

FORM PTO-1594 **RECORDATION FORM COVER SHEET** Docket No.:
TRADEMARKS ONLY 03-533

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

1. Name of conveying parties:
ReplayTV, Inc.

Individual(s) Association
 General Partnership Limited Partnership
 Corporations - California
 Other _____

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party:
Name: ReplayTV, Inc.
Internal Address: _____
Street Address: 1945 Charleston Road
City: Mountain View State: CA ZIP: 94043

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation - State Delaware
 Other _____

If assignee is not domiciled in the United States, a domestic designation is attached (designation must be a separate document from Assignment).
 Yes No
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other: _____

Execution Date: May 3, 2000

4. Application numbers and registration numbers:

A. Trademark Application No.(s) <u>75/554,432 75/802,147</u> <u>75/802,131</u>	B. Trademark Registration No.(s) <u>2,338,455 2,481,355</u> <u>2,402,559</u>
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Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Eric R. Moran
Fax: 312-913-0002

Internal Address: McDonnell Boehnen Hulbert & Berghoff
Street Address: 300 South Wacker Drive, Suite 3200
City: Chicago State: IL ZIP: 60606

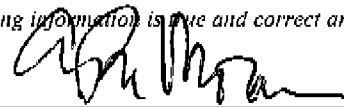
6. Total number of applications and registrations involved:
Six

7. Total Fee (37 CFR 3.41)..... \$165.00
 Enclosed - any excess or insufficiency should be credited or debited to the deposit account. A duplicate copy of this sheet is enclosed for this purpose.
 Authorized to be charged to deposit account

8. Deposit account number: 13-2490

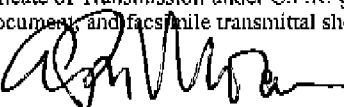
DO NOT USE THIS SPACE

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Eric R. Moran  8/11/2003
Name of Person Signing Signature Date

Total number of pages including cover sheet, document, and facsimile transmittal sheet under C.F.R. § 1.8: 13 pages

Certificate of Transmission under C.F.R. § 1.8
I hereby certify that this correspondence (cover sheet, document, and facsimile transmittal sheet) is being facsimile transmitted to the United States Patent and Trademark Office on August 11, 2003.

 8/11/2003
Eric R. Moran Date

CH \$165.00 132490 75554432

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 11:00 AM 05/04/2000
001227269 - 3138486

**AGREEMENT AND PLAN OF MERGER
OF REPLAYTV, INC.
A DELAWARE CORPORATION,
and
REPLAYTV, INC.
A CALIFORNIA CORPORATION**

This Agreement and Plan of Merger dated as of May 3, 2000 (the "Agreement") is between ReplayTV, Inc., a California corporation ("ReplayTV-California"), and ReplayTV, Inc., a Delaware corporation ("ReplayTV-Delaware"). ReplayTV-Delaware and ReplayTV-California are sometimes referred to in this Agreement as the "Constituent Corporations."

RECITALS

A. ReplayTV-Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 110,077,301 shares, 75,000,000 of which are designated "Common Stock," \$0.001 par value per share, and 35,077,301 of which are designated "Preferred Stock," \$0.001 par value per share, of which (i) 2,494,070 shares have been designated Series A Preferred Stock, none of which are issued and outstanding, (ii) 2,580,644 shares have been designated Series B Preferred Stock, none of which are issued and outstanding, (iii) 3,162,592 shares have been designated Series C Preferred Stock, none of which are issued and outstanding, (iv) 10,200,000 shares have been designated Series D Preferred Stock, none of which are issued and outstanding, (v) 7,639,995 shares have been designated Series E Preferred Stock, none of which are issued and outstanding, (vi) 5,627,267 shares have been designated Series F Preferred Stock, none of which are issued and outstanding, and (vii) 3,372,733 shares have been designated Series G Preferred Stock, none of which are issued and outstanding. As of the date hereof, 1,000 shares of ReplayTV-Delaware Common Stock were issued and outstanding, all of which are held by ReplayTV-California, and no shares of Preferred Stock were issued and outstanding.

