

EXHIBIT 16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

STEPHEN SOTELO, individually and on behalf
of all persons similarly situated,

Plaintiff,

v.

DIRECTREVENUE, LLC, DIRECTREVENUE
HOLDINGS, LLC, BETTERINTERNET, LLC,
BYRON UDELL & ASSOCIATES, INC. D/B/A
ACCUQUOTE, AQUANTIVE, INC., and JOHN
DOES 1-100,

Defendants.

Case No. 05 C 2562

Judge Gettleman

**DECLARATION OF
CHRISTOPHER DOWHAN**

CHRISTOPHER DOWHAN declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am Vice-President, Distribution, for defendant DirectRevenue, LLC. I submit this declaration in support of the defendants' motions to dismiss the complaint and to stay this litigation pending arbitration. I am familiar with the facts set forth herein.

2. Defendants DirectRevenue, LLC ("DirectRevenue"), and BetterInternet, LLC ("BI") are Delaware limited liability companies with principal places of business in New York. DirectRevenue is the parent company of BI.

3. DirectRevenue has created targeted advertising software (the "Software"), distributed by BI, which computer users download onto their machines.

The Software delivers advertisements to a user's screen based on the user's web browsing preferences.

The DirectRevenue/BI End User License Agreement

4. Attached hereto as Exhibit A is a true and correct copy of BI's End User License Agreement (the "EULA"), in substantially the form that has been available and in effect since at least February 2004. This is the same EULA that was annexed to the Defendants' initial memoranda in support of their motions. The EULA governs the download, installation, and use of the Software and other programs downloaded from BI.

5. The EULA has undergone periodic changes since it was first drafted, including a revision that occurred subsequent to the filing of the Complaint. A true and correct copy of this revision is attached hereto as Exhibit B. Since at least February 2004, however, the EULA has remained materially the same. For example, both versions attached contain the arbitration clause cited by Defendants in their memorandum, which has been included in the EULA since at least February 2004. As is evident from these versions of the EULAs, aside from BI's redesignation as "ABI" (both of which refer to BetterInternet, LLC) in the later revision, the arbitration clause is identical in each version attached.

6. The EULA is made available to users in electronic form, at the BI web site. As such, it can be displayed in varied type sizes, depending on the user's display hardware and software settings. Further, users can print the EULA in a variety of ways. For example, the user can click a link on the EULA page to navigate to a "printer

friendly” version, which can then be sent to the printer. Alternatively, the user can highlight the text of the EULA and copy it into a word processor, adjusting the type size and style to his own preferences prior to printing.

Installation Of The Software Under Service Pack 1

7. Attached hereto as Exhibit C are true and correct copies of screen shots demonstrating the Software installation process when users of the Microsoft Windows XP Service Pack 1 (“SP1”) operating system (and older operating systems) downloaded the Software from BI’s website, www.abetterinternet.com. In this demonstration, the user is downloading a product called Flashtalk, which allows computer users to talk to each other telephonically over the internet. (Screen shot 1.) As explained in the EULA, BI’s targeted advertising Software accompanies the Flashtalk download.

8. As the screen shots demonstrate, when the user clicked on the link for Flashtalk, a dialog box appeared, asking the user if they wished to continue with the download. (Screen Shot 2.) Specifically, the message read, “Do you want to install and run ‘the latest version of Flashtalk? By clicking ‘Yes,’ you acknowledge that you have read and understand BetterInternet’s Consumer Policy Agreement and agree to be bound by its terms.’ ” This message was displayed in the dialog box as blue hyperlink text, signaling to the user that more information was available by clicking that text. Clicking the blue hyperlink text sent the user to the full text of the EULA, as shown in the next shot (Screen Shot 3). The hyperlink message was drafted by BI to integrate with the

generic window presented by Windows. In other words, Windows SP1 displayed a dialog box for every download of this type (from any publisher) that reads "Do you want to install and run ' _____ ' signed on _____ and distributed by: _____." Each individual publisher, if they so choose, supplies the text that Windows XP1 inserts into the blanks. In this case, BI additionally opted to have the text displayed as a hyperlink to the EULA. ,

9. Download and installation of the Software could not continue until the user assented by clicking the "Yes" button at the bottom of the dialog box. (Screen Shot 4.) If the user wished to decline, they could click "No," and the download process would abort. Clicking "More Info" provided more information about BI, and about BI's electronic signature, which verifies the authenticity of the computer code producing this download process.

10. Clicking "Yes" allowed the download of the Software to begin. Once the Software downloaded, the installation began. (Screen Shot 5.) This process prompted the user for some additional choices regarding preferences. When the installation process was complete, a small browser window opened to notify the user that the installation had succeeded, and the Flashtalk program opened. (Screen Shot 6.)

Installation Of The Software Under Service Pack 2

11. Upon information and belief, on or about August 6, 2004, Microsoft released an upgrade to the Windows XP operating system, known as Service Pack 2 ("SP2"). Service Pack 2 implemented several changes in the operation of Microsoft's

Internet Explorer ("IE") web browser program, most of which were aimed at increasing IE's security provisions. In practice, however, SP2 also created many unforeseen problems of incompatibility with or improper function of other software programs. Indeed, the scope of these problems is evident by searching the internet for "Windows XP SP2 Problems" at www.google.com, which yields article after article about the frustrating experiences of users following their upgrades to SP2.

12. Upon information and belief, because of the uncertain effects of SP2, it took a substantial period of time – many months following the release – before SP2 was widely deployed. I understand that many companies opted not to upgrade to SP2 initially, and advised their employees not to do so, until their information technology departments could determine what compatibility issues the company computer systems would face upon applying the SP2 upgrade. An example of a news story discussing this lag in acceptance of SP2, *see* PC World, *Businesses Still Wary of XP SP2*, available at <http://www.pcworld.com/news/article/0,aid,120288,00.asp> (April 5, 2005.) According to that article, as late as April of this year, only 24 percent of business systems surveyed had upgraded to SP2.

13. Attached hereto as Exhibit D are true and correct copies of screen shots demonstrating the Software installation process when users of the Microsoft Windows XP SP2 operating system downloaded the Software from BI's website, www.abetterinternet.com. Again, the user in the demonstration is downloading Flashtalk (Screen Shot 1), and, again, as explained in the EULA, BI's targeted advertising Software

accompanies Flashtalk. As evident below, the changes wrought by SP2 resulted in some unforeseen changes in the download process, which changes resulted entirely from Microsoft's design of SP2, and not from any action on DirectRevenue or BI's part.

14. With SP2, when the user clicked on the Flashtalk link on the BetterInternet home page, the operating system automatically blocked the dialog box that had previously been presented (see Ex. C, Screen Shot 2). Instead, the IE browser displayed a message about the download, which IE itself created using the text provided by BetterInternet for the tag "attached" to the Software. Hence, rather than receiving the dialog box with the "Yes," "No," and "More Info" buttons, the user received a message, generated by the operating system (not by BI), that "The site might require the following ActiveX control: **'the latest version of Flashtalk? By clicking... from BetterInternet?'** Click here to install."

15. The bold language in the preceding paragraph represented SP2's attempt to create a message to the user based on the information supplied by the publisher, in this case, BI. However, due to the limited amount of text that SP2 allows to be displayed in this message, SP2 automatically truncated BI's message so it could fit in the new window. Nonetheless, this message served on the user by SP2 was itself clickable, as it said, and the user could again request the Software by clicking the message. Otherwise, the user could close the window, and the installation process aborted.

16. Clicking the message described in the preceding paragraph then led to a new dialog box (Screen Shot 3), which contained the blue hyperlink to the EULA. Again, however, due to constraints on text put in place by Microsoft (and unforeseen by and initially unknown to DirectRevenue and BI), the dialog box truncated BI's intended message, so that it read, "Do you want to install this software? Name: 'the latest version of Flashtalk? By Clicking Yes...'" In any event, SP2 left enough of the message intact to notify the user that clicking to install had consequences ("By clicking Yes..."), and to signal that the hyperlink should have been clicked for additional information. Clicking the hyperlink that read "the latest version of Flashtalk? By clicking Yes..." took the user to the EULA (Screen Shot 4).

17. Additionally, SP2's new download dialog box contains buttons labeled "Install" and "Don't Install", rather than "Yes" and "No," as under SP1. (Screen Shot 5.) Clicking on "Don't Install" aborts the process just as clicking "No" had done previously. Clicking "Install" causes the software to download, and the installation proceeds as it did under SP1. (Screen Shots 6-7.) Because the hyperlink message had been designed with SP1's dialog box in mind, however, the message regarding the Software still referred to the user clicking "Yes" rather than "Install."

BI Revises The Installation Process

18. BI subsequently revised the process of installing the Software from BI's website. This revision was carried out with an eye toward exceeding the standards for compliance with proposed federal legislation governing consumer software

downloads. DirectRevenue and BI wanted to stay ahead of the curve with regard to this proposed legislation.

19. Attached hereto as Exhibit E are true and correct copies of screen shots detailing the revised installation process that resulted from DirectRevenue's and BI's efforts. In the demonstration displayed in these screen shots, the user is downloading Clean Getaway, another BI software product, which assists a user in clearing out a web browser's history file after a browsing session ends. (Screen Shot 1.) Like the Flashtalk download described above, as explained in the EULA, BI's targeted advertising Software downloads along with Clean Getaway.

20. Under the new download and installation process, clicking on one of the BI software products (such as Clean Getaway) takes the user to a page providing a more detailed description of the product, and summarizing some of the information already provided in the EULA regarding the cost-free provision of the software and the function of the Software in serving occasional ads. (Screen Shot 2.) At the bottom of this screen, the site displays a hyperlink to the full EULA, along with a message notifying the user that they must review and accept the EULA prior to downloading and using BI's products.

21. If the user clicks on "download now!" at the right side of the screen, Windows displays a dialog box, prompting the user to provide instructions as to what to do with the installation file that is going to be downloaded. (Screen Shot 3.)

22. Following the download, the user clicks to open the installation file, and SP2 displays a dialog box confirming that the user wishes to run the installation program and verifying the digital signature of the file. (Screen Shot 4.) If the user clicks "Don't Run," the installation aborts. If the user clicks "Run," the installation process begins. (Screen Shot 5.) The first step briefly introduces the product to the user, and prompts the user to click "Next" to continue. Upon doing so, the user is presented with another explanation of how the program and the Software work, similar to the one described in paragraph 20, above. (Screen Shot 6.)

23. Clicking "Next" takes the user to the next step of the installation process, in which the installation program displays the full text of the EULA in a scrollable window, with a link to a printer-friendly version if the user desires a hard copy of the EULA. (Screen Shot 7.) The installation cannot proceed until the user selects, "I have read and accept the agreement," whereupon the "Next" button becomes clickable and the process can continue (Screen Shots 8-9).

24. When the installation has completed, the program displays a final dialog box, again summarizing the function of the Software, and, as detailed in the EULA, notifying the user of the easy process by which the Software can be removed if the user so desires. (Screen Shot 10.)

Regardless of Operating System, Users Are Given the Opportunity to Read the EULA, and Cannot Proceed Until They Have Had That Opportunity

25. The foregoing paragraphs demonstrate that, regardless of which operating system a user has on his or her computer, the user is presented with the opportunity to read the EULA prior to downloading the Software from BI's web site, and the user cannot proceed until they have that opportunity and either take advantage of it or opt to skip it. While SP2 initially caused certain glitches that changed the way the notice was presented, the user was still made aware that, by continuing to download the software, some condition or consequence would come into effect, and this message was always presented as a hyperlink, the most basic indicator to even novice users of the internet that more information is available by clicking the text.

