

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	CORRECTIVE ASSIGNMENT
NATURE OF CONVEYANCE:	Corrective Assignment to correct the Assignment Document, which did not assign the properties in accordance with a controlling asset purchase agreement previously recorded on Reel 022750 Frame 0925. Assignor(s) hereby confirms the Nunc Pro Tunc Trademark Assignment.

CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
MIVA, INC. (now Vertro, Inc.)		04/26/2012	CORPORATION: DELAWARE

RECEIVING PARTY DATA	
Name:	U.S. Acquisition Sub, Inc. (now MIVA AK, Inc.)
Street Address:	4600 Madison Avenue, 10th FL
City:	KANSAS CITY
State/Country:	MISSOURI
Postal Code:	64112
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 22		
Property Type	Number	Word Mark
Registration Number:	3503165	MIVA INLINE
Registration Number:	2225424	MIVA
Registration Number:	3119681	MIVA MERCHANT
Registration Number:	3144895	MIVA MARKETPLACE
Registration Number:	3179269	MIVACENTRAL
Registration Number:	3182540	MIVACENTRAL
Registration Number:	3254184	MIVA
Registration Number:	3254185	MIVA
Registration Number:	3254186	A
Registration Number:	2462416	FINDWHAT.COM
Registration Number:	2493181	FIND WHAT YOU'RE LOOKING FOR
Registration Number:	2878070	TRAFFICBUILDER

CH \$565.00 3503165

Registration Number:	2893286	BIDOPTIMIZER
Registration Number:	2896470	AUTO BID
Registration Number:	2899567	CRUISE CONTROL
Registration Number:	2901597	AUTOREPLENISH
Registration Number:	2901598	ADANALYZER
Registration Number:	2904802	BUSINESSBUILDER
Registration Number:	2954712	PERFORMANCE-DRIVEN MARKETING
Registration Number:	2964997	FINDWHAT.COM
Registration Number:	3032917	INTELLIMAP
Registration Number:	3188692	ADREVENUE XPRESS

CORRESPONDENCE DATA

Fax Number: 8169311769
Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.
Phone: 816-841-7622
Email: ip@adknowledge.com
Correspondent Name: Jerome R. Smith, Jr.
Address Line 1: 4600 Madison Avenue, 10th FL
Address Line 4: KANSAS CITY, MISSOURI 64112

ATTORNEY DOCKET NUMBER:	ADK1.327T-M
NAME OF SUBMITTER:	Jerome R. Smith, Jr.
Signature:	/Jerome R. Smith, Jr./
Date:	05/17/2012

Total Attachments: 243

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mail Stop- Assignment Recordation Services
Director of the United States Patent and Trademark Office
PO BOX 1450
Alexandria, VA 22313-1450

CORRECTIVE ASSIGNMENT DOCUMENT COVER SHEET (37 CFR § 3.31)

Sir:

Attached please find a corrective assignment document for recordal, entitled: Nunc Pro Tunc Trademark Assignment, executed on April 26, 2012. This corrective assignment document is submitted in replacement of an incorrect assignment document, an Assignment Document (Assignment) executed on March 12, 2009, entitled: Trademark and Patent Assignment-Execution Version, also referred to herein as the "IP Assignment," which was recorded in the United States Patent and Trademark Office (USPTO) at: Reel: 022750, Frame: 0925. The aforementioned IP Assignment was recorded in the USPTO for U.S. Patent Applications and Patents, but not for U.S. Trademark Applications and Trademark Registrations. A copy of the aforementioned incorrect Assignment Document, the IP Assignment, executed on March 12, 2009, and recorded in the United States Patent and Trademark Office (USPTO) at: Reel: 022750, Frame: 0925, is attached hereto as Appendix AA.

It is respectfully submitted that the Assignment Document of Appendix AA, the IP Assignment, is incorrect, as it does not assign the listed U.S. and Foreign Patent Applications, Patents, Trademark Applications, and Trademark Registrations, in accordance with a controlling Asset Purchase Agreement,¹ dated March 12, 2009 (a copy of this Asset Purchase Agreement² is

¹ See the Assignment (the IP Assignment) executed on March 12, 2009 (Recorded at Reel: 022750, Frame: 0925) (Appendix AA), at Paragraph 4.1, which states, "In the event of any conflict or inconsistency between the provisions of the [Asset Purchase] Agreement and the provisions of this Assignment [(executed on March 12, 2009)], the provisions of the [Asset Purchase] Agreement will control." The Asset Purchase Agreement is attached hereto as Appendix BB. The aforementioned Assignment Document (Appendix AA) is listed as "Exhibit 1 - IP Assignment" in the Table of Contents of the Asset Purchase Agreement (Appendix BB).

² The copy of the Asset Purchase Agreement dated March 12, 2009 (Appendix BB) is a publicly available redacted Execution Copy of the aforementioned Asset Purchase Agreement from the United States Securities and Exchange Commission's Edgar Database, <http://www.sec.gov>.

attached hereto as Appendix BB), among ASSIGNORS, 1) MIVA, Inc. (MIVA), a Delaware Corporation, now known as Vertro, Inc.,³ a Delaware Corporation, 2) B&B Advertising, Inc. (B&B), a Delaware Corporation, and, 3) MIVA (UK) Limited (MIVA UK), a company formed under the laws of England and Wales, now known as Varick And Spring (UK) Limited,⁴ a company formed under the laws of England and Wales; and ASSIGNEES, 1) U.S. Acquisition Sub, Inc. (US Acquisition Sub), a Delaware Corporation, now known as MIVA AK, Inc.⁵ (MIVA AK), a Delaware Corporation, 2) Ajax Media Ltd., a company formed under the laws of England and Wales, and, 3) Adknowledge, Inc. (Adknowledge), a Delaware Corporation.

The corrective assignment document, the Nunc Pro Tunc Trademark Assignment, executed on April 26, 2012, submitted herewith, for U.S. and Foreign Trademark Applications and Trademark Registrations, is submitted in replacement of the Assignment Document, the IP Assignment, executed on March 12, 2009 (Appendix AA), for U.S. and Foreign Trademark Applications and Trademark Registrations. This corrective assignment document is in accordance with the aforementioned Asset Purchase Agreement dated March 12, 2009 (Appendix BB), in particular, Section 2.1 thereof.

IDENTIFICATION OF TRADEMARK APPLICATIONS AND/OR TRADEMARK REGISTRATIONS FOR ASSIGNMENT RECORDAL

This corrective assignment, the Nunc Pro Tunc Trademark Assignment executed April 26, 2012, is for the following Trademarks and/or Trademark Registrations, U.S. and Foreign, formerly owned by MIVA, Inc. or MIVA Small Business Solutions, Inc.⁶, and listed on

³ Documents for the name change from MIVA, Inc. to Vertro, Inc., are attached hereto as Appendix CC.

⁴ Documents for the name change from MIVA (UK) Limited to Varick And Spring (UK) Limited, are attached hereto as Appendix DD.

⁵ Documents for the name change from U.S. Acquisition Sub, Inc. to MIVA AK, Inc., as recorded in the United States Patent and Trademark Office at Reel: 022751, Frame: 0935, are attached hereto as Appendix EE.

⁶ MIVA Small Business Solutions, Inc. was a wholly-owned Direct Subsidiary of MIVA, Inc. as of March 9, 2009, the date of the Asset Purchase Agreement (Appendix BB), and is listed as such in Exhibit 21.1 of Form 10-K of MIVA, Inc. for the fiscal year ended December 31, 2008 (and signed by MIVA, Inc. signatories on March 31, 2009) (the Form 10-K), with the Exhibit 21.1 referenced in the Form 10-K at page 50. A copy of the aforementioned Form 10-K, including Exhibit 21.1, is attached hereto as Appendix FF, and is publicly available from the United States Securities and Exchange Commission's Edgar Database, <http://www.sec.gov>.

Appendix GG, attached hereto, including those which were previously listed in the IP Assignment executed on March 12, 2009 (Appendix AA).

TOTAL NUMBER OF TRADEMARK APPLICATIONS AND/OR TRADEMARK REGISTRATIONS AND TOTAL FEE

The total number of Trademark Applications and/or Trademark Registrations identified in the Assignment Cover Sheet (for the Nunc Pro Tunc Trademark Assignment) is 22, for a total fee of \$ 565.00. The Trademark Applications/Trademark Registrations are as follows:

MIVA INLINE – U.S. Reg. No. 3,503,165
MIVA – U.S. Reg. No. 2,225,424
MIVA MERCHANT – U.S. Reg. No. 3,119,681
MIVA MARKETPLACE – U.S. Reg. No. 3,144,895
MIVACENTRAL – U.S. Reg. No. 3,179,269
MIVACENTRAL – U.S. Reg. No. 3,182,540
MIVA (Stylized Letters) – U.S. Reg. No. 3,254,184
MIVA – U.S. Reg. No. 3,254,185
A (Lower Case, Stylized Letter) – U.S. Reg. No. 3,254,186
FINDWHAT.COM – U.S. Reg. No. 2,462,416
FIND WHAT YOU'RE LOOKING FOR – U.S. Reg. No. 2,493,181
TRAFFICBUILDER – U.S. Reg. No. 2,878,070
BIDOPTIMIZER – U.S. Reg. No. 2,893,286
AUTO BID – U.S. Reg. No. 2,896,470
CRUISE CONTROL – U.S. Reg. No. 2,899,567
AUTOREPLENISH – U.S. Reg. No. 2,901,597
ADANALYZER – U.S. Reg. No. 2,901,598
BUSINESSBUILDER – U.S. Reg. No. 2,904,802
PERFORMANCE-DRIVEN MARKETING – U.S. Reg. No. 2,954,712
FINDWHAT.COM – U.S. Reg. No. 2,964,997
INTELLIMAP – U.S. Reg. No. 3,032,917

ADREVENUE XPRESS – U.S. Reg. No. 3,188,692

This Assignment Fee of \$ 565.00, is to be charged to USPTO Deposit Account Number 50-5438.

The USPTO is authorized to charge any fee deficiency or credit any overpayment to USPTO Deposit Account Number 50-5438.

NAME OF PARTIES CONVEYING INTEREST

The party conveying interest in the Nunc Pro Tunc Trademark Assignment is: MIVA, Inc.⁷

NAME AND ADDRESS OF PARTIES RECEIVING INTEREST

The rights in the Nunc Pro Tunc Trademark Assignment are being conveyed to:

U.S. Acquisition Sub, Inc. (now MIVA AK, Inc.⁸)
4600 Madison Avenue, 10th Floor
Kansas City, MO 64112

DESCRIPTION OF INTEREST CONVEYED OR TRANSACTION RECORDED

The accompanying document, the Nunc Pro Tunc Trademark Assignment, intends to accomplish an assignment.

NAME AND ADDRESS OF PARTY TO WHOM CORRESPONDENCE SHOULD BE MAILED

Please address correspondence to:

Jerome R. Smith
Adknowledge, Inc.-Legal Dept.
4600 Madison Avenue, 10th Floor
Kansas City, MO 64112

⁷ MIVA, Inc. is also conveying rights for MIVA Small Business Solutions, Inc., a Wholly-owned Direct Subsidiary of MIVA, Inc., as per Footnote 6 above.

⁸ See Appendix EE

DATE ORIGINAL ASSIGNMENT (DOCUMENT) EXECUTED

The original Assignment Document (Appendix AA) was executed by Peter Corrao, on behalf of MIVA, Inc., B&B Advertising, Inc., and MIVA (UK) Limited, the ASSIGNORS, on March 12, 2009.

The original Assignment Document (Appendix AA) was executed by Scott Lynn, on behalf of U.S. Acquisition Sub, Inc., Ajax Media Ltd., and Adknowledge, Inc., the ASSIGNEES, on March 12, 2009.

DATE CORRECTIVE ASSIGNMENT (DOCUMENT) EXECUTED

The attached Corrective Assignment Document, the Nunc Pro Tunc Trademark Assignment, was executed by John B. Pizaris, General Counsel of, and on behalf of, MIVA, Inc.⁹, the ASSIGNOR, on April 26, 2012.

LANGUAGE OF ASSIGNMENT (DOCUMENT) TO BE RECORDED

The attached document (the Nunc Pro Tunc Trademark Assignment) is in the English language.

ORIGINAL DOCUMENT OR TRUE COPY SUBMITTED

Submitted herewith is a true copy of the original documents, which I certify to be a true copy.

TOTAL NUMBER OF PAGES BEING SUBMITTED

The total number of pages being submitted, including cover sheets attachments, Appendices and documents are 243 pages total.

⁹ MIVA, Inc., by virtue of its ownership of MIVA Small Business Solutions, Inc. is the owner of all marks of MIVA Small Business Solutions, Inc., as listed in Appendix GG. Additionally, see Footnote 6 above.

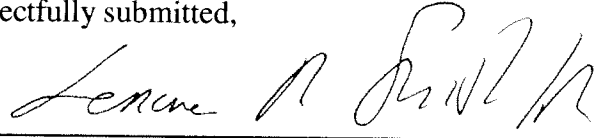
STATEMENT AND SIGNATURE

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.

Respectfully submitted,

Date: May 17, 2012

By



Jerome R. Smith, Jr., Reg. No. 35,684
Adknowledge, Inc.
Customer No.: 000012256
4600 Madison Avenue, 10th Floor
Kansas City, MO 64112
TEL: (816) 931-1771
FAX: (816) 931-1769

NUNC PRO TUNC TRADEMARK ASSIGNMENT

This Assignment ("Assignment") is made effective as of the execution date listed below, from:

ASSIGNOR:

MIVA, Inc., now Vertro, Inc. (a Delaware Corporation)

5220 Summerlin Commons Blvd.

Suite 500

Ft. Myers, FL 33907

a Delaware Corporation

(copies of the name change documents from MIVA, Inc. to Vertro, Inc. are attached hereto as Appendix A),

to,

ASSIGNEE:

U.S. Acquisition Sub, Inc., now MIVA AK, Inc. (a Delaware Corporation)

4600 Madison Avenue, 10th Floor

Kansas City, MO 64112

a Delaware Corporation,

(copies of the name change documents from U.S. Acquisition Sub, Inc. to MIVA AK, Inc. are attached hereto as Appendix B);

WHEREAS, ASSIGNOR is the owner of the U.S. and Foreign Trademark Applications and Trademark Registrations (Trademarks), collectively referred to hereinafter as the "Marks" as listed and described in Exhibit A, attached hereto and incorporated by reference herein, together with the goodwill of the business symbolized thereby in connection with the services and goods (collectively, "the services and goods") on which the Marks are used.

WHEREAS, ASSIGNOR desires to sell, convey, transfer, assign, deliver, and contribute to ASSIGNEE all of its right, title, and interest in and to the Marks.


NOW, THEREFORE, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ASSIGNOR hereby sells, conveys, transfers, assigns, delivers, and contributes to ASSIGNEE all of ASSIGNOR'S right, title, and interest of whatever kind in and to the Marks, *nunc pro tunc*, effective as of March 12, 2009, including and together with: (1) the goodwill of the business relating to the services and goods for which the Marks are used and for which they are registered; (2) all income, royalties, and damages hereafter due or payable to ASSIGNOR with respect to the Marks, including without limitation, damages, and payments for past or future

infringements and misappropriations of the Marks; and, (3) all rights to sue for past, present and future infringements or misappropriations of the Marks.

ASSIGNOR further covenants that it will execute all documents, papers, forms and authorizations and take all other actions that may be necessary for securing, completing, or vesting in ASSIGNEE full right, title, and interest in the Marks.

IN WITNESS WHEREOF, ASSIGNOR has duly executed under seal and delivered his Assignment, as of the day and year first below written.

