

05-09-2000



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HEET

U.S. DEPARTMENT OF COMMERCE
PATENT and TRADEMARK OFFICE

NLY

B-30-00

TI

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies);

Picture Network International, Ltd.

Additional name(s) of conveying parties attached? YES NO

3. Nature of Conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other: _____

Execution Date: January 27, 2000

2. Name and address of receiving party(ies):

Name 1: eMotion, Inc.
 Street Address: 2600 Park Tower Drive, Suite 600
 City: Vienna State: VA ZIP: 22180

- Individual Citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State DELAWARE
- Other _____

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,973,012	2,047,278	2,057,596
1,973,013	2,055,594	

Additional numbers attached? YES NO

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Peter A. Borsari
 Street Address: Borsari & Associates, P.C.
2001 Jefferson Davis Highway
Suite 206
 City: Arlington State: Virginia ZIP: 22202
 Telephone: 703 415 4633

6. Total number of applications and trademarks registrations involved: 5

7. Total fee (37 CFR 3.41) \$ 200.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit Account number:

(Attach duplicate copy of this page if paying by deposit account)

05/08/2000 JSHABAZZ 00000142 197301P

01 FC:481 40.00 DP
 02 FC:482 100.00 DP

DO NOT USE THIS SPACE

9. 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.

Peter A. Borsari
Name of Person Signing

(Signature)

March 29, 2000
Date

Refund Ref: 05/08/2000 JSHABAZZ 0000013342

CHECK Refund Total: \$60.00

OMB No. 0651-0011 (exp 4/94)

Mail documents to be recorded with the required cover sheet information to:
Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

TRADEMARK

REEL: 002068 FRAME: 0466

State of Delaware
Office of the Secretary of State

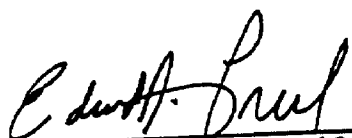
PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "EMOTION, INC.", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF JANUARY, A.D. 2000, AT 1:01 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



2287974 8100
001042655



Edward J. Freel, Secretary of State

AUTHENTICATION: 0221805
DATE: 01-27-00

TRADEMARK
REEL: 002068 FRAME: 0467

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
PICTURE NETWORK INTERNATIONAL, LTD.

Robert Griffin DOES HEREBY CERTIFY:

FIRST: The original name of this corporation is Picture Network International, Ltd. and the date of filing of the original Certificate of Incorporation of the corporation with the Secretary of State of the State of Delaware is February 12, 1992.

SECOND: He is the duly elected and acting President of Picture Network International, Ltd., a Delaware corporation.

THIRD: Pursuant to Sections 242 and 245 of the Delaware General Corporation Law, this Amended and Restated Certificate of Incorporation (the "Certificate") restates and integrates and further amends the provisions of the corporation's original Certificate of Incorporation as follows:

I.

The name of the corporation is eMOTION, INC. (the "Corporation" or the "Company").

II.

The address of the Company's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

III.

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

IV.

A. The Corporation is authorized to issue seventy million (70,000,000) shares of its capital stock, which shall be divided into Common Stock (the "*Common Stock*") and Preferred Stock (the "*Preferred Stock*"). The total number of shares of Common Stock that the Corporation is authorized to issue is fifty million (50,000,000), \$.0001 par value per share, and the total number of shares of Preferred Stock that the Corporation is authorized to issue is twenty million (20,000,000), \$.0001 par value per share. Eight million (8,000,000) shares of the authorized shares of Preferred Stock are hereby designated as "Series A-1 Preferred Stock." Four million (4,000,000) shares of the authorized shares of Preferred Stock are hereby designated as "Series A-2 Preferred Stock." The Series A-1 Preferred Stock and Series A-2 Preferred Stock are hereinafter from time to time referred to collectively as the "Series A Preferred Stock."