Every Time The Software Serves A Ceres Branded Ad, Users Are Given Another Opportunity To Read The EULA

26. Once the user has installed the Software, it periodically serves ads, the content of those ads being based on the user's web browsing preferences. As Plaintiff acknowledges, he received ads contained in "Ceres" branded windows. Attached hereto as Exhibit F are true and correct copies of screen shots displaying a sample Ceres ad.

27. As visible in Screen Shot 1, these Ceres windows contain, in the upper right corner (next to the "X" used to close the window), a button with a question mark, allowing the user to click for information. Clicking the information button opens a

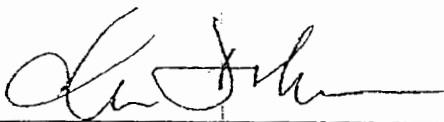
browser window that clearly explains the source of the ad, explains the function of the Software, gives instructions on how to uninstall the Software if the user chooses to do so, (Screen Shot 2), and presents another opportunity to view the EULA, in the form of a hyperlink to the EULA at the bottom of the window. (Screen Shot 2) (The hyperlink leads to the EULA, as displayed in Screen Shot 3.) Because users close the ads by clicking on the "X" in the upper right corner, placement of the information button in that same location makes the information button relatively conspicuous – users mouse over the button every time they close an ad.

DirectRevenue's and BI's Standard Distribution Agreement With Software Distributors

28. Plaintiff, in his memorandum opposing the motion to dismiss, refers to, but fails to attach, the DirectRevenue/BI Standard Distribution Agreement, the terms of which govern third parties' rights to distribute the Software. Attached hereto as Exhibit G is a true and correct copy of that Standard Distribution Agreement.

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

Dated: New York, New York
June 29, 2005


CHRISTOPHER DOWHAN

DR174487

**EXHIBIT A TO DECLARATION OF
CHRISTOPHER DOWHAN**

DR174488

a better internet

[HOME](#) [MORE DOWNLOADS](#)

BETTERINTERNET END USER LICENSE AGREEMENT

(CERES ADVERTISING SOFTWARE)

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.

This Software will collect information about websites you access and will use that information to display advertising on your computer.

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, through its advertising software known as Ceres, 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.

Certain applications or functions that may already be on your computer or that are accessible through the Internet may attempt to install themselves or other components onto your computer by inserting particular domain names into your browser's list of "trusted sites" without providing a notice regarding such actions. By doing so, such applications or functions may use this access to your computer as a means to install unwanted or damaging components on your computer. You agree that BetterInternet may flush the list of all trusted sites in your browser from time to time for the purpose of helping your computer avoid potentially damaging downloads that occur without your prior knowledge. Thereafter, you may have to accept as trusted sites certain web sites which you had previously accepted as trusted sites. While BetterInternet believes this a benefit to you and enhances the security of your computer and your ability to choose whether or not to install certain components on your computer, if you do not wish BetterInternet to flush the list of trusted sites in your browser, you may follow the procedures set forth below in Section 12 to remove the Software.

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 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.

All rights not expressly granted to you by the foregoing sentence are reserved by BetterInternet. Without limiting the generality of the foregoing, you may not modify, distribute, sublicense, rent, lease, or create derivative works based on the Software or any part thereof. Except as may be permitted by law, you may not reverse engineer, decompile or disassemble the Software. You may not copy the Software other than to make one copy of the Software for back-up purposes. You may not use the Software for any commercial purpose other than as permitted hereunder, and may not use the Software in the operation of a service bureau or for the benefit of any other person or entity. Moreover, you may not transfer, sell, assign or convey the Software to another party without the prior written consent of BetterInternet. You shall maintain all copyright notices, trademark notices, and other proprietary notices on the Software. You have no ownership rights in the Software. Rather, you have a license to use the Software pursuant to the terms of this Agreement. Title, ownership rights, and intellectual property rights in and to the Software and related documentation remain in BetterInternet.

7. Proprietary Rights - The Software, and any materials posted or delivered in connection with the use of the Software including code, images, text, illustrations, logos, audio and video files (collectively "Intellectual Property"), are protected by copyrights, trademark rights, service mark rights, or other proprietary rights which are either owned by BetterInternet, or owned by other parties who have licensed their Intellectual Property to BetterInternet.

You may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information of BetterInternet and its affiliates without express written consent of BetterInternet. You may not use any meta tags or any other "hidden text" utilizing the name or trademarks of BetterInternet and its affiliates without the express written consent of BetterInternet and its affiliates. Any unauthorized use terminates the permission or license granted by BetterInternet in this paragraph.

Use or modification of the Intellectual Property in any form, including but not limited to use on any other website or networked computer environment, without express written authorization, is a violation of BetterInternet copyrights and other proprietary rights and is strictly prohibited.

8. Trademarks - BetterInternet, aBetterInternet.com and other BetterInternet logos, page headers, buttons, icons, scripts, and service names are trademarks, service marks and/or trade dress of BetterInternet or its affiliates. None of BetterInternet or its affiliates' trademarks, service marks or trade dress may be used in connection with any product or service that is not a product or service of BetterInternet or its affiliates in any manner that is likely to cause confusion among users, or in any manner that disparages or discredits BetterInternet or its affiliates.

9. Indemnification - You agree to defend, indemnify, and hold harmless BetterInternet and its affiliates, and each of their respective officers, directors, employees, agents, representatives, information providers and licensors, from any claims, costs, losses, damages, judgments and expenses, including but not limited to reasonable attorney's fees and expenses, relating to or arising out of any breach of this Agreement or any use of the Software by you, or by any other person using the Software through you or using or accessing your computer.

10. Disclaimer Of Warranty - YOU UNDERSTAND AND AGREE THAT THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS, AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFECT OF THE SOFTWARE IS YOURS AND YOURS ALONE. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, BETTERINTERNET AND ITS AFFILIATES DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, NEITHER BETTERINTERNET NOR ANY OF ITS AFFILIATES, NOR ANY OF THEIR OFFICERS, DIRECTORS, LICENSORS, EMPLOYEES OR REPRESENTATIVES REPRESENT OR WARRANT (i) THAT THE SOFTWARE, INCLUDING ITS CONTENT, WILL FULFILL ANY OF YOUR PARTICULAR PURPOSES OR NEEDS OR MEET YOUR REQUIREMENTS OR BE ACCURATE, COMPLETE, RELIABLE, OR ERROR FREE; (ii) THAT THE SOFTWARE WILL ALWAYS BE AVAILABLE OR WILL BE UNINTERRUPTED, ACCESSIBLE, TIMELY, OR SECURE; (iii) THAT ANY DEFECTS WILL BE CORRECTED, OR THAT THE SOFTWARE WILL BE FREE FROM VIRUSES, "WORMS," "TROJAN HORSES" OR OTHER HARMFUL PROPERTIES; (iv) THE ACCURACY, RELIABILITY, TIMELINESS, OR COMPLETENESS OF ANY INFORMATION OR OTHER MATERIAL PUBLISHED OR ACCESSIBLE ON OR THROUGH THE SOFTWARE; (v) THE AVAILABILITY FOR SALE, OR THE RELIABILITY OR QUALITY OF ANY PRODUCTS OR SERVICES REFERENCED USING THE SOFTWARE; (vi) ANY IMPLIED WARRANTY ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE; AND (vii) AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE OR THAT THE SOFTWARE IS NONINFRINGEMENT. BETTERINTERNET AND ITS AFFILIATES HEREBY DISCLAIM, AND YOU HEREBY IRREVOCABLY RELEASE BETTERINTERNET AND ITS AFFILIATES FROM AND WAIVE, ANY AND ALL OBLIGATIONS, LIABILITIES, RIGHTS, CLAIMS OR REMEDIES IN TORT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE, WHETHER OR NOT ARISING FROM THE NEGLIGENCE (ACTIVE, PASSIVE OR IMPUTED) OF BETTERINTERNET OR ITS AFFILIATES.

IF YOU PURCHASE A PRODUCT OR SERVICE AS A RESULT OF USING THE SOFTWARE, AND A DISPUTE ARISES BETWEEN YOU AND THE SELLER, YOU IRREVOCABLY RELEASE AND DISCHARGE BETTERINTERNET AND ITS AFFILIATES, AND ANY OF ITS OR THEIR OFFICERS, DIRECTORS, LICENSORS, EMPLOYEES OR REPRESENTATIVES, FROM ANY CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL, DIRECT AND INDIRECT, COMPENSATORY AND PUNITIVE) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES. YOU ACKNOWLEDGE AND AGREE THAT ANY SOFTWARE OR OTHER CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE IS DONE AT YOUR OWN DISCRETION AND SOLELY AT YOUR RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOADING OF SUCH SOFTWARE AND/OR CONTENT.

11. Limitation Of Liability - IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL BETTERINTERNET OR ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, INFORMATION PROVIDERS OR LICENSORS BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER DAMAGES (REGARDLESS OF THE FORM OF ACTION OR PROCEEDING) ARISING OUT OF OR RELATED TO (i) ANY USE OF THE SOFTWARE BY ANY PERSON, INCLUDING BUT NOT LIMITED TO, ANY DAMAGE CAUSED BY ANY RELIANCE ON, OR ANY DELAYS, INACCURACIES, ERRORS OR OMISSIONS IN, ANY INFORMATION AND CONTENT ACCESSED THROUGH THE SOFTWARE, (ii) ANY USE OR INABILITY TO USE THE SOFTWARE FOR WHATEVER REASON, INCLUDING BUT NOT LIMITED TO COMMUNICATIONS FAILURE OR ANY OTHER FAILURE WITH TRANSMISSION OR DELIVERY OF ANY INFORMATION

ACCESSED THROUGH THE SOFTWARE, OR (iii) ANY GOODS OR SERVICES DISCUSSED, PURCHASED OR OBTAINED, DIRECTLY OR INDIRECTLY, THROUGH THE SOFTWARE, IN EACH CASE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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 and Removal of Software - 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://www.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. 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.

You may only use the Software for lawful purposes and in strict compliance with this Agreement and all applicable laws. You may not use the Software to post or transmit any message or content, including linking to any message or content, which is abusive, vulgar, hateful, obscene, scandalous, inflammatory or otherwise objectionable; is being used to harass, stalk or otherwise threaten a person; is libelous, defamatory or invades any privacy or publicity rights of any third party; misrepresents or masks the true identity of any party; infringes any copyright, trademark, service mark, patent, trade secret or confidentiality obligation; contains any illegal contests or lotteries, or any pyramid schemes; or contains any virus, trojan horse, time bomb or any other harmful or disabling software code.

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 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's 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.

Last updated January 05, 2005

[EULA](#) | [Contact Us](#)

©2005 BetterInternet, LLC. All rights reserved.

**EXHIBIT B TO DECLARATION OF
CHRISTOPHER DOWHAN**

DR174495



a division of direct review inc.

[HOME](#) [MORE DOWNLOADS](#) [UNINSTALL](#) [CONTACT US](#) [SUPPORT](#)

mypctuneup abi netw

BETTERINTERNET END USER LICENSE AGREEMENT

(CERES ADVERTISING SOFTWARE)

1. Acceptance of This Agreement - This End User License Agreement ("Agreement") is a contract between you ("you") and BetterInternet, LLC ("ABI") and governs your use of software downloaded from abetterinternet.com ("Software"). Please read the terms of this Agreement carefully before downloading, installing and using the Software.

This Software will collect information about websites you access and will use that information to display advertising on your computer. ABI ensures that these ads will include the name "Ceres" on the upper left hand corner of the ad so that you are able to recognize that the ad is coming from ABI, however, some older versions of the Software may not include this feature. Moreover, the ads will appear while you are surfing the Web, not just when you use the Software.

By clicking "yes", "install" or downloading, installing or using the Software, you acknowledge that you have read and understand this Agreement, agree to be bound by its terms and represent that you have the necessary rights and permissions to install the Software on the computer being used. If you do not agree to be bound by the terms of this Agreement or do not have the necessary rights to the computer being used, you may not download or use the Software.