ASSIGNOR-MIVA, Inc., now Vertro, Inc.

by  _____

John Pizaris

Title: General Counsel

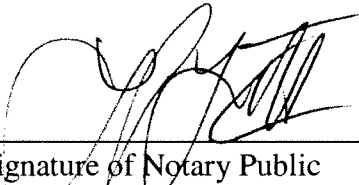
Date: 4-26, 2012

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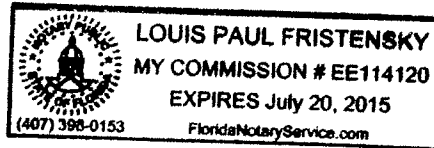
State Of Florida)
)
County Of Lee)

On April 26, 2012, before me, Louis Fristensky, Notary Public, personally appeared JOHN PISARIS, proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Signature of Notary Public



[SEAL]

EXHIBIT A

(11 Pages Total- Including This Page)

Exhibit A



Trademarks

<u>Mark</u>	<u>Registration Number</u>
MIVA MEANS BUSINESS	858104
MIVA MEANS BUSINESS	858105
MIVA RAINMAKER	864839
MIVA MEDIA	868960

Also see Attachments 1,2, and 3.

Attachment 1

UNITED STATES FEDERAL TRADEMARK APPLICATIONS / REGISTRATIONS

<u>Mark</u>	<u>App. No./ App. Date</u>	<u>Reg. No. / Reg. Date</u>	<u>Current Owner</u>
MIVA INLINE	78/994,933 8/04/2006	3,503,165 9/16/2008	MIVA Small Business Solutions, Inc.
MIVA	75/371,296 10/10/1997	2,225,424 2/23/1999	MIVA Small Business Solutions, Inc.
MIVA MERCHANT	78/592,979 3/23/2005	3,119,681 7/25/2006	MIVA Small Business Solutions, Inc.
MIVA MARKETPLACE	78/686,752 8/05/2005	3,144,895 9/19/2006	MIVA Small Business Solutions, Inc.
MIVACENTRAL	78/493,151 10/01/2004	3,179,269 12/05/2006	MIVA Small Business Solutions, Inc.
MIVACENTRAL	78/492,440 9/30/2004	3,182,540 12/12/2006	MIVA Small Business Solutions, Inc.
	78/589,218 3/17/2005	3,254,184 6/19/2007	MIVA Small Business Solutions, Inc.
MIVA	78/589,227 3/17/2005	3,254,185 6/19/2007	MIVA Small Business Solutions, Inc.
	78/589,252 3/17/2005	3,254,186 6/19/2007	MIVA Small Business Solutions, Inc.
FINDWHAT.COM	75/651,445 3/10/1999	2,462,416 6/19/2001	MIVA, Inc.
FIND WHAT YOU'RE LOOKING FOR	75/680,567 5/6/1999	2,493,181 9/25/2001	MIVA, Inc.
TRAFFICBUILDER (Supplemental Register)	78/249,690 5/14/2003	2,878,070 8/24/2004	MIVA, Inc.
BIDOPTIMIZER	78/249,667 5/14/2003	2,893,286 10/12/2004	MIVA, Inc.



AUTO BID (Supplemental Register)	78/249,711 5/14/2003	2,896,470 10/19/2004	MIVA, Inc.
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UNITED STATES FEDERAL TRADEMARK APPLICATIONS / REGISTRATIONS

<u>Mark</u>	<u>App. No./ App. Date</u>	<u>Reg. No. / Reg. Date</u>	<u>Current Owner</u>
CRUISE CONTROL	78/249,700 5/14/2003	2,899,567 11/2/2004	MIVA, Inc.
AUTOREPLENISH	78/249,685 5/14/2003	2,901,597 11/9/2004	MIVA, Inc.
ADANALYZER	78/249,708 5/14/2003	2,901,598 11/9/2004	MIVA, Inc.
BUSINESSBUILDER	78/249,681 5/14/2003	2,904,802 11/23/2004	MIVA, Inc.
PERFORMANCE-DRIVEN MARKETING	78/249,655 5/14/2003	2,954,712 5/24/2005	MIVA, Inc.
FINDWHAT.COM	78/318,902 10/27/2003	2,964,997 7/5/2005	MIVA, Inc.
INTELLIMAP	78/337,404 12/6/2003	3,032,917 12/20/2005	MIVA, Inc.
ADREVENUE XPRESS	78/492,518 9/30/2004	3,188,692 12/26/2006	MIVA, Inc.



Attachment 2

EUROPEAN COMMUNITY TRADEMARK APPLICATION / REGISTRATIONS




<u>Mark</u>	<u>App. No./ App. Date</u>	<u>Reg. No. / Reg. Date</u>	<u>Current Owner</u>
MIVA	1456748 1/11/2000	1456748 2/15/2001	MIVA Small Business Solutions, Inc.
MIVA MERCHANT	4366712 4/1/2005	4366712 3/13/2006	MIVA Small Business Solutions, Inc.
MIVA	4366721 4/1/2005	4366721 6/8/2006	MIVA Small Business Solutions, Inc.
	4369021 4/1/2005	4369021 5/15/2006	MIVA Small Business Solutions, Inc.
	4369039 4/1/2005	4369039 5/15/2006	MIVA Small Business Solutions, Inc.
MIVA MEANS BUSINESS	4503082 6/10/2005	4503082 7/13/2006	MIVA Small Business Solutions, Inc.
MIVA MEDIA	4532883 7/8/2005	4532883 6/8/2006	MIVA Small Business Solutions, Inc.
MIVA MARKETPLACE	4625836 9/2/2005	4625836 7/26/2006	MIVA Small Business Solutions, Inc.
BEFIRST	1843671 9/7/2000	1843671 4/26/2002	MIVA, Inc.
FINDWHAT.COM	1844166 9/7/2000	1844166 4/24/2002	MIVA, Inc.
MIVA RAINMAKER	4619326 8/26/2005	4619326 7/27/2006	MIVA, Inc.

Attachment 3

CANADIAN TRADEMARK APPLICATIONS / REGISTRATIONS

<u>Mark</u>	<u>App. No./ App. Date</u>	<u>Reg. No./ Reg. Date</u>	<u>Current Owner</u>
	1,252,013 3/29/2005	TMA711,644 4/11/2008	MIVA Small Business Solutions, Inc.
	1,252,014 3/29/2005	TMA711,646 4/11/2008	MIVA Small Business Solutions, Inc.
MIVA	1,252,015 3/29/2005	TMA711,645 4/11/2008	MIVA Small Business Solutions, Inc.
MIVA MERCHANT	1,252,016 3/29/2005	TMA689,350 6/7/2007	MIVA Small Business Solutions, Inc.

INTERNATIONAL MARK APPLICATIONS AND REGISTRATIONS

<u>Mark</u>	<u>Reg. No. / Reg. Date</u>	<u>Country / Current Status</u>	<u>Current Owner</u>
MIVA MERCHANT	847182 3/29/2005	China - granted Japan - granted Norway - granted	MIVA Small Business Solutions, Inc.
	855911 3/29/2005	China - granted Japan - granted Korea - granted Norway - granted	MIVA Small Business Solutions, Inc.
MIVA	855913 3/29/2005	China - refusal appealed; awaiting decision Japan - granted Korea - granted Norway - granted	MIVA Small Business Solutions, Inc.
	855914 3/29/2005	China - refusal appealed; awaiting decision Japan - granted Korea - granted Norway - granted	MIVA Small Business Solutions, Inc.
MIVA MARKETPLACE	864086 8/17/2005	China - refusal appealed; awaiting decision Korea - granted Norway - granted	MIVA Small Business Solutions, Inc.
	821164 12/05/2003	China - granted Japan - granted Norway - granted	MIVA, Inc.
FINDWHAT.COM	824309 12/5/2003	Australia - granted China - granted Japan - granted Korea - granted	MIVA, Inc.

APPENDIX A

Name Change Documents from MIVA, Inc. to Vertro, Inc.

(4 Pages Total- Including This Page)

Delaware

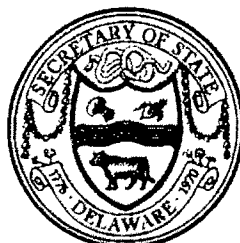
PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"MIVA NAME CHANGE, INC.", A DELAWARE CORPORATION,
WITH AND INTO "MIVA, INC." UNDER THE NAME OF "VERTRO, INC.",
A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIFTH DAY OF JUNE, A.D. 2009, AT 5:05 O'CLOCK P.M.

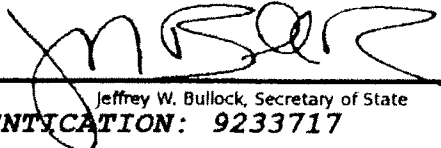
AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE NINTH DAY OF JUNE, A.D. 2009, AT 9 O'CLOCK A.M.



3503180 8100M

111300852

You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9233717

DATE: 12-16-11

TRADEMARK
REEL: 004783 FRAME: 0685

CERTIFICATE OF OWNERSHIP

MERGING

MIVA Name Change, Inc.

INTO

MIVA, Inc.

(Subsidiary into parent pursuant to Section 253 of the General Corporation Law of Delaware)

* * * * *

MIVA, Inc., a corporation incorporated on the 16th day of April, 2002, pursuant to the provisions of the General Corporation Law of the State of Delaware;

DOES HEREBY CERTIFY:

FIRST: That this corporation owns all of the capital stock of MIVA Name Change, Inc., a corporation incorporated on the 2nd day of June, 2009, pursuant to the provisions of the General Corporation Law of the State of Delaware, and that this corporation, by a resolution of its Board of Directors duly adopted on the 3rd day of June, 2009, determined to and did merge into itself MIVA Name Change, Inc., which resolution is in the following words to wit:

WHEREAS, this Corporation lawfully owns all the outstanding shares of MIVA Name Change, Inc. (the "Subsidiary"), a corporation organized and existing under the laws of Delaware;

WHEREAS, the Board of Directors deems it to be in the best interests of this Corporation and its stockholders that the Subsidiary be merged with and into this Corporation on June 9, 2009, at 9:00 a.m. eastern time (the "Effective Date");

WHEREAS, it is intended that the merger be considered a tax-free plan of reorganization of the Subsidiary pursuant to Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Board of Directors deems it to be in the best interest of this Corporation and its stockholders that the Corporation's name be changed to Vertro, Inc., pursuant to the authority granted by Section 253 of the General Corporation Law of Delaware, as of the Effective Date.

NOW, THEREFORE, BE IT RESOLVED, that this Corporation merge into itself the Subsidiary and assume all of said Subsidiary's liabilities and obligations as of the Effective Date.

FURTHER RESOLVED, that pursuant to the authority granted by Section 253 of the General Corporation Law of Delaware, the name of this Corporation is Vertro, Inc. as of the Effective Date and Article FIRST of the Amended and Restated Certificate of Incorporation of this Corporation is changed to read as follows:

FIRST: The name of the corporation is Vertro, Inc.

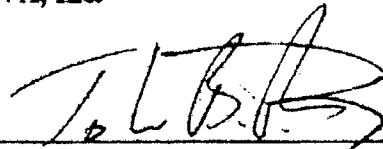
FURTHER RESOLVED, that the appropriate officers of this Corporation be and they hereby are directed to make, execute, and acknowledge a certificate of ownership setting forth a copy of the resolutions to merge Subsidiary into this Corporation and to assume Subsidiary's liabilities and obligations, and the date of adoption thereof, and to file the same in the office of the Secretary of State of Delaware, and a certified copy thereof in the office of the Recorder of Deeds of New Castle County.

FURTHER RESOLVED, that the appropriate officers of this Corporation are hereby authorized to do any and all things and to take any and all actions, whether within or without the State of Delaware, including executing, delivering, acknowledging, filing, recording, and sealing all documents, certificates, statements, or other instruments, and the making of any expenditures, which they deem necessary or advisable in order to carry out the intent and purposes of these resolutions.

SECOND: That anything herein or elsewhere to the contrary notwithstanding, this merger may be amended or terminated and abandoned by the Board of Directors of MIVA, Inc. at any time prior to the time that this merger filed with the Secretary of State becomes effective.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by an authorized officer this 5th day of June, 2009.

MIVA, Inc.



John B. Pizaris, General Counsel and Secretary

APPENDIX B

Name Change Documents from U.S. Acquisition Sub, Inc. to MIVA AK, Inc.

(3 Pages Total- Including This Page)

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "U.S. ACQUISITION SUB, INC.", CHANGING ITS NAME FROM "U.S. ACQUISITION SUB, INC." TO "MIVA AK, INC.", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF MARCH, A.D. 2009, AT 3:45 O'CLOCK P.M.

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

4661445 8100

090275564

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7192327

DATE: 03-17-09

PATENT
REEL: 023751 FRAME: 0937
TRADEMARK
REEL: 004783 FRAME: 0689

STATE OF DELAWARE
CERTIFICATE OF AMENDMENT
OF CERTIFICATE OF INCORPORATION

U.S. Acquisition Sub, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation") does hereby certify:

FIRST: That pursuant to an action by unanimous written consent of the director without a meeting taken in accordance with Section 141 of the General Corporation Law of the State of Delaware, resolutions were duly adopted by the board of directors of the Corporation, setting forth a proposed amendment of the certificate of incorporation of the corporation, declaring said amendment to be advisable and calling a meeting of the sole stockholder of the Corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Certificate of Incorporation of the Corporation be amended by changing the Article thereof numbered "ARTICLE I" so that, as amended, said Article shall be and read as follows:

ARTICLE I


The name of the corporation (which is hereinafter referred to as the "Corporation") is:

MIVA AK, Inc.

SECOND: That thereafter, in lieu of a meeting, the sole stockholder of the Corporation voted all issued and outstanding shares of capital stock of the Corporation in favor of the amendment pursuant to an action by written consent of the sole stockholder in lieu of a meeting taken in accordance with Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of Certificate of Incorporation to be signed by Scott Lynn, an authorized officer, this 17th day of March, 2009.

By: 
Name: Scott Lynn
Title: President and Chief Executive Officer

APPENDIX AA

(28 Pages Total- Including This Page)

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
MIVA, Inc., B&B Advertising, Inc., MIVA (UK) Limited	03/12/2008
RECEIVING PARTY DATA	
Name:	U.S. Acquisition Sub, Inc. (name changed to MIVA AK, Inc.)
Street Address:	4800 Madison Avenue
Internal Address:	10th Floor
City:	Kansas City
State/Country:	MISSOURI
Postal Code:	64112
Name:	Ajax Media LTD.
Street Address:	4800 Madison Avenue
Internal Address:	10th Floor
City:	Kansas City
State/Country:	MISSOURI
Postal Code:	64112
Name:	Adknowledge, Inc.
Street Address:	4800 Madison Avenue
Internal Address:	10th Floor
City:	Kansas City
State/Country:	MISSOURI
Postal Code:	64112
PROPERTY NUMBERS Total: 12	
Property Type	Number
Application Number:	11369085
Application Number:	09781500

OF 5310 00 11369085

500871799

PATENT
REEL: 022750 FRAME: 0926

TRADEMARK
REEL: 004783 FRAME: 0692

Application Number:	10331926
Application Number:	11399914
Application Number:	10854134
Application Number:	10724546
Application Number:	10979470
Application Number:	11238460
Application Number:	11284571
Application Number:	11400489
Application Number:	10296036
Application Number:	10801199

CORRESPONDENCE DATA

Fax Number: (215)557-8477
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
Phone: 215-599-0985
Email: denise@mendelip.com
Correspondent Name: Jerome R. Smith, Jr.
Address Line 1: Mendelsohn, Drucker, & Associates, P.C.
Address Line 2: 1500 John F. Kennedy Blvd., Suite 405
Address Line 4: Philadelphia, PENNSYLVANIA 19102

ATTORNEY DOCKET NUMBER:	1182.001
NAME OF SUBMITTER:	Jerome R. Smith

Total Attachments: 24
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TRADEMARK
REEL: 004783 FRAME: 0693

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PATENT
REEL: 022760 FRAME: 0927

TRADEMARK
REEL: 004783 FRAME: 0694

REDACTED

Confidential Subject Matter Redacted by Assignees

EXECUTION VERSION

TRADEMARK AND PATENT ASSIGNMENT

This Trademark and Patent Assignment (this "Assignment") is entered into effective as of March 12, 2009 (the "Effective Date") by and between MIVA, Inc., a Delaware corporation ("MIVA"), B&B Advertising, Inc., a Delaware corporation ("B&B"), MIVA (UK) Limited, a company formed under the laws of England and Wales ("MIVA (UK)", collectively with MIVA and B&B, the "Assignors" and each an "Assignor"), U.S. Acquisition Sub, Inc., a Delaware corporation (the "U.S. Acquisition Sub"), Ajax Media Ltd., a company formed under the laws of England and Wales (the "European Acquisition Sub," collectively with the U.S. Acquisition Sub, the "Acquisition Subs"), and Adknowledge, Inc., a Delaware corporation ("Adknowledge," collectively with the Acquisition Subs, the "Assignees" and each an "Assignee").