B. ReplayTV-California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 110,077,301 shares, 75,000,000 of which are designated "Common Stock," \$0.001 par value per share, 10,271,534 shares of which are issued and outstanding, and 35,077,301 shares of which are designated "Preferred Stock," \$0.001 par value per share, of which (i) 2,494,070 shares have been designated Series A Preferred Stock, all of which are issued and outstanding, (ii) 2,580,644 shares have been designated Series B Preferred Stock, of which 2,258,058 shares are issued and outstanding, (iii) 3,162,592 shares have been designated Series C Preferred Stock, of which 3,162,584 shares are issued and outstanding, (iv) 10,200,000 shares have been designated Series D Preferred Stock, of which 10,193,544 shares are issued and outstanding, (v) 7,639,995 shares have been designated Series E Preferred Stock, of which 7,633,329 shares are issued and outstanding, (vi) 5,627,267 shares have been designated Series F Preferred Stock, all of which are issued and outstanding, and (vii) 3,372,733 shares have been designated Series G Preferred Stock, of which 2,090,907 shares are issued and outstanding.

C. The Board of Directors of ReplayTV-California has determined that, for the purpose of effecting the reincorporation of ReplayTV-California in the State of Delaware, it is advisable and in the best interests of ReplayTV-California that ReplayTV-California merge with and into ReplayTV-Delaware upon the terms and conditions provided in this Agreement.

D. The respective Boards of Directors of ReplayTV-Delaware and ReplayTV-California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective stockholders and executed by the undersigned officers.

AGREEMENT

In consideration of the mutual agreements and covenants set forth herein, ReplayTV-Delaware and ReplayTV-California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

1. Merger.

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, ReplayTV-California shall be merged with and into ReplayTV-Delaware (the "Merger"), the separate existence of ReplayTV-California shall cease and ReplayTV-Delaware shall be, and is sometimes referred to below as, the "Surviving Corporation," and the name of the Surviving Corporation shall be ReplayTV, Inc..

1.2 Filing and Effectiveness. The Merger shall become effective upon completion of the following actions:

(a) Adoption and approval of this Agreement and the Merger by the stockholders of each Constituent Corporation in accordance with the applicable requirements of the Delaware General Corporation Law and the California General Corporation Law;

(b) The satisfaction or waiver of all of the conditions precedent to the consummation of the Merger as specified in this Agreement; and

(c) The filing with the Secretary of State of Delaware of an executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law.

The date and time when the Merger becomes effective is referred to in this Agreement as the "Effective Date of the Merger."

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of ReplayTV-California shall cease and ReplayTV-Delaware, as the Surviving Corporation, (a) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (b) shall be subject to all actions previously taken by its and ReplayTV-California's Board of Directors, (c) shall succeed, without other transfer, to all of the assets, rights, powers and property of ReplayTV-California in

the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (d) shall continue to be subject to all of the debts, liabilities and obligations of ReplayTV-Delaware as constituted immediately prior to the Effective Date of the Merger, and (e) shall succeed, without other transfer, to all of the debts, liabilities and obligations of ReplayTV-California in the same manner as if ReplayTV-Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California General Corporation Law.

2. Charter Documents, Directors and Officers.

2.1 Certificate of Incorporation. The Certificate of Incorporation of ReplayTV-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of ReplayTV-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of ReplayTV-California immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

3. Manner of Conversion of Stock.

3.1 ReplayTV-California Common Stock. Upon the Effective Date of the Merger, each one share of ReplayTV-California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.001 par value, of the Surviving Corporation. No fractional share interests of the Surviving Corporation shall be issued. Any fractional share interests to which a holder would otherwise be entitled shall be aggregated so that no ReplayTV-California shareholders shall receive cash in an amount greater than the value of one (1) full share of ReplayTV-Delaware Common Stock.

3.2 ReplayTV-California Preferred Stock. Upon the Effective Date of the Merger, each share of ReplayTV-California Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock issued and outstanding immediately prior thereto, which shares are convertible into such number of shares of ReplayTV-California Common Stock as set forth in the ReplayTV-California Articles of Incorporation, as amended, shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and non-assessable share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock,

Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock of the Surviving Corporation, \$0.001 par value per share, respectively, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation, which shares of Preferred Stock shall be convertible into the same number of shares of the Surviving Corporation's Common Stock, \$0.001 par value per share, as such share of ReplayTV-California Preferred Stock was convertible into shares of ReplayTV-California Common Stock immediately prior to the Effective Date of the Merger, subject to adjustment pursuant to the terms of the Certificate of Incorporation of the Surviving Corporation.