2. Functionality - This Software delivers advertising as well as various promotional messages to your computer screen while you view Internet web pages. ABI is able to provide you with the Software free of charge as a result of your agreement to accept the advertising and promotional messages it delivers. In addition, the Software may be bundled with or installed in connection with Promotional Applications (see Section 14 below for more information about Promotional Applications).

By installing the Software, you understand and agree that the Software may, without any additional notice to you, perform the following: display pop-up ads and various other ad formats of third party advertisers; display links to and advertisements of related websites based on the information you view and the websites you visit; store non-personally identifiable information regarding your Internet browsing and usage habits; redirect certain URLs, including your browser's default 404-error page; provide advertisements, links or information in response to search terms you use at third-party websites; provide search functionality or capabilities.

3. Uninstall and Remove Software - You may uninstall the Software at any time by visiting www.mypctuneup.com. Other attempts to uninstall the Software, such as via anti-spyware software, will not effectively uninstall the Software, and may result in the Software re-installing itself. Visiting www.mypctuneup.com is the primary method to properly remove the Software. MyPCTuneUp will leave behind a unique identifier on your computer for the sole purpose of notifying ABI that you no longer want the Software to operate on your computer.

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. You agree not to initiate, permit, authorize or assist any third party or application to remove the Software from your computer, or disrupt its proper operation. ABI may store a cookie, computer file or other unique identifier on your computer to identify you and may automatically repair or reinstall the Software if any third party application attempts to delete, disable or modify the Software.

ABI may terminate this Agreement or your right to continue to use the Software at any time.

4. Software updates - You understand and agree that ABI may, without providing additional notice to you: update the Software; install added features, functionality or additional software, including search clients, toolbars and shopping applications; install desktop icons and installation files; and install software from ABI affiliates.

5. Security - ABI is dedicated to helping to ensure the security of your computer. There are third parties who are unaffiliated with ABI and who may in the future, attempt to install applications or functions onto your computer without first obtaining your consent, or who may have already done so.

DR174496

Some of these third parties may attempt to install a virus, worm, trojan horse and/or other malicious and unwanted agent onto your computer. In order to ensure the safety of your computer, ABI may remove the virus, worm or trojan horse from your computer.

These third parties may also attempt to insert particular domain names into your browser's list of "trusted sites," make host file changes or manipulate your network communication functionality without first obtaining your consent. By doing so, such third parties may obtain access to your computer as a means to install unwanted or damaging components on your computer.

You understand and agree that ABI may flush the list of all trusted sites in your browser from time to time. Thereafter, you may need to re-designate as trusted sites certain web sites which you had previously designated as trusted sites. ABI believes this a benefit to you because it enhances the security of your computer and provides you with the ability to choose whether or not to install certain components on your computer.

Some third parties may attempt to disrupt network communications to and from your computer to ABI's servers. This may include the manipulation of either your DNS configuration, or your computer's host file. If ABI believes that a third party is impeding your network communications, we reserve the right to correct the conflict in order to preserve proper communication.

You understand and agree, by installing the Software that ABI and/or the Software may, without any additional notice to you, remove, disable or render inoperative other adware programs resident on your computer. This in turn, may disable or render inoperative other software resident on your computer, including software bundled with such adware. This may also have other adverse impacts on your computer.

If you do not want ABI and/or the Software to take these security measures, you should not install the Software, or follow the procedures set forth below in Section 3 to remove the Software.

6. Privacy - ABI does not require you to provide any personally identifiable information in order to download or use the Software. However, the Software does collect certain types of non-personally identifiable information about individuals who install and use the Software. None of the information collected is used by ABI to identify you personally. The use and collection of your information is in accordance with ABI's privacy policy located at www.abetterinternet.com/privacypolicy.html and is incorporated as part of this Agreement.

7. Software License - The Software, including any documentation, enhancements, additions or other modifications thereto, is a copyrighted work belonging to ABI and its licensors. ABI grants to you a personal, revocable, nonexclusive, non-assignable and nontransferable license to download, install and use the Software on a single computer and to use the Software only as permitted under this Agreement for non-commercial purposes only.

All rights not expressly granted to you by the foregoing paragraph are reserved by ABI and its licensors. Without limiting the generality of the foregoing, you may not modify, distribute, sublicense, rent, lease, or create derivative works based on the Software or any part thereof. Except as may be permitted by law, you may not reverse engineer, decompile or disassemble the Software. You may not copy the Software other than to make one copy of the Software for back-up purposes. You may not use the Software for any commercial purpose, and may not use the Software in the operation of a service bureau or for the benefit of any other person or entity. Moreover, you may not transfer, sell, assign or convey the Software to another party without the prior written consent of ABI. You shall maintain all copyright notices, trademark notices, and other proprietary notices on the Software.

You agree not to publicly disseminate performance information or analysis (including, without limitation, benchmarks) developed by you or obtained from any third party relating to the Software.

8. Proprietary Rights - The Software, and any materials posted or delivered in connection with the use of the Software, including code, images, text, illustrations, logos, audio and video files (collectively "Intellectual Property"), are protected by copyrights, trademark rights, service mark rights, or other proprietary rights which are either owned by ABI, or owned by other parties who have licensed their Intellectual Property to ABI.

You may not frame or utilize framing techniques to enclose any trademark, logo, or other Intellectual Property of ABI or its licensors without express written consent of ABI. You may not use any meta tags or any other "hidden text" utilizing the name or trademarks of ABI and its affiliates without the express written consent of ABI or its licensors.

Use or modification of the Intellectual Property in any form, including but not limited to use on any other website or networked computer environment, without express written authorization, is a violation of ABI's or its licensors' Intellectual Property rights and is strictly prohibited.

9. Trademarks - ABI, aBetterInternet.com and other ABI logos, page headers, buttons, icons, and service names are trademarks, service marks and/or trade dress of ABI or its licensors. None of ABI's or its licensors' trademarks, service marks or trade dress may be used in connection with any product or service that is not a product or service of ABI or its licensors in any manner that is likely to cause confusion among users, or in any manner that disparages or discredits ABI or its affiliates.

10. Indemnification - You agree to defend, indemnify, and hold harmless ABI and its affiliates, and each of their respective officers, directors, employees, agents, representatives, information providers and licensors, from any claims, costs, losses, damages, judgments and expenses, including but not limited to reasonable attorney's fees and expenses, relating to or arising out of any breach of this Agreement or any use of the Software by you, or by any other person using the Software through you or using or accessing your computer.

11. Disclaimer Of Warranty - YOU UNDERSTAND AND AGREE THAT THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS, AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFECT OF THE SOFTWARE IS YOURS AND YOURS ALONE. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, ABI AND ITS AFFILIATES DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, NEITHER ABI NOR ANY OF ITS AFFILIATES, NOR ANY OF THEIR OFFICERS, DIRECTORS, LICENSORS, EMPLOYEES OR REPRESENTATIVES REPRESENT OR WARRANT (i) THAT THE SOFTWARE, INCLUDING ITS CONTENT, WILL FULFILL ANY OF YOUR PARTICULAR PURPOSES OR NEEDS OR MEET YOUR REQUIREMENTS OR BE ERROR FREE; (ii) THAT THE SOFTWARE WILL ALWAYS BE AVAILABLE OR WILL BE UNINTERRUPTED, ACCESSIBLE, TIMELY, OR SECURE; (iii) THAT ANY DEFECTS WILL BE CORRECTED, OR THAT THE SOFTWARE WILL BE FREE FROM VIRUSES, "WORMS," "TROJAN HORSES" OR OTHER HARMFUL PROPERTIES; (iv) THE ACCURACY, RELIABILITY, TIMELINESS, OR COMPLETENESS OF ANY INFORMATION OR OTHER MATERIAL PUBLISHED OR ACCESSIBLE ON OR THROUGH THE SOFTWARE; (v) THE AVAILABILITY FOR SALE, OR THE RELIABILITY OR QUALITY OF ANY PRODUCTS OR SERVICES REFERENCED USING, OR ACCESSIBLE THROUGH, THE SOFTWARE; AND (vi) ANY IMPLIED WARRANTY ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE. ABI AND ITS AFFILIATES HEREBY DISCLAIM, AND YOU HEREBY IRREVOCABLY RELEASE ABI AND ITS AFFILIATES FROM AND WAIVE, ANY AND ALL OBLIGATIONS, LIABILITIES, RIGHTS, CLAIMS OR REMEDIES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE, WHETHER OR NOT ARISING FROM THE NEGLIGENCE (ACTIVE, PASSIVE OR IMPUTED) OF ABI OR ITS AFFILIATES.

IF YOU PURCHASE A PRODUCT OR SERVICE AS A RESULT OF USING THE SOFTWARE, AND A DISPUTE ARISES BETWEEN YOU AND THE SELLER, YOU IRREVOCABLY RELEASE AND DISCHARGE ABI AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, LICENSORS, EMPLOYEES OR REPRESENTATIVES, FROM ANY CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL, DIRECT AND INDIRECT, COMPENSATORY AND PUNITIVE) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES. YOU ACKNOWLEDGE AND AGREE THAT ANY SOFTWARE OR OTHER CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE IS DONE AT YOUR OWN DISCRETION AND SOLELY AT YOUR RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOADING OF SUCH SOFTWARE AND/OR CONTENT.

12. Limitation Of Liability - IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ABI OR ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, INFORMATION PROVIDERS OR LICENSORS BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER DAMAGES (REGARDLESS OF THE FORM OF ACTION OR PROCEEDING) ARISING OUT OF OR RELATED TO (i) ANY USE OF THE SOFTWARE BY ANY PERSON, INCLUDING BUT NOT LIMITED TO, ANY DAMAGE CAUSED BY ANY RELIANCE ON, OR ANY DELAYS, INACCURACIES, ERRORS OR OMISSIONS IN, ANY INFORMATION AND CONTENT ACCESSED THROUGH THE SOFTWARE, (ii) ANY USE OR INABILITY TO USE THE SOFTWARE FOR WHATEVER REASON, INCLUDING BUT NOT LIMITED TO COMMUNICATIONS FAILURE OR ANY OTHER FAILURE WITH TRANSMISSION OR DELIVERY OF ANY INFORMATION ACCESSED THROUGH THE SOFTWARE, OR (iii) ANY GOODS OR SERVICES DISCUSSED, PURCHASED OR OBTAINED, DIRECTLY OR INDIRECTLY, THROUGH THE SOFTWARE, IN EACH CASE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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 ABI is liable to you for any other reason, then ABI'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.

13. Acceptable Use Policy - While ABI 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 ABI in conjunction with the sending of unsolicited e-mail, or cause to be used ABI 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 ABI network addresses or ABI 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 ABI 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.

You may only use the Software for lawful purposes and in strict compliance with this Agreement and all applicable laws. You may not use the Software to post or transmit any message or content, including linking to any message or content, which is abusive, vulgar, hateful, obscene, scandalous, inflammatory or otherwise objectionable; is being used to harass, stalk or otherwise threaten a person; is libelous, defamatory or invades any privacy or publicity rights of any third party; misrepresents or masks the true identity of any party; infringes any copyright, trademark, service mark, patent, trade secret or confidentiality obligation; contains any illegal contests or lotteries, or any pyramid schemes; or contains any virus, trojan horse, time bomb or any other harmful or disabling software code.

You may not use any persons, means, devices or arrangements to commit fraud, redirect Internet traffic in a deceptive or fraudulent manner, interfere with the proper operation of the Software or falsify or manipulate results or information generated or collected in connection with the Software.

