

11-04-1998



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*MD*  
*11-2-98*

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### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

10: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

#### Conveyance Type

- Assignment  License
  - Security Agreement  Nunc Pro Tunc Assignment
  - Merger
  - Change of Name
  - Other
- Effective Date  
Month Day Year

#### Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKATA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

11/03/1998 JSHABAZZ 00000032 2120963  
01 FC: 181 40.00 DP

FOR OFFICE USE ONLY

*file OK*

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments. #

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="2,120,963"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved. #

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed  Deposit Account

**Deposit Account**

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Michael Barocas, Esq.

*Michael Barocas*

10/30/98

Name of Person Signing

Signature

Date Signed

## SUBSIDIARY TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (as amended from time to time, this "Agreement") is made as of October 6, 1998 by Broadway Video Management, L.L.C. and Broadway Interactive Group, L.L.C., each a New York limited liability company (collectively, the "Grantors"), in favor of Citibank, N.A, a national banking association ("Lender").

W I T N E S S E T H :

WHEREAS, Broadway Video, Inc. (the "Borrower") and Lender are parties to that certain Credit Agreement dated as of June 16, 1993 (as amended, modified, supplemented or restated from time to time, the "Credit Agreement") providing for the making of loans, advances and other financial accommodations to or for the benefit of the Borrower;

WHEREAS, the Grantors and the Lender are entering into a Security Agreement dated as of even date herewith (as amended, modified supplemented or restated from time to time, the "Security Agreement"), pursuant to which each Grantor has granted to the Lender a security interest in substantially all of its assets;

WHEREAS, pursuant to the Eighth Amendment, dated as of October 6, 1998 (the "Amendment") to the Credit Agreement between the Borrower and the Lender, the Lender has agreed to amend certain provisions of the Credit Agreement to, among other things, increase the Borrower's revolving line of credit;

WHEREAS, the Grantors are entering into a Guaranty dated as of October 6, 1998 (as amended, supplemented or otherwise modified from time to time, the "Subsidiary Guaranty") made by the Grantors in favor of the Lender; and

WHEREAS, it is a condition subsequent to the effectiveness of the Amendment that the Grantors execute and deliver this Agreement in order to secure the payment and performance of the Obligations and the liabilities and obligations of the Grantors under the Subsidiary Guaranty (collectively with the Obligations, the "Guaranteed Obligations").

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors and the Lender hereby agree as follows:

1. Defined Terms

(a) Unless otherwise defined herein, each capitalized term used herein that is defined in the Credit Agreement shall have the meaning ascribed thereto in the Credit Agreement. Unless otherwise defined herein or in the Credit Agreement, each capitalized term used herein that is defined in the Security Agreement shall have the meaning ascribed thereto in the Security Agreement.

(b) The words "hereof", "herein", and hereunder and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and paragraph references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural and vice versa, unless otherwise specified.

2. Incorporation of Recitals. The recitals above are incorporated into this Agreement by this reference thereto and are made a part hereof.

3. Security Interest in Trademarks and Trademark Licenses, etc. To secure the complete and timely payment and performance when due of all of the Guaranteed Obligations, the Grantors hereby grant to the Lender a first priority and perfected security interest in, with power of sale to the extent permitted by applicable law, all of each Grantor's right, title and interest in and to the following, whether now owned or existing or hereafter acquired or arising and wherever located (the "Collateral"):

(a) trademarks, registered trademarks, trademark applications, trade names, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, registered trademarks, trademark applications, trade names, service marks, registered service marks and service mark applications listed on Schedule A attached hereto and made a part hereof, and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into on connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) the goodwill of each Grantor's business symbolized by the foregoing and connected therewith, and (v) all of each Grantor's rights corresponding thereto

throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications, trade names, and service marks, registered service marks and service mark applications, together with the items described in clauses (i)-(v) in this paragraph 3(a), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(b) rights under or interests in any trademark license agreements or service mark license agreements with any other party, whether a Grantor is a licensee or licensor under any such license agreement, including, without limitation, those trademark license agreements and service mark license agreements listed on Schedule B attached hereto and made part hereof, together with any goodwill connected with and symbolized by any such trademark license agreements or service mark license agreements, and the right to prepare for sale and sell any and all assets now or hereafter owned by any Grantor and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Trademark Licenses"); and

(c) all proceeds or products of any of the foregoing.

4. Restrictions on Future Agreements. Each Grantor will not, without the Lender's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and each Grantor further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any respect affect the validity or enforcement of the rights transferred to the Lender under this Agreement or the rights associated with the Trademarks or Trademark Licenses or any other Collateral.

