

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Constellation MediaXstream, Inc.		12/06/2006	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	Origin Digital, Inc.		
Street Address:	300 Boulevard East		
City:	Weehawken		
State/Country:	NEW JERSEY		
Postal Code:	07086		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3371518	ORIGIN DIGITAL	
CORRESPONDENCE DATA			
Fax Number:	(402)341-8290		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	4023416000		
Email:	dguinan@fraserstryker.com		
Correspondent Name:	Daniel J. Guinan		
Address Line 1:	409 South 17th Street		
Address Line 4:	Omaha, NEBRASKA 68102		
NAME OF SUBMITTER:	Daniel J. Guinan		
Signature:	/dan guinan/		
Date:	04/22/2008		

Total Attachments: 21
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Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "CONSTELLATION MEDIAXSTREAM, INC.", CHANGING ITS NAME FROM "CONSTELLATION MEDIAXSTREAM, INC." TO "ORIGIN DIGITAL, INC.", FILED IN THIS OFFICE ON THE SIXTH DAY OF DECEMBER, A.D. 2006, AT 1:33 O'CLOCK P.M.

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



3922066 8100

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Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5255212

DATE: 12-07-06

TRADEMARK
REEL: 003764 FRAME: 0294

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
CONSTELLATION MEDIASTREAM, INC.**

Constellation MediaXstream, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "DGCL"), is hereby amending and restating its certificate of incorporation as follows:

A. The name of the Corporation is Constellation MediaXstream, Inc. and its original certificate of incorporation was filed with the Secretary of State of Delaware on February 4, 2005.

B. This Amended and Restated Certificate of Incorporation restates, integrates and further amends the Corporation's original certificate of incorporation (the "Certificate of Incorporation"), and was duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL and was approved by written consent of the stockholders of the Corporation given in accordance with the provisions of Section 228 of the DGCL.

C. The Certificate of Incorporation is restated and amended in its entirety as follows:

ARTICLE FIRST. The name of the Corporation is Origin Digital, Inc.

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

ARTICLE THIRD. The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE FOURTH. The Corporation may issue in the aggregate 16,000,000 shares of stock, par value \$0.0001 per share, in two separate classes as follows: (i) 9,500,000 shares of Common Stock and (ii) 6,500,000 shares of Preferred Stock, all of which shall be designated Series A Convertible Preferred Stock (the "Preferred Stock"). The rights and obligations of the Common Stock and the Preferred Stock are as follows:

A. COMMON STOCK

1. Dividends and Distributions. Dividends may be paid on the Common Stock out of funds legally available therefor as and when declared by the Board of Directors. However, except for any dividend on the Common Stock payable solely in Common Stock, no dividend on the Common Stock shall be declared or paid unless there shall simultaneously be declared and paid dividends to all holders of Preferred Stock in an amount which such holders would have received had all shares of Preferred Stock been converted (on the date for determination of stockholders entitled to such dividend) to Common Stock at the Conversion Price for the Preferred Stock.

2. Liquidation Rights. Subject to the prior and superior right of any Preferred Stock outstanding, upon any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Corporation, the holders of Common Stock shall be entitled to receive distributions as provided in Part B, Section 2 below.

3. Voting Rights. Subject to the rights and preferences of any Preferred Stock outstanding, the holders of Common Stock shall be entitled to one vote for each share held with respect to all matters voted on by the shareholders of the Corporation.

4. Relative Rights of Preferred Stock and Common Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations or restrictions of the Common Stock are expressly made subject and subordinate to those that may be fixed with respect to any shares of Preferred Stock.

B. PREFERRED STOCK

1. Dividends and Distributions.

1.1. *Preferred Stock Dividends.* Subject to the provisions of law and this Certificate of Incorporation, the holders of shares of Preferred Stock shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors, dividends at a rate per annum so determined by the Board. No dividends shall be paid on the Common Stock at a rate greater than the rate at which dividends are paid on the Preferred Stock (based on the number of shares of Common Stock into which the outstanding shares of Preferred Stock are convertible on the date that the dividend is declared). Dividends on the Preferred Stock will be in preference to dividends on the Common Stock. Dividends on the Preferred Stock shall not accrue or be cumulative.

