

12-06-2000

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101540794

Original document or copy thereof.

To the Honorable Commissioner of Patents and Trademarks		101540794	
1. Name of Party(ies) conveying an interest: iReturn, Inc. 720 Brazos Street, Suite 403 Austin, Texas 78701 <i>NRD 8-18-00</i>		2. Name and Address of Party(ies) receiving an interest: Newgistics, Inc. 720 Brazos Street, Suite 1100 Austin, Texas 78701	
<input type="checkbox"/> Individual(s)	<input type="checkbox"/> Association	<input type="checkbox"/> Individual	<input type="checkbox"/> Association
<input type="checkbox"/> General Partnership	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Limited Partnership
<input checked="" type="checkbox"/> Corporation		<input checked="" type="checkbox"/> Corporation	
<input type="checkbox"/> Other		<input type="checkbox"/> Other	
		<input type="checkbox"/> Citizenship	

3. Interest Conveyed:	If not domiciled in the United States, a domestic representative designation is attached:
<input type="checkbox"/> Assignment	<input type="checkbox"/> Yes
<input type="checkbox"/> Security Agreement	<input type="checkbox"/> No
<input type="checkbox"/> Other	
<input checked="" type="checkbox"/> Change of Name	
<input type="checkbox"/> Merger	

Effective Date: July 24, 2000

4. Application number(s) or registration number(s). Additional sheet attached?	Yes	<input checked="" type="checkbox"/>	No
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A. Trademark Application No.(s) 76/013,009 filed March 30, 2000; 76/013,008 filed March 30, 2000 76/013,007 filed March 30, 2000	B. Trademark Registration No.(s)
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5. Name and address of party to whom correspondence concerning document should be mailed: Name: Thomas R. Felger, Esq Baker & Botts, L.L.P. Street Address: 2001 Ross Avenue City: Dallas State: Texas Zip: 74201	6. Number of applications and registrations involved: Three (3)
	7. Amount of fee enclosed or authorized to be charged: \$65.00
	8. Deposit account number (Attach duplicate copy of this form if paying by deposit account): <i>91000E</i>

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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.

Thomas R. Felger
Name of Person Signing

Thomas R. Felger
Signature

15 AUG 2000
Date

Total number of pages including cover sheet 22

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REEL: 002189 FRAME: 0202

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 "IRETURNIT, INC.", CHANGING ITS NAME FROM "IRETURNIT, INC." TO "NEWGISTICS, INC.", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF JULY, A.D. 2000, AT 4:30 O'CLOCK P.M.

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



Edward J. Freel

Edward J. Freel, Secretary of State

3133218 8100

001374330

AUTHENTICATION: 0579688

DATE: 07-25-00

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 THAT THE SAID "IRETURNIT, INC.", FILED A RESTATED CERTIFICATE, CHANGING ITS NAME TO "NEWGISTICS, INC.", THE TWENTY-FOURTH DAY OF JULY, A.D. 2000, AT 4:30 O'CLOCK P.M.



Edward J. Freel

Edward J. Freel, Secretary of State

3133218 8320

001375014

AUTHENTICATION:

0579793

DATE:

07-25-00

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
IRETURNIT, INC.
(a Delaware corporation)

(Pursuant to Sections 228, 242 and 245 of the
General Corporation Law of the State of Delaware)

iReturnit, Inc. (the "*Corporation*"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "*General Corporation Law*"),

DOES HEREBY CERTIFY:

FIRST: That the Corporation was originally incorporated pursuant to the General Corporation Law on December 1, 1999 under the name of iReturnit, Inc.

SECOND: That the Board of Directors of the Corporation (the "*Board of Directors*") duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of the Corporation, declaring said amendment and restatement to be advisable and in the best interests of the Corporation and its stockholders, and authorizing the appropriate officers of the Corporation to obtain the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Certificate of Incorporation of the Corporation be amended and restated in its entirety as follows:

ARTICLE I

The name of the Corporation is Newgistics, Inc.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801 and the name of the registered agent at that address is The Corporation Trust Company.