B. Subject to the provisions of this Amended and Restated Certificate of Incorporation (this "*Certificate*") and applicable law, the Preferred Stock may be divided into such number of series as the Board of Directors of this Corporation may determine. The Board of Directors of this Corporation is authorized to determine and alter the rights, preferences, privileges and restrictions granted to and imposed upon any wholly unissued class or series of Preferred Stock, to fix the number of shares of any such wholly unissued class or series of Preferred Stock, and the designation of any such wholly unissued class or series of Preferred Stock. The Board of Directors of this Corporation, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors of this Corporation originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the issue of that series.

C. The powers, preferences and rights and the qualifications, limitations or restrictions thereof, in respect to the Common Stock and the Series A Preferred Stock shall be as follows:

Section 1. VOTING RIGHTS AND BOARD OF DIRECTORS

1.1 General Voting Rights

(a) **Common Stock.** Except as otherwise provided by law or in this Certificate, each holder of shares of Common Stock shall be entitled to one vote on all matters for each share of Common Stock held by such holder on the record date fixed for a meeting of the stockholders or on the effective date of any written consent.

(b) **Preferred Stock.** Except as otherwise provided by law or in this Certificate, each holder of shares of Preferred Stock shall be entitled to one vote for each share of Common Stock, in the aggregate, into which such Preferred Stock is convertible on the record date fixed for a meeting of the stockholders or on the effective date of any written consent (treating the Preferred Stock as converted into Common Stock at the then current Conversion Price, as defined in Section 4.4).

(c) **Equal Voting.** Except as otherwise provided by law or in this Certificate, the shares of Preferred Stock shall be voted equally with the shares of Common Stock, voting together as a single class, on all matters, including but not limited to at any annual or special meeting of the stockholders or in connection with any action by written consent of the stockholders of the Corporation (treating the Preferred Stock as converted into Common Stock at the applicable Conversion Price).

1.2 Special Voting Rights of Series A Preferred Stock and Series A-1 Preferred Stock. In addition to any other rights provided by law, the Corporation shall not, without first obtaining the approval (by vote or written consent) of the holders of a majority of the outstanding shares of Series A-1 Preferred Stock, voting as a single class, one vote per share, amend or repeal any provision of, or add any provision to, this Certificate or the Corporation's bylaws which adversely changes the rights, preferences and privileges of the Series A-1 Preferred Stock as a

class. Also, in addition to any other rights provided by law, the Corporation shall not, without first obtaining the approval (by vote or written consent) of the holders of a majority of the outstanding shares of Series A-1 Preferred Stock, voting as a single class, one vote per share, amend or repeal any provision of, or add any provision to, this Certificate or the Corporation's bylaws which changes the liquidation preference of the Series A-1 Preferred Stock.

Section 2. DIVIDENDS

2.1 Declaration. Dividends of cash, stock, or other property on the Common Stock and the Preferred Stock shall only be paid when declared by the Board in its sole and unfettered discretion.

2.2 Relative Rights and Preferences. Whenever this Corporation declares a dividend on its Common Stock in any year, the holders of the Series A-1 Preferred Stock shall be entitled to receive dividends in such year, in preference to all dividends on the Common Stock and Series A-2 Preferred Stock during such year, equal to six percent (6%) of the Series A-1 Preferred Stock liquidation preference amount provided in Section 3.1(a), per share of the Series A-1 Preferred Stock (as adjusted for stock dividends, splits, combinations, etc.) This dividend preference is noncumulative and shall not accrue in any year in which a dividend is not declared or paid on the Common Stock. After the payment of the foregoing dividend preference to the holders of Series A-1 Preferred Stock, any additional dividends distributed by the Company shall be distributed ratably to the holders of the Common Stock and Series A-2 Preferred Stock on an as-if-converted to Common Stock basis.