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

14. Promotional Applications - 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 ("Promotional Applications"). Please note that the Promotional Applications are subject to different license agreements or other arrangements, which you should read carefully. By downloading and using Promotional Applications, you accept such license agreements or other arrangements and acknowledge that you have read them and understand them. ABI disclaims to the maximum extent permitted by applicable law, any responsibility for or liability related to the Promotional Applications. Any questions, complaints or claims related to the Promotional Applications should be directed to the appropriate vendor. PROMOTIONAL APPLICATIONS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS". ABI MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE QUALITY, SAFETY OR SUITABILITY OF PROMOTIONAL APPLICATIONS, 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 ABI BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWEVER THEY MAY ARISE AND EVEN IF ABI HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. 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.

16. Arbitration - Except as provided in the next paragraph, you and ABI 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 ABI 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 ABI's rights in the Intellectual Property, ABI may seek injunctive or other appropriate relief in any court of competent jurisdiction and you irrevocably consent to jurisdiction and venue in such courts.

17. Changes - ABI may change any of the terms and conditions contained in this Agreement, including the privacy policy referenced in Section 6 above, 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 ABI's 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.

18. 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. ABI's failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of ABI'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 ABI which is unquantifiable but nonetheless real and irreparable. Accordingly, in the event ABI determines in its sole discretion that you have violated or will violate any such provision, ABI will be entitled to injunctive relief from a court of competent jurisdiction restraining such violation. ABI'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 ABI ability to resort to any other remedy available under law or equity. Any rights not expressly granted herein are reserved.

19. 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. ABI 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.

Last updated April 28, 2005

[Privacy Policy](#) | [EULA](#) | [Uninstall](#) | [Contact Us](#) | [Support](#)

©2005 BetterInternet, LLC. All rig

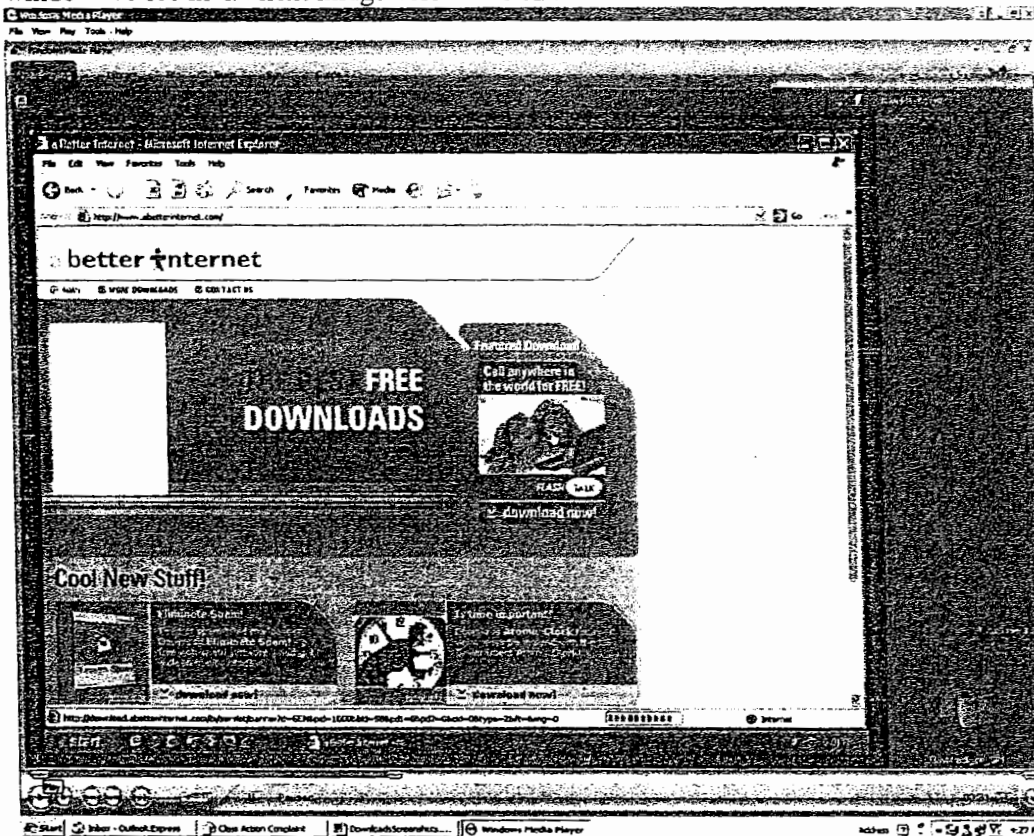
DR174500

**EXHIBIT C TO DECLARATION OF
CHRISTOPHER DOWHAN**

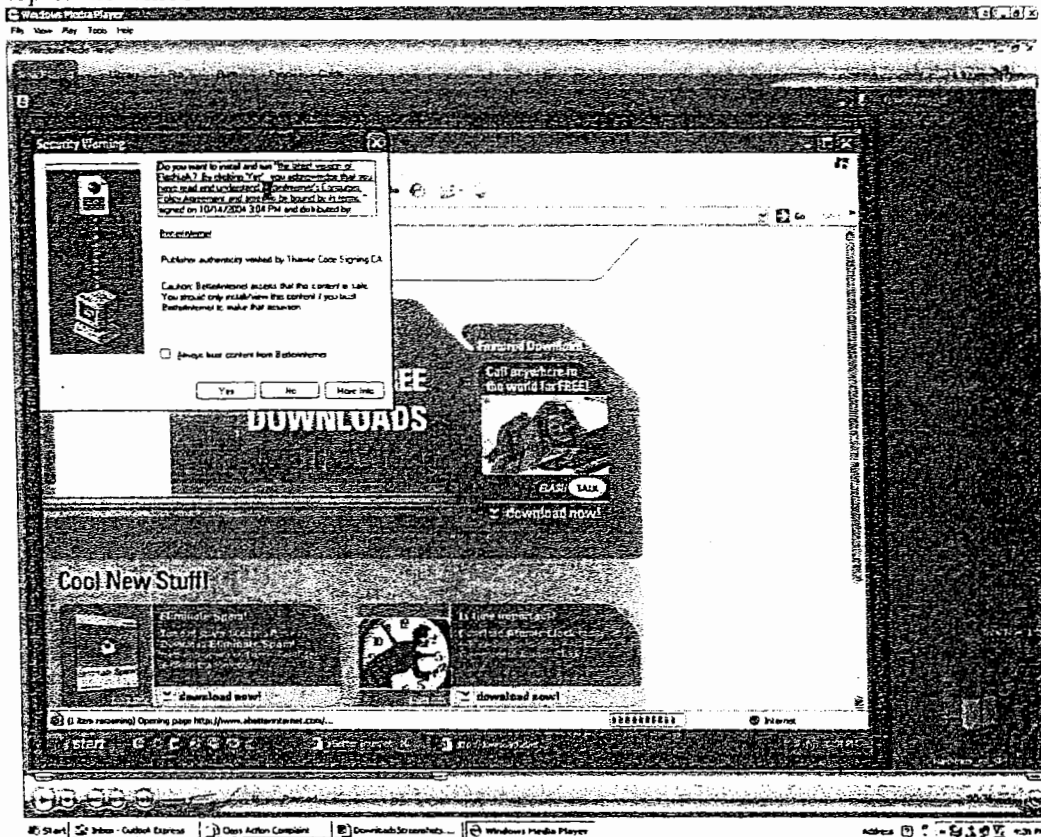
DR174501

For XP-SP1, Win2k, Win95, WinME, WinNT, etc. machines, this is how the download works:

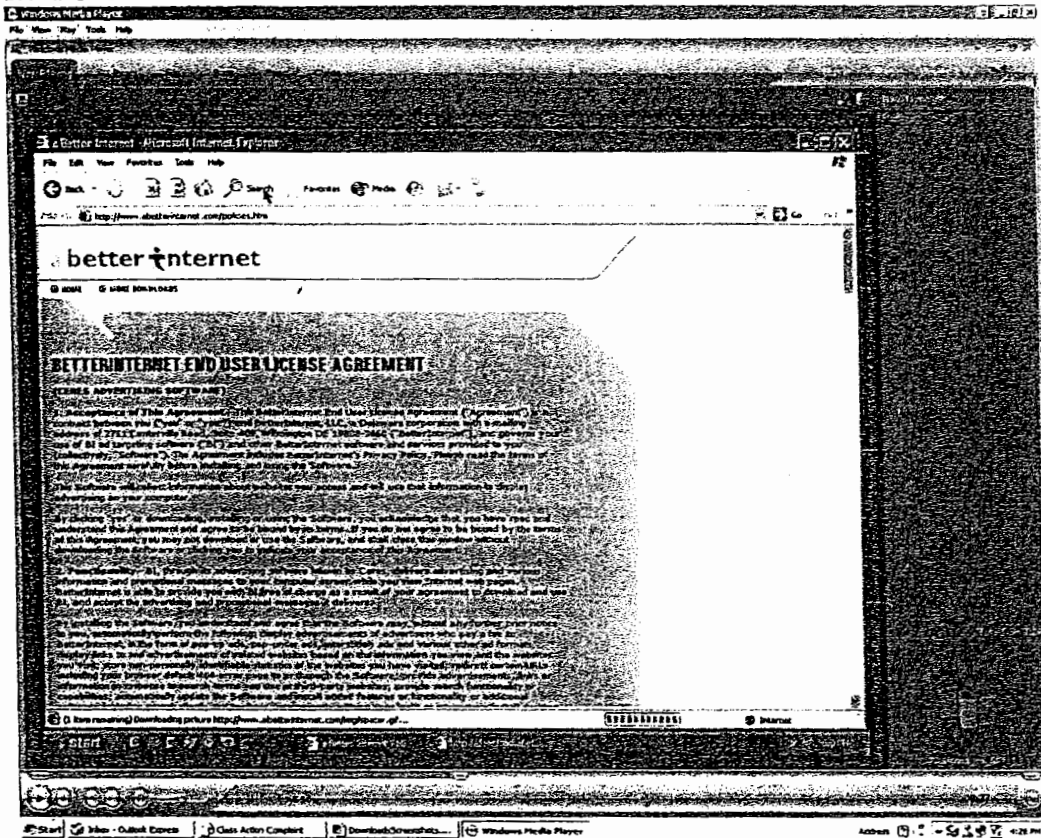
Browse to www.abetterinternet.com website and click on a product link – Flashtalk in this example. Some of our distribution will show an ad and automatically pop the window we see in the next image below this one.