ARTICLE III

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

ARTICLE IV

A. Classes of Stock. The Corporation is authorized to issue two classes of capital stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares of capital stock authorized to be issued is 89,000,000 shares. 65,000,000

shares shall be Common Stock, par value \$0.001 per share, and 24,000,000 shares shall be Preferred Stock, par value \$0.001 per share, 23,500,000 of which shall be designated as "Series A Convertible Preferred Stock" (the "*Series A Preferred Stock*").

B. Rights, Preferences and Restrictions of Preferred Stock. Undesignated Preferred Stock authorized under this Amended and Restated Certificate of Incorporation, as the same may be amended or restated from time to time hereafter, may be issued from time to time in one or more series. The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. Subject to compliance with applicable protective voting rights which have been or may be granted to the Preferred Stock or series thereof in Certificates of Designation or in amendments to this Amended and Restated Certificate of Incorporation as hereafter may be amended ("*Protective Provisions*"), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, *pari passu* with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred Stock or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series, prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock are as set forth below in this Division B of Article IV.

I. Dividend Provisions.

(a) The holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of \$0.04, as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations or the like after the date upon which shares of Series A Preferred Stock were first issued (the "*Initial Series A Issue Date*"), per share of Series A Preferred Stock per annum, payable quarterly, when, as and if declared by the Board of Directors, except as provided in Subsection 1(b) of this Division B of Article IV. Such dividends shall not be cumulative.

(b) Any dividend or distribution which is declared by the Corporation and payable with assets of the Corporation other than cash shall be governed by the provisions of Subsection 2(c)(ii) of this Division B of Article IV.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, each holder of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share (the "*Liquidation Amount*") equal to the sum of (i) \$0.50 (as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations or the like after the Initial Series A Issue Date) for each outstanding share of Series A Preferred Stock (the "*Original Series A Issue Price*") held by such holder and (ii) an amount equal to all declared but unpaid dividends on the shares of Series A Preferred Stock held by such holder. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the amount of such stock owned by each such holder.

(b) After the distribution described in Subsection 2(a) above has been paid, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of Common Stock pro rata based on the number of shares of Common Stock held such holder.

(c) (i) For purposes of this Section 2, at the discretion of the holders of at least two-thirds of the then outstanding shares of Series A Preferred Stock, a liquidation, dissolution or winding up of the Corporation, shall be deemed to be occasioned by, or to include, (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation); or (B) a sale of all or substantially all of the assets of the Corporation; *unless* the Corporation's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity.

(ii) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities to be delivered to the holders of the Series A Preferred Stock or Common Stock, as the case may be, shall be valued as follows:

(A) If traded on a securities exchange or through the Nasdaq National Market or SmallCap Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(iii) In the event the requirements of this Subsection 2(c) are not complied with, the Corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the respective rights, preferences and privileges of the holders of the Series A 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 Subsection 2(c)(iv) below.

(iv) The Corporation shall give each holder of record of Series A Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; *provided, however, that* such periods may be shortened upon the Corporation's receipt of written consent of the holders of at least a majority of the Series A Preferred Stock entitled to such notice rights or similar notice rights.

3. Redemption.

(a) (i) At any time after the fifth anniversary of the Initial Series A Issue Date and before the thirtieth (30th) day following the sixth anniversary of the Initial Series A Issue Date, but within thirty (30) days after the receipt by the Corporation of a written request from the holders of at least a majority of the then outstanding Series A Preferred Stock (a "**Redemption Request**") that up to 50% of the then outstanding Series A Preferred Stock be redeemed, and concurrently with surrender by such holders of the certificates representing such shares and (ii) at any time after the sixth anniversary of the Initial Series A Issue Date, but within thirty (30) days after the receipt by the Corporation of a Redemption Request that the remaining then outstanding Series A Preferred Stock be redeemed, and concurrently with surrender by such holders of the certificates representing such shares, the Corporation shall, to the extent it may lawfully do so, redeem the shares specified in such Redemption Request by paying a sum per share equal to the greater (x) of the Original Series A Issue Price plus any accrued but unpaid dividends and (y) the fair market value of the Series A Preferred Stock, as determined on a "going-concern" basis, with the Corporation proposing such fair market value, in good faith, and if not accepted by the holders of a majority of the Series A Preferred Stock then by a qualified independent appraisal firm selected by the Board of Directors and approved by the holders of a majority of the Series A Preferred Stock. Any redemption effected pursuant to this Subsection 3(a) shall be made on a pro rata basis among the holders of the Series A Preferred Stock in

proportion to the number of shares of Series A Preferred Stock then held by such holders. If any date fixed for redemption of shares pursuant to this Subsection 3(a) is a Saturday, Sunday or legal holiday, then such redemption shall occur on the first business day thereafter.