2.3 Manner of Payment of Cash Dividends. Cash dividends shall be paid by forwarding a check, postage prepaid, to the address of each holder (or, in the case of joint holders, to the address of any such holder) of Preferred Stock and Common Stock as shown on the books of the Corporation, or to such other address as such holder specifies for such purpose by written notice to the Corporation. The forwarding of such check shall satisfy all obligations of the Corporation with respect to such cash dividends, unless such check is not paid upon timely presentation.

Section 3. LIQUIDATION PREFERENCES

3.1 Distribution

(a) Upon the occurrence of any Liquidation Event (as defined in Section 3.2), the holders of Series A-1 Preferred Stock shall be entitled to receive, prior and in preference to the holders of Series A-2 Preferred Stock and Common Stock, an amount equal to \$6.25 per share for the Series A-1 Preferred Stock, (as adjusted for stock dividends, splits, combinations, etc.), plus declared and unpaid dividends. If the Corporation has insufficient funds legally available to pay the entire liquidation preference on the Series A-1 Preferred Stock, each holder of Series A-1 Preferred Stock shall be paid, as the total amount of liquidation distributions to such holder, an amount bearing the same ratio to the total liquidation preference to which such holder of Series A-1 Preferred Stock is entitled as the total amount of liquidation distributions to all holders of

Series A-1 Preferred Stock bears to the aggregate amount of liquidation preference to which all holders of Series A-1 Preferred Stock are entitled.

(b) After the payment of the preference to all holders of Series A-1 Preferred Stock as described above, assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Series A-2 Preferred Stock on an as-if-converted to Common Stock basis.

3.2 Definition of Liquidation Event. Each of the following shall be deemed a Liquidation Event for purposes of this Certificate: (a) any liquidation, dissolution, or winding-up of the Corporation; (b) a consolidation or merger of the Company in which the Company is not the surviving entity, except for a transaction (i) in which the holders of the outstanding voting securities of the Corporation immediately prior to such consolidation or merger hold, in the aggregate, securities possessing more than 50% of the total combined voting power of all outstanding voting securities of the surviving entity immediately after such consolidation or merger, or (ii) which is approved by directors constituting at least 70% of the board of directors of the Corporation; (c) a reverse merger in which the Corporation is the surviving entity but in which securities possessing more than 50% of the total combined voting power of all outstanding voting securities of the Corporation are transferred to or acquired by a person or persons different from the persons holding those securities immediately prior to such merger, except for a merger which is approved by directors constituting at least 70% of the board of directors of the Corporation; and (d) the sale, transfer or other disposition (other than in a merger or consolidation), in one transaction or a series of related transactions, of all or substantially all of the Company's assets, except for a transaction or series of related transactions which is approved by directors constituting at least 70% of the board of directors of the Corporation.

3.3 Valuation. Whenever the distribution provided for in this Section 3 shall be payable in property or securities other than cash, the value of such distribution shall be as follows:

(a) for property, the fair market value of such property as determined in good faith by at least five members of the Board of Directors of this corporation (or in the absence of such determination as determined by holders of a majority of the Series A-1 Preferred Stock); and

(b) for securities not subject to investment letter or other similar restrictions on free marketability:

(i) if traded on a securities exchange or the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three days prior to the closing;

(ii) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three days prior to the closing; and

(iii) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by at least five members of the Board of Directors of this corporation (and in the absence of such determination as determined by holders of a majority of the Series A-1 Preferred Stock).

(c) the method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (b)(i), (ii) or (iii) to reflect the appropriate fair market value thereof, as determined in good faith by at least five members of the Board of Directors of this corporation (and in the absence of such determination as determined by holders of a majority of the Series A-1 Preferred Stock).