1.0 Background.

1.1 The Assignors and the Assignees have entered into that certain Asset Purchase Agreement by and among the Assignors and Assignees dated as of the Effective Date (the "Agreement"), pursuant to which the Assignors wish to assign the Trademarks and Patents (as those terms are defined below) to the Assignees. Capitalized terms used but not defined in this Assignment shall have the respective meanings ascribed to such terms in the Agreement.

2.0 Assignment.

2.1 In consideration of and exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignors hereby assign, sell, transfer and set over unto the Assignees their entire right, title and interest in and to all intellectual property used or held for use by any Assignor in the Assignors' business:

including, without limitation:

(a) the trademarks and service marks set forth on Exhibit A attached hereto (collectively the "Trademarks"), together with the associated goodwill, and all registrations and applications to register any such Trademarks;

(b) the patents and patent applications listed on Exhibit B attached hereto (collectively the "Patents"), together with all corresponding foreign applications and patents which may be filed thereon, including the right to claim priority from such patents; and

(c)

[REDACTED]

2.2 The Assignors agree to execute and deliver at the request of the Assignees, all papers, instruments, and assignments, and, at the cost and expense of the Assignees, to perform any other reasonable acts the Assignees may require in order to vest all of the Assignors' rights, title, and interest in and to said Trademarks and Patents in the Assignees and/or to provide evidence to support any of the foregoing in the event such evidence is deemed necessary by the Assignees, to the extent such evidence is in the possession or control of Assignors.

2.3 Each Assignor hereby irrevocably designates and appoints each Assignee and its duly authorized officers and agents as such Assignor's agent and attorney in fact, to act for and on its behalf and stand to execute and file any such applications and documents and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, trademark or service mark registrations or copyright registrations, or to evidence, perfect or facilitate transfers or assignments thereof or of any other intellectual property assigned hereunder (or related to or derived from any intellectual property assigned hereunder), with the same legal force and effect as if executed by such Assignor. This appointment is coupled with an interest in and to the intellectual property assigned hereunder and any inventions, works of authorship, trademarks, service marks, trade secrets and other things to which such intellectual property may apply.

3.0 [REDACTED]

3.1 [REDACTED]

3.2 [REDACTED]

4.0 Miscellaneous.

4.1 Nothing in this Assignment shall alter any liability or obligation of the Assignors or the Assignees arising under the Agreement. In the event of any conflict or inconsistency between the provisions of the Agreement and the provisions of this Assignment, the provisions of the Agreement will control.

4.2 This Assignment shall be governed by, and construed and enforced in accordance with the laws of the State of New York and the federal laws of the United States, without reference to principles of conflicts of law that might cause the laws of any other jurisdiction to apply.

4.3 This Assignment may be executed in counterparts, each of which, when executed, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned, being the duly authorized representatives of the Assignors and Assignees, have executed this Assignment below effective as of the Effective Date.

ASSIGNORS:

MIVA, INC.
By: Peter A. Corrao
Name: Peter Corrao
Title: Chief Executive Officer

B&B ADVERTISING, INC.
By: Peter A. Corrao
Name: Peter Corrao
Title: Chief Executive Officer

MIVA (UK) LIMITED
By: Peter A. Corrao
Name: Peter Corrao
Title: Director


IP ASSIGNMENT SIGNATURE PAGE

PATENT
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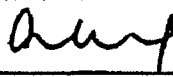
TRADEMARK
REEL: 004783 FRAME: 0697

ASSIGNERS:


U.S. ACQUISITION SUB, INC.

By: 
Name: Scott Lynn
Title: Chief Executive Officer

AJAK MEDIA LTD.

By: 
Name: Scott Lynn
Title: Director

ADKNOWLEDGE, INC.

By: 
Name: Scott Lynn
Title: Chief Executive Officer

IP ASSIGNMENT SIGNATURE PAGE

PATENT
REEL: 022760 FRAME: 0931

TRADEMARK
REEL: 004783 FRAME: 0698

Exhibit A

Trademarks

<u>Mark</u>	<u>Registration Number</u>
MIVA MEANS BUSINESS	858104
MIVA MEANS BUSINESS	858105
MIVA RAINMAKER	864839
MIVA MEDIA	868960

Also see Attachments 1, 2, and 3.

CHDM812689392.3

PATENT
REEL: 022750 FRAME: 0932

TRADEMARK
REEL: 004783 FRAME: 0699

Exhibit B



Patents

See Attachments 4, 5, and 6.

Attachment 1

PATENT
REEL: 022750 FRAME: 0934
TRADEMARK
REEL: 004783 FRAME: 0701

UNITED STATES FEDERAL TRADEMARK APPLICATIONS / REGISTRATIONS

Mark	App. No. / App. Date	Reg. No. / Reg. Date	Current Owner
TRAFFICANALYST (Supplemental Register)	78/226,945 3/18/03	2,849,943 6/01/04	B&B Advertising, Inc.
SEARCHFEED	78/226,931 3/18/03	2,951,327 5/17/05	B&B Advertising, Inc.
WORD MASTER	76/535,702 7/29/03	3,022,414 12/06/05	E-Spotting Limited
MIVA INLINE	78/944,933 8/04/06	3,503,165 9/16/08	MIVA Small Business Solutions, Inc.
MIVA	75/371,296 10/10/97	2,225,424 2/23/99	MIVA Small Business Solutions, Inc.
MIVA MERCHANT	78/592,979 3/23/05	3,119,681 7/25/06	MIVA Small Business Solutions, Inc.
MIVA MARKETPLACE	78/686,752 8/05/05	3,144,895 9/19/06	MIVA Small Business Solutions, Inc.
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MIVACENTRAL	78/492,440 9/30/04	3,182,540 12/12/06	MIVA Small Business Solutions, Inc.
	78/589,218 3/17/05	3,254,184 6/19/07	MIVA Small Business Solutions, Inc.
MIVA	78/589,227 3/17/05	3,254,185 6/19/07	MIVA Small Business Solutions, Inc.
	78/589,252 3/17/05	3,254,186 6/19/07	MIVA Small Business Solutions, Inc.
FINDWHAT.COM	75/651,445 3/10/99	2,462,416 6/19/01	MIVA, Inc.
FIND WHAT YOU'RE LOOKING FOR	75/680,567 5/06/99	2,493,181 9/25/01	MIVA, Inc.
TRAFFICBUILDER (Supplemental Register)	78/249,690 5/14/03	2,878,070 8/24/04	MIVA, Inc.

PATENT
REEL: 022750 FRAME: 0936

TRADEMARK
REEL: 004783 FRAME: 0702

Mark	App. No. / App. Date	Reg. No. / Reg. Date	Current Owner
BIDOPTIMIZER	78/249,667 5/14/03	2,893,286 10/12/04	MIVA, Inc.
AUTO BID (Supplemental Register)	78/249,711 5/14/03	2,896,470 10/19/04	MIVA, Inc.
CRUISE CONTROL	78/249,700 5/14/03	2,899,567 11/02/04	MIVA, Inc.
AUTOREPLENISH	78/249,683 5/14/03	2,901,597 11/09/04	MIVA, Inc.
ADANALYZER	78/249,708 5/14/03	2,901,598 11/09/04	MIVA, Inc.
BUSINESSBUILDER	78/249,681 5/14/03	2,904,802 11/23/04	MIVA, Inc.
PERFORMANCE-DRIVEN MARKETING	78/249,655 5/14/03	2,954,712 5/24/05	MIVA, Inc.
FINDWHAT.COM	78/318,902 10/27/03	2,964,997 7/05/05	MIVA, Inc.
INTELLIMAP	78/337,404 12/06/03	3,032,917 12/20/05	MIVA, Inc.
ADREVENUE XPRESS	78/492,518 9/30/04	3,188,692 12/26/06	MIVA, Inc.





PATENT
REEL: 022750 FRAME: 0936

TRADEMARK
REEL: 004783 FRAME: 0703

Attachment 2

PATENT
REEL: 022760 FRAME: 0937
TRADEMARK
REEL: 004783 FRAME: 0704

EUROPEAN COMMUNITY TRADEMARK APPLICATIONS / REGISTRATIONS

<i>Mark</i>	<i>App. No. / App. Date</i>	<i>Reg. No. / Reg. Date</i>	<i>Current Owner</i>
ESPOTTING	2388346 9/25/01	2388346 7/30/03	E-Spotting Limited
	2388759 9/25/01	2388759 5/14/03	E-Spotting Limited
	2395622 9/25/01	2395622 4/30/03	E-Spotting Limited
WORD MASTER	3270691 7/08/03	3270691 11/19/04	E-Spotting Limited
MIVA	1456748 1/11/00	1456748 2/15/01	MIVA Small Business Solutions, Inc.
MIVA MERCHANT	4366712 4/01/05	4366712 3/13/06	MIVA Small Business Solutions, Inc.
MIVA	4366721 4/01/05	4366721 6/08/06	MIVA Small Business Solutions, Inc.
	4369021 4/01/05	4369021 5/15/06	MIVA Small Business Solutions, Inc.
	4369039 4/01/05	4369039 5/15/06	MIVA Small Business Solutions, Inc.
MIVA MEANS BUSINESS	4503082 6/10/05	4503082 7/13/06	MIVA Small Business Solutions, Inc.
MIVA MEDIA	4532883 7/08/05	4532883 6/08/06	MIVA Small Business Solutions, Inc.
MIVA MARKETPLACE	4625836 9/02/05	4625836 7/26/06	MIVA Small Business Solutions, Inc.
BEFIRST	1843671 9/07/00	1843671 4/26/02	MIVA, Inc.

**PATENT
REEL: 022750 FRAME: 0938**

**TRADEMARK
REEL: 004783 FRAME: 0705**

<i>Mark</i>	<i>App. No. / App. Date</i>	<i>Reg. No. / Reg. Date</i>	<i>Current Owner</i>
FINDWHAT.COM	1844166 9/07/00	1844166 4/24/02	MIVA, Inc.
MIVA RAINMAKER	4619326 8/26/03	4619326 7/27/06	MIVA, Inc.



PATENT
REEL: 022750 FRAME: 0939

TRADEMARK
REEL: 004783 FRAME: 0706

Attachment 3

PATENT
REEL: 022760 FRAME: 0940
TRADEMARK
REEL: 004783 FRAME: 0707

CANADIAN TRADEMARK APPLICATIONS / REGISTRATIONS

<i>Mark</i>	<i>App. No./ App. Date</i>	<i>Reg. No./ Reg. Date</i>	<i>Current Owner</i>
	1,252,013 3/29/05	TMA711,644 4/11/08	MIVA Small Business Solutions, Inc.
	1,252,014 3/29/05	TMA711,646 4/11/08	MIVA Small Business Solutions, Inc.
MIVA	1,252,015 3/29/05	TMA711,645 4/11/08	MIVA Small Business Solutions, Inc.
MIVA MERCHANT	1,252,016 3/29/05	TMA689,350 6/7/07	MIVA Small Business Solutions, Inc.




PATENT

REEL: 022750 FRAME: 0941

TRADEMARK

REEL: 004783 FRAME: 0708

INTERNATIONAL MARK APPLICATIONS AND REGISTRATIONS

<u>Mark</u>	<u>Reg. No. / Reg. Date</u>	<u>Country / Current Status</u>	<u>Current Owner</u>
MIVA MERCHANT	847182 3/29/05	China—granted Japan—granted Norway—granted	MIVA Small Business Solutions, Inc.
	855911 3/29/05	China—granted Japan—granted Korea—granted Norway—granted	MIVA Small Business Solutions, Inc.
MIVA	855913 3/29/05	China—refusal appealed; awaiting decision Japan—granted Korea—granted Norway—granted	MIVA Small Business Solutions, Inc.
	855914 3/29/05	China—refusal appealed; awaiting decision Japan—granted Korea—granted Norway—granted	MIVA Small Business Solutions, Inc.
MIVA MARKETPLACE	864086 8/17/05	China—refusal appealed; awaiting decision Korea—granted Norway—granted	MIVA Small Business Solutions, Inc.
	821164 12/05/03	China—granted Japan—granted Korea—granted	MIVA, Inc.
FINDWHAT.COM	824309 12/05/03	Australia—granted China—granted Japan—granted Korea—granted	MIVA, Inc.

**PATENT
REEL: 022750 FRAME: 0942**

**TRADEMARK
REEL: 004783 FRAME: 0709**

Attachment 4

PATENT
REEL: 022760 FRAME: 0943
TRADEMARK
REEL: 004783 FRAME: 0710

13 January, 2009

U.S. PATENT APPLICATIONS

Title	Country	Application No.	Filing Date	Publication No.
MVA, Inc. Patent Applications				
System and Method For Marketing Employing The Distribution of a Pay For Performance Database	United States of America	09/781,500	2/12/2001	
System and Method For Pay For Performance Advertising In General Media	United States of America	10/331,926	12/30/2002	US2003/0220668
System and Method For Pay For Performance Advertising In General Media	United States of America	11/399,914	4/7/06	2006/0190336
System and Method For Pay For Performance Advertising Employing Multiple Sets of Advertisement Listings	United States of America	10/654,134	9/2/2003	US2004/0133471
System and Method For Pay For Performance Advertising Having Bidable Advertising Units Utilizing Rotating To Advertiser Websites	United States of America	10/724,546	11/26/2003	US2004/0162757
System and Method for Distributing Content Using Advertising Sponsorship	United States of America	10/979,470	11/01/2004	US2005/0125354
System and Method for Delivering Pay For Performance Advertising in Conjunction with Distributed Media Content	United States of America	11/236,460	8/27/05	
System and Method for Delivery Pay for Performance Advertising with Enhanced Effectiveness	United States of America	11/284,571	11/22/05	

PATENT
REEL: 022750 FRAME: 0944

TRADEMARK
REEL: 004783 FRAME: 0711

Advertisement Brokerage System for Diversified General Media	United States of America	11/400,469	4/7/06	
System and Method for Delivering Advertising with Enhanced Effectiveness	United States of America	11/369,085	3/6/06	
"Spotting" Patent Applications				
Search Apparatus and a Method of Searching	United States of America	10/296,036	6/6/2003	US2004/0117353
Searchfeed Patent Applications				
A System and Method for Ranking the Quality of Internet Traffic Directed From One Web Site to Another	United States of America	10/801,199	3/16/2004	2004-0190448

MVA CONFIDENTIAL

PATENT
REEL: 022760 FRAME: 0945

TRADEMARK
REEL: 004783 FRAME: 0712

Attachment 5

PATENT
REEL: 022750 FRAME: 0946
TRADEMARK
REEL: 004783 FRAME: 0713

MYA, Inc. EU and Foreign Patent Applications

System and Method For Pay For Performance Advertising In General Media	Patent Cooperation Treaty	PCT/US02/41707 / WO/003058531	12/30/02
System and Method For Pay For Performance Advertising In General Media	Australia	300235797 / WO/003058531	12/30/02
System and Method For Pay For Performance Advertising In General Media	Canada	3473100 / WO/003058531	12/30/02
System and Method For Pay For Performance Advertising In General Media	China	02827796.1 / WO/003058531	12/30/02
System and Method For Pay For Performance Advertising In General Media	European Patent Office	02806270.1 / WO/003058531	12/30/02
System and Method For Pay For Performance Advertising In General Media	Republic of Korea	04/7040271 / WO/003058531	12/30/02
System and Method For Pay For Performance Advertising Employing Multiple Sets of Advertisement Listings	Patent Cooperation Treaty	PCT/US03/27474 / WO/04021152	9/2/2003
System and Method For Pay For Performance Advertising Employing Multiple Sets of Advertisement Listings	European Patent Office	03749336.8 / WO/04021152	8/28/2003
System and Method For Pay For Performance Advertising Employing Multiple Sets of	Australia	2003268374 / WO/04021152	8/29/2003