5. New Trademarks and Trademark Licenses. Each Grantor represents and warrants that, from and after the date hereof, (a) the Trademarks listed on Schedule A opposite the name of such Grantor include all of the trademarks, registered trademarks, trademark applications, trade names, service marks, registered service marks and service mark applications now owned or held by such Grantor, (b) the Trademark Licenses listed on Schedule B opposite the name of such Grantor include all of the trademark license agreements and service mark license agreements under which such Grantor is the licensee or licensor, and (c) no liens, claims or security interests in the Trademarks, Trademark Licenses or the other Collateral have been granted by such Grantor to any Person other than the Lender, except that such

Grantor's rights in the Trademarks and Trademark Licenses are subject to the Liens and other restrictions set forth on Schedule C opposite the name of such Grantor. If, prior to the termination of this Agreement, any Grantor shall (i) obtain rights to any new trademarks, registered trademarks, trademark applications, tradenames, service marks, registered service marks or service mark applications, (ii) become entitled to the benefit of any trademarks, registered trademarks, trademark applications, trade names, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals, whether as licensee or licensor, or (iii) enter into any new trademark license agreement or service mark license agreement, the provisions of paragraph 3 above shall automatically apply thereto. Each Grantor shall give to the Lender written notice of each event described in clause (i), (ii) and (iii) of the preceding sentence promptly after the occurrence thereof, but in any event not less frequently than on a quarterly basis. Each Grantor hereby authorizes the Lender (i) to modify this Agreement unilaterally (i) by amending Schedule A to include any future trademarks, registered trademarks, trademark applications, trade names, service marks, registered service marks and service mark applications and by amending Schedule B to include any future trademark license agreement and service mark license agreements, which are Trademarks or Trademark Licenses under paragraph 3 above or under this paragraph 5, and (ii) to file, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedule A or B hereto, as the case may be, such future trademarks, registered trademarks, trademark applications, trade names, service marks, registered service marks and service mark applications, and trademark license agreements and service mark license agreements.

6. Royalties. Each Grantor hereby agrees that the Lender's rights to use the Trademarks and Trademark Licenses as authorized hereunder in connection with the Lender's exercise of its rights and remedies hereunder or under the Security Agreement shall be coextensive with such Grantor's rights thereunder and with respect thereto and Lender shall not have any liability for royalties or other related charges on account of any such use.

7. Right to Inspect; Further Assignments and Security Interests. The Lender may at all reasonable times (and at any time after the occurrence and during the continuation of an Event of Default) have access to, examine, audit, make copies (at the Grantor's joint and several expense) and extracts from and inspect any Grantor's premises and examine any Grantor's books, records and operations relating to the Trademarks and Trademark Licenses; provided, that in conducting such inspections and examinations, the Lender shall use reasonable efforts not to disturb unnecessarily the conduct of the Grantors' ordinary

business operations. From and after the occurrence and during the continuation of an Event of Default, each Grantor agrees that the Lender, or a conservator appointed by the Lender, shall have the right to establish such reasonable additional product quality controls as the Lender or such conservator, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold or services rendered by any Grantor under the Trademarks and the Trademark Licenses or in connection with which such Trademarks and Trademark Licenses are used. Each Grantor agrees (a) not to sell or assign its respective interests in, or grant any license under, the Trademarks or the Trademark Licenses or any other Collateral without the prior and express written consent of the Lender, except in the ordinary course of business, to the extent permitted under the Credit Agreement, (b) to maintain the quality of such products as of the date hereof, and (c) not to change the quality of such products in any material respect without the Lender's prior and express written consent.

8. Nature and Continuation of the Lender's Security Interest; Termination of the Lender's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Trademark Licenses and the other Collateral and shall terminate only when the Obligations have been paid in full in cash and the Credit Agreement and the Security Agreement have been terminated. When this Agreement has terminated, the Lender shall promptly execute and deliver to the Grantors, at the Grantors' joint and several expense, all termination statements and other instruments as may be necessary or proper to terminate the Lender's security interest in the Trademarks and the Trademark Licenses, subject to any disposition thereof which may have been made by the Lender pursuant to this Agreement or the Security Agreement.