3.4 Notice. Subject to any contrary agreement between the Corporation and holders of its Series A-1 Preferred Stock, if the Corporation proposes to take any action constituting a Liquidation Event, the Corporation shall, within 10 days after the date the Board approves such action, or 20 days prior to any stockholder's meeting called to approve such action, whichever is earlier, give each holder of shares of Series A-1 Preferred Stock initial written notice of the proposed action. Such initial written notice shall describe the material terms and conditions of such proposed action, including a description of the type and amount of stock, cash, and property to be received by the holders of shares of each series of the Series A-1 Preferred Stock upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice occurs, the Corporation shall promptly give written notice to each holder of shares of Series A-1 Preferred Stock of such material change.

3.5 Timing. Subject to any contrary agreement between the Corporation and holders of its Series A-1 Preferred Stock, the Corporation shall not consummate any Liquidation Event before the expiration of 30 days after the mailing of the initial notice referred to in Section 3.4 or 10 days after the mailing of any subsequent written notice, whichever is later.

3.6 Effect of Noncompliance. Subject to any contrary agreement between the Corporation and holders of its Series A-1 Preferred Stock, in the event of a deemed liquidation, if the requirements of this Section 3 are not complied with, the Corporation shall forthwith either:

(i) cause the closing of such transaction to be postponed until such time as the requirements of this Section 3 have been complied with; or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A-1 Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 3.4.

Section 4. CONVERSION OF PREFERRED STOCK

4.1 Right to Convert; Conversion Rates. Each holder of each series of Series A Preferred Stock shall have the right to convert all or a portion of its Series A Preferred Stock, at

the option of the holder thereof, at any time after the date of issuance of such shares, without payment of further consideration, at the office of the Corporation or any transfer agent for such stock, into fully paid and nonassessable shares of Common Stock. Each share of Series A-1 Preferred Stock shall be convertible into the number of shares of Common Stock equal to \$6.25 divided by the Series A-1 Preferred Stock Conversion Price established from time to time as provided in Section 4.4. Such number of shares of Common Stock into which each share of Series A-1 Preferred Stock is convertible from time to time is hereinafter referred to as the "Series A-1 Preferred Stock Conversion Rate." Each share of Series A-2 Preferred Stock shall be convertible into the number of shares of Common Stock equal to \$2.00 divided by the Series A-2 Preferred Stock Conversion Price established from time to time as provided in Section 4.4. Such number of shares of Common Stock into which each share of Series A-2 Preferred Stock is convertible from time to time is hereinafter referred to as the "Series A-2 Preferred Stock Conversion Rate."

4.2 Mechanics of Conversion into Common Stock. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, it shall surrender the certificate or certificates thereof, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that it elects to convert the same and shall state therein the name or names in which it wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which it shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date and time.

4.3 Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Series A-1 Preferred Stock Conversion Rate or Series A-2 Preferred Stock Conversion Rate, whichever applies, for such share (i) in the event of the closing of a public offering of shares of Common Stock of the Corporation registered under the Securities Act of 1933, as amended (the "*Securities Act*"), (other than a registration relating solely to a transaction under Rule 145 under the Securities Act (or any successor thereto) or to an employee benefit plan of the Company), in which the per share price is at least \$9.30 (as adjusted for stock splits, dividends, recapitalizations and the like) and the aggregate gross proceeds to the Company equal or exceed \$10,000,000 (a "*Qualified Public Offering*"); (ii) upon the election of at least 50% of the holders of the then outstanding shares of Series A-1 Preferred Stock, voting as a single class (as to conversion of the Series A-1 Preferred Stock), or at least 50% of the holders of the then outstanding shares of Series A-2 Preferred Stock, voting as a single class (as to conversion of the Series A-2 Preferred Stock), ; or (iii) upon the voluntary conversion of at least 50% of the Series A-1 Preferred Stock (as to conversion of the Series A-1 Preferred Stock) or at least 50% of the Series A-2 Preferred Stock (as to conversion of the Series A-2 Preferred Stock).