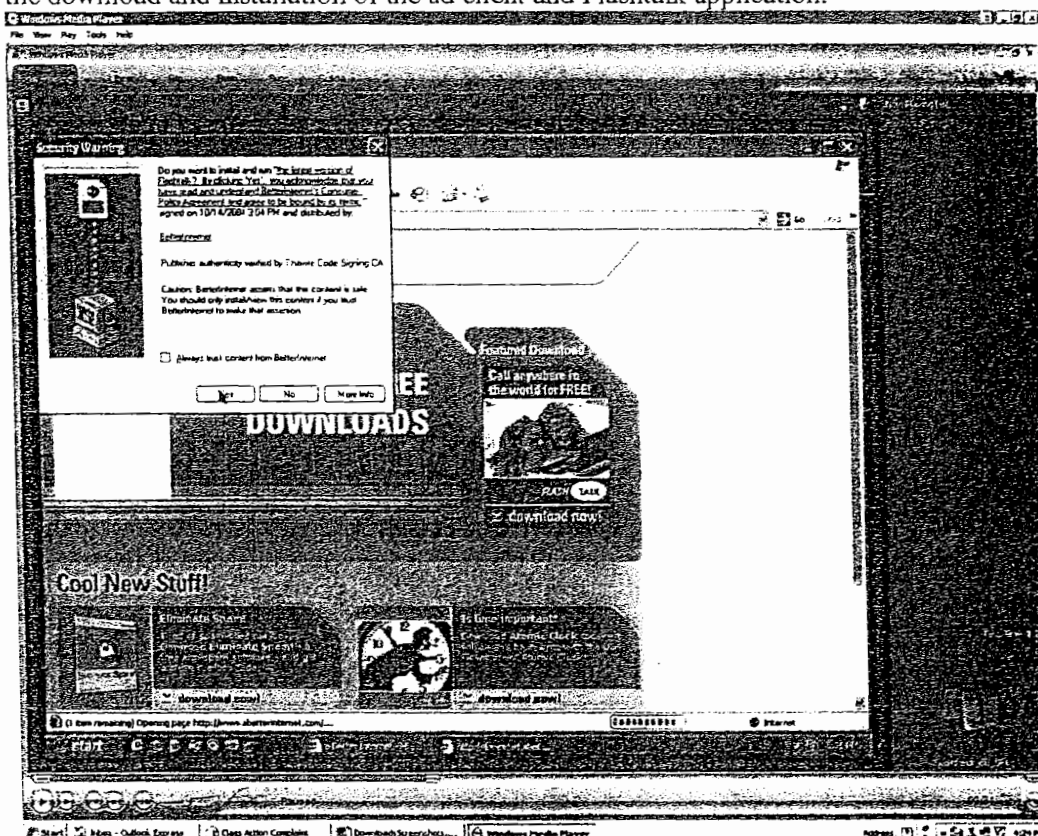
The ActiveX pop-up window appears and asks the user if they want to continue with the download and agree to the EULA which is accessible through the linked blue text at the top of the window.



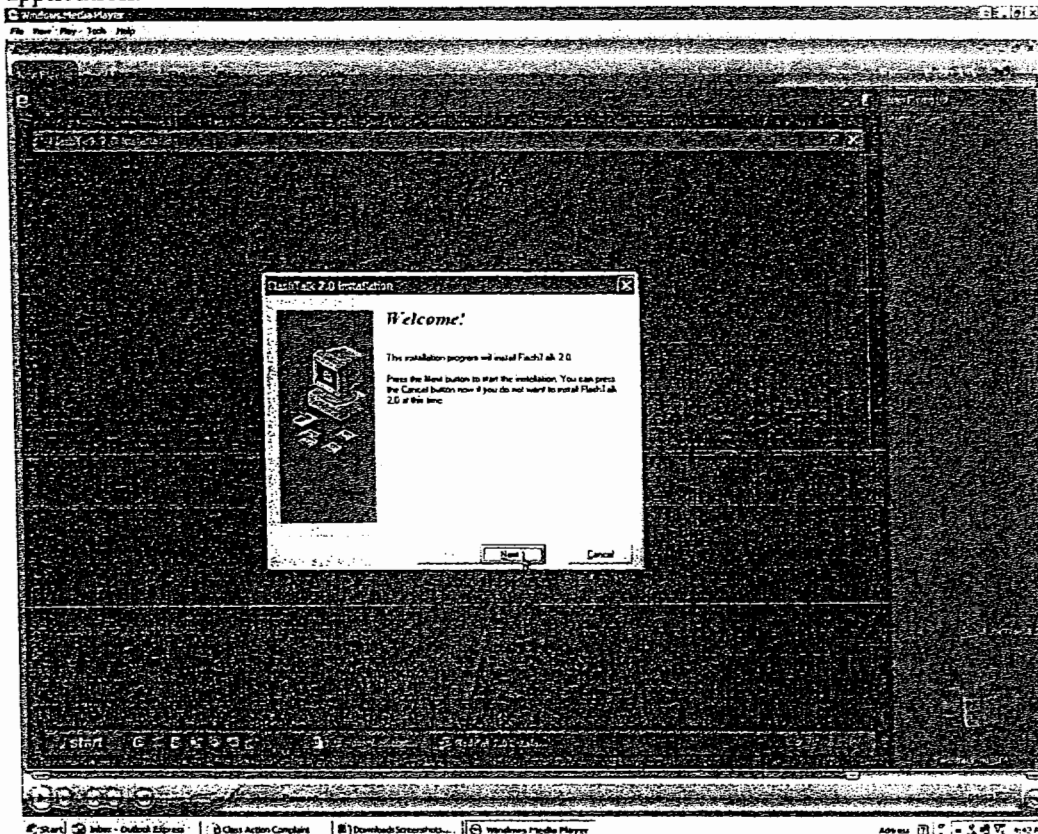
By clicking on the blue text at the top of the pop-up you are sent to the webpage with our full EULA.



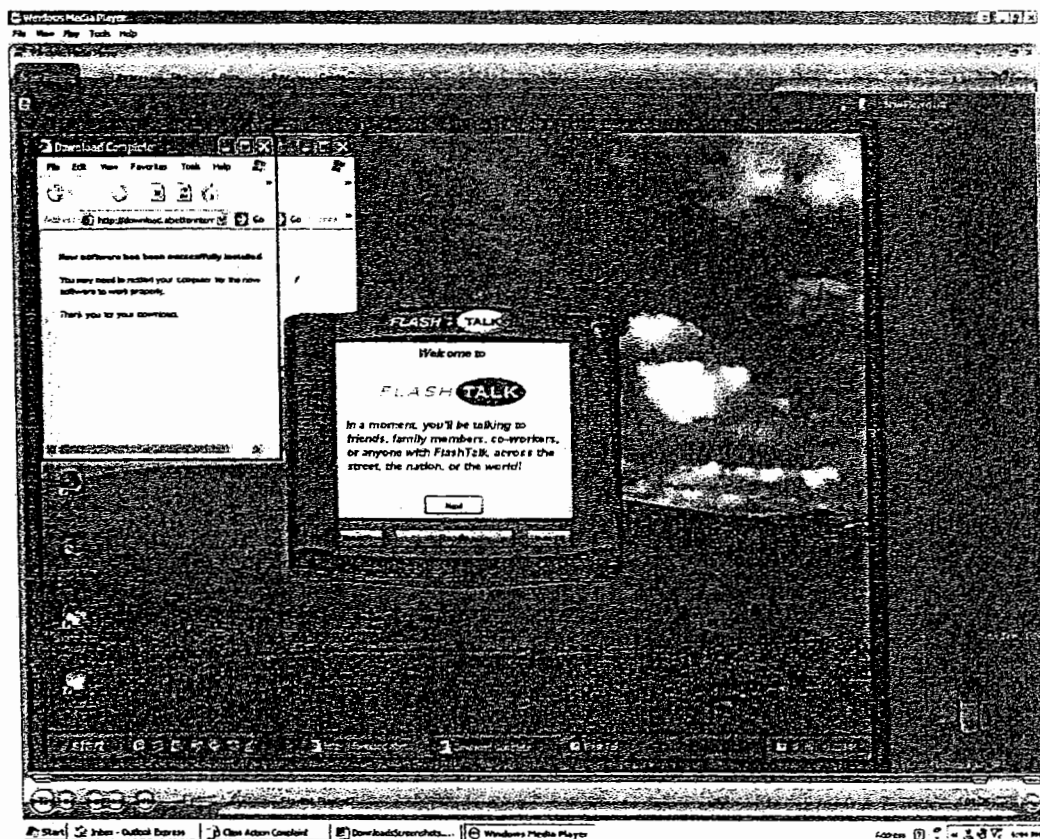
If you click on the "No" button, the install is aborted and nothing is installed. If you click on the "More Info" button, you can get more information about BetterInternet and the way we signed the code with our Authenticode keys. By clicking "Yes", it proceeds with the download and installation of the ad client and Flashtalk application.



The user is prompted with a couple more installation preferences screens for the Flashtalk application.



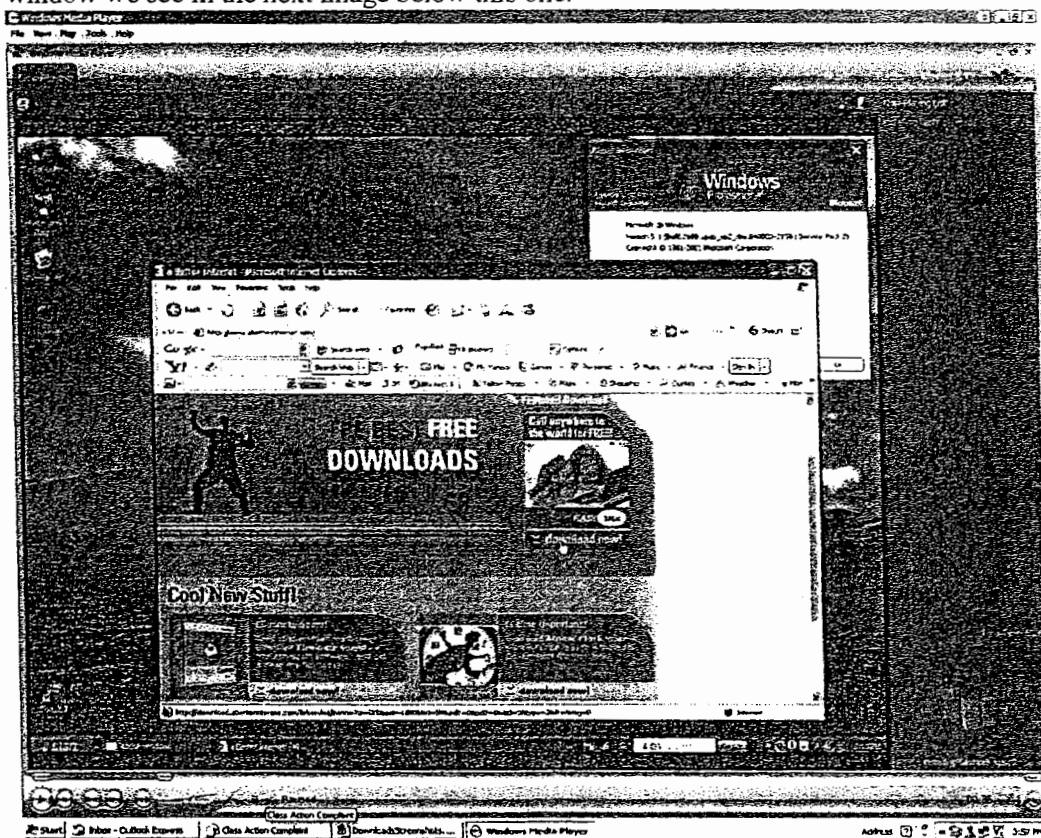
And finally, after the installation is complete we open a small browser window to indicate that the installation was successful, and the FlashTalk application is launched.