9. Duties of Grantors. Each Grantor shall have the duty, to the extent it is in the normal conduct of such Grantor's business, to: (a) prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement, and (b) make application for trademarks or service marks. Each Grantor further agrees (a) not to abandon any material Trademark or material Trademark License which is used in or useful to its business without the prior written consent of the Lender, and (b) to use its reasonable efforts to maintain in full force and effect the Trademarks and Trademark Licenses that are or shall be necessary or economically desirable in the operation of such Grantor's business. Any expenses incurred in connection with the foregoing shall be borne jointly and severally by the Grantors. The Lender shall not have any duty with respect to the Trademarks and Trademark Licenses and the other Collateral. Without limiting the generality of the

foregoing, the Lender shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks or Trademark Licenses or other Collateral against any other parties, but Lender may do so at its option from and after the occurrence of an Event of Default, and all reasonable expenses incurred in connection therewith shall be for the joint and several account of the Grantors and shall be added to the Guaranteed Obligations secured hereby.

10. Remedies upon Default. If any Event of Default shall have occurred and be continuing, the Lender may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party under the Uniform Commercial Code (the "Code") and the Lender may also, without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Lender's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Lender may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least five days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. All money held by the Lender as Collateral and all cash proceeds received by the Lender in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral, shall be applied in a manner determined by the Lender in its sole judgment subject to the provisions of the Code.

11. The Lender's Right to Sue. From and after the occurrence and during the continuation of an Event of Default, the Lender shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Trademarks and the Trademark Licenses and the other Collateral and, if the Lender shall commence any such suit, the Grantors shall, at the request of the Lender, do any and all lawful acts and execute any and all proper documents required by the Lender in aid of such enforcement. The Grantors shall jointly and severally, upon demand, promptly reimburse the Lender for all reasonable costs and expenses incurred by the Lender in the exercise of its rights under this paragraph 11 (including, without limitation, reasonable fees and expenses of attorneys for the Lender). In the event Lender shall commence any such enforcement action, Lender shall use its reasonable efforts to provide the Grantors with ten (10) days prior written notice thereof, and shall



provide the Grantors with an opportunity to participate in any such action, at the Grantors' joint and several expense.

12. Waivers. The Lender's failure, at any time or times hereafter, to require strict performance by any Grantor of any provisions of this Agreement shall not waive, affect or diminish any right of the Lender thereafter to demand strict compliance and performance therewith nor shall any course of dealing between any Grantor and the Lender have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of any Grantor contained in this Agreement shall be deemed to have been suspended or waived by the Lender unless such suspension or waiver is in writing signed by an officer of the Lender and directed to the Grantors.

13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but the provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part hereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

14. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in paragraph 5 hereof or by a writing signed by the parties hereto.

15. Power of Attorney; Cumulative Remedies. Each Grantor hereby irrevocably designates, constitutes and appoints the Lender (and all Persons designated by the Lender in its sole and absolute discretion) as such Grantor's true and lawful attorney-in-fact, and authorizes the Lender and any of the Lender's designees, in such Grantor's or the Lender's name, to take any action and execute any instrument which the Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, from and after the occurrence and during the continuation of an Event of Default and the giving by the Lender of notice to a Grantor of the Lender's intention to enforce its rights and claims against such Grantor, to (a) endorse such Grantor's name on all applications, documents, papers and instruments necessary or desirable for the Lender in the use of the Trademarks or the Trademark Licenses, (b) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Trademark Licenses or any other Collateral to anyone on commercially reasonable terms, (c) grant or issue any exclusive or nonexclusive license under the

Trademarks or, to the extent permitted, under the Trademark Licenses, to anyone on commercially reasonable terms, and (d) take any other actions with respect to the Trademarks or the Trademark Licenses or any other Collateral as the Lender deems in its own best interest. Each Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all of the Obligations shall have been paid in full in cash and the Credit Agreement shall have been terminated. Each Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Lender under the Security Agreement, but rather is intended to facilitate the exercise of such rights and remedies.

The Lender shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks or the Trademark Licenses or any other Collateral may be located or deemed located. Upon the occurrence and during the continuation of an Event of Default and the election by the Lender to exercise any of its remedies under Section 9-504 or Section 9-505 of the Uniform Commercial Code with respect to the Trademarks and Trademark Licenses and the other Collateral, each Grantor agrees to assign, convey and otherwise transfer title in and to the Trademarks and the Trademark Licenses and the other Collateral to the Lender or any transferee of the Lender and to execute and deliver to the Lender or any such transferee all such agreements, documents and instruments as may be necessary, in the exercise of the Lender's commercially reasonable judgment, to effect such assignment, conveyance and transfer. All of the Lender's rights and remedies with respect to the Trademarks and the Trademark Licenses and the other Collateral, whether established hereby, by the Security Agreement, by any other agreements or by law, shall be cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuation of an Event of Default, the Lender may exercise any of the rights and remedies provided in this Agreement, the Security Agreement and any other of the other Loan Documents.