3.3 ReplayTV-California Options, Stock Purchase Rights and Convertible Securities.

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of ReplayTV-California under ReplayTV-California's 1997 Stock Option Plan, 1999 Stock Plan, 2000 Employee Stock Purchase Plan and 2000 Directors' Stock Option Plan, and all other employee benefit plans of ReplayTV-California. Each outstanding and unexercised option, other right to purchase or security convertible into ReplayTV-California Common Stock or Preferred Stock (a "Right") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase or a security convertible into the Surviving Corporation's Common Stock or Preferred Stock, respectively, on the basis of one share of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, for each one share of ReplayTV-California Common Stock or Preferred Stock issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such ReplayTV-California Right at the Effective Date of the Merger. This paragraph 3.3(a) shall not apply to ReplayTV-California Common Stock or Preferred Stock. Such Common Stock and Preferred Stock are subject to paragraphs 3.1 and 3.2 hereof, respectively.

(b) A number of shares of the Surviving Corporation's Common Stock and Preferred Stock shall be reserved for issuance upon the exercise or conversion of Rights equal to the number of shares of ReplayTV-California Common Stock and Preferred Stock so reserved immediately prior to the Effective Date of the Merger.

Notwithstanding the foregoing, with respect to options issued under the ReplayTV-California 1997 Stock Option Plan or 1999 Stock Plan that are assumed in the Merger, the number of shares of Common Stock to which the holder would be otherwise entitled upon exercise of each such assumed option following the Merger shall be rounded down to the nearest whole number and the exercise price shall be rounded up to the nearest whole cent. In addition, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

3.4 ReplayTV-Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$0.001 par value per share, of ReplayTV-Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by

ReplayTV-Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.5 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of ReplayTV-California Common Stock or Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the appropriate class and series of the Surviving Corporation's capital stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate therefor representing shares of ReplayTV-California capital stock shall be deemed for all purposes to represent the number of whole shares of the appropriate class and series of the Surviving Corporation's capital stock into which such shares of ReplayTV-California capital stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of capital stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing capital stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of ReplayTV-California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of Surviving Corporation's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

4. General.

4.1 Covenants of ReplayTV-Delaware. ReplayTV-Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of California and irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law.

(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by ReplayTV-Delaware of all of the franchise tax liabilities of ReplayTV-California; and

(c) Take such other actions as may be required by the California General Corporation Law.

4.2 **Further Assurances.** From time to time, as and when required by ReplayTV-Delaware or by its successors or assigns, there shall be executed and delivered on behalf of ReplayTV-California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions, as shall be appropriate or necessary in order to vest or perfect in, or conform of record or otherwise by, ReplayTV-Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of ReplayTV-California and otherwise to carry out the purposes of this Agreement, and the officers and directors of ReplayTV-Delaware are fully authorized in the name and on behalf of ReplayTV-California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 **Abandonment.** At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either ReplayTV-California or ReplayTV-Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of ReplayTV-California or by the sole stockholder of ReplayTV-Delaware, or by both.

4.4 **Amendment.** The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (a) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (b) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (c) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of such Constituent Corporation.

4.5 **Registered Office.** The registered office of the Surviving Corporation in the State of Delaware is located at 1013 Centre Road, Wilmington, County of New Castle, Delaware 19801. Corporation Service Company is the registered agent of the Surviving Corporation at such address.

4.6 **FIRPTA Notification.**

(a) On the Effective Date of the Merger, ReplayTV-California shall deliver to ReplayTV-Delaware, as agent for the shareholders of ReplayTV-California, a properly executed statement (the "Statement") in substantially the form attached hereto as Exhibit A. ReplayTV-

Delaware shall retain the Statement for a period of not less than seven years and shall, upon request, provide a copy thereof to any person that was a shareholder of ReplayTV-California immediately prior to the Merger. In consequence of the approval of the Merger by the shareholders of ReplayTV-California, (i) such shareholders shall be considered to have requested that the Statement be delivered to ReplayTV-Delaware as their agent and (ii) ReplayTV-Delaware shall be considered to have received a copy of the Statement at the request of the ReplayTV-California shareholders for purposes of satisfying ReplayTV-Delaware's obligations under Treasury Regulation Section 1.1445-2(c)(3).