1.2. *Participating Dividends.* If the Corporation shall declare a dividend or make any other distribution to holders of Common Stock or any other capital stock of the Corporation ranking junior to the Preferred Stock as to payment of dividends (other than a stock dividend on the Common Stock payable solely in the form of additional shares of Common Stock), then the Board of Directors of the Corporation shall declare, and each holder of shares of Preferred Stock shall be entitled to receive, prior to and in preference to the payment of such dividend or distribution to the holders of shares of Common Stock or any other capital stock of the Corporation ranking junior to the Preferred Stock as to payment of dividends, a dividend or distribution per share of the Preferred Stock held by such holder in an amount equal to the amount of such dividend or distribution that would be payable to a holder of the largest number of whole shares of Common Stock into which a share of Preferred Stock could be converted pursuant to the provisions of Section 4 hereof on the record date for such dividend or distribution.

1.3. *Record Date for Dividends.* The Board of Directors of the Corporation may fix a record date for the determination of holders of shares of Common Stock or Preferred Stock entitled to receive payment of a dividend declared thereon, which record date shall be no more than 60 days and no less than 10 days prior to the date fixed for the payment thereof.

2. Liquidation Rights.

2.1 *Liquidation, Dissolution or Winding-Up.* In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after provision for the payment of the Corporation's debts and other liabilities, payments shall be made out of the assets of the Corporation available for distribution to its stockholders as follows: first, the holders of Preferred Stock shall be entitled to receive, before any distribution or payment is made upon any Common Stock, an amount equal to the Liquidation Preference (as defined in Section 2.2 below) per share, computed to the date payment thereof is made available; provided, however, that no Liquidation Preference shall be payable to the holders of Preferred Stock if, were the Preferred Stock to be converted into Common Stock immediately prior to the event of liquidation, dissolution or winding up, the holders of Preferred Stock would receive, upon the consummation of such event, without any payment of the Liquidation Preference, an amount per share of Preferred Stock equal to or greater than three (3) times the Liquidation Preference that would otherwise be payable (the "Target Return").

2.2. *Preferred Stock Preferences.* For purposes hereof, the "Liquidation Preference" equals \$1.00 per share of Preferred Stock (subject to equitable adjustment in the event of any stock dividend, stock split, combination, reorganization, recapitalization, reclassification, or other similar event affecting such shares), plus any other dividends declared but unpaid thereon, computed to the date payment thereof is made available.

If upon such liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, the assets of the Corporation available for distribution to its stockholders are insufficient to permit payment in full of the Liquidation Preference to each outstanding share of Preferred Stock to the holders thereof, then the assets of the Corporation available for distribution to the holders of Preferred Stock shall be distributed to the holders of Preferred Stock ratably in proportion to the respective amounts that would otherwise be payable in respect of the shares of Preferred Stock held by each holder thereof if the Liquidation Preference of each share were paid in full.

2.3. *Remaining Liquidating Distribution.* After the Corporation shall have paid in full the Liquidation Preference in accordance with Section 2.1 above, all remaining assets of the Corporation available for distribution to its stockholders shall be distributed to the holders of Common Stock and Preferred Stock, *pari passu*, on the basis of the number of shares of Common Stock they then hold or into which their shares of Preferred Stock are then convertible in accordance with Section 4 hereof, as applicable. In the event that the holders of Preferred Stock will receive the Target Return without any payment of the Liquidation Preference, then the assets of the Corporation available for distribution upon an event of liquidation, dissolution or winding up shall be distributed to the holders of the Corporation's Common Stock and Preferred Stock (counted on an as-converted to Common Stock basis), as their respective interests may appear.

2.4. *Treatment of Mergers, Consolidations, and Dispositions of Assets.* The merger or consolidation of the Corporation into or with another corporation (other than one in which the holders of the capital stock of the Corporation immediately prior to the merger or consolidation

continue to hold, directly or indirectly, more than 50% of the voting power or the capital stock of the surviving corporation), or the sale, lease, license, exchange or other conveyance of all or substantially all the assets of the Corporation, including its intellectual property, shall be deemed to be a liquidation, dissolution, or winding-up of the Corporation for purposes of this Section 2. Notwithstanding the forgoing, if holders of more than 50% of the outstanding Preferred Stock elect in writing not to treat such merger or consolidation, or such sale, lease, license, exchange or other conveyance, as a liquidation under this Section 2 by submitting notice of such election to the Corporation at its principal office no later than ten days after receipt of written notice of such transaction, then the provisions of Section 4.6, and not this Section 2, shall apply to all then outstanding shares of Preferred Stock. The Corporation shall not have the power to effect any transaction set forth in this Section 2.4 above unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1 through 2.3 above.

