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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

1-16-01

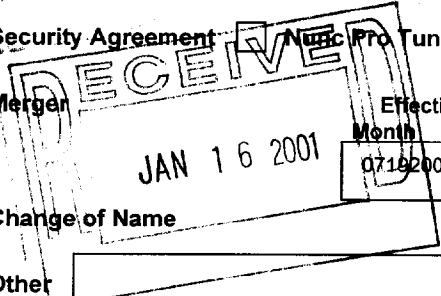
TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

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

Conveyance Type

- Assignment License
- Security Agreement Merg Acq Pro Func Assignment
- Merger
- Effective Date
Month Day Year
 07192000
- Change of Name
- Other



Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization 76074037

Receiving Party

Mark if additional names of conveying parties attached

Name

DBA/AK/A/T/A

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
City State/Country Zip Code

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

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

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSENGMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:

Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

01/24/2001 GTOM11 00000257 76074037

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40.00 OP

TRADEMARK
REEL: 002219 FRAME: 0498

Expires 06/30/99
OMB 0651-0027

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

[Empty text box for Name]

Address (line 1)

[Empty text box for Address (line 1)]

Address (line 2)

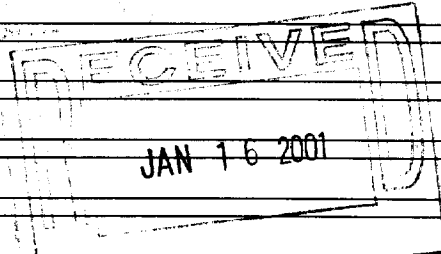
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Address (line 3)

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Address (line 4)

[Empty text box for Address (line 4)]



Correspondent Name and Address

Area Code and Telephone Number 919-781-4000

Name

J. Christopher Lynch

Address (line 1)

Wyrick Robbins Yates & Ponton

Address (line 2)

4101 Lake Boone Trail

Address (line 3)

Suite 300

Address (line 4)

Raleigh, North Carolina 27607

Pages

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

13

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

Mark if additional numbers attached

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

Trademark Application Number(s)

Registration Number(s)

76074037						

Number of Properties

Enter the total number of properties involved.

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 40.00

Method of Payment:

Enclosed

Deposit Account

Deposit Account

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

Deposit Account Number:

[Empty text box]

Authorization to charge additional fees:

Yes

No

Statement and Signature

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

Kevin H. Pollard

Name of Person Signing

Signature

12/22/00

Date Signed

Office of the Secretary of State

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 "USENDIT.COM INC.", CHANGING ITS NAME FROM "USENDIT.COM INC." TO "ARSENAL DIGITAL SOLUTIONS WORLDWIDE, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF JULY, A.D. 2000, AT 9 O'CLOCK A.M.

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



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

3134300 8100

001365937

AUTHENTICATION: 0568812

DATE: 07-19-00

TRADEMARK
REEL: 002219 FRAME: 0500

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

OF

Usendit.com Inc.
(Original file date 12-01-99)
(Under sections 242-245)

Usendit.com Inc., a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The amendment and restatement of the Corporation's Certificate of Incorporation set forth below was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware ("DGCL"), and has been consented to in writing by the stockholders of the Corporation, and notice has been given, in accordance with Section 228 of the DGCL.

2. The Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

FIRST: The name of this corporation is Arsenal Digital Solutions Worldwide, Inc. (the "Corporation").

SECOND: The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, zip code 19801. The name of its registered agent at such address is The Corporation Trust Company.

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

FOURTH: (a) **Authorized Stock.** The total number of shares of all classes of stock which the Corporation is authorized to issue is 300,000,000 shares, \$0.001 par value per share, consisting of 200,000,000 shares of Common Stock and 100,000,000 shares of Preferred Stock, 42,000,000 of which are designated "Series A Preferred Stock" and 28,000,000 of which are designated "Series B Preferred Stock". The Board of Directors is authorized to reserve and set aside such number of shares of Common Stock and/or Preferred Stock as are necessary or appropriate for establishment of stock option or stock purchase plans for which employees, officers, directors, agents and/or contractors of the Corporation may be eligible, as determined by the Board of Directors in its discretion, subject to the requirements of applicable law.