PATENT
REEL: 022750 FRAME: 0947

TRADEMARK
REEL: 004783 FRAME: 0714

Advertisement Listings			
System and Method For Pay For Performance Advertising Employing Multiple Sets of Advertisement Listings	Canada	Not available / WO/04021152	8/29/2003
System and Method For Pay For Performance Advertising Employing Multiple Sets of Advertisement Listings	China	Not available / WO/04021152	8/29/2003
System and Method For Pay For Performance Advertising Employing Multiple Sets of Advertisement Listings	Japan	2004-533020 / WO/04021152	8/29/2003
System and Method For Pay For Performance Advertising Having Bidable Advertising Units Utilizing Rotating Routing To Advertiser Websites	Patent Cooperation Treaty	PCT/US03/38007 / WO/04051418	11/26/2003
System and Method For Pay For Performance Advertising Having Bidable Advertising Units Utilizing Rotating Routing To Advertiser Websites	European Patent Office	PCT/US03/038007 / WO/04051418	11/26/2003
System and Method For Pay For Performance Advertising Having Bidable Advertising Units Utilizing Rotating Routing To Advertiser Websites	Japan	2004-557,385 / WO/04051418	11/26/2003
System and Method For Pay For Performance Advertising Having Bidable Advertising Units Utilizing Rotating Routing To Advertiser Websites	Canada	2,507,510 / WO/04051418	11/26/2003
System and Method For Pay For Performance Advertising Having Bidable Advertising	China	2003 80108823.6 / WO/04051418	11/26/2003

PATENT
REEL: 022750 FRAME: 0948

TRADEMARK
REEL: 004783 FRAME: 0715

Units Utilizing Rotating Routing To Advertiser Websites			
System and Method For Pay For Performance Advertising Having Bidable Advertising Units Utilizing Rotating Routing To Advertiser Websites	Australia	2003 293,160 / WO/04051418	11/26/2005
System and Method for Distributing Content Using Advertising Sponsorship	Patent Cooperation Treaty	PCT/US04/36390 / WO05/043341	11/01/2004
System and Method for Distributing Content Using Advertising Sponsorship	European Patent Office	PCT/US04/36390 / WO05/043341	11/01/2004
System and Method for Distributing Content Using Advertising Sponsorship	Canada	2,544,341 / CA2544341	11/01/2004
System and Method for Distributing Content Using Advertising Sponsorship	Hong Kong	06113126.4	11/30/06

MTVA (UK) EU and Foreign Patent Applications

Search Apparatus and a Method of Searching	European Patent Office	2001EP -- 0931940 / EP1282903	5/24/2001
Search Apparatus and a Method of Searching	Japan	2001JP -- 0887236 / JP2003-034096	5/24/2001
Search Apparatus and a Method of Searching	Patent Cooperation Treaty	PCT/GB01/00000 / WO 01/00017 A2	5/24/2001

PATENT
REEL: 022750 FRAME: 0949

TRADEMARK
REEL: 004783 FRAME: 0716

Attachment 6

PATENT
REEL: 022750 FRAME: 0950
TRADEMARK
REEL: 004783 FRAME: 0717

Foreign Patents

Name: Searching Apparatus and a Method of Searching

Country: Canada

Application Number: 2001CA - 2409951

Filing Date: 5/24/2001

Publication Number: CA2409951

Patent Number: 2,409,951

Issue Date: December 5, 2006

Owner: MIVA (UK) Limited

Abstract: A search engine at a service provider is configured to identify commercial suppliers in response to a keyword specified by a user. Keywords are received and searches are performed on an index database to identify displayable text items. Images are stored in the form of commercially relevant graphical images such as logos. A logo is linked to each item of displayable text and an output list is produced in which each text item includes a displayable graphical image. The system may store different image formats to allow the graphical images to be displayed on a variety of platforms.

RECORDED: 06/29/2009

**PATENT
REEL: 022760 FRAME: 0961**

**TRADEMARK
REEL: 004783 FRAME: 0718**

APPENDIX BB

(55 Pages Total- Including This Page)

EX-10.1 2 a09-8019_lex10d1.htm EX-10.1

Exhibit 10.1

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO CERTAIN PORTIONS OF THIS AGREEMENT. CONFIDENTIAL PORTIONS HAVE BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

EXECUTION COPY

ASSET PURCHASE AGREEMENT

among

MIVA, Inc.,

B & B Advertising, Inc.

and

MIVA (UK) Limited

as the Sellers

and

U.S. Acquisition Sub, Inc.,

Ajax Media Ltd.

and

Adknowledge, Inc.

as the Buyers

Dated as of March 12, 2009

*** = Confidential treatment requested for redacted portion; redacted portion has been filed separately with the Securities and Exchange Commission.

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*** = Confidential treatment requested for redacted portion; redacted portion has been filed separately with the Securities and Exchange Commission.

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[***] = Confidential treatment requested for redacted portion; redacted portion has been filed separately with the Securities and Exchange Commission.

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of March 12, 2009 (this "Agreement"), among MIVA, Inc., a Delaware corporation (the "MIVA"), B & B Advertising, Inc., a Delaware corporation ("B&B"), MIVA (UK) Limited, a company formed under the laws of England and Wales ("MIVA (UK)"), collectively with MIVA and B&B, the "Sellers" and each a "Seller") U.S. Acquisition Sub, Inc., a Delaware corporation (the "U.S. Acquisition Sub"), Ajax Media Ltd., a company formed under the laws of England and Wales (the "European Acquisition Sub," collectively with the U.S. Acquisition Sub, the "Acquisition Subs"), and Adknowledge, Inc., a Delaware corporation ("Adknowledge," collectively with the Acquisition Subs, the "Buyers" and each a "Buyer").

RECITALS

A. The Sellers are engaged among other things, in the business of owning and operating a pay-per-click network connecting advertisers and third party publishers (the "Media Business") in North America (the "U.S. Media Business") and Europe (the "European Media Business") both directly and through Subsidiaries.

B. The Sellers wish to sell to (i) the U.S. Acquisition Sub, and the U.S. Acquisition Sub wishes to purchase from the Sellers, the entire U.S. Media Business, and in connection therewith the U.S. Acquisition Sub is willing to assume the U.S. Assumed Liabilities, and (ii) the European Acquisition Sub, and the European Acquisition Sub wishes to purchase from the Sellers, the entire European Media Business, and in connection therewith the European Acquisition Sub is willing to assume the European Assumed Liabilities, in each case, upon the terms and subject to the conditions set forth herein.

AGREEMENT

In consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Certain Defined Terms. For purposes of this Agreement:

"Action" means any claim, action, suit, arbitration or proceeding by or before any Governmental Authority, or any other litigation, arbitration, mediation or similar proceeding.

"Affiliate" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

"Ancillary Agreements" means the Transition Services Agreement, the Premises License Agreement, the Intellectual Property Assignment, the Assignment and Assumption

[***] = Confidential treatment requested for redacted portion; redacted portion has been filed separately with the Securities and Exchange Commission.

Agreement, the Bill of Sale, the Sellers Solvency Certificate, the Lane's Gifts Fulfillment Agreement and the Perot Management Agreement.

"Assets and Properties" of any Person means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, whether absolute, contingent, accrued, fixed or otherwise and wherever situated, including the goodwill related thereto), operated owned or leased by such Person, including without limitation, evidences of indebtedness, stocks, securities, accounts and notes receivable, chattel paper, documents, instruments, general intangibles, real estate, equipment, inventory, goods and Intellectual Property.

"Assignment and Assumption Agreement" means the assignment and assumption agreement for the Transferred Assets and the Assumed Liabilities, dated as of the date hereof.

"Assumed Liabilities" means collectively the U.S. Assumed Liabilities and the European Assumed Liabilities.

"Bill of Sale" means the bill of sale for the Transferred Assets, as of the date hereof.

"Books and Records" means all books of account, general, financial, accounting and personnel records, files, invoices, customers' and suppliers' lists, other distribution lists, billing records, sales and promotional literature, manuals and customer and supplier correspondence owned by the Sellers or an Affiliate of the Sellers relating to the Media Business.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York.

"Business Employees" means all individuals employed by the Sellers or any of their Subsidiaries immediately prior to the Closing Date (including (i) those on military leave and family and medical leave, (ii) those on approved leaves of absence, but only to the extent they have reemployment rights guaranteed under federal, state or foreign law, under any applicable collective bargaining agreement or under any leave of absence policy of the employer and (iii) those on short-term disability under the Seller's short-term disability program), whose duties relate primarily to the operations of the Media Business regardless of the company payroll on which such individuals are listed.

"Business Intellectual Property" means all Intellectual Property that is included in the U.S. Media Assets or the European Media Assets.

"Buyer Material Adverse Effect" means any event, change, occurrence or effect that would prevent, materially delay or materially impede the performance by the Buyers of their obligations under this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby.

"Code" means the Internal Revenue Code of 1986, as amended.

[***] = Confidential treatment requested for redacted portion; redacted portion has been filed separately with the Securities and Exchange Commission.

"Contracts" means all contracts and agreements to which a Seller is a party or by which a Seller is bound that arise out of the operation of the Media Business, including all contracts and agreements listed in Schedule 1.1(a) of the Disclosure Schedules;

"control," including the terms "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by contract or otherwise.

"Employee Plans" means all "employee benefit plans" within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA), and all other compensation and benefit plans, contracts, policies, programs and arrangements (other than routine administrative procedures) of the Sellers or any of their Subsidiaries in effect as of the date hereof, including all pension, profit sharing, savings and thrift, bonus, stock bonus, stock option or other cash or equity-based incentive or deferred compensation, severance pay and medical and life insurance plans, in which any of the Business Employees or their dependents participate or under which any of the Business Employees or their dependents are covered.

"Encumbrance" means any charge, limitation, condition, equitable interest, mortgage, lien, option, pledge, security interest, easement, encroachment, right of first refusal, or pre-emption, adverse claim, restriction or third party right of any kind, including any restriction on or transfer or other assignment, as security or otherwise, of or relating to use, quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"European Closing Working Capital" means the net book value of the consolidated European Included Assets less the consolidated European Included Liabilities, as shown on the European Closing Net Working Capital Statement.

"European Included Assets" means, solely with respect to the European Media Assets, the current assets included in the European Media Assets, including prepaid expenses but excluding Excluded Assets and deferred tax assets and receivables from any of the Sellers' Affiliates, directors, employees or officers and any of their Affiliates, in each case calculated as of the close of business on the Closing Date and determined in accordance with GAAP applied on basis consistent with the preparation of the Financial Statements and in accordance with Schedule 2.7(a).

"European Included Liabilities" means, solely with respect to the European Media Assets, the current liabilities included in the European Assumed Liabilities, including accrued compensation and accrued expenses (including customer deposits or deferred revenue), but excluding payables to any of the Sellers' Affiliates that are extinguished at Closing and Excluded Liabilities, in each case calculated as of the close of business on the Closing Date and determined in accordance with GAAP applied on a basis consistent with the preparation of the Interim Financial Statements and in accordance with Schedule 2.7(a).

"European Media Assets" means all of the Sellers' and/or their Affiliate's right, title and interest, direct or indirect, in and to all of the Contracts, assets, properties and rights of

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every nature, kind and description (wherever located), whether tangible or intangible, used or held for use in the European Media Business (other than the Excluded Assets), as they exist at the time of the Closing, including, without limitation, the Contracts, assets, properties and rights set forth on Schedule 1.1(b) of the Disclosure Schedules.

"European Targeted Working Capital" means [***].

"European Working Capital Adjustment" means an amount equal to the European Targeted Working Capital less the European Closing Working Capital as finally determined pursuant to Section 2.7.

"Exon-Florio Provision" means Section 721 of the Defense Production Act of 1950, as amended, and the regulations promulgated thereunder.

"Foreign Plans" means Employee Plans that are maintained or contributed to solely for the benefit of employees of a Seller or any of their Subsidiaries who are not resident in the United States, and the employee policies and practices applicable to such employees.

"GAAP" means United States generally accepted accounting principles and practices as in effect on the date hereof.

"Governmental Authority" means any United States or non-United States national, federal, state or local governmental, regulatory or administrative authority, agency or commission or any judicial or arbitral body.

"Immediate Family" means, with respect to any individual, that individual's (i) spouse and (ii) the parents, siblings and children of that individual or of that individual's spouse.

"Intellectual Property" means all intellectual property rights arising under the laws of the United States or any other jurisdiction with respect to the following: (i) trade names, trademarks and service marks (registered and unregistered), domain names, trade dress and similar rights and applications to register any of the foregoing (including pending "intent-to-use" and similar applications that reserve the right to obtain or that establish or may establish a priority date with respect to any of the foregoing) (collectively, "Marks"); (ii) patents and patent applications (including provisional applications and all other filings that establish or may establish priority dates), inventions (including all rights to file, obtain or own any patent applications or patents that relate to any inventions), and rights in respect of utility models or industrial designs (collectively, "Patents"); (iii) copyrights and registrations and applications therefor (collectively, "Copyrights"); and (iv) know-how, inventions, discoveries, methods, processes, technical data, specifications, research and development information, technology, data bases and other proprietary or confidential information, including customer lists, in each case that derives economic value from not being generally known to other Persons who can obtain economic value from its disclosure (collectively, "Trade Secrets").

"Intellectual Property Assignment" means the assignment of Intellectual Property in the form of Exhibit I to this Agreement.

[***] = Confidential treatment requested for redacted portion; redacted portion has been filed separately with the Securities and Exchange Commission.

"IRS" means the Internal Revenue Service of the United States.

"Knowledge" with respect to a Seller, means the actual knowledge of the persons listed on Schedule 1.1(c)(i) of the Disclosure Schedules, and with respect to a Buyer, means the actual knowledge of the persons listed on Schedule 1.1(c)(ii) of the Disclosure Schedules, and in each case, such knowledge as would be imputed to such persons upon reasonable inquiry.

"Law" means any statute, law, ordinance, regulation, rule, code, injunction, judgment, decree or order of any Governmental Authority.

"Leased Real Property" means all real property leased, subleased or licensed to the Sellers or any of its Subsidiaries or which any of them otherwise has a right or option to use or occupy, in each case used or intended to be used in connection with the Media Business, together with all structures, facilities, fixtures, systems and improvements located thereon, or attached or appurtenant thereto, and all easements, rights and appurtenances relating to the foregoing.

"Material Adverse Effect" means any event, change, circumstance, occurrence, effect or state of facts that (i) is materially adverse to the business, assets, financial condition or results of operations of the Media Business taken as a whole, or (ii) materially impairs the ability of any of the Sellers, to consummate, or prevents or materially delays, any of the transactions contemplated by this Agreement; provided, however, that none of the following, either alone or in combination, will constitute, or be considered in determining whether there has been, a Material Adverse Effect, any event, change, circumstance, effect or other matter directly resulting from or related to (a) any outbreak or escalation of war or major hostilities or any act of terrorism, (b) changes in Laws, GAAP or enforcement or interpretation thereof, (c) changes that generally affect the industries and markets in which the Business operates that do not have a disproportionate impact in any material respect on the Business, (d) changes in financial markets, general economic conditions (including prevailing interest rates, exchange rates, commodity prices and fuel costs) or political conditions that do not have a disproportionate impact in any material respect on the Business, or (e) effects or changes resulting from the execution or delivery of this Agreement, the consummation of the transactions contemplated by this Agreement or the public announcement or other publicity with respect to any of the foregoing.