2.5. *Distributions Other Than Cash.* The amount deemed distributed to the holders of Preferred Stock upon any liquidation, dissolution, or winding-up (including any transaction treated as such pursuant to Section 2.4) shall be the cash or the fair market value of the property, rights, or securities distributed to such holders by the acquiring person, firm, or other entity. The value of such property, rights, or other securities shall be determined in good faith by the Board of Directors of the Corporation.

3. Voting Rights. Except as otherwise required by law or as provided in Section 7 hereof, the holders of the Preferred Stock and the Common Stock shall have the following respective voting rights:

3.1. *Preferred Stock Voting Rights.* Each holder of shares of Preferred Stock shall be entitled to notice of any stockholders' meeting and to vote on any matters on which the Common Stock may be voted. Each share of Preferred Stock shall be entitled to a number of votes equal to the number of whole shares of Common Stock into which such share of Preferred Stock is convertible as of the date such vote is taken (as adjusted from time to time in the manner set forth herein). Except as otherwise provided by law or as set forth herein, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

3.2. *Non-Cumulative Voting.* All voting for election of directors shall be non-cumulative.

3.3. *Increase/Decrease of Shares.* The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding and issuable upon the conversion of all of the outstanding Preferred Stock) by the affirmative vote of the holders of a majority of the then outstanding shares of the Common Stock, Preferred Stock and all other classes or series of stock of the Corporation entitled to vote thereon, voting as a single class, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

3.4 *Election of Directors.* The holders of the Corporation's capital stock shall be entitled to elect Directors as follows: (a) two Directors shall be elected by the holders of a majority of the Preferred Stock voting separately as a single class; and (b) one Director shall be the Company's Chief Executive Officer. The Corporation shall reimburse the Directors elected by the holders of Preferred Stock for all reasonable expenses incurred in their services to the Corporation.

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

4.1. *Right of Preferred Stock to Convert.* Each issued and outstanding share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance thereof and without the payment of any additional consideration therefor, into that number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.00 by the Conversion Price in effect at the time of conversion. The "Conversion Price" shall initially be \$1.00 per share, and shall be subject to adjustment (in order to adjust the number of shares of Common Stock into which the Preferred Stock is convertible) as hereinafter provided.

4.2 *Automatic Conversion of Preferred Stock.*

(a) All outstanding shares of Preferred Stock shall automatically convert into shares of Common Stock, subject to the following provisions of this Section 4.2(a), at the then effective Conversion Price (i) upon the closing of an underwritten, firm commitment public offering pursuant to an effective registration statement under the Securities Act, in which the price to the public is at least \$4.00 per share of Common Stock (subject to equitable adjustment in the event of any stock dividend, stock split, combination, reorganization, recapitalization, reclassification, or other similar event affecting such shares) and the aggregate net proceeds to the Corporation (after deduction of underwriting discounts and commissions) are not less than \$30,000,000 (a "Qualified Public Offering"), (ii) upon the written election of the holders of a majority of the outstanding Preferred Stock, that all shares of Preferred Stock shall be automatically converted (each of the events specified in subsections (i) and (ii) above, an "Automatic Conversion Event").

(b) On or after the date of occurrence of an Automatic Conversion Event, and in any event within 10 days after receipt of notice, by mail, postage prepaid from the Corporation of the occurrence of such event, each holder of record of shares of Preferred Stock being converted shall surrender such holder's certificates evidencing such shares at the principal office of the Corporation or at such other place as the Corporation shall designate, and shall thereupon be entitled to receive certificates evidencing the number of shares of Common Stock into which such shares of Preferred Stock are converted and cash as provided in Section 4.3 in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the

certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(c) All certificates evidencing shares of Preferred Stock that are required to be surrendered for conversion in accordance with the provisions hereof, from and after the date such certificates are so required to be surrendered shall be deemed to have been retired and canceled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date.

4.3. *Fractional Shares.* No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. If more than one share of Preferred Stock is surrendered for conversion at one time by the same holder, the number of shares of Common Stock issuable upon the conversion thereof shall be computed on the basis of the aggregate number of shares of Preferred Stock so surrendered. If after such aggregation such conversion would result in the issuance of a fractional share, in lieu of issuing such fractional share to such holder, the Corporation shall pay to such holder cash equal to the product of such fraction multiplied by the then effective Conversion Price of the shares of Preferred Stock so surrendered.

