature of the Search Assistant is the Targeted Search Results Assistant, which saves time and increases the overall productivity of all keyword searches by providing the user with additional targeted results via a non-intrusive pop-under delivery mechanism.

By checking the "I have read the End-User License Agreement" checkbox and clicking the "Yes, I Accept" button, you have read and agree to the terms within the End-User License Agreement.

I have read the End-User License Agreement

Do you accept the terms of this Agreement?

Click [here](#) to view a printable version.

1. Acceptance of This Agreement - This BetterInternet End User License Agreement ("Agreement") is a contract between you ("you" or "your") and BetterInternet, LLC, a Delaware corporation with a mailing address of 2711 Centerville Road, Suite 400, Wilmington DE 19808-1660 ("BetterInternet"), and governs your use of BI ad targeting software ("BI") and other BetterInternet software and services provided to you (collectively, "Software"). The Agreement includes BetterInternet's Privacy Policy. Please read the terms of this Agreement carefully before installing and using the Software.

By clicking "yes" or downloading, installing or using the Software, you acknowledge that you have read and understand this Agreement and agree to be bound by its terms. If you do not agree to be bound by the terms of this Agreement, you may not download or use the Software, and shall close this window without downloading the Software

Do you accept the terms of this Agreement?

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