"Permitted Encumbrance" means (i) statutory liens for current Taxes not yet due or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate proceedings, (ii) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of the Sellers for a period greater than 60 days, or the validity or amount of which is being contested in good faith by appropriate proceedings, or pledges, deposits or other liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers' compensation, unemployment insurance or other social security legislation), (iii) zoning, entitlement, conservation restriction and other land use and environmental regulations by Governmental Authorities and (iv) defects, easements, rights of way, restrictions, covenants, claims, subleases or similar items relating to

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real property that do not, individually or in the aggregate, have a material adverse effect on the present use or occupancy of the real property subject thereto.

“Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

“Personal Property” means all machinery, equipment, furniture, furnishings, rolling stock, tools, office supplies, vehicles, computer hardware and other tangible personal property owned or leased by any Person and related to, used or held for use in connection with the Media Business.

“Premises License Agreement” means the premises license agreement in the form of Exhibit 2 to this Agreement.

“Purchase Price” means collectively the U.S. Purchase Price and the European Purchase Price.

“Related Party,” with respect to any specified Person, means: (i) any Affiliate of such specified Person, or any director, executive officer, general partner or managing member of such Affiliate; (ii) any Person who serves or within the past four years has served as a director, executive officer, partner, member or in a similar capacity of such specified Person; (iii) any Immediate Family member of a Person described in clause (ii); or (iv) any other Person who holds, individually or together with any Affiliate of such other Person and any member(s) of such Person’s Immediate Family, more than 5% of the outstanding voting equity or ownership interests of such specified Person.

“Representatives” means, with respect to any Person, the officers, directors, employees, agents, accountants, advisors, bankers and other representatives of such Person.

“Seller Taxes” means all Taxes (i) arising from or with respect to the Transferred Assets or the operation of the Media Business that are incurred in or attributable to any period, or any portion of any period, ending on or prior to the Closing Date (including any Taxes that are the liability of Sellers pursuant to Section 7.4); (ii) of the Sellers for any period that is not related to the Transferred Assets or the Media Business, and for Taxes of the Sellers for any period that could become a liability of, or be assessed or collected against, the Buyers, or that could become an Encumbrance on the Transferred Assets; and (iii) of the Sellers that arise as a result of the transactions contemplated by this Agreement (including but not limited to any Transfer Taxes that are assessed upon or with respect to the transfer of the Transferred Assets and for which the Sellers are responsible under the terms of this Agreement).

“Small Business Solutions Agreements” means the asset purchase agreement, license agreement, and transition services agreement, in each case dated August 1, 2007 and in each made by and among MIVA Small Business Solutions, Inc., a Delaware corporation, MIVA

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and MSB Acquisition, Inc., a California corporation, together with all others agreements and documents contemplated therein.

"Small Business Solutions License Agreement" means the license agreement, dated August 1, 2007, by and among MIVA Small Business Solutions, Inc., a Delaware corporation, MIVA and MSB Acquisition, Inc., a California corporation.

"Subsidiary" means, with respect to any Person, any other Person of which at least 50% of the outstanding voting securities or other voting interests are owned, directly or indirectly, by such first Person.

"Tangible Personal Property" means all machinery, equipment, furniture, furnishings, parts, spare parts, vehicles and other tangible personal property owned by any of the Sellers and/or their Affiliates and used or held for use in the Media Business.

"Tax Return" means any return, declaration, report, statement, information statement and other document required to be filed with respect to Taxes.

"Taxes" means: (i) all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, registration, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments, levies, duties, contributions or charges of any kind whatsoever whether of the United States, the United Kingdom, the European Union, or elsewhere, together with any interest and any penalties, additions to tax or additional amounts with respect thereto; (ii) any liability for payment of amounts described in clause (i) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise through operation of law; and (iii) any liability for the payment of amounts described in clauses (i) or (ii) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other Person.

"Transferred Assets" means collectively the U.S. Media Assets and the European Media Assets.

"Transfer Tax" means any tax imposed on the transferor or transferee of property by any taxing jurisdiction by reason of the transfer, or any tax that becomes a lien on the property transferred by reason of the transfer, including without limitation any stamp duty, sales, use, excise, documentary, valued added, real estate transfer taxes or taxes of a similar nature, including any interest, penalties or additions to tax that become payable with respect to such tax. "Transfer Tax" shall not include any taxes imposed on a seller or transferor of property that is measured by reference to the net income or gain of the seller or transferor.

"Transition Services Agreement" means the transition services agreement in the form of Exhibit 3 to this Agreement.

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"U.S. Closing Working Capital" shall mean the net book value of the consolidated U.S. Included Assets less the consolidated U.S. Included Liabilities, as shown on the U.S. Closing Net Working Capital Statement.

"U.S. Included Assets" means, solely with respect to the U.S. Media Assets, the current assets included in the U.S. Media Assets, including accounts receivable and prepaid expenses but excluding Excluded Assets and deferred tax assets and receivables from any of the Sellers' Affiliates, directors, employees or officers and any of their Affiliates, determined in accordance with GAAP applied on a basis consistent with the preparation of the Financial Statements, in each case calculated as of the close of business on the Closing Date and determined in accordance with GAAP applied on a basis consistent with the preparation of the Financial Statements and in accordance with Schedule 2.7(a).

"U.S. Included Liabilities" means, solely with respect to the U.S. Media Assets, the current liabilities included in the U.S. Assumed Liabilities, including accrued compensation and accrued expenses (including customer deposits or deferred revenue), but excluding payables to any of the Sellers' Affiliates that are extinguished at Closing and Excluded Liabilities, in each case calculated as of the close of business on the Closing Date and determined in accordance with GAAP applied on a basis consistent with the preparation of the Interim Financial Statements and in accordance with Schedule 2.7(a).

"U.S. Media Assets" means all of the Sellers' and/or their Affiliate's right, title and interest, direct or indirect, in and to all of the assets, properties and rights of every nature, kind and description (wherever located), whether tangible or intangible, used or held for use in the U.S. Media Business (other than the Excluded Assets), as they exist at the time of the Closing, including, without limitation, the assets, properties and rights set forth on Schedule 1.1(d) of the Disclosure Schedules.

"U.S. Targeted Working Capital" means [***].

"U.S. Working Capital Adjustment" means an amount equal to the U.S. Targeted Working Capital less the U.S. Closing Working Capital as finally determined pursuant to Section 2.7.

"VAT" means the tax imposed by VAT Directive 2006/112/EC of the European Communities and any national legislation implementing that directive together with legislation supplemental thereto or any similar sales or turnover tax whether of the European Union or elsewhere.

"Welfare Plan" means any employee welfare benefit plan within the meaning of Section 3(1) of ERISA, any short-term disability program classified as a "payroll practice," any group health plan within the meaning of Section 105 of the Code, any cafeteria plan within the meaning of Section 125 of the Code, any dependent care assistance program within the meaning of Section 129 of the Code, any adoption assistance plan within the meaning of Section 137 of the Code, any tuition assistance plan within the meaning of Section 127 of the Code, and any qualified transportation plan within the meaning of Section 132 of the Code.

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Section 1.2 Table of Definitions. The following terms have the meanings set forth in the Sections referenced below:

<u>Definition</u>	<u>Location</u>
AAA	10.9(a)
Acquisition Subs	Preamble
Adknowledge	Preamble
Agreement	Preamble
B&B	Preamble
Business Patents	3.13(a)
Business Registered Copyrights	3.13(a)
Business Registered IP	3.13(a)
Business Registered Marks	3.13(a)
Buyer	Preamble
Buyers	Preamble
Cap	8.6(a)(i)
Closing	2.6(a)
Closing Date	2.6(a)
Closing Net Working Capital Statements	2.7(a)
Confidential Information	5.3(a)
***]	7.1(a)
Disclosing Parties	10.9(c)
Disclosure Schedules	Article III
European Acquisition Sub	Preamble
European Assumed Liabilities	2.3(b)
European Balance Sheet	3.5(a)
European Carveout Procedures	3.5(a)
European Closing Net Working Capital Statement	2.7(a)
European Media Business	Recitals
European Purchase Price	2.5(b)
Excluded Assets	2.2
Excluded Liabilities	2.4
Financial Statements	3.5(a)
HSR Act	3.3(b)
Indemnified Party	8.5(a)
Indemnifying Party	8.5(a)
Independent Accounting Firm	2.7(c)
Interim Financial Statements	3.5(a)
Losses	8.2
Material Contracts	3.15(a)
Media Business	Recitals
MIVA	Preamble

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<u>Definition</u>	<u>Location</u>
MIVA (UK)	Preamble
New York Convention	10.9(b)
Notice of Disagreement	2.7(b)
Order	6.4
Permits	3.7(b)
Post-Closing Tax Period	8.4
Pre-Closing Tax Period	8.4
Price Allocation	6.1
Proposed Expert	10.9(c)
***]	2.3(b)
Restricted Contract	5.4(a)
Restricted Period	5.10(a)
Seller Solvency Certificate	2.6(b)(ii)(D)
Seller(s)	Preamble
Third Party Claim	8.5(a)
Transferring Employees	5.8(a)
TUPE	5.8(d)
U.S. Assumed Liabilities	2.3(a)
U.S. Balance Sheet	3.5(a)
U.S. Carveout Procedures	3.5(a)
U.S. Closing Net Working Capital Statement	2.7(a)
U.S. Media Business	Recitals
U.S. Purchase Price	2.5(a)
US Acquisition Sub	Preamble

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions of this Agreement, at the Closing, the Sellers shall, or cause its Subsidiaries to, sell, assign, transfer, convey and deliver to (a) the U.S. Acquisition Sub all of the Sellers' and/or their Affiliate's right, title and interest as of the Closing Date in and to the U.S. Media Assets, and the U.S. Acquisition Sub shall purchase, acquire, accept and pay for the U.S. Media Assets and assume the U.S. Assumed Liabilities and (b) the European Acquisition Sub all of the Sellers' and/or their Affiliate's right, title and interest as of the Closing Date in and to the European Media Assets, and the European Acquisition Sub shall purchase, acquire, accept and pay for the European Media Assets and assume the European Assumed Liabilities.

Section 2.2 Excluded Assets. Notwithstanding anything contained in Section 2.1 to the contrary, the Sellers are not selling, and the Acquisition Subs are not purchasing, any assets listed on Schedule 2.2 of the Disclosure Schedules, all of which shall be retained by the Sellers (collectively, the "Excluded Assets").

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Section 2.3 Assumed Liabilities.

(a) In connection with the purchase and sale of the U.S. Media Assets pursuant to this Agreement, at the Closing, the U.S. Acquisition Sub shall assume and pay, discharge, perform or otherwise satisfy the liabilities and obligations of the Sellers related to the U.S. Media Business and set forth on Schedule 2.3(a) of the Disclosure Schedules (the "U.S. Assumed Liabilities").

(b) In connection with the purchase and sale of the European Media Assets pursuant to this Agreement, at the Closing, the European Acquisition Sub shall assume and pay, discharge, perform or otherwise satisfy the liabilities and obligations of the Sellers related to the European Media Business and set forth on Schedule 2.3(b) of the Disclosure Schedules (the "European Assumed Liabilities").

Section 2.4 Excluded Liabilities. Notwithstanding the provisions of Section 2.3 or any other provision of this Agreement, any Disclosure Schedule hereto or any Ancillary Agreement to the contrary, except for the Assumed Liabilities, neither of the Acquisition Subs shall assume, and neither shall have any Liability for, any Liabilities of any Seller (including without limitation those relating to the Media Business and any Seller Taxes) of any kind, character or nature whatsoever (the "Excluded Liabilities"). [***].

Section 2.5 Consideration.

(a) In full consideration for the sale, assignment, transfer, conveyance and delivery of the U.S. Media Assets to the U.S. Acquisition Sub, at the Closing, the U.S. Acquisition Sub shall (a) pay, or cause to be paid, to the Sellers, an amount equal to \$6,966,600 (the "U.S. Purchase Price") in immediately available funds in United States dollars and (b) assume the U.S. Assumed Liabilities. The U.S. Purchase Price shall be subject to adjustment as provided in Section 2.7.

(b) In full consideration for the sale, assignment, transfer, conveyance and delivery of the European Media Assets to the European Acquisition Sub, at the Closing, the European Acquisition Sub shall (a) pay, or cause to be paid, to the Sellers, an amount equal to \$4,644,400 (the "European Purchase Price") in immediately available funds in United States dollars and (b) assume the European Assumed Liabilities. The European Purchase Price shall be subject to adjustment as provided in Section 2.7.

Section 2.6 Closing.

(a) The sale and purchase of the Transferred Assets shall take place simultaneously with the execution of this Agreement at a closing (the "Closing") to be held at the offices of Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166. The day on which the Closing takes place is referred to as the "Closing Date."

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(H) a duly executed counterpart of the Transition Services Agreement; and

(I) a duly executed counterpart of the Premises License Agreement.

(J) such other bills of sale, assignments and other instruments of assignment, transfer or conveyance, in form and substance reasonably satisfactory to the Buyers, as the Buyers may reasonably request or as may be otherwise necessary or desirable to evidence and effect the sale, assignment, transfer, conveyance and delivery of the Transferred Assets to the Acquisition Sub and to put the Buyers in actual possession or control of the Transferred Assets, duly executed by the Sellers; and

(K) an affidavit of non-foreign status that complies with Section 1445 of the Code for each of MIVA and B&B.

Section 2.7 Post-Closing Adjustment of Purchase Price.

(a) Within 90 days after the Closing Date, (i) the U.S. Acquisition Sub shall deliver to the Sellers a consolidated net working capital statement (the "U.S. Closing Net Working Capital Statement") of the U.S. Media Business, consisting of the U.S. Included Assets and the U.S. Included Liabilities, and (ii) the European Acquisition Sub shall deliver to the Sellers a consolidated net working capital statement (the "European Closing Net Working Capital Statement") of the European Media Business, consisting of the European Included Assets and the European Included Liabilities, in each case, including all notes thereto, dated as of the Closing Date (collectively, the "Closing Net Working Capital Statements"). Each aforementioned Closing Net Working Capital Statement shall be prepared in accordance with GAAP applied on a basis consistent with the preparation of the Balance Sheets, and the respective European Targeted Working Capital and U.S. Targeted Working Capital calculations as set forth by way of example on Schedule 2.7(a) (other than the inclusion of any normal and recurring year-end adjustments that would be required under GAAP and the absence of notes thereto); provided that no purchase accounting adjustments in respect of the transactions contemplated by this Agreement shall be made; provided further, that in the event of a conflict between the applicable GAAP and consistent application thereof, the applicable GAAP shall prevail. The Sellers shall cause their employees and the employees of their respective Subsidiaries to assist the Buyers and their auditors in the preparation of the Closing Statements and shall provide the Buyers and their Representatives reasonable access, during normal business hours and upon reasonable prior notice, to the personnel, properties, books and records of the Sellers and their Subsidiaries for such purpose.

(b) During the 20 Business Day period following the Sellers' receipt of the Closing Statements, the Buyers shall provide the Sellers and their Representatives with access to the working papers of the Buyers relating to the Closing Statements, and the Buyers shall cooperate with the Sellers and their Representatives to provide them with any other information used in preparing the Closing Statements reasonably requested by the Sellers and their Representatives. Each Closing Statement shall become final and binding on the 20th Business

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Day following delivery thereof, unless prior to the end of such period, the Sellers deliver to the Buyers written notice of their disagreement (a "Notice of Disagreement") specifying the nature and amount of any disputed item. The Sellers shall be deemed to have agreed with all items and amounts in a Closing Statement not specifically referenced in a Notice of Disagreement, and such items and amounts shall not be subject to review in accordance with this Section 2.7(b).