4.4. *Mechanics of Conversion.*

(a) In order for a holder of Preferred Stock to convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock, at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates; provided, however, that in the event of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted into Common Stock as provided in Section 4.2 above automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, further, however, that the Corporation shall not be obligated to issue to the holder of shares of Preferred Stock certificates evidencing the shares of Common Stock into which such shares are automatically converted, unless either the certificates evidencing such holder's shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued and the number of shares of Preferred Stock to be converted. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date (the "Conversion Date") and the conversion shall be deemed effective as of the close of business on the Conversion Date. The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Preferred Stock, or to his or its nominees, a

certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(b) The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock. Before taking any action that would cause an adjustment reducing the Conversion Price below the then-existing par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Corporation shall take any corporate action that may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(c) At the time of conversion of any of the Preferred Shares all declared but unpaid dividends on such shares will be paid to the holder thereof in cash or, at the option of the holders of the Preferred Stock entitled to such dividends, in Common Stock at the Conversion Price.

(d) All shares of Preferred Stock surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including without limitation the rights, if any, to receive notices, to vote and to accrual of dividends shall immediately cease and terminate at the close of business on the earlier of the Conversion Date or the date of the Automatic Conversion Event (except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive unpaid dividends declared prior to conversion) and any shares of Preferred Stock so converted shall be retired and canceled and shall not be reissued.

4.5. *Adjustments to Preferred Stock Conversion Price for Diluting Issues:*

(a) *Special Definitions.* For the purposes hereof, the following definitions shall apply:

(1) "Award" means (a) an Option (and the shares of Common Stock issued or issuable upon exercise thereof) or (b) shares of Common Stock, in each case if granted or issued to employees, officers, directors or consultants of the Corporation or any subsidiary thereof pursuant to any stock option or equity incentive plan or agreement adopted by the Board of Directors in an aggregate amount not to exceed 2,535,109 shares of Common Stock (such maximum number subject to appropriate adjustment for any stock dividend, stock split, combination, or other similar recapitalization affecting such shares).

(2) "Option" means a right, option or warrant to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(3) "Original Issue Date" means the date the first share of Preferred Stock is issued.

(4) "Convertible Securities" means any evidences of indebtedness, shares (other than Common Stock or Preferred Stock), or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(5) "Additional Shares of Common Stock" means, as to the Preferred Stock, all shares of Common Stock issued (or, pursuant to Section 4.5(c), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

- (i) upon conversion of shares of the Preferred Stock;
- (ii) as a dividend or distribution on the Preferred Stock;
- (iii) by reason of a dividend, stock split, split-up, reclassification or other pro rata distribution on, shares of Common Stock, for which appropriate adjustment is made pursuant to paragraph 4.5(f);
- (iv) as Awards, including upon the exercise or conversion thereof;
- (v) upon the closing of an offering of Common Stock or Convertible Securities to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act");
- (vi) in consideration for the acquisition or licensing of technology or assets or a corporate partnership transaction with a third party;
- (vii) in connection with bank credit lines or equipment leasing transactions;
- (viii) shares of Preferred Stock issued pursuant to the Securities Purchase Agreement; or
- (ix) after the waiver of the provisions of Section 4.5(d) hereof by the holders of at least 66-2/3% of the outstanding Preferred Stock with respect to issues (or, pursuant to Section 4.5(c), deemed issues) of Common Stock for a consideration per share that is less than the Conversion Price immediately prior to such issue (or deemed issue) of Common Stock.

(6) "Common Stock Deemed Outstanding" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock issuable at such time upon conversion of the Preferred Stock, and upon the exercise or conversion of any other Convertible Securities then outstanding, plus the number of shares of Common Stock issuable at any time upon the exercise of all then outstanding Options.

(7) "Securities Purchase Agreement" means that certain Securities Purchase Agreement dated on or about December 6, 2006 by and among the Company and the investors party thereto, as amended and in effect from time to time.

(b) *No Adjustment of Preferred Stock Conversion Price.* No adjustment shall be made in the Conversion Price for any Preferred Stock as the result of the issuance of Additional Shares of Common Stock or otherwise, unless the consideration per share determined pursuant to Section 4.5(e) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price in effect for the Preferred Stock on the date of, and immediately prior to, the issuance of such Additional Shares of Common Stock.