(b) As used herein and in Subsections 3(c) and 3(d) below, the term "*Redemption Date*" shall refer to the date on which shares of Series A Preferred Stock are scheduled to be redeemed as provided in Subsection 3(a). At least fifteen (15) but no more than thirty (30) days prior to the Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series A Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series A Preferred Stock to be redeemed (the "*Redemption Notice*"). Except as provided in Subsection 3(c), on or after the Redemption Date, each holder of Series A Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series A Preferred Stock designated for redemption in the Redemption Notice as holders of such shares of Series A Preferred Stock (except the right to receive the applicable Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series A Preferred Stock. In addition, in the event that the Corporation fails to redeem shares of Series A Preferred Stock within 30 days after a Redemption Request is made in accordance with the requirements of this Subsection 3, the holders of at least a majority of the Series A Preferred Stock shall have the right to demand, in the form of a written notice to the Corporation signed by the holders of at least a majority of the Series A Preferred Stock, that the Corporation engage a reputable investment banking firm, selected by the Board of Directors and reasonably acceptable to the holders of Series A Preferred Stock, to arrange for a sale or disposition of the Corporation whether as a sale of all or substantially all of the Corporation's assets or all of the capital stock of the Corporation, pursuant to a merger, sale of assets or sale of capital stock of the Corporation by its stockholders. The proceeds of such sale to be distributed to stockholders in accordance with Subsection 2 above as a liquidation of the Corporation.

The shares of Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date but which it has not redeemed.

(d) On or prior to each Redemption Date, the Corporation shall deposit the Redemption Price of all shares of Series A Preferred Stock designated for redemption in the Redemption Notice, and not yet redeemed or converted, with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to publish the notice of redemption thereof and pay the applicable Redemption Price for such shares to their respective holders on or after the Redemption Date, upon receipt of notification from the Corporation that such holder has surrendered his, her or its share certificate to the Corporation pursuant to Subsection 3(b) above. As of the date of such deposit (even if prior to the Redemption Date), the deposit shall constitute full payment of the shares to their holders. From and after the date of such deposit the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto, except the rights to receive from the bank or trust corporation payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor and the right to convert such shares as provided in Section 4 of this Division B of Article IV below. Such instructions shall also provide that any monies deposited by the Corporation pursuant to this Subsection 3(d) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to this Section 4 of Division B of Article IV below prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any monies deposited by the Corporation pursuant to this Subsection 3(d) remaining unclaimed at the expiration of two (2) years following the final Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

4. Conversion. The holders of the Series A Preferred Stock shall have conversion rights as follows (the "*Conversion Rights*"):

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined, with respect to each share of Series A Preferred Stock, by dividing the Original Series A Issue Price by the "*Conversion Price*" in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for the Series A Preferred Stock shall be the Original Series A Issue Price; *provided, however, that* such Conversion Price shall be subject to adjustment as set forth in Subsection 4(d) below.

(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the

time in effect immediately upon the earlier of (i) except as provided below in Subsection 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering by a nationally recognized underwriter pursuant to a registration statement under the Securities Act of 1933, as amended (the "*Securities Act*"), the public offering price per share of which is not less than \$1.50 (as adjusted to reflect stock dividends, stock splits, combinations, recapitalizations or the like after the Initial Series A Issue Date) and with gross proceeds to the Corporation and selling stockholders therein of at least \$25,000,000 in the aggregate (a "*Qualified Public Offering*") or (ii) the date specified by written consent or agreement of the holders of at least three-fourths (3/4) of the then outstanding shares of Series A Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Subsection 4(a) above and upon the occurrence of the events specified in Subsection 4(b) above, as the case may be, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock, and in the case of Subsection 3(a) above shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued; *provided that* any failure by a holder to comply with these provisions shall not have any effect on the automatic conversion of such holder's shares, which shall in any event convert in accordance with Subsection 4(b) above. The Corporation shall, as soon as practicable thereafter, pay all accrued and unpaid dividends on such shares of Common Stock and issue and deliver at such office to such holder of Series A Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder 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 such 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. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion shall be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments. The Conversion Price shall be subject to adjustment from time to time as follows:

(i) (A) If the Corporation shall issue, after the Initial Series A Issue Date, any Additional Stock (as defined in Subsection 4(d)(ii) below) without consideration or for a consideration price per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying the Conversion Price by a fraction, the numerator of which shall be (a) the number of shares of Common Stock outstanding plus the number of shares of Common Stock issuable upon conversion of any shares of Series A Preferred Stock outstanding immediately prior to such issuance ("*Common Stock Deemed Outstanding*") plus (b) the

number of shares of Common Stock (assuming conversion or exercise in the case of a convertible security) that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus shares of Common Stock Deemed Outstanding plus the number of shares of Additional Stock. For example, if after the original date of issuance of the shares of Series A Preferred Stock, the Corporation issues 1,000,000 shares of Common Stock for consideration per share of \$0.25 and assuming there are 20,000,000 shares of Common Stock outstanding and deemed outstanding immediately prior to such issuance, the Conversion Price immediately would be reduced to the price determined by multiplying \$0.50, the Conversion Price then in effect, by the following fraction:

$$\begin{array}{r}
 20,000,000 \quad + \quad \frac{\$0.25 \times 1,000,000}{\$0.50} \\
 \hline
 20,000,000 \quad + \quad 1,000,000 \\
 \\
 = \quad \frac{20,500,000}{21,000,000} \\
 \\
 = \quad 0.976
 \end{array}$$

resulting in an adjusted Conversion Price of \$0.488 (i.e., \$0.50 x 0.976), and an adjusted conversion rate of 1.0246:1 (i.e., \$0.50/\$0.488).

(B) No adjustment of the Conversion Price shall be made if such adjustment would be in an amount less than one cent per share.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined pursuant to Subsection 2(c)(ii) above.

(E) In the case of the issuance (whether before, on or after the applicable Initial Series A Issue Date) of equity securities, the following provisions shall apply for all purposes of this Subsection 4(d)(i) and Subsection 4(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (to the extent then exercisable) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Subsections 4(d)(i)(C) and (d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights

plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (to the extent then convertible or exchangeable) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Subsections 4(d)(i)(C) and 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of Subsection 4(d)(i)(A)), the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Subsection 4(d)(i)(E)(3) or (4).

(ii) "*Additional Stock*" shall mean all shares of Common Stock issued (or deemed to have been issued pursuant to Subsections 4(d)(i)(E)(1) or (2)) by the

Corporation after the Initial Series A Issue Date other than shares of Common Stock issued or issuable:

(A) upon conversion of shares of the Series A Preferred Stock;

(B) to officers, directors or employees of, or consultants to, the Corporation as compensation for services, directly or pursuant to a stock option plan or a restricted stock purchase plan unanimously approved by the Board of Directors;

(C) to banks, savings and loan associations, equipment lessors or other similar lending institutions in connection with such entities providing working capital credit facilities or equipment financing to the Corporation for a non-equity financing purpose approved by the Board of Directors (representing in the aggregate, up to 5% of the Corporation's outstanding capital stock as determined on a fully diluted basis immediately prior to the consummation of such transaction);

(D) as a dividend or distribution on Series A Preferred Stock or to stockholders of the Corporation generally;

(E) pursuant to a transaction for which adjustments of the Conversion Price is made pursuant to Subsection 4(f);

(F) pursuant to the Corporation's bona fide business or technology acquisition (or license) of, or by, another corporation, whether by merger, consolidation, purchase of assets, sale or exchange of stock, reorganization, or otherwise (representing in the aggregate, up to 10% of the Corporation's outstanding capital stock as determined on a fully diluted basis immediately prior to the consummation of such transaction);

(G) upon exercise of any warrants that may be issued to R. R. Donnelley & Sons Company pursuant to Section 4 of a Co-Marketing Agreement between the Corporation and R. R. Donnelley & Sons Company; or

(H) upon any other issuance of securities which is approved by the Board of Directors and by holders of at least two-thirds (2/3) of the Series A Preferred Stock then outstanding.