4.4 Series A Preferred Stock Conversion Prices. The conversion price for the Series A-1 Preferred Stock shall initially be \$6.25 (the "*Series A-1 Preferred Stock Conversion Price*") and the conversion price for the Series A-2 Preferred Stock shall initially be \$2.00 (the "*Series A-2 Preferred Stock Conversion Price*"). The Series A-1 Preferred Stock Conversion Price and the Series A-2 Preferred Stock Conversion Price are herein sometimes referred to individually as a "Series A Preferred Stock Conversion Price" and collectively as the "Series A Preferred Stock Conversion Prices." The initial Series A Preferred Stock Conversion Prices shall be adjusted from time to time in accordance with this Section 4. All references herein to the Series A Preferred Stock Conversion Prices shall mean the the Series A Preferred Stock Conversion Prices as so adjusted.

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the date that the first share of Series A Preferred Stock is issued (the "Original Issue Date") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series A Preferred Stock, the Series A Preferred Stock Conversion Prices in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series A Preferred Stock, the Series A Preferred Stock Conversion Prices in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4.5 shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Common Stock Dividends and Distributions. If the Corporation at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series A Preferred Stock Conversion Prices that are then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series A Preferred Stock Conversion Prices then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however*, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Preferred Stock Conversion Prices shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Preferred Stock Conversion Prices shall be adjusted pursuant to this Section 4.6 to reflect the actual payment of such dividend or distribution.

4.7 Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series A Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a

subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series A Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

4.8 Reorganizations, Mergers or Consolidations. If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Corporation with or into another corporation or another entity or person (other than a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series A Preferred Stock after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series A Preferred Stock Conversion Prices then in effect and the number of shares issuable upon conversion of the Series A Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

4.9 Sale of Shares Below Series A-1 Preferred Stock Conversion Price.

(a) If at any time or from time to time after the Original Issue Date, the Corporation issues or sells, or is deemed by the express provisions of this Section 4.9 to have issued or sold, Additional Shares of Common Stock (as defined in Section 4.9(d) below)), other than as a dividend or other distribution on any class of stock as provided in Section 4.6 above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4.5 above, for an Effective Price (as defined in Section 4.9(d) below) less than the then effective Series A-1 Preferred Stock Conversion Price, then and in each such case the then existing Series A-1 Preferred Stock Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying such Series A-1 Preferred Stock Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in Section 4.9(b)) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series A-1 Preferred Stock Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the

number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding (excluding shares subject to repurchase by the Corporation at cost), and (B) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock and any other series of convertible preferred stock could be converted if fully converted on the day immediately preceding the given date.

(b) For the purpose of making any adjustment required under this Section 4.9, the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale but without deduction of any expenses payable by the Corporation, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by at least five of the seven members of the Board of Directors (and in the absence of such determination as determined by holders of a majority of the Series A-1 Preferred Stock) irrespective of any accounting treatment, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in Section 4.9(c) below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by at least five of the seven members of the Board of Directors (and in the absence of such determination as determined by holders of a majority of the Series A-1 Preferred Stock) to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(c) For the purpose of the adjustment required under this Section 4.9, if the Corporation issues or sells any (i) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (ii) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Series A-1 Preferred Stock Conversion Price, in each case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable

to the Corporation upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series A-1 Preferred Stock Conversion Prices, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A-1 Preferred Stock Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series A-1 Preferred Stock Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities; provided that such readjustment shall not apply to prior conversions of Series A-1 Preferred Stock.

(d) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 4.9, other than (A) shares of Common Stock issued upon conversion of the Series A Preferred Stock; (B) shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like), issued after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board; (C) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date; and (D) shares of Common Stock issued and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination approved by at least five of the seven members of the Board. References to Common Stock in the subsections of this clause (d) above shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 4.9. The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or

sold, by the Corporation under this Section 4.9, into the aggregate consideration received, or deemed to have been received, by the Corporation for such issue under this Section 4.9, for such Additional Shares of Common Stock.