(c) *Issue of Options and Convertible Securities Deemed Issue of Additional Shares of Common Stock.* If the Corporation at any time or from time to time shall issue any Options or Convertible Securities, or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument(s) relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock (unless specifically excluded from the definition of Additional Shares of Common Stock pursuant to Section 4.5(a) (5)(i)-(ix) above) issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided, that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share determined pursuant to Section 4.5(e) of such Additional Shares of Common Stock would be less than the Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided, further, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the right of conversion or exchange under such Convertible Securities.

(3) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities that shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a

record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(A) In the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the additional consideration actually received by the Corporation upon the exercise of such Options or portion thereof, or for the issue of all such Convertible Securities, whether or not converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon the conversion or exchange of such Convertible Securities or portion thereof; and

(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation determined pursuant to Section 4.5(e) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no recomputation pursuant to the preceding clauses (2) and (3) shall have the effect of increasing the Conversion Price to an amount that exceeds the lower of (i) the Conversion Price in effect immediately prior to the adjustment on the original adjustment date (subject to equitable adjustment in the event of any stock dividend, stock split, combination, reorganization, recapitalization, reclassification, or other similar event), or (ii) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such recomputation date;

(5) in the case of any Options that expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (3) above; and

(6) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price that became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 4.5(c) as of the actual date of their issuance.

(d) *Adjustment of Conversion Price Upon Certain Events.* If the Corporation shall issue Additional Shares of Common Stock, including Additional Shares of Common Stock

deemed to be issued pursuant to Section 4.5(c) hereof, but excluding Additional Shares of Common Stock issued or issuable pursuant to this Section 4.5(d), without consideration or for a consideration per share less than the Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue in order to increase the number of shares of Common Stock into which the relevant shares of Preferred Stock are then convertible, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction (x) the numerator of which shall be (A) the number of shares of Common Stock Deemed Outstanding immediately prior to such issue, plus (B) the number of shares of Common Stock that the aggregate consideration received by the Corporation for the total number of Additional Shares of Common stock so issued would purchase at such Conversion Price, and (y) the denominator of which shall be (A) the number of shares of Common Stock Deemed Outstanding immediately prior to such issue, plus (B) the number of such Additional Shares of Common Stock so issued.

Notwithstanding the foregoing, the applicable Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$0.001, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction that, carried forward, shall aggregate to \$0.001 or more.

(e) *Determination of Consideration.* For purposes of this Section 4.5, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

- (1) *Cash and Property:* Such consideration shall:
 - (i) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest or accrued dividends;
 - (ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and
 - (iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration that covers both such additional Shares of Common Stock and such other shares, securities or other assets, such consideration shall be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors.
- (2) *Options and Convertible Securities.* The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4.5(c), relating to Options and Convertible Securities, shall be determined by dividing:

- (i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration until such subsequent adjustment occurs) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by
- (ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number until such subsequent adjustment occurs) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) *Adjustment for Stock Splits, Stock Dividends, Subdivisions, Combinations or Consolidation of Common Stock.* In the event the outstanding shares of Common Stock shall be split, subdivided, combined or consolidated, by reclassification or otherwise, into a greater or lesser number of shares of Common Stock, and in the event that the Corporation shall issue shares of Common Stock by way of a stock dividend or other distribution to the holders of Common Stock, the Preferred Stock Conversion Price in effect immediately prior to such split, subdivision, stock dividend, combination or consolidation shall, concurrently with the effectiveness of such split, subdivision, stock dividend, combination or consolidation, be increased or decreased proportionately.

(g) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4.5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of 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 Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that then would be received upon the conversion of Preferred Stock.

4.6. *Merger.* Subject to Section 2.4, if at any time or from time to time there shall be a merger or consolidation of the Corporation with or into another corporation (collectively, an "Acquisition"), then, as a part of such Acquisition, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock, the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such Acquisition, to which a holder of Common Stock

issuable upon conversion of such Preferred Stock would have been entitled on such Acquisition. In any such case, appropriate adjustment (as determined by the Board of Directors) shall be made in the application of the provisions of this Section 4 with respect to the rights and interest thereafter of the holders of the Preferred Stock after the Acquisition to the end that the provisions of this Section 4 (including adjustment of the Preferred Stock Conversion Price then in effect and the number of shares acquirable upon conversion of the Preferred Stock) shall be applicable after the Acquisition in as nearly equivalent a manner as maybe practicable.