(b) **"Blank Check" Preferred Stock.** The Board of Directors is authorized, subject to limitations prescribed by law, to provide for the issuance of the shares of authorized and undesignated Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of

(a) Restrictions on Distributions. Without the consent of holders of a majority of the outstanding shares of Preferred Stock acting together as a single class on an as converted into Common Stock basis, no dividend shall be paid or declared, and no distribution shall be made, on any capital stock of the Corporation (other than a stock dividend on the Common Stock solely in the form of additional shares of Common Stock) unless a like or greater dividend is paid to the holders of Preferred Stock. Furthermore, except to the extent in any instance such approval is provided, the Corporation shall not purchase, redeem, retire or otherwise acquire for value any of its capital stock (or rights, options or warrants to purchase such shares) now or hereafter outstanding, return any capital to its stockholders as such, or make any distribution of assets to its stockholders as such, or permit any subsidiary to do any of the foregoing, except that subsidiaries may declare and make payment of cash and stock dividends, return capital and make distributions of assets to the Corporation, and except that nothing herein contained shall prevent the Corporation from:

(i) effecting a stock split or declaring or paying any dividend consisting of shares of any class of capital stock to the holders of shares of such class of capital stock; or

(ii) repurchasing any stock of a director, officer, employee or consultant subject to a stock repurchase agreement or stock restriction agreement under which the Corporation has the right or obligation to repurchase such shares in the event of termination of employment or of the consulting arrangement, or other similar discontinuation of relationship; or

(iii) redeeming shares of Preferred Stock in accordance with contractual agreements between the Company and the holders of Preferred Stock.

(b) Preferred Restrictions on Distributions. The holders of the outstanding Series A Preferred Stock and Series B Preferred Stock shall each be entitled to receive in any fiscal year, when and as declared by the Board of Directors, out of any funds legally available therefor, dividends, if paid to the holders of Common Stock or any series of Preferred Stock, in an amount at least equal to the amount paid, based upon the number of shares of Common Stock which would be held by each such holder if all shares of Series A Preferred Stock and Series B Preferred Stock were then converted into Common Stock. In the event that the dividends declared by the Board of Directors shall be insufficient to permit the payment of the full aforesaid dividends, such dividends shall be paid ratably to each holder in proportion to the dividend amounts to which each holder of capital stock is entitled. The right to such dividends on Series A Preferred Stock and Series B Preferred Stock shall not be cumulative, and no right shall accrue to holders of Series A Preferred Stock or Series B Preferred Stock by reason of the fact that dividends on such shares are not declared or paid in any prior year.

(c) Liquidation Preference.

(i) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, in which the amount to be distributed to all stockholders on an as-converted to Common Stock basis is less than \$[0.614] per share as adjusted to reflect any and all subdivisions (by stock split, stock dividend or otherwise) or combinations or consolidations (by reclassification or otherwise):

(A) The holders of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, an amount equal to:

(1) \$0.163 for each share of Series A Preferred Stock, as adjusted to reflect any and all subdivisions (by stock split, stock dividend or otherwise) or combinations or consolidations (by reclassification or otherwise) of the Series A Preferred Stock (the "Original Series A Price"), plus an amount equal to all declared and unpaid dividends (the "Series A Liquidation Preference"); and

(2) \$0.307 for each share of Series B Preferred Stock, as adjusted to reflect any and all subdivisions (by stock split, stock dividend or otherwise) or combinations or consolidations (by reclassification or otherwise) of the Series B Preferred Stock (the "Original Series B Price"), plus an amount equal to all declared and unpaid dividends (the "Series B Liquidation Preference").

If upon the occurrence of such event the assets and funds thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full Series A Liquidation Preference and Series B Liquidation Preference, then the entire such amount of the assets and funds of the Corporation legally available for distribution to the holders of the Preferred Stock shall be distributed ratably among the holders of the Preferred Stock in proportion to the aggregate liquidation preferential amounts owed to such holders.