(c) During the ten Business Day period following delivery of a Notice of Disagreement by the Sellers to the Buyers, the parties in good faith shall seek to resolve in writing any differences that they may have with respect to the matters specified therein. During such ten Business Day period, the Sellers shall use their commercially reasonable efforts to provide the Buyers and their Representatives with access to the working papers of the Sellers and their accountants relating to such Notice of Disagreement, and the Sellers and its Subsidiaries and their accountants shall cooperate with the Buyers and their Representatives to provide them with any other information used in preparation of such Notice of Disagreement reasonably requested by the Buyers or their Representatives. Any disputed items resolved in writing between the Sellers and the Buyers within such ten Business Day period shall be final and binding with respect to such items, and if the Sellers and the Buyers agree in writing on the resolution of each disputed item specified by the Sellers in the Notice of Disagreement and the amount of the Closing Statement, the amount so determined shall be final and binding on the parties for all purposes hereunder. If the Sellers and the Buyers have not resolved all such differences by the end of such ten Business Day period, the Sellers and the Buyers shall submit, in writing, to an independent public accounting firm (the "Independent Accounting Firm"), their briefs detailing their views as to the correct nature and amount of each item remaining in dispute and the amounts of the Closing Working Capital. Sellers and Buyers will also furnish to the Independent Accounting Firm such other work papers, documentation and information directly relating to the disputed items as the Independent Accounting Firm may reasonably request. The Independent Accounting Firm shall make a written determination as to each such disputed item and the amounts of the Closing Working Capital, which determination shall be final and binding on the parties for all purposes hereunder. The Independent Accounting Firm shall be authorized to resolve only those items remaining in dispute between the parties in accordance with the provisions of this Section 2.7 within the range of the difference between the Buyers' position, on the one hand, with respect thereto and the Sellers' position, on the other hand, with respect thereto. The determination of the Independent Accounting Firm shall be accompanied by a certificate of the Independent Accounting Firm that it reached such determination in accordance with the provisions of this Section 2.7. For purposes of this Section 2.7, the Independent Accounting Firm shall be Grant Thornton LLP or, if such firm is unable or unwilling to act, such other independent public accounting firm as shall be agreed in writing by the Sellers and the Buyers. The Sellers and the Buyers shall use their commercially reasonable efforts to cause the Independent Accounting Firm to render a written decision resolving the matters submitted to it within 20 Business Days following the submission thereof. The fees and expenses of the Independent Accounting Firm shall be borne by the parties in inverse proportion as they may prevail on the matters resolved by the Independent Accounting Firm, which proportionate allocation shall be calculated on an aggregate basis based on the relative dollar values of the amounts in dispute and shall be determined by the Independent

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Accounting Firm at the time the determination of such firm is rendered on the merits of the matters submitted. Except as aforesaid, all fees and expenses incurred by a party in connection with any dispute resolution pursuant to this Section 2.7, including without limitation the fees and disbursements of the auditors and other Representatives of each party incurred in connection with their preparation or review of a Closing Net Working Capital Statement, preparation or review of any Notice of Disagreement and presentation of issues to the Independent Accounting Firm, shall be borne by such party.

(d) Upon final determination of the amounts on the Closing Statements as provided in Section 2.7(c) above, (1) if the U.S. Working Capital Adjustment or the European Working Capital Adjustment is positive, the Sellers shall promptly, but no later than five Business Days after such final determination, pay to the Buyers (or if requested by the Buyers, to a specified Person) the relevant Working Capital Adjustment in United States dollars in immediately available funds by wire transfer to an account designated in writing by the Buyers to the Sellers and (2) if the U.S. Working Capital Adjustment or the European Working Capital Adjustment is negative, the Buyers shall promptly, but no later than five Business Days after such final determination, pay to the Sellers the absolute value of the relevant Working Capital Adjustment. Any amounts to be paid pursuant to Section 7.2 or this Section 2.7 not paid within the five Business Day period following such final determination shall bear interest from the Closing Date to the date of such payment at a rate equal to six percent (6%). For purposes hereof, each of the U.S. Working Capital Adjustment and the European Working Capital Adjustment shall be considered separately and neither shall be netted against the other. If the European Working Capital Adjustment is negative, the amount of such adjustment shall be paid by disbursing to MIVA or its nominee the amount of such adjustment from the European Acquisition Sub.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth in the Disclosure Schedules attached hereto (collectively, the "Disclosure Schedules"), the Sellers hereby represent and warrant, jointly and severally, to the Buyers as follows:

Section 3.1 Organization and Qualification. Each Seller is a corporation or other limited liability company duly organized or formed, validly existing and in good standing under the laws of its jurisdiction of organization or formation and has all necessary corporate power and authority to own, lease and operate the Transferred Assets owned by it and to carry on the Media Business as it is now being conducted. Except as set forth on Schedule 3.1 of the Disclosure Schedules, each Seller is duly qualified or licensed as a foreign corporation or other legal entity to do business, and is in good standing, in each jurisdiction where the ownership or operation of the Transferred Assets or the conduct or operation of the Media Business makes such qualification or licensing necessary, except, in each case, for any such failures that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on such Seller or the Media Business.

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Section 3.2 Authority. Each Seller has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party, to perform its respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by each Seller of this Agreement and each of the Ancillary Agreements to which it is a party and the consummation by each Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action, and the Sellers represent and warrant that the consent of MIVA's stockholders is not required to consummate the transactions contemplated hereby. This Agreement and each of the Ancillary Agreements to which any Seller is a party have been duly executed and delivered by such Seller. This Agreement and each of the Ancillary Agreements to which any Seller is a party constitute the legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 3.3 No Conflict; Required Filings and Consents.

(a) Except as set forth on Schedule 3.3(a) of the Disclosure Schedules, the execution, delivery and performance by the Sellers of this Agreement and each of the Ancillary Agreements to which any Seller is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:

(i) conflict with or violate the certificate of incorporation or bylaws or similar charter or organizational document of any Seller;

(ii) conflict with or violate any Law applicable to any Seller, the Media Business or any of the Transferred Assets or by which any Seller, the Media Business or any of the Transferred Assets may be bound or affected; or

(iii) conflict with, result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, require any consent of any Person pursuant to, or give to others any rights of termination, acceleration or cancellation of, any Material Contract;

except, in the case of clause (ii) or (iii), for any such conflicts, violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or that arise as a result of any facts or circumstances relating to the Buyers or any of their Affiliates.

(b) No Seller is required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by such Seller of this Agreement or any Ancillary Agreements to which any Seller is a party or the consummation of the transactions contemplated hereby or thereby or in order to prevent the termination of any right, privilege, license or qualification of the Media Business, except for (i) any filings required to be made

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under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (iii) as may be necessary as a result of any facts or circumstances relating to the Buyers or any of their Affiliates.

Section 3.4 Transferred Assets.

(a) The sale of the Transferred Assets by Sellers to Buyer(s) pursuant to this Agreement will effectively convey to Buyer(s) the entire Media Business and all of the tangible and intangible property used by Sellers or any of their respective Affiliates (whether owned, leased or held under license by Sellers, by any of Sellers Affiliates or by others) in connection with the conduct of the Media Business as heretofore conducted by the Sellers (except for the Excluded Assets and those assets to be provided pursuant to the terms of the Ancillary Agreements) including, without limitation, all tangible Assets and Properties of the Sellers reflected in the Balance Sheet and assets and properties acquired since the date of the Balance Sheet, other than Excluded Assets and assets and properties disposed of since the date of the Balance Sheet. Except as disclosed in Schedule 3.4 of the Disclosure Schedules, there are no shared facilities used in connection with the Media Business. None of the Transferred Assets are owned or held by any Person other than MIVA, B&B or MIVA (UK).

(b) The Sellers have good and valid title to or a valid leasehold interest in all of the Transferred Assets, free and clear of any Encumbrance, other than Permitted Encumbrances. The delivery to the Buyers of the Bill of Sale and other instruments of assignment, conveyance and transfer pursuant to this Agreement and the Ancillary Agreements will transfer to the Buyers good and valid title to or a valid leasehold interest in all of the Transferred Assets, free and clear of any Encumbrance other than Permitted Encumbrances. Except for the Excluded Assets and assets to be made available to Buyer(s) under the Ancillary Agreements, the Transferred Assets constitute all of the assets, properties and rights necessary and sufficient for the conduct and operation of the Media Business.

Section 3.5 Financial Statements: No Undisclosed Liabilities.

(a) True and complete copies of (i) the consolidated audited balance sheet of MIVA as at December 31, 2007, and the related consolidated statements of results of operations and cash flows of MIVA together with all related notes and schedules thereto, (ii) the consolidated unaudited balance sheet of MIVA as at March 31, 2008, June 30, 2008 and September 30, 2008, and the related consolidated statements of results of operations and cash flows of MIVA together with all related notes and schedules thereto, (iii) the unaudited balance sheet of the U.S. Media Business as at December 31, 2008, and the related statements of results of operations of the U.S. Media Business together with all related notes and schedules thereto (including the worksheet reflecting the adjustments or elimination entries used in the preparation of the U.S. Balance Sheet and related financial statements (the "U.S. Carveout Procedures")), and (iv) the unaudited balance sheet of the European Media Business as at December 31, 2008, and the related statements of results of operations of the European Media Business together with all related notes and schedules thereto (including the worksheet

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reflecting the adjustments or elimination entries used in the preparation of the European Balance Sheet and related financial statements (the "European Carveout Procedures") (collectively referred to as the "Financial Statements") and (i) the unaudited balance sheet of the U.S. Media Business as at January 31, 2009 (the "U.S. Balance Sheet"), and the related statements of results of operations, together with all related notes and schedules thereto, and (ii) the unaudited balance sheet of the European Media Business as at January 31, 2009 (the "European Balance Sheet"), and the related statements of results of operations, together with all related notes and schedules thereto (collectively referred to as the "Interim Financial Statements"), are attached hereto as Schedule 3.5(a) of the Disclosure Schedules. Each of the Financial Statements and the Interim Financial Statements (A) has been prepared based on the books and records of the Seller pertaining to the Media Business (except as may be indicated in the notes thereto), (B) has been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto) and (C) fairly presents, in all material respects, the consolidated financial position, results of operations and (in the case of (i) and (ii) above only) cash flows of the Media Business as at the respective dates thereof and for the respective periods indicated therein, except as otherwise noted therein and subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments and the absence of notes that will not, individually or in the aggregate, be material. The adjustments and elimination entries included in the U.S. Carveout Procedures and the European Carveout Procedures, in each case, were determined in the reasonable, good faith estimation of Miva's management to be meaningfully necessary for purposes of the preparation of the standalone U.S. Balance Sheet and European Balance Sheet, and the financial statements of the results of operations for the US Media Business and the EU Media Business at December 31, 2008 are complete and consistent with the historic practices of Miva management for purposes of evaluating and measuring the results of operations and financial position of the Media Business and, except as specifically footnoted on the statements (which footnotes relate to the U.S. Carveout Procedures and European Carveout Procedures), do not exclude operating expenses that were incurred in respect of the operation of the Media Business for the period covered by such financial statements of the results of operations.

(b) Except (A) as set forth on Schedule 3.5(b) of the Disclosure Schedules and (B) as and to the extent adequately accrued or reserved against in the reviewed balance sheet of the Media Business as at the date of the Balance Sheet, there are no debts, liabilities or obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, of the Media Business of a nature required to be reflected on a balance sheet prepared in accordance with GAAP, other than any such debts, liabilities or obligations (i) reflected or reserved against on the Financial Statements or the notes thereto, (ii) incurred since the date of the Balance Sheet in the ordinary course of business, (iii) for Taxes, or (iv) that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.6 Absence of Certain Changes or Events. Except as set forth on Schedule 3.6 of the Disclosure Schedules, since September 30, 2008, (a) the Sellers have conducted the Media Business, in all respects, in the ordinary course of business consistent with past practice and (b) there has not occurred any Material Adverse Effect.

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Section 3.7 Compliance with Law; Permits.

(a) Except as set forth on Schedule 3.7(a) of the Disclosure Schedules, to the Knowledge of the Sellers, the Media Business is and has been conducted in compliance with all applicable Laws. The Sellers, their Subsidiaries or any of their executive officers have not received during the past five years, nor, to the Knowledge of such individuals, is there any basis for, any notice, order, complaint or other communication from any Governmental Authority or any other Person that any part of the Media Business is not in compliance in any material respect with any Law applicable to it.

(b) Except as set forth on Schedule 3.7(b) of the Disclosure Schedules, the Sellers are in possession of all permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, orders, registrations, notices or other authorizations of any Governmental Authority necessary for it to own, lease and operate the Transferred Assets and to carry on the Media Business as currently conducted (the "Permits"), each of which is in full force and effect, except where the failure to have, or the suspension or cancellation of, any of the Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All aspects of the Media Business has been conducted in compliance in all material respects with all such Permits. No suspension, cancellation, modification, revocation or nonrenewal of any Permit is pending or, to the Knowledge of the Sellers, threatened or likely to be threatened.

Section 3.8 Litigation. Except as set forth on Schedule 3.8 of the Disclosure Schedules, as of the date hereof, there is no Action by or against the Sellers in connection with the Media Business or which could affect the Transferred Assets pending, or to the Knowledge of the Sellers, threatened in writing (a) seeking damages in excess of \$100,000, (b) pursuing any criminal sanctions or penalties, (c) seeking equitable or injunctive relief or (d) that would otherwise, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or would affect the legality, validity or enforceability of this Agreement or any Ancillary Agreement or the consummation of the transactions contemplated hereby or thereby.

Section 3.9 Employee Plans.

(a) Schedule 3.9 of the Disclosure Schedules sets forth all material Employee Plans. The Sellers have made available to the Buyers a true and complete copy of the following documents: (i) each writing constituting an Employee Plan or a written description of any Employee Plan not in writing, (ii) the current summary description of each Employee Plan and any material modifications thereto and (iii) the most recent determination letter from the IRS, if any, with respect to any Employee Plan qualified under Section 401(a) of the Code.

(b) With respect to the Employee Plans: (i) no event (including, but not limited to, the undertaking of the transactions contemplated by this Agreement, either alone or in conjunction with any other event) or omission has occurred and, to the Knowledge of the Sellers, there exists no condition or set of circumstances in connection with which the Buyer or its Affiliates would incur a material liability after Closing under the terms of any Employee

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Plan, ERISA or the Code, (ii) to the Knowledge of the Sellers, each of the Employee Plans has been operated and administered in all material respects in accordance with its terms, applicable Law, and the rules or regulations of any Governmental Authority, including ERISA and the Code, (iii) there is no claim pending or, to the Knowledge of the Seller, threatened, against or in connection with any Employee Plan by any Business Employee or any Governmental Authority that would be a liability of Buyer or its Affiliates after Closing, and (iv) each Employee Plan intending to be "qualified" within the meaning of Section 401(a) of the Code has received a favorable determination or opinion letter as to such qualification from the IRS and, to the Knowledge of the Sellers, no event has occurred, either by reason of any action or failure to act, which would cause the loss of any such qualification.

(c) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, none of the Employee Plans is a "multiemployer plan" (within the meaning of Section 3(37) or of ERISA), a "multiple employer plan" (within the meaning of Section 4063 or 4064 of ERISA), or subject to Section 412 of the Code or Title IV of ERISA.

(d) Except as set forth in Section 3.9 of the Disclosure Schedules, (i) all Foreign Plans that are required to be funded are fully funded, and with respect to all other Foreign Plans, adequate reserves therefor have been established on the accounting statements of the Sellers in accordance with GAAP as of the Closing Date; (ii) all contributions, insurance premiums, tax and expenses due to and in respect of the Foreign Plans have been duly paid; and (iii) any Foreign Plan that provides for pension, lump sum, death or ill-health benefits provides only money purchase benefits and no assurance, promise or guarantee has been made or given to any person of a particular level or amount of benefit to be provided for or in respect of him on death, retirement or leaving service.

Section 3.10 Labor and Employment Matters.