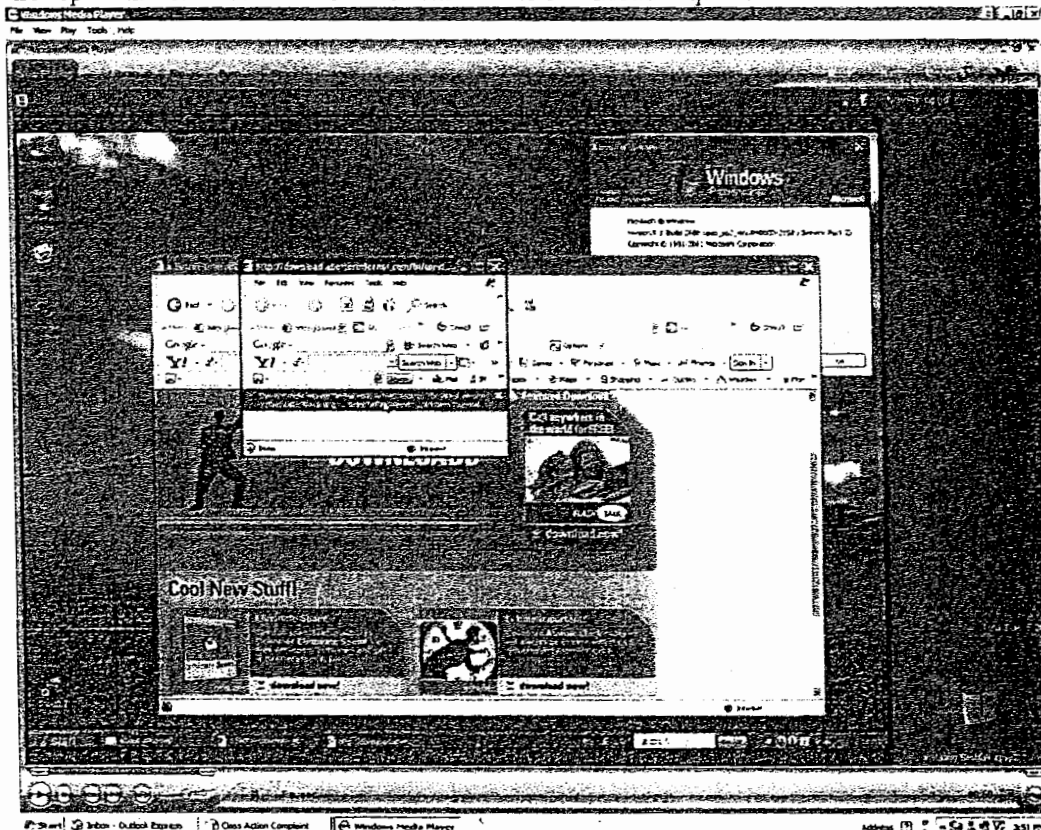
**EXHIBIT D TO DECLARATION OF
CHRISTOPHER DOWHAN**

On an XP-SP2 machine, here's what the download sequence looks like:

Browse to www.abetterinternet.com website and click on a product link – Flashtalk in this example. Some of our distribution will show an ad and automatically pop the window we see in the next image below this one.



After clicking on the download link, XP-SP2 by default will block the download of our application. Technically, this is an <OBJECT> tag that has always been supported by IE browsers as the way to download "ActiveX" content. Our OBJECT tag is pointing to a CAB file which would pop a small window in XP-SP1, Win2K, Win98, WinNT, WinMe, etc. prompting the user to choose "Yes" or "No" to the download. In this case, that pop-up is suppressed and the message about the download is shown in a strip of text across the top of the browser window that started the download sequence.

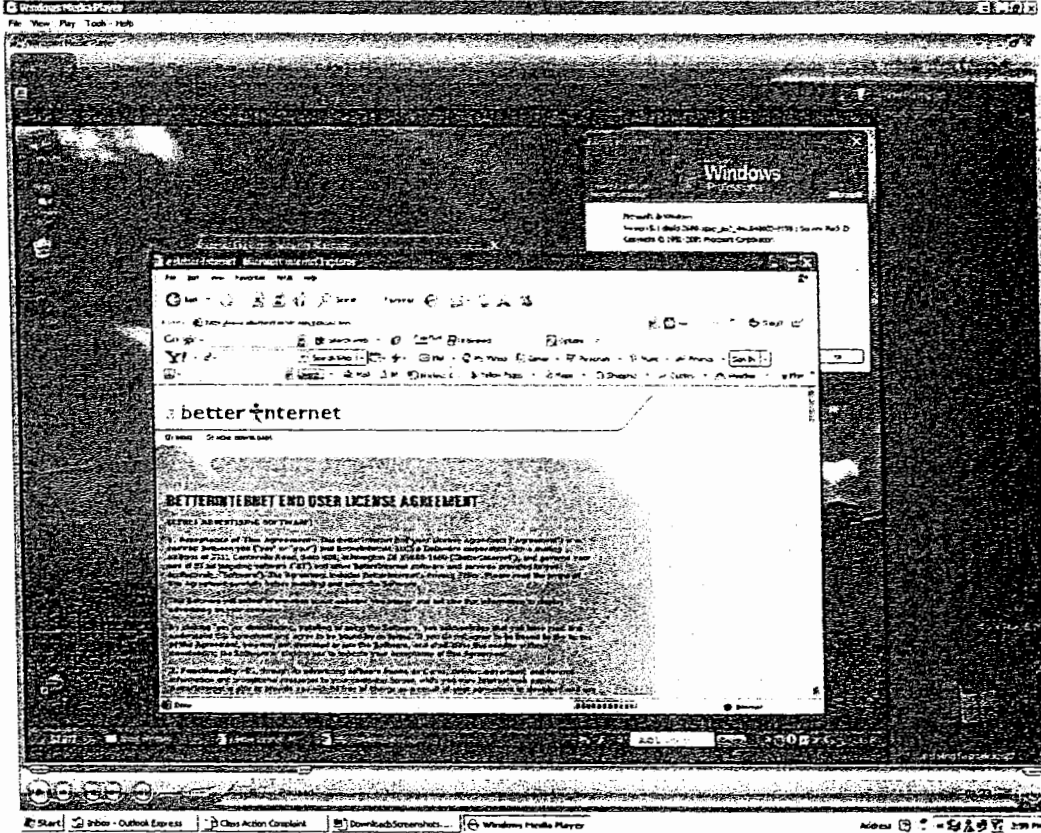


Here we can see that the strip of text is “active” and we can click on it to install the ActiveX control – the second time the user has had to ask now.

This second request pops another window that has a link to our EULA – at this point the phrasing is different from the pop-up we would see for an ActiveX download on XP-SP1 machines, and the rest.

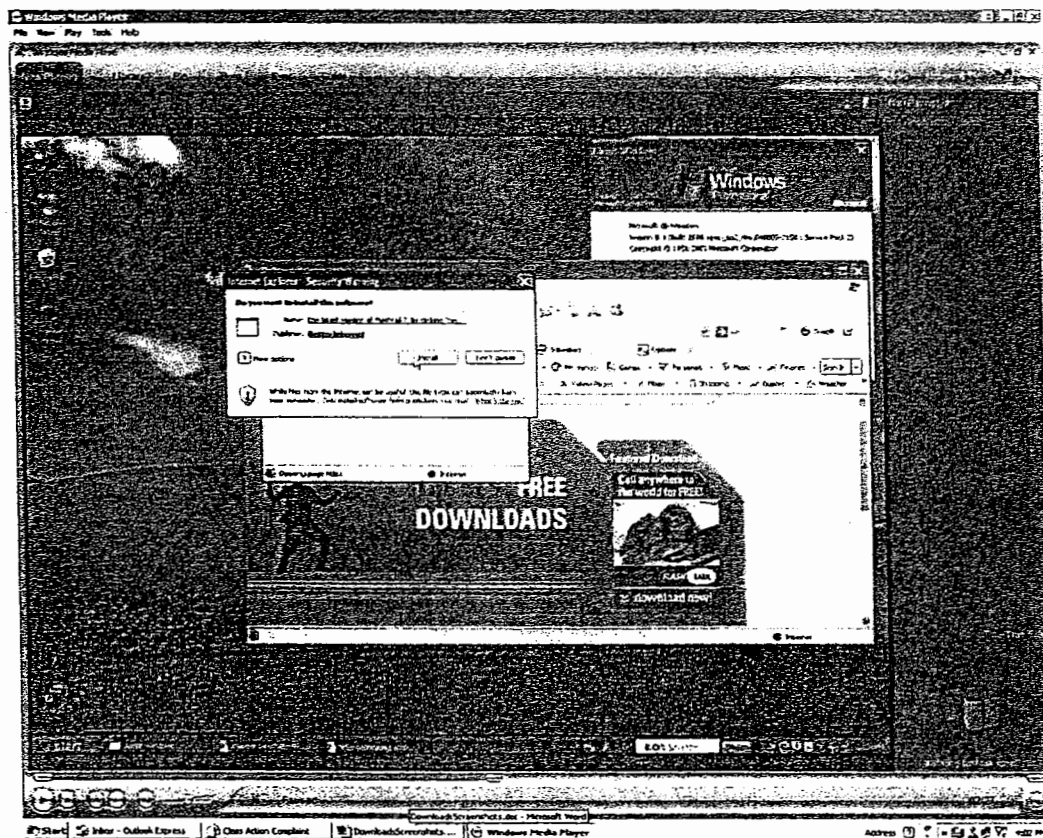


By clicking on this link a browser window is opened and reveal the EULA in it's entirety.



DR174513

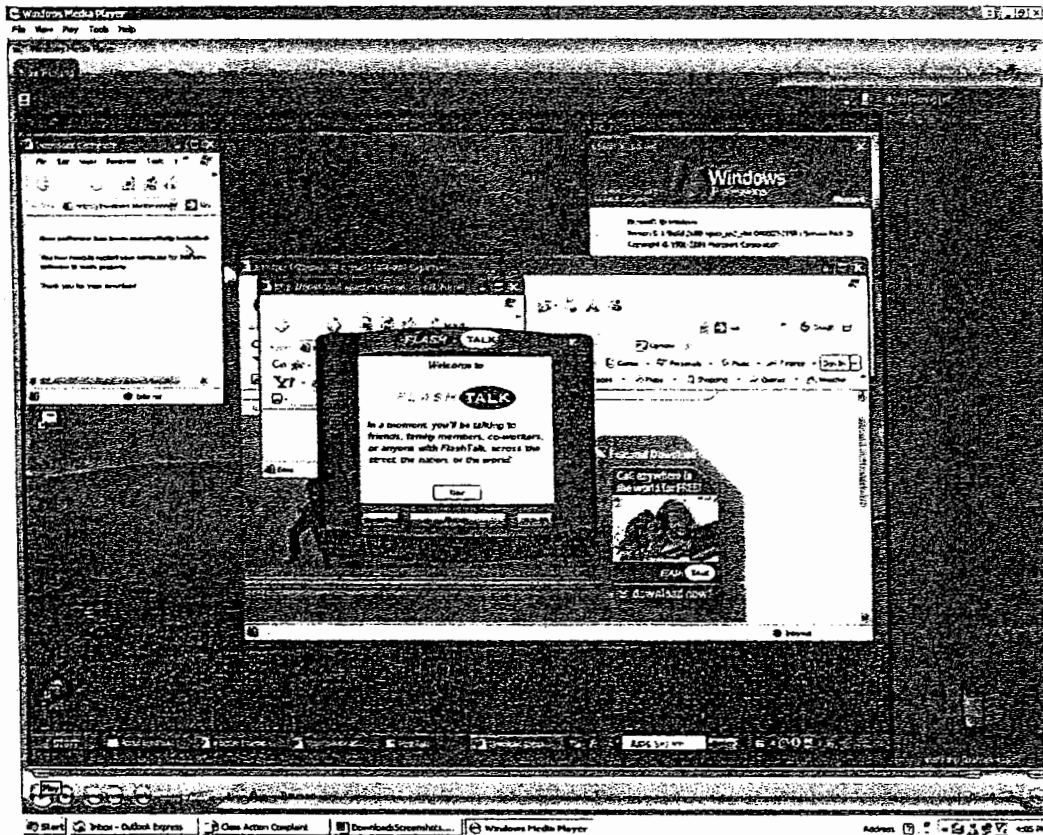
By clicking on the "Don't Install" button, the entire process is aborted and nothing has been installed. By clicking on the Install button, the ad client and FlashTalk application are installed.



The FlashTalk application walks through a set of windows to confirm installation preferences, etc....



And finally, after the installation is complete we open a small browser window to indicate that the installation was successful, and the FlashTalk application is launched.



**EXHIBIT E TO DECLARATION OF
CHRISTOPHER DOWHAN**

DR174517

betterinternet

a division of direct revenue

HOME MORE DOWNLOADS UNINSTALL CONTACT US SUPPORT

myx.tuneup abi network

MORE FREE DOWNLOADS!