(B) After payment has been made to the holders of the Preferred Stock in Liquidation Preferences, the holders of the Preferred Stock and Common Stock shall receive the remaining assets of the Corporation in proportion to the number of shares of Common Stock held by each such holder, with the holders of Preferred Stock deemed to hold that number of shares of Common Stock equal to the number of shares of Common Stock into which such shares of Preferred Stock are then convertible.

(ii) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, in which the amount to be distributed to all stockholders on an as-converted to Common Stock basis is equal to or greater than \$[0.614] per share, all stockholders shall receive the assets of the Corporation in proportion to the number of shares of Common Stock held by each such holder, with the holders of Preferred Stock deemed to hold that number of shares of Common Stock equal to the number of shares of Common Stock into which such shares of Preferred Stock are then convertible.

(iii) For purposes of this subsection (c), a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include, (A) the Corporation's sale of all or substantially all of its assets or stock, or (B) any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) which will result in the holders of the outstanding voting equity securities of the Corporation immediately prior to such transaction or series of related transactions holding securities

representing less than 50% of the voting power of the surviving entity immediately following such transaction or series of related transactions.

(d) Conversion. The holders of Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(i) Right to Convert.

(A) Each share of Series A Preferred Stock shall be convertible at any time, at the option of the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series A Price by the Series A Conversion Price (as defined below), determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion (the "Series A Conversion Price") shall initially be the Original Series A Price per share of Common Stock for conversions of Series A Preferred Stock. The Series A Conversion Price shall be subject to adjustment as hereinafter provided.

(B) Each share of Series B Preferred Stock shall be convertible at any time, at the option of the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series B Price by the Series B Conversion Price (as defined below), determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion (the "Series B Conversion Price") shall initially be the Original Series B Price per share of Common Stock for conversions of Series B Preferred Stock. The Series B Conversion Price shall be subject to adjustment as hereinafter provided.

(ii) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price for the appropriate series upon: (A) the written consent of the holders of a majority of the outstanding Preferred Stock acting together as a single class on an as converted into Common Stock basis; or (B) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (other than an employee benefit plan offering or an offering relating solely to a transaction under Rule 145 promulgated under such Act), covering the offer and sale of Common Stock at a per share price to the public of not less than \$3.07 (as adjusted to reflect any stock splits, dividends, recapitalizations and other similar events) with aggregate gross proceeds of not less than \$20,000,000.00 (the "Qualified Public Offering"). In the event of the Qualified Public Offering, the person(s) entitled to receive Common Stock issuable upon such conversion of Preferred Stock shall not be deemed to have converted such shares until immediately prior to the closing of the Qualified Public Offering.

(iii) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional share to which a holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of Common Stock as determined, in good faith, by the Board of Directors. All declared but unpaid dividends on the Preferred Stock to be converted shall also be converted into shares of Common Stock at their fair market value as determined by the Board of Directors at

the date of such conversion. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into a fractional share of Common Stock. 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 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 on such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Preferred Stock for conversion, 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 Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(iv) Adjustments for Stock Dividends, Subdivisions, Combinations or Consolations. In the event the Corporation shall pay a stock dividend on Common Stock, or the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by reclassification or otherwise, into a greater or lesser number of shares of Common Stock, each of the Series A Conversion Price and the Series B Conversion Price in effect immediately prior to such action shall, concurrently with the effectiveness of such action, be proportionately adjusted.

(v) Adjustments for Diluting Issuances.

(A) Upon Dilutive Issuances of Common Stock or Convertible Securities. If the Corporation shall, while there are any shares of Preferred Stock outstanding, issue or sell shares of its Common Stock (or Common Stock Equivalents, as provided herein) without consideration or at a price per share less than a Conversion Price for a particular series in effect immediately prior to such issuance or sale, then in each such case such Conversion Price, except as hereinafter provided, shall be lowered so as to be equal to an amount determined by multiplying such Conversion Price by a fraction:

(1) the numerator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock or Common Stock Equivalents (calculated assuming the conversion of Preferred Stock into Common Stock), plus (b) the number of shares of Common Stock which the net aggregate consideration, if any, received by the Corporation for the total number of such additional shares of Common Stock or Common Stock Equivalents so issued would purchase at the applicable Conversion Price in effect immediately prior to such issuance, and

(2) the denominator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock or Common Stock Equivalents (calculated assuming the conversion of outstanding Preferred Stock into Common Stock), plus (b) the number of such additional shares of Common Stock or Common Stock Equivalents so issued.