(iii) In the event the Corporation should at any time or from time to time after the Initial Series A Issue Date fix a record date for the effectuation of a split or a subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "*Common Stock Equivalents*") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price shall be appropriately decreased so that the number of shares of Common

Stock issuable on conversion of each share of the Series A Preferred shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

If the number of shares of Common Stock deemed outstanding at any time after the Initial Series A Issue Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event the Corporation shall declare a dividend or distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or Common Stock Equivalents, then, in each such case, the holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such dividend or distribution.

(f) Recapitalizations. If at any time or from time to time after the Initial Series A Issue Date, there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2 above) provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of their shares of Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. 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 the Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation, or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, and the number of shares of Common Stock

to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock which the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series A Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A Preferred Stock.

(i) Notices of Record Date. In the event of 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 (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) 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 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 Series A Preferred Stock; and 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 Series A Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series A Preferred Stock, the Corporation will take such corporate action as, in the opinion of its counsel, may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to its Certificate of Incorporation.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

5. Voting Rights. The holder of each shares of Series A Preferred Stock shall have the right to one (1) vote for each share of Common Stock into which such holder's

shares of Series A Preferred Stock could then be converted, with full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, except as required by law or as expressly provided herein, including the Protective Provisions in Section 6 below; shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation; and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with 0.5 being rounded upward).

6. Protective Provisions. So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as permitted by law) of the holders of at least a two-thirds (2/3) of the then outstanding shares of Series A Preferred Stock, voting or acting, as the case may be, as a single class:

(a) sell, convey or otherwise dispose of all or substantially all of its property or business; liquidate, dissolve or wind up the Corporation's business; or merge into or consolidate with any other Corporation (other than a wholly-owned subsidiary corporation); or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of (a "*Corporate Transaction*"), unless the Corporation's stockholders of record as constituted immediately prior to such Corporate Transaction will, immediately after such Corporate Transaction, hold at least fifty percent (50%) of the voting power of the surviving or acquiring entity;

(b) materially and adversely change the rights, preferences or privileges of the Series A Preferred Stock;

(c) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock;

(d) amend or modify any provision of the Corporation's Certificate of Incorporation or Bylaws to materially and adversely change the rights, preferences or privileges of the Series A Preferred Stock;

(e) declare or pay any dividends on its Common Stock (other than dividends payable solely in shares of Common Stock) or redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost, or at cost upon the occurrence of certain events, such as the termination of employment;

(f) increase the size of the Board of Directors to greater than seven (7) members; or

(g) authorize or issue, or authorize or effect any reclassification of, or obligate itself to issue, any equity security (other than the Series A Preferred Stock), including any other security convertible into or exercisable for any equity security, so as to cause such security to have a preference over the Series A Preferred Stock with respect to voting, redemption, dividends or upon liquidation.

7. Status of Converted or Redeemed Stock. In the event any shares of Series A Preferred Stock shall be converted pursuant to Section 4 above, or in the event any shares of Series A Preferred Stock shall be redeemed pursuant to Section 3 above, the shares so converted or redeemed shall be cancelled and shall not thereafter be issuable by the Corporation.

C. Common Stock.

1. Dividend Rights. Subject to the provisions of Section 1 of Division (B) of this Article IV, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (B) of this Article IV hereof.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (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) under Section 174 of the General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended after approval by the stockholders of this Article V to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article V by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VI

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of the Corporation (and any other persons to which Delaware law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders, and others.

ARTICLE VII

The Board of Directors may from time to time adopt, amend, alter, supplement, rescind or repeal any or all of the Bylaws of the Corporation without any action on the part of the stockholders; *provided, however, that* the stockholders may adopt, amend or repeal any Bylaw adopted by the Board of Directors, and no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement adopted by the stockholders.