My Panic Button



tell me more!

My Panic Button
During the office, Get MyPanicButton for when your boss is just around the corner. Hit F5 on your keyboard and immediately look like you're busy working on an important spreadsheet.

Eliminate Spam!



tell me more!

Eliminate Spam!
Tired of spam cluttering your mailbox? Download Eliminate Spam! free anti-spam software and get a clean mailbox today.

FreePhone



tell me more!

FreePhone
Call anywhere in the world for FREE! Download FreePhone for your computer and call anyone anywhere in the world for FREE!

Clean Get-Away



tell me more!

Clean Get-Away
Want to erase your Internet trail? Get Clean Get-Away now! It will remove all your Internet history after each session.

Atomic Clock



Atomic Clock
Is time important? Be on time! Use the Atomic Clock for your computer. It will always be in sync with the US Government.

Mahjong



Mahjong
Mahjong offers endless hours of on-line fun. You too can become a master of this ancient Asian game. Features great sound.

1

Internet

start

a Better Internet - M...

2:55 PM

a Better Internet - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Stop Search Favorites

Address http://www.abetterinternet.com/deangetaway.html

mytuneup abi network

Clean Get-Away

Free Software that increases your on-line privacy

Your computer tracks your activity as you move on the Internet. Now you can protect yourself and your privacy by using our program to delete Clean Get-Away.

Upon request, Clean Get-Away removes traces such as temporary Internet files, Cookies, temporary URLs, and AutoComplete information used for web forms.

Why is Clean Get-Away Free?

Clean Get-Away is provided to you free of charge because it is supported by advertising from the Better Internet Network. To learn more about the Better Internet Network, visit www.betterinternet.com. Millions of computers also use our ad serving software and our program will change the advertising.

As you surf the web, you will occasionally receive relevant offers from the Better Internet Network. The Better Internet Network selects which ads are shown based on your online activity. The ads you receive from the Better Internet Network will be branded with the logo you will recognize. The ads in the prompt display of each brand name in the upper left corner of the ad. For example, when an ad is branded it might look like:

The ads you receive will be sent to you from Better Internet's ad serving software, not by the individual website(s) you visit.

Please remember when you install Clean Get-Away, we require that you review and accept our End User License Agreement.

download now!

System Requirements:
OS: Windows XP, 10, 2000 or 98

How to Install Clean Get-Away:
Click the "download" button above to download the installation package. You will be asked whether you wish to Save the file locally or to Run the file.

If you choose to Save the file:
1. Your computer will now ask you where on your computer you wish to save the installation file.
2. Once the file has downloaded to the location you chose, doubleclick the downloaded file to start the installation. The step-by-step installation will begin.

If you choose to Run the file:
Your computer will initiate the step-by-step installation procedure as soon as the program has finished downloading.

Please keep in mind that you can uninstall Better Internet's ad serving software at any time by visiting www.mytuneup.com.

download now!

Privacy Policy | EULA | Uninstall | Contact Us | Support

©2005 Better Internet, LLC. All rights reserved.

Done

Internet

Internet Explorer window showing the Better Internet website. The address bar displays <http://www.abetterinternet.com/cleangetaway.html>. The page features a large banner for "Clean Get-Away" software, which is described as free software that increases online security. A "File Download - Security Warning" dialog box is open, asking if the user wants to run or save the file "cleangetaway-wise1000.exe". The dialog box includes a "Run" button, a "Save" button, and a "Cancel" button. The background page also includes a "download now!" button and a "Privacy Policy" link.

Clean Get-Away

Free Software that increases your on-line security.

Your computer tracks your every move on the Internet. You need the best history deletion program to protect your privacy.

Upon request, Clean Get-Away removes traces of cookies, temporary files, and ActiveX controls.

Why is Clean Get-Away Free?

Clean Get-Away is provided to you free of charge by Better Internet Network. By using millions of computers and entertainment exchange for advertising from the Better Internet Network, we can provide you with this free software.

As you surf the web, you will occasionally receive Better Internet Network's Better Internet Network based on your online activities. The ads you receive will be branded with the Better Internet Network logo. For example, what an online ad might look like.


The ads you receive will be sent to you from Better Internet Network's advertising software, not by the individual websites you visit.


Please remember, when you install Clean Get-Away, we require that you read and accept our End User License Agreement.

download now!

File Download - Security Warning

Do you want to run or save this file?

 Name: cleangetaway-wise1000.exe
Type: Application, 195 KB
From: download.abetterinternet.com

 While files from the Internet can be useful, this file type can potentially harm your computer. If you do not trust the source, do not run or save this software. [What's the risk?](#)

download now!

Privacy Policy | EULA | Uninstall | Contact Us | Support

©2005 Better Internet, LLC. All rights reserved.

Done

Internet

Internet Explorer window showing the Better Internet website. The address bar displays <http://www.abetterinternet.com/deangetaway.html>. The page content includes a "Clean Getaway" section with a "download now!" button. A security warning dialog box is displayed, asking "Do you want to run this software?" for "Clean Getaway Installation" by "BetterInternet". The dialog includes a "More options" checkbox and "Run" and "Don't Run" buttons. The background text on the website describes the software and its installation process.

Internet Explorer window showing the Better Internet website. The address bar displays <http://www.abetterinternet.com/deangetaway.html>. The page content includes a "Clean Getaway" section with a "download now!" button. A security warning dialog box is displayed, asking "Do you want to run this software?" for "Clean Getaway Installation" by "BetterInternet". The dialog includes a "More options" checkbox and "Run" and "Don't Run" buttons. The background text on the website describes the software and its installation process.

Internet Explorer - Security Warning

Do you want to run this software?

Name: Clean Getaway Installation
Publisher: BetterInternet

☐ More options

While files from the Internet can be useful, this file type can potentially harm your computer. Only run software from publishers you trust. [What's the risk?](#)

Installation: The step-by-step installation will begin.

If you choose to run the file, your computer will initiate the step-by-step installation procedure as soon as the program has finished downloading.

Please keep in mind that you can uninstall BetterInternet's ad-serving software at any time by visiting www.myoptuneup.com.

[download now!](#)

Privacy Policy | EULA | Uninstall | Contact Us | Support

© 2005 BetterInternet, LLC. All rights reserved.

Microsoft Internet Explorer

Address: <http://www.abetterinternet.com/deangetaway.html>

mycplunep abi network

Clean Get-Away

Free Software that lets you delete your computer's history, cookies, and other information. Now you can protect yourself with the best history deletion program to date, Clean Get-Away.

Click 'Next' to get started.

About Clean Get-Away

Your computer tracks your every move on the Internet. Now you can protect yourself with the best history deletion program to date, Clean Get-Away.

Click 'Next' to get started.

This software is supported by Ceres advertisements

A Service by BetterInternet

Next > Cancel

download now!

Privacy Policy | EULA | Uninstall | Contact Us | Support

©2005 BetterInternet, LLC. All rights reserved.

Done Internet

Better Internet - Microsoft Internet Explorer

Address: <http://www.abetterinternet.com/cleangetaway.html>

my pictureup abi network

Clean Get-Away Installation: Step 2 of 4

Free Software that increases your computer's speed & allows you to surf the web with the best history cleaner.

Upon request, Clean Get-Away will remove cookies, temporary internet files and ActiveX controls.

Why is Clean Get-Away Free?

Clean Get-Away is provided to you free of charge because it is supported by advertising from the BetterInternet Network. As you surf the web, you will occasionally receive relevant offers from the BetterInternet Network. The ads you receive from the BetterInternet Network will be branded Ceres. You will recognize these ads by the prompt display of Ceres brand name in the upper left corner of the ad.

The ads you receive from BetterInternet can be displayed as pop-ups, pop-unders or any other display mechanism. All ads served by BetterInternet will have the brand name 'Ceres' on the upper left corner.

Thank You - and enjoy your free version of Clean Get-Away.

This software is supported by Ceres advertisements

A Service by BetterInternet

< Back Next > Cancel

download now!

Please keep in mind that you can uninstall BetterInternet's advertising software at any time by visiting www.mypictureup.com

2.55 Privacy Policy | EULA | Uninstall | Contact Us | Support

©2005 BetterInternet, LLC. All rights reserved.

Done Internet

a Better Internet - Microsoft Internet Explorer


File Edit View Favorites Tools Help

Back Stop Search Favorites

Address http://www.abetterinternet.com/cleangetaway.html

myoptuneup abi network

Clean Get-Away Installation: Step 3 of 4

 Clean Get-Away

End Software Installation

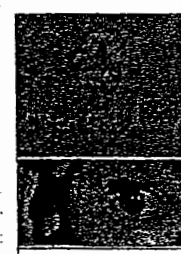
Your computer will be your own. You will not be tracked or monitored. You will not be sold or rented your information. You will not be used for advertising or other purposes. You will not be used for anything else.

When you use Clean Get-Away, you will be able to remove all advertising software from your computer. This will help you keep your computer clean and free of unwanted software. You will also be able to remove all tracking cookies from your computer. This will help you keep your computer private and secure.


As you use the web, you will see Better Internet Network ads. These ads are based on your online activities. The ads will be placed on the web pages you visit. You will be able to remove these ads by using Clean Get-Away. This will help you keep your computer clean and free of unwanted software.

The ads you see will be based on your online activities. You will be able to remove these ads by using Clean Get-Away. This will help you keep your computer clean and free of unwanted software.

Please remember, when you install Clean Get-Away, we require that you review and accept our End User License Agreement.

 This software is supported by Ceres advertisements

A Service by BetterInternet

 Print Friendly Version

☐ I have read and accept the agreement

☒ I do not accept the terms of the agreement

< Back Next > Cancel

download now!

Please keep in mind that you can uninstall BetterInternet's advertising software at any time by visiting www.myoptuneup.com.

Privacy Policy | EULA | Uninstall | Contact Us | Support

©2005 BetterInternet, LLC. All rights reserved.

Done Internet

Internet Explorer window titled "a Better Internet - Microsoft Internet Explorer". The address bar shows "http://www.abetterinternet.com/cleangetaway.html". The page content is titled "Clean Get-Away" and describes a free software tool for cleaning up a computer. It includes a section titled "Clean Get-Away Installation: Step 3 of 4" which presents an "End User License Agreement". The agreement text includes: "In order to use Clean Get-Away, you need to accept the End User License Agreement below. By installing this software you are bound to the agreement and certify that you will adhere to the terms outlined in the agreement." and "A BETTER INTERNET END USER LICENSE AGREEMENT (CERES ADVERTISING SOFTWARE, AS DISTRIBUTED WITH CLEAN GETAWAY)". The agreement lists terms of use, including acceptance of the agreement and the right to uninstall the software. Below the agreement text are radio buttons for "I have read and accept the agreement" (selected) and "I do not accept the terms of the agreement". Navigation buttons include "< Back", "Next >", and "Cancel". A "download now!" button is also visible. The footer contains links for "Privacy Policy", "EULA", "Uninstall", "Contact Us", and "Support", along with the copyright notice "©2005 BetterInternet, LLC. All rights reserved." and the status bar shows "Done" and "Internet".

Free Software that cleans up your computer space. You can even run yourself with the best history, delete cookies, temporary files, and more. Upon request, Clean Get-Away can also delete your Internet Explorer cookies, temporary files, and more.

Why is Clean Get-Away Free?

Clean Get-Away is provided to you as a service by BetterInternet, LLC. The BetterInternet Network will be branded across the display of Ceres' brand name in the example what an Ceres machine. The ads you receive will be sent to software, not by the individual web.

Please remember, when you install Clean Get-Away, we require that you review and accept our End User License Agreement.