(b) ReplayTV-California shall deliver to the Internal Revenue Service a notice regarding the Statement in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).

4.7 **Agreement.** Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 1945 Charleston Road, Mountain View, CA 94043, and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

4.8 **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

4.9 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

The undersigned authorized representatives of the Constituent Corporation have executed and acknowledged this Agreement as of the date first set forth above.

REPLAYTV, INC.,
a Delaware corporation

By: 

Craig W. Dougherty, President

REPLAYTV, INC.,
a California corporation

By: 

Eric H. McMasters, III, Chief Executive Officer

EXHIBIT A - FORM OF FIRPTA CERTIFICATE

May 3, 2000

Assistant Commissioner (International)
Director, Office of Compliance
OP:I:C:E:666
950 L'Enfant Plaza South, S.W.
COMSAT Building
Washington, D.C. 20024

**NOTICE TO THE INTERNAL REVENUE SERVICE OF REPLAYTV, INC.'S
UNITED STATES REAL PROPERTY HOLDING CORPORATION STATUS UNDER
TREASURY REGULATION 1.897-2(H)(2)**

Dear Sir:

1. This Notice is being filed by ReplayTV, Inc., a California corporation, ("Target") pursuant to section 1.897-2(h)(2) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code").
2. The undersigned, on behalf of Target hereby declares that stock of Target is not a United States real property interest within the meaning of section 897 of the Code because Target is not and has not been a United States real property holding corporation as that term is defined in section 897(c) (2) of the Code during the applicable period specified in section 897(c) (1) (A) (ii) of the Code.
3. Target's United States taxpayer identifying number is: 77-0465127
4. Target's address is:

ReplayTV, Inc.
1945 Charleston Road
Mountain View, CA 94043
5. In connection with the acquisition of Target by ReplayTV, Inc., a Delaware corporation ("Acquiror"), the undersigned provided the attached statement to Acquiror declaring that an interest in Target is not a United States real property interest. The statement was voluntarily provided in response to a request from the transferee, Acquiror under Regulation 1.1445-2(e) (3) (i).


Acquiror's United States taxpayer identifying number is: 77-0465127

ReplayTV, Inc.
1945 Charleston Road
Mountain View, CA 94043

6. No supplemental statements pursuant to Treasury Regulations section 1.897-2(h) (5) are required to be filed herewith.

7. Under penalties of perjury the undersigned declares that he has examined this certificate, and the attachment hereto, and to the best of his knowledge and belief they are true, correct and complete. The undersigned further declares that he is a responsible officer and that he has authority to sign this document on behalf of Target.

A copy of the statement provided pursuant to Treasury Regulation §§1.897-2(h)(2) and 1.1445-2(c)(3)(i) is attached.



Mark H. LeMasters, III
Chief Executive Officer

ReplayTV, Inc.

A California Corporation


OFFICERS' CERTIFICATE OF APPROVAL OF THE MERGER

Earle H. LeMasters, III and Mark A. Medearis certify that:

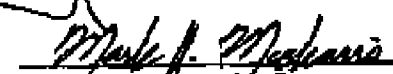
1. They are the Chief Executive Officer and the Secretary, respectively, of ReplayTV, Inc., a corporation organized under the laws of the State of California.
2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock," respectively.
3. There were 9,720,943 shares of Common Stock and 21,175,308 and 2,258,058 shares of Series A Preferred Stock, 2,494,070 shares of Series B Preferred Stock, 3,162,584 shares Series C Preferred Stock, 10,193,544 shares Series D Preferred Stock, 7,633,329 shares of Series E Preferred Stock, 5,627,267 shares of Series F Preferred Stock outstanding as of the record date (the "Record Date") and entitled to vote at the shareholders' meeting at which the Agreement and Plan of Merger attached hereto (the "Merger Agreement") was approved.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the outstanding shares of Common Stock and more than two-thirds of the outstanding shares of Preferred Stock, voting as separate classes.

Earle H. LeMasters, III and Mark A. Medearis further declare under penalty of perjury under the laws of the States of California and Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true and correct of his or her own knowledge.

Executed in Mountain View, California on May 3, 2000.



 Earle H. LeMasters, III, Chief Executive Officer



 Mark A. Medearis, Secretary