(B) Waiver. The provisions of subsection (d)(v)(A) may be waived by and with respect to a Series of Preferred Stock in any instance (without the necessity of convening any meeting of stockholders of the Corporation) upon the written consent of the holders of a majority of the outstanding shares of the applicable series of Preferred Stock.

(vi) Dilutive Issuances of Warrants, Options and Purchase Rights to Common Stock or Convertible Securities.

(A) For the purposes of subsection (d)(v), the issuance of any warrants, options, subscription or purchase rights with respect to shares of Common Stock and the issuance of any securities convertible into or exchangeable for shares of Common Stock, or the issuance of any warrants, options, subscription or purchase rights with respect to such convertible or exchangeable securities (collectively, "Common Stock Equivalents"), shall be deemed an issuance of Common Stock with respect to the Preferred Stock if the Net Consideration Per Share (as hereinafter determined) which may be received by the Corporation for such Common Stock shall be less than a Conversion Price in effect at the time of such issuance of any Common Stock Equivalents or any time thereafter. Any obligation, agreement or undertaking to issue Common Stock Equivalents at any time in the future shall be deemed to be an issuance at the time such obligation, agreement or undertaking is made or arises. No adjustment of a Conversion Price shall be made under subsection (d)(v) upon the issuance of any shares of Common Stock which are issued pursuant to the exercise, conversion or exchange of any Common Stock Equivalents if any adjustment shall previously have been made upon the issuance of any such Common Stock Equivalents as above provided.

(B) Adjustments for Cancellation or Expiration of Common Stock Equivalents. Should the Net Consideration Per Share of any such Common Stock Equivalents be decreased from time to time, then, upon the effectiveness of each such change, each Conversion Price will be that which would have been obtained (1) had the adjustments made upon the issuance of such Common Stock Equivalents been made upon the basis of the actual Net Consideration Per Share of such securities, and (2) had adjustments made to such Conversion Price since the date of issuance of such Common Stock Equivalents been made to such Conversion Price as adjusted pursuant to subparagraph A above. Any adjustment of a Conversion Price with respect to this paragraph which relates to Common Stock Equivalents shall be disregarded if, as and when all of such Common Stock Equivalents expire or are cancelled without being exercised, so that each Conversion Price effective immediately upon such cancellation or expiration shall be equal to the each Conversion Price in effect at the time of the issuance of the expired or cancelled Common Stock Equivalents, with such additional adjustments as would have been made to such Conversion Price had the expired or cancelled Common Stock Equivalents not been issued.

(C) Net Consideration Per Share. For purposes of this paragraph, the "Net Consideration Per Share" which may be received by the Corporation shall be determined as follows:

(1) The "Net Consideration Per Share" shall mean the amount equal to the total amount of consideration, if any, received by the Corporation for the issuance of such Common Stock Equivalents, plus the minimum amount of consideration, if any, payable to the Corporation upon exercise, or conversion or exchange thereof, divided by the aggregate number of shares of Common Stock that would be issued if all such Common Stock Equivalents were exercised, exchanged or converted.

(2) The "Net Consideration Per Share" which may be received by the Corporation shall be determined in each instance as of the date of issuance of Common Stock Equivalents, without giving effect to any possible future upward price adjustments or rate adjustments which may be applicable with respect to such Common Stock Equivalents unless and until such adjustments are made.

(vii) Stock Dividends for Holders of Capital Stock Other Than Common Stock. In the event that the Corporation shall make or issue, or shall fix a record date for the determination of holders of any capital stock of the Corporation other than holders of Common Stock entitled to receive a dividend or other distribution payable in Common Stock or securities of the Corporation convertible into or otherwise exchangeable for the Common Stock of the Corporation, then such Common Stock or other securities issued in payment of such dividend shall be deemed to have been issued for a consideration of \$0.01 per share issued, except for (A) dividends payable in shares of Common Stock payable pro rata to holders of Preferred Stock and to holders of any other class of stock (whether or not paid to holders of any other class of stock); (B) with respect to the Series A Preferred Stock, pro rata dividends payable in shares of Series A Preferred Stock; and (C) with respect to the Series B Preferred Stock, pro rata dividends payable in shares of Series B Preferred Stock.