ARTICLE VIII

Subject to any restrictions which may be imposed by the Corporation's Bylaws, the number of directors of the Corporation shall be set from time to time by resolution of the Board of Directors.

ARTICLE IX

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE X

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Corporation.

* * *


THIRD: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of the Corporation in accordance with Section 228 of the General Corporation Law.

FOURTH: That the amendment and restatement was duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law.

[Signature Page Follows]

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been signed by the Chief Executive Officer of the Corporation this 24 day of July, 2000.

IRETURNIT, INC.

By: 
Clarence Gabriel
Chief Executive Officer



The State of Texas

SECRETARY OF STATE AMENDED CERTIFICATE OF AUTHORITY OF

NEWGISTICS, INC.
FORMERLY: IRETURNIT, INC.

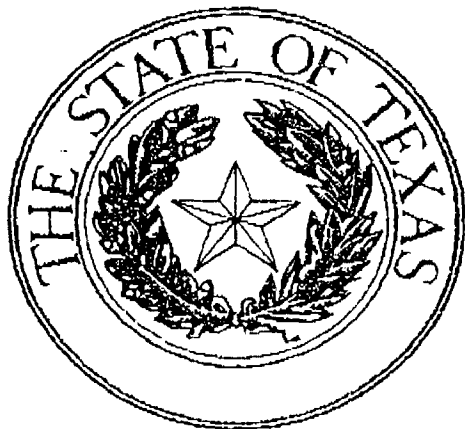
The undersigned, as Secretary of State of Texas, hereby certifies that an application of the above named entity for an Amended Certificate of Authority to transact business in this state, has been received in this office and is found to conform to law.

ACCORDINGLY the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Amended Certificate of Authority to transact business in this state under the name of

NEWGISTICS, INC.

and attaches hereto a copy of the Application for such Amended Certificate.

Dated: August 3, 2000
Effective: August 3, 2000



Elton Bomer
Secretary of State



AUG 08 2000 2:10 PM FR BROBECK-AUSTIN
 Office of the Secretary of State
 Corporations Section
 P.O. Box 13697
 Austin, Texas 78711-3697

TO 8302#030220#0001 P.21/23
 In the Office of the
 Secretary of State of Texas
 AUG 08 2000
 Corporations Section

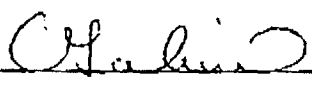
**APPLICATION FOR AMENDED
 CERTIFICATE OF AUTHORITY**

Pursuant to the law governing the undersigned corporation or limited liability company, the entity makes this application to amend its certificate of authority to transact business in Texas and provides the following information:

1. The name of the entity as it currently appears on the records of the secretary of state of Texas is iReturnit, Inc.
2. (If the entity's name was previously unavailable and the entity elected to use an assumed name in Texas, complete the following.) The assumed name of the entity as it currently appears on the records of the secretary of state is Not applicable.
3. A certificate of authority was issued to the entity on the following date: 12/3/99.
4. The name has been changed to Newgistics, Inc.
 The entity name has not been changed.
5. If applicable, the name that it elects to use hereafter in the state of Texas is Newgistics, Inc.
6. It desires to pursue in Texas purposes other than, or in addition to, those authorized by its certificate of authority, as follows: Not applicable.

It is authorized to pursue such purpose or purposes in the state or country under the laws of which it is organized.

7. It desires to change the statement(s) contained in item(s) number _____ of the original or amended certificate of authority to read as follows: Not applicable.

Newgistics, Inc.
 By 
 Clarence Gabriel
 Chief Executive Officer and President

State of Delaware

PAGE 1

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE SAID "IRETURNIT, INC.", FILED A RESTATED CERTIFICATE, CHANGING ITS NAME TO "NEWGISTICS, INC.", THE TWENTY-FOURTH DAY OF JULY, A.D. 2000, AT 4:30 O'CLOCK P.M.



Edward J. Freel

Edward J. Freel, Secretary of State

3133218 8320

001375014

AUTHENTICATION:

0579793

DATE:

07-25-00

** TOTAL PAGE 22 **

RECORDED: 08/18/2000

TRADEMARK
REEL: 002189 FRAME: 0223