(a) None of the Sellers are a party to any labor or collective bargaining contract that pertains to any Business Employees. To the Knowledge of the Sellers, (a) there are no organizing activities or collective bargaining arrangements that could affect the Media Business pending or under discussion with any labor organization or Business Employees and (b) there are no lockouts, strikes, slowdowns or work stoppages pending or threatened by or with respect to any Business Employees that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Neither the Sellers nor any of their Subsidiaries has engaged or is engaging in any unfair labor practice affecting Business Employees. No unfair labor practice or labor charge or complaint is pending or, to the Knowledge of the Sellers, threatened with respect to any Business Employee by any Governmental Authority. Except as set forth on Schedule 3.10(b) of the Disclosure Schedules, the Sellers and their Subsidiaries have complied with all applicable federal, state, local, European and foreign laws, rules and regulations respecting employment, employment practices, labor, terms and conditions of employment and wages and hours in connection with the Business Employees.

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(c) In respect of all Business Employees based in the UK (the "UK Business Employees"), Schedule 3.10 (c) of the Disclosure Schedules sets forth an accurate and complete list of: (i) the particulars of all UK Business Employees including remuneration, variable compensation and other benefits (whether contractual, discretionary or otherwise), date of commencement of employment, age or date of birth, period of continuous employment and notice periods; (ii) complete particulars of the terms and conditions of employment applicable to each UK Business Employee; (iii) details of any employee who would have been a UK Business Employee had they not been dismissed in the 12 months prior to the date of this Agreement; (iv) details of any UK Business Employee who is absent on sick leave or otherwise inactive; (v) full details of any severance or enhanced redundancy arrangements (whether applied on a contractual, customary or discretionary basis) applicable to any of the UK Business Employees; and (v) details of any material change to the terms and conditions of employment that have been made, promised or proposed. All the persons identified by the Seller as an independent contractor are properly classified as such.

Section 3.11 Insurance. Schedule 3.11 of the Disclosure Schedules sets forth a true and complete list of all insurance policies in force with respect to the Media Business and the Transferred Assets, which includes a brief summary of the coverage and terms of each such policy.

Section 3.12 Real Property.

(a) Schedule 3.12(a) of the Disclosure Schedules lists the street address of each parcel of Leased Real Property and the identity of the lessor of each such parcel of Leased Real Property. Neither the Sellers nor any of their Subsidiaries owns any real property that is used in connection with the Media Business. The Sellers have a valid leasehold estate in all Leased Real Property, free and clear of all Encumbrances, other than Permitted Encumbrances. All leases in respect of the Leased Real Property and all amendments and modifications thereto are in full force and effect, the Sellers have not received any written notice of a breach of default thereunder, and to the Knowledge of the Sellers, no event has occurred that, with notice or lapse of time or both, would constitute a breach or default thereunder. Except as set forth on Schedule 3.12(a) of the Disclosure Schedules, none of the Companies has assigned any lease of Leased Real Property, nor have the Companies subleased any Leased Real Property.

(b) All utilities required for the present and normal use and operation of the Media Business at any Leased Real Property are all connected and operating pursuant to valid Permits, to the extent Permits are necessary to such operations, are adequate to service the business of such Seller, and such facilities are connected by means of one or more public or private easements extending from a property line to one or more public streets, public rights-of-way or utility facilities.

Section 3.13 Intellectual Property.

(a) Schedule 3.13(a)(i) of the Disclosure Schedules sets forth an accurate and complete list of all registered Marks and applications for registration of Marks included in the Business Intellectual Property (collectively, the "Business Registered Marks").

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Schedule 3.13(a)(ii) of the Disclosure Schedules sets forth an accurate and complete list of all Patents and applications for Patent included in the Business Intellectual Property (collectively, the "Business Patents") and Schedule 3.13(a)(iii) of the Disclosure Schedules sets forth an accurate and complete list of all registered Copyrights and all applications for registration of Copyrights included in the Business Intellectual Property (collectively, the "Business Registered Copyrights" and, together with the Business Registered Marks and the Business Patents, the "Business Registered IP"). No Business Registered IP is involved in any interference, reissue, reexamination, opposition or cancellation proceeding. All filing, examination, issuance, post registration and maintenance fees, annuities and the like associated with or required with respect to any of the Business Registered IP have been paid.

(b) The Sellers together own all right, title and interest in and to the Business Registered IP, free and clear of any claims or encumbrances, and, to the Knowledge of the Sellers, all issued Business Registered IP is valid, subsisting and enforceable. The Sellers have not received within the prior six years any notice or claim asserting that any Business Intellectual Property is invalid or unenforceable, asserting any encumbrance or other claim with respect to the Business Intellectual Property or challenging the Sellers' sole ownership of any Business Intellectual Property. No Business Intellectual Property is subject to any outstanding order, judgment, decree, stipulation or agreement restricting the use or licensing thereof by the Sellers or any Affiliate thereof or which would restrict the use thereof by the Buyers.

(c) To the Knowledge of the Sellers, none of the products or services distributed, sold or offered by the Media Business, nor any activity or conduct of Sellers in connection with the Media Business, infringes upon or misappropriates any Intellectual Property of any third party, and the Sellers have not received within the prior three years any notice or claim (including offers to license) asserting that any such infringement or misappropriation has or may have occurred. To the Knowledge of the Sellers, no third party is misappropriating or infringing any Business Intellectual Property.

(d) Except as specifically set forth on Schedule 3.13(d) of the Disclosure Schedules, no Seller has entered into any license, covenant not to sue, concurrent-use agreement, consent to use or similar agreement that grants any right to use, or consents to any use of, any Mark included in the Business Intellectual Property.

Section 3.14 Taxes. To the extent a breach or inaccuracy of any of the following could result in a Liability of the Buyers to any Person, whether as a result of applicable Law, contract or otherwise: (i) the Sellers have timely paid and will continue to pay all Taxes when the same have become due, (ii) there is no outstanding claim, audit or other examination or proceeding with respect to Taxes, (iii) there is no basis for a claim by any Governmental Authority for Taxes and (iv) the Sellers have timely filed all Tax Returns they are required to have filed and will continue to file such Tax Returns as they become due and all Tax Returns filed, or to be filed, by the Sellers have been and will be true, correct, and complete. Other than Taxes not yet due and payable, there are no Taxes of the Sellers that form or could form the basis for a Lien on any of the Transferred Assets. The Sellers have complied with all applicable Laws relating to record retention (including, without limitation, to the extent necessary to claim any exemption from

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sales tax collection and maintaining adequate and current resale certificates to support any such claimed exemptions).

Section 3.15 Material Contracts.

(a) Schedule 3.15 of the Disclosure Schedules lists each of the following written Contracts (such Contracts as described in this Section 3.15(a) being "Material Contracts"):

- (i) The top 50 partner/publisher Contracts for the US Media Business, based on revenues for the month of December, 2008;
- (ii) The top 50 advertiser Contracts for the US Media Business, based on revenues for the month of December, 2008;
- (iii) The top 50 partner/publisher Contracts for the EU Media Business, based on revenues for the calendar quarter ended December 31, 2008;
- (iv) The top 50 advertiser Contracts for the EU Media Business, based on revenues for the month of December, 2008;
- (v) all Contracts relating to indebtedness for borrowed money;
- (vi) all Contracts that limit or purport to limit the ability of the Media Business to compete in any line of business or with any Person or in any geographic area or during any period of time;
- (vii) any Contract with any Governmental Authority;
- (viii) any Contract relating to the Media Business that involves a Related Party of a Seller or any of its Subsidiaries;
- (ix) all joint venture, legal partnership or similar Contracts;
- (x) any Contract relating to the lease, sale or purchase of real property used or intended to be used in the Media Business;
- (xi) any Contract relating to settlement of any administrative or judicial proceedings within the past five years;
- (xii) any commercial agency agreement within the meaning of the UK Commercial Agents (Council Directive) Regulations 1993; or
- (xiii) other than in respect of any partner/publisher or advertiser Contract, any other Contract potentially involving \$50,000 payments per annum either to any of the Sellers or owed by any of the Sellers in relation to the Media Business.

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(b) Each Material Contract is valid and binding on a Seller and, to the Knowledge of the Sellers, the counterparties thereto, and is in full force and effect. None of the Sellers is in breach of, or default under, any Material Contract to which it is a party, except for such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Sellers have delivered or made available to the Buyers true and complete copies of all Material Contracts, including any amendments thereto. There are no guaranteed minimum payments, orders or volume requirements imposed upon any of the Sellers or that will be imposed upon any of the Buyers immediately after Closing under any Material Contract specified by clause (i), (ii), (iii) or (iv) of the foregoing Section 3.15(a). Sellers represent and warrant that the Collocation Service Agreement effective December 27, 2005 by and between NTT America, Inc. and MIVA Direct, as amended to date, will not terminate sooner than that date which is 30 days from the date hereof.

Section 3.16 Personal Property.

(a) Schedule 3.16(a) of the Disclosure Schedules sets forth a true and complete list of (i) all Personal Property which is included in the Transferred Assets and having an original cost of \$50,000 or more or, and (ii) each lease of Personal Property which is included in the Transferred Assets, including, in each case, the expiration date thereof and a brief description of the property covered.

(b) All of the Personal Property set forth on Schedule 3.17(a) has been maintained in all material respects in accordance with past practice and generally accepted industry practice. Each item of such Personal Property is in all material respects in good operating condition and repair, ordinary wear and tear excepted, and is adequate for the uses to which it is being put. All leased Personal Property set forth on Schedule 3.17(a) is in all material respects in the condition required of such property by the terms of the lease applicable thereto.

Section 3.17 Brokers. Except for Petsky Prunier, the fees of which will be paid by the Sellers, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Sellers.

Section 3.18 Prohibited Payments. None of the Sellers, their Subsidiaries nor any of their respective directors, officers, agents or employees in their capacity as such has (a) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to political activity, (b) made any unlawful payments to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (c) made any other unlawful payment, or agreed to make any such payment.

Section 3.19 Solvency. Immediately after giving effect to the transactions contemplated hereby, the Sellers and each of their Subsidiaries shall be able to pay their respective debts as they become due and shall own property which has a fair saleable value greater than the amounts required to pay their respective debts (including a reasonable estimate of the amount of all

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contingent liabilities). For purposes of this Section 3.20, "debt" means a liability in connection with another Person's (a) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (b) right to any equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. Immediately after giving effect to the transactions contemplated hereby, the Seller and each of its Subsidiaries shall have adequate capital to carry on their respective businesses. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of the Seller or its Subsidiaries.

Section 3.20 Disclosure. To the actual knowledge of those persons listed in Schedule 1.1(c)(i) of the Disclosure Schedules, none of the representations or warranties of any of the Sellers contained in this Agreement or any Ancillary Agreement and none of the information contained in any schedule, certificate, or other document delivered pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyers hereby represent and warrant, jointly and severally, to the Sellers as follows:

Section 4.1 Organization and Qualification. Each of the Buyers is a corporation or other limited liability company duly organized or formed, validly existing and in good standing under the laws of its jurisdiction of organization or formation, and each has all necessary corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. Each Buyer is duly qualified or licensed as a foreign corporation or other legal entity to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except, in each case, for any such failures that would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

Section 4.2 Authority. Each of the Buyers has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by each of the Buyers of this Agreement and each of the Ancillary Agreements to which either is a party and the consummation by the Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action. This Agreement and each of the Ancillary Agreements to which either Buyer is a party have been duly and validly executed and

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delivered by such Buyer. This Agreement and each of the Ancillary Agreements to which either Buyer is a party constitute the legal, valid and binding obligations of the Buyers, enforceable against the Buyers in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 4.3 No Conflict: Required Filings and Consents.

(a) The execution, delivery and performance by the Buyers of this Agreement and each of the Ancillary Agreements to which either of the Buyers is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:

- (i) conflict with or violate the certificate of incorporation or bylaws of either Buyer;
- (ii) conflict with or violate any Law applicable to the Buyers; or
- (iii) conflict with, result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, require any consent of any Person pursuant to, or give to others any rights of termination, acceleration or cancellation of, any material contract or agreement to which the Buyer is a party;

except, in the case of clause (ii) or (iii), for any such conflicts, violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect or that arise as a result of any facts or circumstances relating to the Seller or any of its Affiliates.

(b) The Buyers are not required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Buyers of this Agreement and each of the Ancillary Agreements to which it is party or the consummation of the transactions contemplated hereby or thereby or in order to prevent the termination of any right, privilege, license or qualification of the Buyer, except for (i) any filings required to be made under the HSR Act, (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect or (iii) as may be necessary as a result of any facts or circumstances relating to the Sellers or any of their Affiliates.

Section 4.4 Financing. The Buyers have sufficient funds to permit the Buyers to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 4.5 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Buyer.

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**ARTICLE V
COVENANTS**

Section 5.1 Covenants Regarding Information.

(a) On or as soon as practicable after the Closing Date, and in any event within five Business Days thereafter, the Sellers will deliver or cause to be delivered to the Buyers all original agreements, documents, books and records and files stored on computer disks or tapes or any other storage medium relating to the Media Business and in the possession of the Seller or any Affiliate of the Seller.

(b) In order to facilitate the resolution of any claims made against or incurred by the Sellers (as it relates to the Media Business) or for any other legitimate business purpose, including without limitation (i) the preparation of financial statements, (ii) U.S. Securities and Exchange Commission reporting requirements, and (iii) Excluded Liabilities, for a period of seven years after the Closing or, if shorter, the applicable period specified in the Buyers' document retention policy, one of the Buyers shall (i) retain the books and records relating to the Media Business relating to periods prior to the Closing and (ii) afford the Representatives of the Sellers reasonable access (including the right to make, at the Sellers' expense, photocopies), during normal business hours, to such books and records; provided, however, that a Buyer shall notify the Sellers in writing at least 30 days in advance of destroying any such books and records prior to the seventh anniversary of the Closing Date in order to provide the Sellers the opportunity to copy such books and records in accordance with this Section 5.1(b), and (iii) assist Seller and Seller's Representatives in the preparation of, review or audit of financial statements that are reasonably required to enable Seller to comply on a timely basis with applicable United States federal securities Laws.

(c) In order to facilitate the resolution of any claims made against or incurred by a Buyer or for any other legitimate business purpose, including without limitation (i) the preparation of financial statements, (ii) U.S. Securities and Exchange Commission reporting requirements, and (iii) Assumed Liabilities, for a period of seven years after the Closing or, if shorter, the applicable period specified in the Sellers' document retention policy, the Sellers shall (i) retain the books and records relating to the Media Business relating to periods prior to the Closing which shall not otherwise have been delivered to a Buyer, (ii) upon reasonable notice, afford the Representatives of the Buyers reasonable access (including the right to make, at a Buyer's expense, photocopies), during normal business hours, to such books and records to the extent relating exclusively to the Media Business; provided, however, that the Sellers shall notify the Buyers in writing at least 30 days in advance of destroying any such books and records prior to the seventh anniversary of the Closing Date in order to provide the Buyers the opportunity to copy such books and records in accordance with this Section 5.1(c), and (iii) assist Buyers and Buyers' Representatives in the preparation of, review or audit of financial statements that are reasonably required to enable Buyers to comply on a timely basis with applicable United States federal securities Laws.

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Section 5.2 Intercompany Arrangements. All intercompany and intracompany accounts or contracts between the Media Business, on the one hand, and the Sellers and their Affiliates, on the other hand, shall be cancelled without any consideration or further liability to any party and without the need for any further documentation, immediately prior to the Closing.

Section 5.3 Confidentiality.