Clean Get-Away Installation: Step 3 of 4

In order to use Clean Get-Away, you need to accept the End User License Agreement below. By installing this software you are bound to the agreement and certify that you will adhere to the terms outlined in the agreement.

A BETTER INTERNET END USER LICENSE AGREEMENT
(CERES ADVERTISING SOFTWARE, AS DISTRIBUTED WITH CLEAN GETAWAY)

1. Acceptance of this Agreement - This End User License Agreement ("Agreement") is a contract between you ("you") and BetterInternet, LLC ("ABI") and governs your use of the Ceres Advertising Program ("Software"). Please read the terms of this Agreement carefully before downloading, installing and using the Software.

☒ I have read and accept the agreement
☐ I do not accept the terms of the agreement

[Print Friendly Version](#)

[download now!](#)

Please keep in mind that you can uninstall BetterInternet's advertising software at any time by visiting www.myoptuneup.com.

©2005 BetterInternet, LLC. All rights reserved.

a Better Internet - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites

Address <http://www.abetterinternet.com/cleangetaway.html> Go Links

mypctuneup abi network

Clean Get-Away

Free software to help protect your online privacy.

Your computer is constantly being monitored. Now you can protect yourself with the most powerful protection tool available.

Upon request, Clean Get-Away removes all cookies, temporary files and files from your hard drive, and also completely removes all information from your computer.

Why I Don't Get Away

Clean Get-Away is a powerful tool that helps you protect your privacy. It removes all cookies, temporary files and files from your hard drive, and also completely removes all information from your computer. It also removes all information from your computer.

Clean Get-Away Installation

Please wait while we install Clean Get-Away

1. Once the file has downloaded to the location you chose, doubleclick the downloaded file to start the installation. The step-by-step installation will begin.

If you choose to Run the file:
Your computer will initiate the step-by-step installation procedure as soon as the program has finished downloading.

Please keep in mind that you can uninstall BetterInternet's ad-serving software at any time by visiting www.mypctuneup.com.

download now!

download now!

Privacy Policy | EULA | Uninstall | Contact Us | Support

©2005 BetterInternet, LLC. All rights reserved.

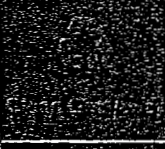
Done Internet

Microsoft Internet Explorer - a Better Internet

Address: <http://www.abetterinternet.com/cleangetaway.html>

myoptuneup | abi network

Clean Get-Away Installation: Step 4 of 4



Installation Done

Congratulations! Your installation of Clean Get-Away was successful.

Please remember:

1. As you surf the web, you will occasionally receive ads from ABI. The ads will be labeled with the name "Ceres".
2. If at some point you wish to stop receiving ads from ABI, you can uninstall the Ceres software by visiting www.myoptuneup.com
3. If you wish to contact us you are welcome to e-mail us at contact@abetterinternet.com

Please press **FINISH** to end this installation.

Finish

This software is supported by Ceres advertisements

A Service by BetterInternet

Please remember: When you install Clean Get-Away you agree to the following terms and conditions:

download now!

[Privacy Policy](#) | [EULA](#) | [Uninstall](#) | [Contact Us](#) | [Support](#)

©2005 BetterInternet, LLC. All rights reserved.

Done | Internet

10

10

**EXHIBIT F TO DECLARATION OF
CHRISTOPHER DOWHAN**

Ceres Removal Screenshots

Ceres Pop-Up Advertisement:

Ceres CheapTickets
just click, you're there.

Get packed and go! Leave just 10% off with our Last Minute Trip. [Learn More](#)

Home | Flights | Hotels | Cars | Cruises | Vacations | Deals | News | CheapTickets

Join Now | Log In | View My Itinerary | My Profile | Travel Resources | FAQs

Flight | Hotel | Car | Cruise

Book Together and Save

Flight + Hotel + Car
Flight + Hotel
Flight + Car

Leaving From: Leave on: May 9

Going To: Return on: May 16

1 Adults 0 Children 0 Seniors

☐ More Search Options
One-way, No. of Stops...

Escape the Everyday
First Caribbean packages from \$777

This Week's Top Deals

- Great flight deals from \$841
- Renos Marra's from \$49/mt**
- Sneaky San Francisco from \$304
- Save big on a Last Minute Trip
- Hertz: FREE upgrade on select cars

Ask us about vacation ownership
* Add Fare Fees & Taxes

Save up to 70% with Last Minute Trips

Gotta-go Destinations for Less

	Air From*	Packages From	Hotel From**
Vegas/Casinos	\$145	4 nts. \$454	\$36/nt
Caribbean	\$254	5 nts. \$692	\$131/nt
New York City	\$104	4 nts. \$394	\$153/nt

[See More Deals](#)

View or Change My Itinerary
Traveler's Last Name:
CheapTickets Reference #: [Learn More](#)

Customer Support
Confirm, change, or cancel my itinerary

FAQs
• How do I book travel?
• What are e-tickets?
• All FAQs

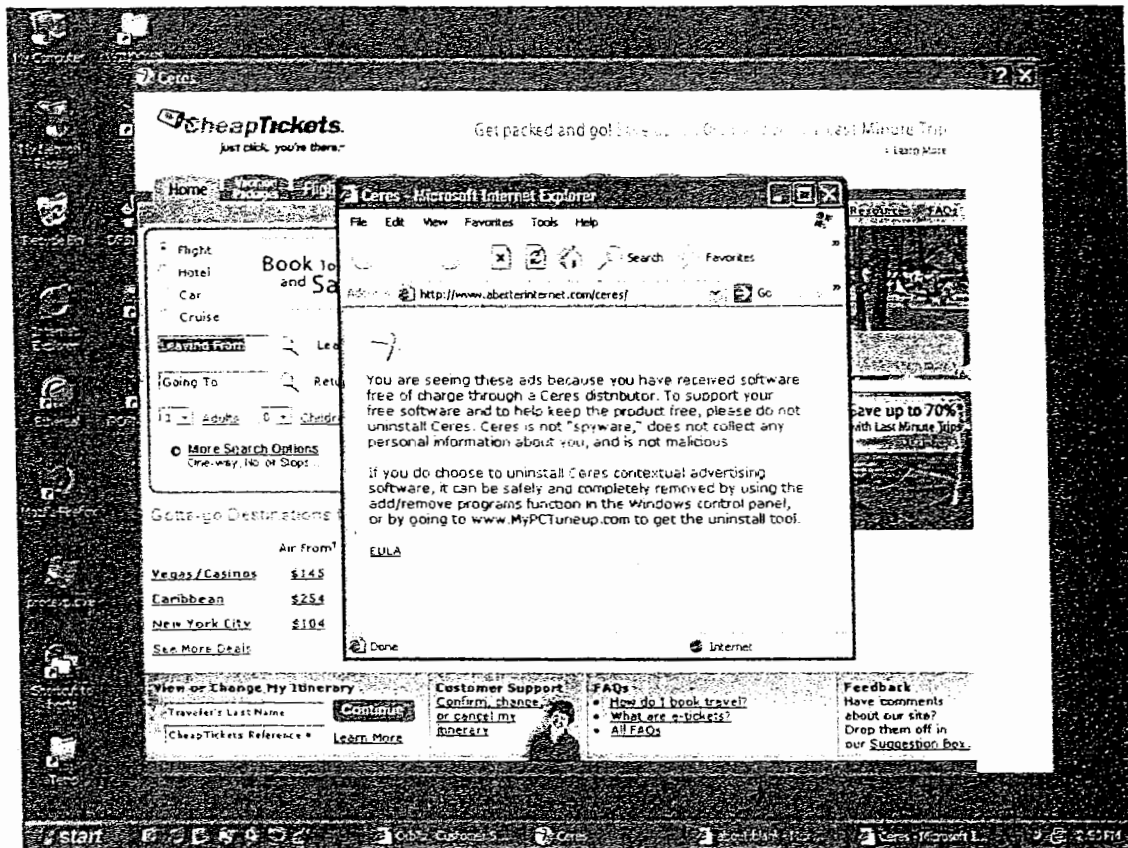
Feedback
Have comments about our site? Drop them off in our Suggestion Box.

LOW FARE

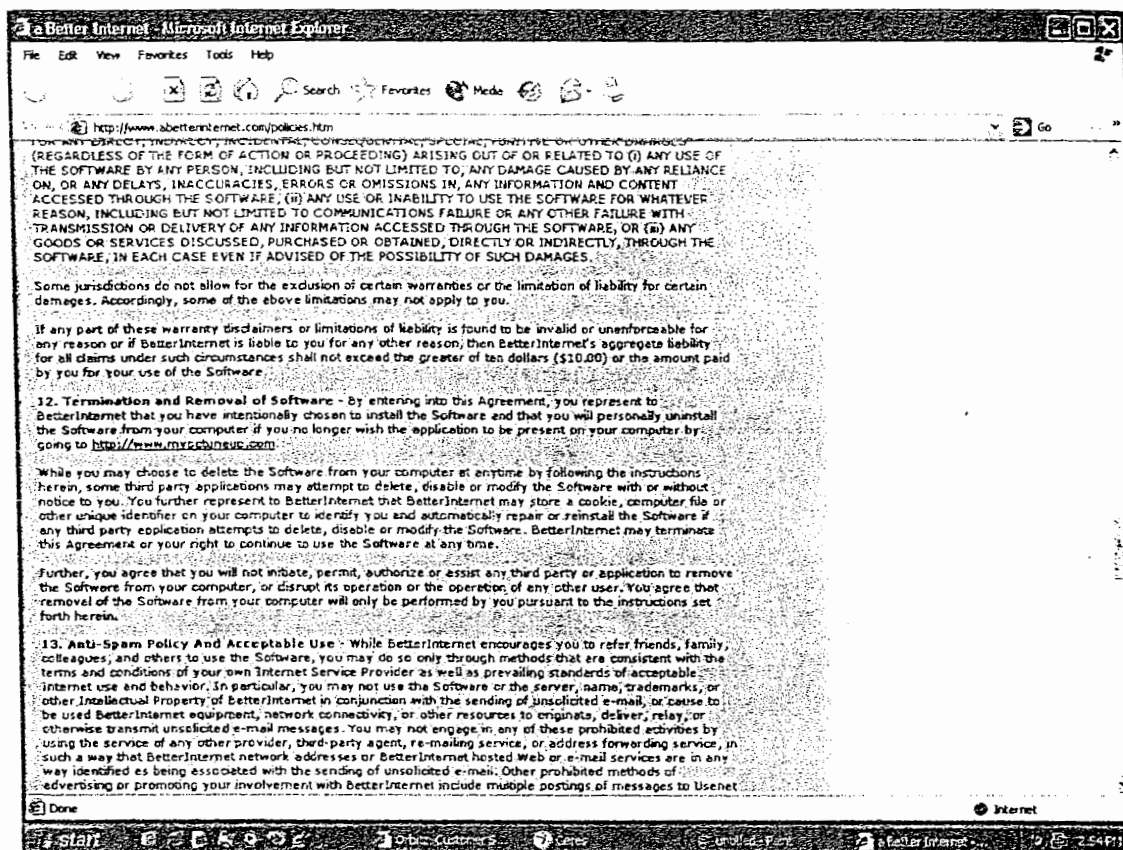
Done

Start | Orbitz Customer Service | My Itinerary | Ceres | CheapTickets | Home

Ceres Help Window (Accessed by clicking on the question mark found on the top right-hand corner of the advertisement window):



Ceres EULA (Also contains a link to mypctuneup.com):



DR174531

**EXHIBIT G TO DECLARATION OF
CHRISTOPHER DOWHAN**



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 release (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. BI shall make commercially reasonable efforts to report to Company, approximately once per day,

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,

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

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](#)

©2005 BetterInternet, LLC. All rig

DR174536

EXHIBIT 17