4.7. *Notice of Record Date.* In the event that there occurs any of the following events:

(a) the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;

(b) there occurs or is proposed to occur any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another corporation, or of the sale of all or substantially all of the assets of the Corporation; or

(c) the involuntary or voluntary liquidation, dissolution, or winding-up of the Corporation; or

(d) the Corporation subdivides or combines its outstanding shares of Common Stock;

then in each such case, the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Preferred Stock, and shall cause to be mailed to the holders of the Preferred Stock at their addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the record date specified in (1) below or twenty days before the date specified in (2) below, a notice stating the following information:

(1) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision, or combination are to be determined, or

(2) the date on which such reclassification, consolidation, merger, sale, liquidation, dissolution, or winding-up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, liquidation, dissolution, or winding-up.

4.8. *No Impairment.* The Corporation will not, by amendment of this Amended and Restated Certification of Incorporation or through any reorganization, 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 Preferred Stock as set forth in this Section 4 against impairment.

5. Redemption.

5.1. *Optional Redemption.* At the option and written election of the holders of a majority of the outstanding Preferred Stock, the Corporation shall redeem (i) on the fifth anniversary of the Original Issue Date, one-third of the outstanding shares of Preferred Stock, and (ii) on each of the sixth and seventh anniversaries of the Original Issue Date, an equivalent number of shares of Preferred Stock. For the purposes of this Section, the Redemption Price shall be \$1.00 per share plus any other dividends declared but unpaid thereon, computed to the date payment thereof is made available. Each redemption of shares of Preferred Stock shall be made so that the number of shares of Preferred Stock held by each registered holder thereof shall be redeemed as nearly as practicable in an amount that shall bear the same ratio to the total number of shares of Preferred Stock being so redeemed as the number of shares of Preferred Stock then held by such registered holder bears to the aggregate number of shares of Preferred Stock then outstanding.

5.2. *Equitable Adjustment.* The Redemption Price set forth in this Section 5 shall be subject to equitable adjustment whenever there shall occur a stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the Preferred Stock.

5.3. *Redemption Notice.* If the holders of a majority of the outstanding shares of Preferred Stock elect to have the Corporation redeem shares of Preferred Stock as set forth in Section 5.1, notice to that effect shall be given by such holders to the Corporation at least 90 days prior to the respective anniversary date (hereinafter referred to as a "Redemption Date"). If such notice is given, then at least 45 days prior to the Redemption Date, written notice (hereinafter referred to as the "Redemption Notice") shall be mailed, postage prepaid, by the Corporation to each holder of record of the Preferred Stock that is to be redeemed, at its address shown on the records of the Corporation; provided, however, that the Corporation's failure to give such Redemption Notice shall in no way affect its obligation to redeem the shares of Preferred Stock as provided in Section 5.1 hereof. The Redemption Notice shall contain the following information:

- (a) the number of shares of Preferred Stock held by the holder to be redeemed by the Corporation and the total number of shares of Preferred Stock held by all holders to be so redeemed;
- (b) the Redemption Date and the Redemption Price; and
- (c) the place designated for the holder to surrender to the Corporation its certificate or certificates representing the shares of Preferred Stock to be redeemed.

5.4. *Surrender of Certificates.* Each holder of shares of Preferred Stock to be redeemed shall surrender the certificate(s) representing such shares to the Corporation at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares as set forth in this Section 5 shall be paid to the order of the person whose name appears on such certificate(s) and each surrendered certificate shall be canceled and retired. In the event some but not all of the shares of Preferred Stock represented by a certificate surrendered by a holder are being redeemed, the Corporation shall execute and deliver to or on the order of the holder, at the expense of the Corporation, a new certificate representing the number of shares of Preferred Stock that are not so redeemed.

5.5. *Insufficient Funds for Redemption.* If the funds of the Corporation legally available for redemption of Preferred Stock on the Redemption Date are insufficient to redeem the number of shares of Preferred Stock to be so redeemed on such Redemption Date, the holders of shares of Preferred Stock shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable with respect to the number of shares owned by them if the shares to be so redeemed on such Redemption Date were redeemed in full. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Preferred Stock, such funds will be used, at the end of that fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above. In the event that funds are not legally available for the payment in full of the aggregate Redemption Price for the actual number of shares of Preferred Stock to be so redeemed on the Redemption Date, then the Corporation shall make such partial redemptions so that the number of shares of Preferred Stock held by each registered holder shall be reduced in an amount that shall bear the same ratio to the actual number of shares of Preferred Stock required to be redeemed on such Redemption Date as the number of shares of Preferred Stock then held by such registered holder bears to the aggregate number of shares of Preferred Stock required to be redeemed on any such Redemption Date.