16. Successors and Assigns. This Agreement shall be binding upon each Grantor and its successors and assigns, and shall inure to the benefit of the Lender and its nominees, successors and assigns. Each Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for such Grantor; provided, however, that no Grantor shall voluntarily assign or transfer its rights or obligations hereunder without the Lender's prior written consent.

17. Governing Law. THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS AND DECISIONS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICT OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

18. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Security Agreement.

19. Paragraph Titles. The paragraph titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

20. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This Agreement may be executed and delivered by telecopier with the same force and effect as if it were an originally executed and delivered manual counterpart.

21. Recordation of Agreement. The Lender intends to record this Agreement with the United States Patent and Trademark Office.

IN WITNESS WHEREOF, each Grantor has duly executed this Agreement as of the day and year first above written.

BROADWAY VIDEO MANAGEMENT, L.L.C.

By: Cristina McGinniss  
Name: Cristina McGinniss  
Title: VP and Secretary

BROADWAY INTERACTIVE GROUP, L.L.C.

By: Cristina McGinniss  
Name: Cristina McGinniss  
Title: VP and Secretary

By its acceptance hereof, as of the day and year first above written, the Lender agrees to be bound by the provisions hereof.

CITIBANK, N.A.

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, each Grantor has duly executed this Agreement as of the day and year first above written.

BROADWAY VIDEO MANAGEMENT, L.L.C.

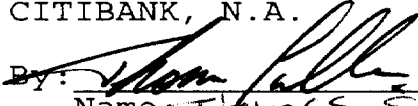
By: \_\_\_\_\_  
Name:  
Title:

BROADWAY INTERACTIVE GROUP, L.L.C.

By: \_\_\_\_\_  
Name:  
Title:

By its acceptance hereof, as of the day and year first above written, the Lender agrees to be bound by the provisions hereof.

CITIBANK, N.A.

By:  \_\_\_\_\_  
Name: Thomas Sullivan  
Title: Vice President

STATE OF NEW YORK )  
COUNTY OF Queens ) ss.:  
~~NEW YORK~~ )

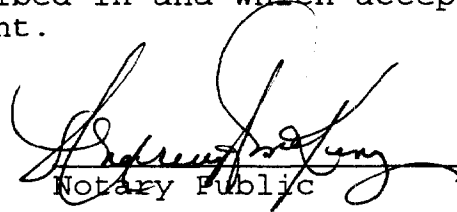
On the 15<sup>th</sup> day of October, 1998, before me personally came Cristina McGinnis, to me known, who being by me duly sworn, did depose and say that she is the VP and Secretary of Broadway Interactive Group, L.L.C., the entity described in and which accepted and agreed to the foregoing instrument.

  
\_\_\_\_\_  
Notary Public

HOWARD M. GROUDAN  
Notary Public, State of New York  
No. 41-4914882  
Qualified in Queens County  
Commission Expires December 14, 99

STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK ) ss.:

On the 8<sup>th</sup> day of October, 1998, before me personally came Thomas Sullivan, to me known, who being by me duly sworn, did depose and say that he is the Vice President of Citibank, N.A., the entity described in and which accepted and agreed to the foregoing instrument.

  
\_\_\_\_\_  
Notary Public

**ANDREA A. MCKENZIE**  
Notary Public, State of New York  
No. 01MC5043756  
Qualified in New York County  
Commission Expires May 15, 1997

Schedule A  
to  
Trademark Security Agreement

Trademarks

Broadway Interactive Group, L.L.C.

"Broadway Interactive Group", Registration  
No. 2,120,963.

Broadway Video Management, L.L.C.

None.



Schedule B  
to  
Trademark Security Agreement

Trademark Licenses

Broadway Interactive Group, L.L.C.

License Agreement dated as of October 2, 1995 (the "BVI License Agreement") between Broadway Video, Inc., as licensor, and Broadway Interactive Group, L.L.C., as licensee, with respect to certain trademarks, service marks and related intellectual property (the "Licensed Property") that is licensed to the licensee on a royalty free basis.

Broadway Video Management, L.L.C.

None.

Schedule C  
to  
Trademark Security Agreement

Liens and Restrictions

Broadway Interactive Group, L.L.C.

The encumbrances on the Licensed Property pursuant to the BVI License Agreement.

Broadway Video Management, L.L.C.

None.