(viii) Consideration Other than Cash. For purposes of subsection (d)(v), if a part or all of the consideration received by the Corporation in connection with the issuance of shares of the Common Stock or the issuance of any of the securities described in subsection (d)(v) consists of property other than cash, such consideration shall be deemed to have a fair market value as is reasonably determined in good faith by the Board of Directors of the Corporation. In the event of any dispute between the holders of the Preferred Stock and the Corporation regarding the determination of fair market value, at the option of the holders of a majority of the aggregate outstanding shares of Preferred Stock (acting together as a single class on an as converted into Common Stock basis), the Corporation shall engage a consulting firm or investment banking firm selected by the holders of a majority of the outstanding shares of Preferred Stock (acting together as a single class on an as converted into Common Stock basis) to prepare an independent appraisal (the "Independent Appraisal") of the fair market value of such property to be distributed. Whichever of the Corporation's or the Preferred Stockholders' latest position regarding fair market value is closer to the Independent Appraisal shall be the fair market value and such determination shall be binding on all parties. The expenses of such appraisal shall be borne by whichever of the

Corporation or the holders of the Preferred Stock whose position regarding fair market value is not chosen.

(ix) Exceptions to Anti-dilution. Subsection (d)(v) shall not apply with respect to:

(A) the issuance or sale of (i) a number of shares of Common Stock that are issued to Company officers, directors, employees or consultants (1) up to 15% of the fully-diluted shares of the Company or (2) as may be approved by the holders of a majority of the Preferred Stock acting together as a single class on an as converted into Common Stock basis or by a majority of the Preferred Stock Directors as defined herein and (ii) shares issued in connection with any leases or other borrowings, direct or indirect, provided such issuance and sale is approved by the holders of a majority of the Preferred Stock acting together as a single class on an as converted into Common Stock basis or by a majority of the Preferred Stock Directors; or

(B) securities issued solely in consideration for the acquisition (whether by merger or otherwise) by the Corporation of all or substantially all of the capital stock or assets of any other entity or business organization, or securities issued solely in consideration for the grant by or to the Corporation of marketing rights, distribution rights, license rights or similar rights granted by or to the Corporation in consideration of the exchange of proprietary technology, whether of the Corporation or any other entity, provided the issuance of such securities is approved by the holders of a majority of the Preferred Stock or by a majority of the Preferred Stock Directors; or

(C) conversion of shares of Preferred Stock or the conversion or exercise of convertible debt or warrants outstanding on the date of the Series B Preferred Stock is first issued.

All such numbers shall be subject to equitable adjustment in the event of any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Corporation.

(x) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, 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 paragraph 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 Preferred Stock against impairment.

(xi) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price hereunder, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of the affected 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 Preferred Stock,

furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustments and readjustments with respect to the Series held by such holder, (B) the Conversion Price at the time in effect with respect to the Series held by such holder, 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 the Series held by such holder.

(xii) Recapitalization. If at any time or from time to time, there shall be a recapitalization of Common Stock (other than a subdivision, combination, merger or sale of assets provided for elsewhere herein), provision shall be made so that the holders of Preferred Stock shall thereafter be entitled to receive upon conversion of 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 of each share of Preferred Stock held by such holders would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions hereof with respect to the rights of the holders of Preferred Stock after the recapitalization to the end that such provisions (including adjustment of the Conversion Prices then in effect and the number of shares issuable upon conversion) shall be applicable after that event as nearly equivalent as may be practicable.

(xiii) Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant hereto, the shares so converted shall be cancelled and shall not be issuable by the Corporation, and the Certificate of Incorporation of this Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(e) Voting Rights.