5.6. *Interest on Defaulted Amounts.* In the event of a default by the Corporation in the payment of the full Redemption Price, any unpaid balance of the Redemption Price shall accrue interest at the rate of 12% per annum, payable quarterly in arrears, and the holders of the Preferred Stock that has not been redeemed shall retain all other rights as holders of Preferred Stock granted hereunder.

6. Reacquired Shares. Any shares of Preferred Stock converted, redeemed, purchased, or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof, and shall not be reissued and the Corporation from time to time shall take such action as may be necessary to reduce the authorized Preferred Stock accordingly.

7. Restrictions and Limitations.

7.1. *Preferred Holders Vote Required.* Except as expressly provided herein or required by law, then without the approval by vote or written consent of the holders of a majority

of the voting power of the then outstanding shares of Preferred Stock (each share of Preferred Stock to be entitled to one vote for each share of Common Stock into which it is then convertible), the Corporation shall not, and shall not permit any subsidiary (including any entity or trust of which the Corporation owns of record a majority of the outstanding shares or interests entitled to vote in the election of directors, trustees, or persons having similar functions), whether by amendment of this Certificate of Incorporation, merger or otherwise, to do any of the following:

(a) Redeem, purchase, or otherwise acquire for value (or pay into or set aside for a sinking fund for such purchases) any capital stock of the Corporation, except as is contemplated in this Certificate and except for the repurchase of shares of Common Stock held by employees, consultants, directors, or officers of the Corporation that are subject to stock repurchase agreements under which the Corporation has the right to repurchase such shares at not more than the original purchase price per share in the event of termination of employment or the termination of the consulting relationship;

(b) Authorize or issue, or obligate itself to authorize or issue, any other equity security having any preference or priority over, or ranking senior to or on parity with, the Preferred Stock with respect to dividends, voting or rights upon liquidation, dissolution, or winding-up;

(c) Authorize or issue, or obligate itself to authorize or issue, any equity securities of the Corporation except (i) for the issuance of shares of Common Stock upon the conversion of shares of Preferred Stock in accordance herewith, (ii) the issuance of stock at one or more closings pursuant to the Securities Purchase Agreement, or (iii) for the issuance of shares of Common Stock pursuant to an Award;

(d) Issue or obligate itself to issue any additional shares of Preferred Stock or increase or decrease the par value of the shares of Preferred Stock;

(e) Amend its certificate of incorporation, or otherwise alter or change the powers, preferences or rights of any Preferred Stock, or the qualifications, limitations or restrictions thereof, or reclassify any securities junior to the Preferred Stock into shares having any preference or priority over the Preferred Stock;

(f) Increase or decrease (other than by conversion or as otherwise required or permitted hereby) the total number of authorized shares of Common Stock or Preferred Stock;

(g) Incur indebtedness for borrowed money in an aggregate amount greater than \$500,000;

(h) Liquidate, dissolve, wind-up or engage in any recapitalization or reorganization of the Corporation;

(i) Effect any sale, lease, license, assignment, pledge, transfer or other conveyance of all or a substantial portion of the assets of the Corporation (including but not limited to

intellectual property, but excluding licenses granted in the ordinary course of business consistent with past practice), acquire all or a substantial portion of the assets of another corporation or entity, or effect any merger or consolidation of the Corporation into another corporation or other entity, or a merger or consolidation of another corporation or entity into the Corporation, or effect any sale of 50% or more of the Corporation's outstanding capital securities;

(j) Pay, declare or distribute any dividend on any class or series of capital stock of the Corporation junior to the Preferred Stock, including, without limitation, Common Stock;

(k) Increase or decrease the number of authorized directors of the Corporation; or

(l) Enter into any transaction with an affiliate of the Corporation.

ARTICLE FIFTH. The Corporation is to have perpetual existence.

ARTICLE SIXTH. In furtherance of, and not in limitation of, powers conferred by statute, it is further provided:

1. The Board of Directors is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation.

2. Election of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

3. The books and records of the Corporation may be kept at such place within or without the State of Delaware as the By-laws of the Corporation may provide or as may be designated from time to time by the Board of Directors.

