

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](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  
26

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](http://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.

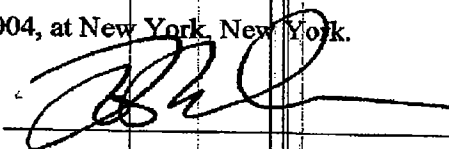
14 20. As discussed above, the BI EULA specifically discloses that this will occur and  
15 obtains each end user’s consent to the same. The update code also openly discloses that it will  
16 remove other adware resident on end users’ computers.

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  
18 aaday@stoel.com  
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# EXHIBIT A

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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](mailto: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](mailto: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.

There are inherent dangers in the use of any software available for downloading on the Internet, and BetterInternet cautions you to make sure that you completely understand the potential risks before downloading any of the Third Party Software. You are solely responsible for adequate protection and backup of the data and equipment used in connection with any of the Third Party Software, and BetterInternet will not be liable for any damages that you may suffer in connection with using any of the Third Party Software.

**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](http://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

EXHIBIT B  
PAGE 14 of 18



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  
City: PO Box 6052  
State: Curacao  
ZIP: Netherlands Antilles  
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**

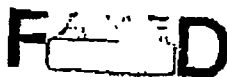
Company understands, acknowledges, and agrees to the **STANDARD DISTRIBUTION AGREEMENT TERMS** posted at <http://www.abetterinternet.com/terms>, which are incorporated into this Insertion Order by this reference and will be deemed a part of this Insertion Order.

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

Accepted (BetterInternet)  
By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT B  
PAGE 16 of 18





**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

Mia Strumson  
Account Representative  
848-813-0376 x 127  
mia@betterinternet.com

Distributor: Adrienne Balle  
Contract Date: 6/15/2004  
  
Address: Edgingville Blvd 31  
City: NC 28642  
State: NC 28642  
Zip: 28642  
Fax Number: 252-216-0910

NO # : FCI-044811  
Tax ID # : 00-0130063  
Contract # : 0000  
  
Contact Name: Freddy Kohnke  
Phone: 848-813-0376  
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
  - RAKED
  - 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 of America N.A.

SWR Code: CIT051  
Routing Number: 2108011  
Account Number: 3823115  
Other: 3001 OR CANCEL

**PAYMENT WILL BE MADE BASED ON BETTER INTERNET, LLC REPORTING**

**Company's acceptance of this order is subject to the following DISTRIBUTION AGREEMENT TERMS**

Accepted By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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>

EXHIBIT B  
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# EXHIBIT C

EXHIBIT C  
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☑ HOME    ☑ MORE DOWNLOADS

## 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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