4.10 Certificate of Adjustment. In each case of an adjustment or readjustment of a Series A Preferred Stock Conversion Price, if such Series A Preferred Stock is then convertible pursuant to this Section 4, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of such Series A Preferred Stock at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series A Preferred Stock Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred Stock.

4.11 Notices of Record Date. Subject to any contrary agreement between the Corporation and holders of its Series A Preferred Stock, upon (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Series A Preferred Stock at least ten (10) days prior to the record date specified therein (or such shorter period approved by a majority of the outstanding Series A Preferred Stock) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

4.12 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

4.13 Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock,

solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

4.14 Notices. Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) two (2) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iii) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

4.15 Payment of Taxes. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered.

4.16 No Dilution or Impairment. Without the consent of the holders of the then outstanding Series A Preferred Stock, the Corporation shall not take any voluntary action for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such actions as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against dilution or other impairment.

4.17 No Reissuance of Series A Preferred. No share or shares of Series A Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued, and, in addition, the Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized stock.

FIFTH: Each holder of an outstanding share of Series A Preferred Stock shall be deemed to have consented, for purposes of the Delaware General Corporation Law (and any applicable provisions of the General Corporation Law of the State of California) to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by directors, employees, independent contractors or consultants upon termination of their employment or services pursuant to agreements providing for the right of said repurchase between the Corporation and such persons.

SIXTH: For the management of the business and for the conduct of the affairs of the Corporation and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors.

B. The Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; *provided, however*, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of holders of capital stock as provided therein; and, *provided further*, that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with this Certificate, any amendment or any supplement thus adopted by the stockholders.

C. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

D. Subject to any applicable requirements of law, the books of the Corporation may be kept outside the State of Delaware at such location or locations as may be designated by the board of directors of the Corporation or in the Bylaws of the Corporation.

SEVENTH: A. The Corporation shall indemnify to the fullest extent authorized or permitted by law (as now or hereafter in effect) any person made, or threatened to be made, a defendant or witness to any action, suit or proceeding (whether civil or criminal or otherwise) by reason of the fact that he/she, his/her testator or intestate, is or was a director or officer of the Corporation or by reason of the fact that such director or officer, at the request of the Corporation, is or was serving any other Corporation, partnership, joint venture, trust, employee benefit plan or enterprise, in any capacity. Nothing contained herein shall affect any rights to indemnification to which employees other than directors and officers may be entitled by law. No amendment or repeal of this Section A of Article SEVENTH shall apply to or have any effect on any right to indemnification provided hereunder with respect to any acts or omissions occurring prior to such amendment or repeal.

B. No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such a director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the GCL, or (iv) for any transaction from which such director derived an improper personal benefit. No amendment to or repeal of this Section B of Article SEVENTH shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

C. In furtherance and not in limitation of the powers conferred by statute:

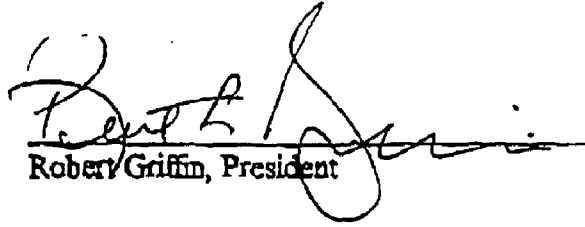
(i) The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify against such liability under the provisions of law; and

(ii) The Corporation may create a trust fund, grant a security interest and/or use other means (including, without limitation, letters of credit, surety bonds and/or other similar arrangements), as well as enter into contracts providing indemnification to the fullest extent authorized or permitted by law and including as part thereof provisions with respect to any or all of the foregoing to ensure the payment of such amounts as may become necessary to effect indemnification as provided therein, or elsewhere.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, Picture Network International, Ltd. has caused this Amended and Restated Certificate of Incorporation to be signed by its President this 27th day of January, 2000.

PICTURE NETWORK INTERNATIONAL, LTD.



Robert Griffin, President

Amended Certificate of Incorporation