4. Meetings of the stockholders may be held within or without the State of Delaware, as the By-laws may provide.

ARTICLE SEVENTH. Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of the DGCL on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of the DGCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on

all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

ARTICLE EIGHTH. To the fullest extent permitted by the DGCL, 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, 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 DGCL or (iv) for any transaction from which the Director derived an improper personal benefit. If the DGCL is amended after the effective date of this Certificate of Incorporation to authorize corporate 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 DGCL, as so amended.

The Corporation shall, to the fullest extent permitted by the provisions of Section 145 of the DGCL, indemnify each person who it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section. The indemnification provided for herein shall not be deemed exclusive of any other rights to which each such indemnified person may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such indemnified person's official capacity and as to action in another capacity while serving as a director, officer, employee or agent of the Corporation, and shall continue as to a person who has ceased to be a director, officer, employee or agent of the Corporation, and shall inure to the benefit of the heirs, executors and administrators of such person.

Any (i) repeal or amendment of this Article EIGHTH by the stockholders of the Corporation or (ii) amendment to the DGCL shall not adversely affect any right or protection existing at the time of such repeal or amendment with respect to any acts or omissions occurring before such repeal or amendment of a person serving as a director, officer, employee or agent of the Corporation or otherwise enjoying the benefits of this Article EIGHTH at the time of such repeal or amendment.

ARTICLE NINTH. The Corporation reserves the right to amend, alter or repeal any provisions contained in this Certificate of Incorporation from time to time and at any time in the manner now or hereafter prescribed in this Certificate of Incorporation and by the DGCL, and all rights herein conferred upon stockholders are granted subject to such reservation.

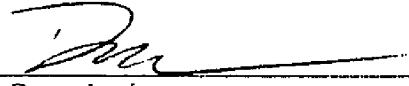
ARTICLE TENTH. Pursuant to Section 122(17) of the DGCL, the Corporation hereby renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any and all business opportunities that are presented to the holders of any shares of capital stock or their affiliates (other than holders employed by or formerly employed by the Corporation or any subsidiary, and their affiliates), (collectively, the "Exempt Parties") at any time that such holders hold any capital stock. Without limiting the foregoing renunciation, the Corporation (i) acknowledges that the Exempt Parties are in the business of making investments in, and have or may have investments in, other businesses similar to and that may compete with the Corporation's businesses ("Competing Businesses"), and (ii) agrees that the Exempt Parties shall have the unfettered right to make investments in or have relationships with other

Competing Businesses independent of their investments in the Corporation. By virtue of an Exempt Party holding capital stock or by having persons designated by or affiliated with such Exempt Party serving on or observing at meetings of the Board of Directors or otherwise, no Exempt Party shall have any obligation to the Corporation, any of its subsidiaries or any other holder of capital stock to refrain from competing with the Corporation and any of its subsidiaries, making investments in or having relationships with Competing Businesses, or otherwise engaging in any commercial activity; and none of the Corporation, any of its subsidiaries or any other holder of capital stock shall have any right with respect to any such investments or activities undertaken by such Exempt Party. Without limitation of the foregoing, each Exempt Party may engage in or possess any interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Corporation or any of its subsidiaries, and none of the Corporation, any of its subsidiaries or any other holder of capital stock shall have any rights or expectancy by virtue of such Exempt Party's relationships with the Corporation, or otherwise in and to such independent ventures or the income or profits derived therefrom; and the pursuit of any such venture, even if such investment in a Competing Business shall not for any purpose be deemed wrongful or improper. No Exempt Party shall be obligated to present any particular investment opportunity to the Corporation or any of its subsidiaries even if such opportunity is of a character that, if presented to the Corporation or such Subsidiary, could be taken by the Corporation or such subsidiary, and each Exempt Party shall continue to have the right for its own respective account or to recommend to others any such particular investment opportunity. The provisions of this Article TENTH shall in no way limit or eliminate any Exempt Party's duties, responsibilities and obligations with respect to the protection of any proprietary information of the Corporation and any of its subsidiaries, including any applicable duty to not disclose or use such proprietary information improperly or to obtain therefrom an improper personal benefit.

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned, Darcy Lorincz, the Chief Executive Officer of the Corporation, being thereunto duly authorized, has executed this Amended and Restated Certificate of Incorporation as of December 6, 2006.

CONSTELLATION MEDIASTREAM, INC.

By: 
Name: Darcy Lorincz
Title: Chief Executive Officer

W431396.03

Signature page to Amended and Restated Certificate of Incorporation

RECORDED: 04/22/2008

TRADEMARK
REEL: 003764 FRAME: 0314