(i) Except as set forth in this subsection (e) or subsection (f) below or as otherwise required by law, the holders of the Preferred Stock and the holders of Common Stock shall be entitled to notice of any stockholders' meeting and to vote as a single class upon any matter submitted to the stockholders for a vote, as follows:

(A) each holder of the Preferred Stock shall have one vote for each full share of Common Stock into which its respective shares of Preferred Stock would be convertible on the record date for the vote; and

(B) the holders of Common Stock have one vote per share of Common Stock.

(ii) (A) The number of directors of the Corporation shall be set at seven. The Board of Directors will consist of the following: (1) one representative designated by the holders of a majority of the Series B Preferred Stock (the "Series B Director"); (2) two representatives elected by the holders of a majority of the Series A Preferred Stock ("Series A Directors"), together with the Series B Director the "Preferred Stock Directors"); (3) two representatives designated by Kevin H. Pollard; and (4) two directors designated by the other directors acting unanimously and elected by a majority of all outstanding shares, acting together as a single class on an as converted into Common Stock basis.

(B) In the case of any vacancy in the office of a director occurring among the directors designated by the persons set forth in Section A, the person(s) who designated the director whose seat becomes vacant shall be entitled to designate a successor to hold office for the unexpired term of the director whose place shall be vacant. Any director may be removed at any time during that director's term of office, either with or without cause, by, and only by, the person(s) entitled to designate such director, and any vacancy thereby created may be filled by the person(s) entitled to designate the director so removed.

(iii) The following actions shall not be taken unless approved by an affirmative vote by the holders of at least 65% of the outstanding Common Stock of the Corporation, which vote may be taken by written consent in lieu of meeting pursuant to the DGCL: (A) any reorganization or reclassification of the outstanding shares that would have the effect of changing the ownership interests of the stockholders; (B) the amendment of any provision of the Certificate of Incorporation of the Corporation; (C) the merger or consolidation of the Corporation with any other corporation or other business entity where the stockholders of the Corporation immediately before such merger or consolidation will not hold more than 50% of the outstanding voting stock of the surviving entity; (D) the filing of a voluntary proceeding of dissolution of the Corporation; and (E) the sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation.

(f) Protective Provisions. In addition to any other rights provided by law:

(i) so long as shares of any series of Preferred Stock shall be outstanding, the affirmative vote or written consent of the holders of a majority of the outstanding shares of such series of Preferred Stock, acting together as a single class on an as converted into Common Stock basis, shall be required for

(A) any sale by the Corporation of all or substantially all of its assets,

(B) any merger of the Corporation with another,

(C) any liquidation or winding up of the Corporation,

(D) any increase in number of shares authorized under the Corporation's stock option plan, and

(E) any new borrowing by the Corporation in excess of \$500,000, unless approved by the Board of Directors including a majority of the Preferred Stock Directors; and

(ii) so long as shares of Series A Preferred Stock shall be outstanding, the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series A Preferred Stock, voting as a separate series, shall be required for

(A) any amendment of the Corporation's Certificate of Incorporation in a manner adverse to the Series A Preferred Stock,

(B) the issuance of any security senior to or on parity with the Series A Preferred, and

(C) any increase or decrease in the authorized number of shares of the Series A Preferred Stock or Common Stock; and

(iii) so long as shares of Series B Preferred Stock shall be outstanding, the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series B Preferred Stock, voting as a separate series, shall be required for

(A) any amendment of the Corporation's Certificate of Incorporation in a manner adverse to the Series B Preferred Stock,

(C) the issuance of any security senior to or on parity with the Series B Preferred, and

(C) any increase or decrease in the authorized number of shares of the Series B Preferred Stock or Common Stock.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Corporation shall so provide.

EIGHTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

NINTH: To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

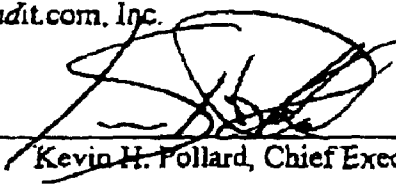
Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

TENTH: 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 of 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.

IN WITNESS WHEREOF, *Usendit.com, Inc.* has caused this Amended and Restated Certificate of Incorporation to be executed by Kevin H. Pollard, its Chief Executive Officer, on this the 19th day of July 2000.

Usendit.com, Inc.

By:



Kevin H. Pollard, Chief Executive Officer