(a) For a period of five years following the Closing Date, the Sellers shall not, and the Sellers shall cause each of their Affiliates and the respective Representatives of the Sellers and their Affiliates not to, use for its or their own benefit or divulge or convey to any third party, any Confidential Information; provided, however, that the Sellers or their Affiliates may furnish such portion (and only such portion) of the Confidential Information as the Sellers or such Affiliate reasonably determines it is legally obligated to disclose if: (i) it receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena, civil investigative demand or order issued by a Governmental Authority; (ii) to the extent not inconsistent with such request, it notifies the Buyers of the existence, terms and circumstances surrounding such request and consults with the Buyers on the advisability of taking steps available under applicable Law to resist or narrow such request; (iii) it exercises its commercially reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information; and (iv) disclosure of such Confidential Information is required to prevent the Sellers or such Affiliate from being held in contempt or becoming subject to any other penalty under applicable Law. For purposes of this Agreement, "Confidential Information" consists of all information and data relating to the Media Business or the transactions contemplated hereby (other than data or information that is or becomes generally available to the public other than as a result of a breach of this Section 5.3).

(b) Effective as of the Closing, the Sellers hereby assign to the Buyers all of the Sellers' right, title and interest in and to any confidentiality agreements entered into by the Sellers (or their Affiliates or Representatives) and each Person (other than the Buyers and their Affiliates and Representatives) who entered into any such agreement or to whom Confidential Information was provided in connection with the Media Business. From and after the Closing, the Sellers will take all actions reasonably requested by either of the Buyers in order to assist in enforcing the rights so assigned. The Sellers shall use their commercially reasonable efforts to cause any such Person to return to the Sellers any documents, files, data or other materials constituting Confidential Information that was provided to any Person in connection with the consideration of any transaction involving the Media Business or any portion thereof.

Section 5.4 Consents and Filings: Further Assurances.

(a) Without limiting the Sellers' obligations hereunder, including under this Section 5.4, if any consent approval or authorization necessary or desirable to preserve for the Buyers any right or benefit under any lease, license, commitment or other Contract which is included in the Transferred Assets (a "Restricted Contract") is not obtained prior to the Closing, then this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery of such Restricted Contract and, subject to Section 5.13, the Sellers, on the one hand, and the

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Buyers, on the other, shall cooperate with one another in structuring and documenting any lawful and reasonable arrangement under which the Buyers shall obtain the economic benefits of the asset, claim or right with respect to which the consent has not been obtained in accordance with this Agreement and the Sellers will, subsequent to the Closing, cooperate with the Buyers in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. Such reasonable arrangement may include (i) the subcontracting, sublicensing or subleasing to a Buyer of any and all rights of the Sellers against the other party to such Restricted Contract, (ii) the enforcement by the Sellers of such rights in respect of such Restricted Contract, and (iii) the performance by a Buyer of the obligations under such Restricted Contract as the relevant Sellers' agent. From and after Closing, (i) Sellers will promptly pay to Buyers when received all moneys relating to the period on or after the Closing Date received by it under any Restricted Contract (other than any Excluded Assets), and (ii) Buyers will promptly pay, perform or discharge when due any Liabilities arising thereunder after the Closing Date under any Restricted Contract. Liabilities arising after the Closing under a Restricted Contract shall constitute Assumed Liabilities. As soon as the relevant consent for the sale, assignment, transfer, conveyance, delivery or assumption of a Restricted Contract is obtained, Sellers shall promptly assign, transfer, convey and deliver such Restricted Contract to the relevant Buyer, and such Buyer shall assume such Restricted Contract from and after the date of assignment to Buyer pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assignment and Assumption Agreement or in such other terms as may be required by the relevant third party. If Sellers shall have complied with their obligations under this Section 5.4(a), the inability to secure the consent to the transfer or assignment of a Restricted Contract shall not constitute a breach of any of Sellers' covenants or obligations under this Agreement and no reduction shall be made to the Purchase Price in respect thereof.

(b) The Sellers and the Buyers agree, and the Sellers agree to cause each of the Licensors (as defined in the Premises License Agreement), to use their commercially reasonable efforts to promptly obtain the consents of the landlords as contemplated under the Premises License Agreement. The parties further agree, and the Sellers agree to cause each of the Licensors, to negotiate in good faith with one another and the applicable landlord any changes or modifications to a Sublease or Assignment (in each case, as defined in the Premises License Agreement) and to promptly execute (or cause the applicable Affiliate to execute) the final agreed upon Sublease or Assignment. MIVA separately agrees to guarantee the obligations of each of the Licensors under the Premises License Agreement, including, without limitation, any breaches by a Licensor of any provision of the Premises License Agreement, and to cause such Licensor to fully and timely perform its obligations thereunder.

(c) At any time or from time to time after the Closing, at the request of any party to this Agreement and without further consideration, the other parties shall execute and deliver, at their own expense, such other documents, instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as the requesting party may reasonably require in order to carry out the intent of this Agreement and the transactions contemplated by this Agreement.

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Section 5.5 Refunds and Remittances. After the Closing: (a) if the Sellers or any of their Affiliates receive any refund or other amount that is a Transferred Asset or is otherwise properly due and owing to the Buyers in accordance with the terms of this Agreement, the Sellers promptly shall remit, or shall cause to be remitted, such amount to the Buyers and (b) if the Buyers or any of their Affiliates receive any refund or other amount that is an Excluded Asset or is otherwise properly due and owing to the Sellers or any of their Affiliates in accordance with the terms of this Agreement, the Buyers promptly shall remit, or shall cause to be remitted, such amount to the Sellers.

Section 5.6 Payment of Liabilities.

(a) The Sellers shall pay or otherwise satisfy in the ordinary course of business, after the Closing, the Excluded Liabilities.

(b) The Buyers shall pay or otherwise satisfy in the ordinary course of business, after the Closing, the Assumed Liabilities and all other liabilities and obligations incurred in connection with the Media Business after the Closing.

Section 5.7 Bulk Transfer Laws. Buyers and Sellers hereby waive compliance by Buyers and Sellers with bulk sales and any other similar Laws in any applicable jurisdiction in respect of the transactions contemplated by this Agreement and the Ancillary Agreements; provided, however, that Sellers shall pay and discharge when due all claims of creditors asserted against Buyer or the Transferred Assets by reason of such noncompliance and shall take promptly all necessary actions required to remove any Encumbrance (except any Permitted Encumbrance) which may be placed upon any of the Transferred Assets by reason of such noncompliance; provided, further, however, that nothing herein shall affect the obligation of Buyers to pay and discharge the Assumed Liabilities and no indemnity is made under this Section 5.7 with respect to the Assumed Liabilities.

Section 5.8 Media Business Employees.

(a) The Buyers shall, or shall cause one of their Affiliates to, continue to employ (where employment continues automatically by operation of law) or extend offers of employment (where employment does not continue automatically by operation of law) to each Business Employee who is listed on Schedule 5.8(a) (all such employees who transfer automatically by operation of applicable Law, or who accept a Buyer's offer of employment are referred to as the "Transferring Employees"). Such offers of employment shall be on terms and conditions substantially similar in the aggregate to the terms and conditions of their employment as of February 28, 2009. The Buyers would provide in writing to each such U.S. Business Employee to whom an offer of employment is made an explanation of the material terms and conditions of the offer and a reasonable period of time to accept the offer. The Sellers shall terminate the employment of all U.S. Transferring Employees employed by such Seller immediately prior to the Closing and shall cooperate with and use its reasonable best efforts to assist the Buyers in their efforts to secure satisfactory employment arrangements with those Business Employees to whom a Buyer makes an offer of employment. In addition, the parties hereto agree as follows:

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(i) The Sellers shall be solely responsible for, and shall discharge and shall indemnify the Buyers in respect of, any and all liabilities, obligations, costs, expenses, claims and demands arising out of or relating to the employment (and/or the termination of employment) of employees of the Sellers who do not become Transferring Employees, whether such liabilities arise before, on or after the Closing Date;

(ii) The Sellers shall be solely responsible for, and shall discharge and shall indemnify the Buyers in respect of, any and all liabilities, obligations, costs, expenses, claims and demands arising out of or relating to the employment (and/or the termination of employment) of, or accruing with respect to, any Transferring Employee before the date such employee actually commences work with a Buyer and its Affiliates pursuant to this Section 5.8 (except that in respect of the UK Transferring Employees the Sellers shall not be liable for any redundancy payments which become due to a UK Transferring Employee as a result of a dismissal by a Buyer or its Affiliates after the date on which they become employed by a Buyer or its Affiliates solely because such redundancy payment is calculated or due as a result of their period of service prior to the date on which they became employed by the Buyer or its Affiliates). For avoidance of doubt, the Sellers shall be solely responsible for any and all severance payments or change in control payments which arise as a result of an act of the Seller or directly as a result of their employment with the Seller being terminated (but excluding any subsequent termination by a Buyer or its Affiliates) or directly as a result of the occurrence of the transactions contemplated by this Agreement, and salary or other compensation, and accrued bonus or commission payments made or owing to employees or independent contractors of the Sellers in respect of the period of their employment by the Seller;

(iii) For avoidance of doubt, the Sellers shall be solely responsible for any and all severance payments, change in control payments, salary or other compensation, and accrued bonus or commission payments made or owing to employees or independent contractors of the Sellers;

(iv) The Buyers shall be solely responsible for, shall discharge and shall indemnify the Sellers in respect of, any and all liabilities, costs, obligations, expenses, claims and demands (including for the avoidance of doubt all compensation, pay and accrued bonus or commission payments) arising from or in respect of any of the Transferring Employees after Closing and not relating to any matters, events or occurrences arising before Closing;

(v) The Sellers shall be solely responsible for, and shall discharge and shall indemnify the Buyers in respect of, any and all liabilities, obligations, costs, expenses, claims and demands arising out of or relating to the employment (and/or the termination of employment) of any employee or former employee of the Sellers whose employment (and/or associated liabilities) transfers to the Buyers under operation of law but who are not identified on Schedule 5.8(a) of the Disclosure Schedules; provided, however, that this Section 5.8(a)(iv) shall not apply with respect to the continuing costs of employing any individual described in this subsection if the Buyers decide to employ such individual in the Media Business on an ongoing basis;

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(vi) For avoidance of doubt, the Sellers shall be responsible for any and all payments to Transferring Employees (including any employer-related withholding and social security obligations) in connection with stock options, restricted stock units, or other equity awards granted under an equity incentive plan of the Sellers; and

(vii) For avoidance of doubt, the Sellers shall be responsible for the provision of COBRA benefits to employees of Seller receiving such benefits as of the Closing Date, and to any employee who does not become a Transferring Employee, under a group health plan of the Sellers on and after the Closing Date.

(b) The Sellers shall be responsible for the payment of all vacation pay earned but not paid to its employees until and through the date of termination of each such employee. The Buyers shall, in respect of the U.K. Transferring Employees, reimburse to Miva UK within 28 days of the Closing an amount equal to all outstanding sums due to Miva UK from the U.K. Transferring Employees in respect of any interest-free season ticket travel loans made by Miva UK to U.K. Transferring Employees.

(c) From and after the Closing Date, Buyers shall offer to U.S. Transferring Employees such benefit plans and arrangements that are substantially similar to those provided by the Sellers and their Affiliates to the U.S. Transferring Employees immediately prior to the Closing. With respect to the coverage of the Transferring Employees under Buyer's Welfare Plans, (i) each such employee's credited service with Seller and its Affiliates shall be credited against any waiting period applicable to eligibility for enrollment of new employees under Buyer's Welfare Plans to the same extent such service was credited under the similar Seller Welfare Plan; (ii) limitations on benefits due to pre-existing conditions shall be waived for any U.S. Transferring Employee enrolled in any Seller Welfare Plan as of the Closing Date; (iii) any out-of-pocket annual maximums and deductibles taken into account under the Seller Welfare Plan for any U.S. Transferring Employee in the calendar year which contains the Closing Date shall be credited under Buyer's Welfare Plan for the same calendar year; and (iv) with respect to aggregate lifetime maximum benefits available under Buyer's Welfare Plans, a Transferring Employee's prior claim experience under any of Seller Welfare Plan will not be taken into account, in each of clauses (i) through (iv) above, to the extent permitted under the terms and conditions of Buyer's Welfare Plans as of the Closing; provided, however, that if the items described in clauses (i) through (iv) above are not permitted under the terms and conditions of Buyer's Welfare Plans, Buyer agrees to use commercially reasonable efforts to negotiate with its insurance carriers to effectuate the intent of clauses (i) through (iv) above, to the extent doing so does not result in significant cost to Buyer, as determined in Buyer's sole discretion. For purposes of this Section 5.8(c), the term Buyer's Welfare Plans shall mean Welfare Plans sponsored or maintained by Buyer or its Affiliates and Seller Welfare Plans shall mean Welfare Plans sponsored or maintained by Seller or its Affiliates.

(d) Sellers and Buyers shall comply with their respective obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") in respect of the UK Transferring Employees, including without limitation, the Seller's obligation to inform and/or consult with the employee representatives.

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(e) Seller covenant not to sue in respect of any non-solicitation, non-competition, non-disclosure, and confidentiality provisions or agreements entered into between any Seller and any Transferred Employee prior to Closing that would restrict any Transferred Employee's employment and/or conduct in connection as an employee of a Buyer or an Affiliate of a Buyer after Closing.

(f) Nothing in this Section 5.8 is intended to or shall confer upon any Person other than the parties to this Agreement and their respective successors and permitted assigns any right to employment or any other legal or equitable right, benefit or remedy of any nature.

Section 5.9 MIVA, Findwhat, Searchfeed, and eSpotting Names.

(a) Within 90 days of the date hereof, MIVA agrees to take or cause to be taken such actions as are required to change the respective names of MIVA, Inc. and any of its Affiliates or any name being used by the Sellers or any of their Affiliates (including any name used for "doing business as" purposes) in MIVA's or such Affiliate's jurisdiction of organization and in any state or foreign state or country where the Sellers or such Affiliate are qualified and registered to do business, so that neither the name of MIVA, Inc. nor any of the Sellers' Affiliates contains any of the following words or derivatives thereof: MIVA, eSpotting, FindWhat or SearchFeed. Concurrently herewith the Sellers are executing and delivering an Intellectual Property Assignment assigning all such names and any other Intellectual Property included in the Transferred Assets to the Buyers. The Sellers agree that neither it nor any of its Affiliates shall use any of the names listed above or any derivative thereof for any business, commercial, professional or other endeavor.

(b) Buyers acknowledge that Sellers and their Affiliates have provided certain rights to use the "MIVA" name and mark under the Small Business Solutions Agreements. Notwithstanding anything herein to the contrary, Buyers hereby grant, and shall cause Buyers' Affiliates to grant, to Sellers and Sellers' Affiliates a royalty-free right and license to use such Intellectual Property rights entailed in the U.S. Media Assets as are necessary in order for MIVA and its Affiliates to comply with the terms and conditions of the Small Business Solutions License Agreement. In addition, neither the Buyers nor Buyers' Affiliates will use the MIVA MERCHANT mark or any variant containing "MIVA MERCHANT," for any product or service during the term of the license granted under the Small Business Solutions License Agreement.

Section 5.10 Non-Competition; Non-Solicitation.

(a) For a period of five years following the Closing (the "Restricted Period"), or for such shorter period as expressly set forth below, each of the Sellers agrees not to, and shall cause their Affiliates not to, directly or indirectly through any Person or contractual arrangement:

(i) engage in any business activity with, have any economic or ownership interest in or loan any money to, or perform any services or provide any advice for, any person, firm, corporation, business or entity (whether as a shareholder, member, partner, investor, proprietor, principal, agent, security holder, trustee, beneficiary, creditor lending credit

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or money for the purpose of establishing or operating any such business or otherwise, alone or in association with any other Person or entity) which is the same as, substantially similar to, or substantially competitive with, the Media Business within the United States and Europe; provided, however, that nothing herein shall prevent (A) for the avoidance of doubt, any individual member of the board of directors of any of the Sellers or Sellers' Affiliates from being a member of the board of directors of any other entity in their personal capacity and not in their capacity as a member of the board of directors of MIVA or any of MIVA's Affiliates, (B) Sellers or their Affiliates from owning and operating toolbar, homepage and desktop products, through its MIVA Direct division as operated by them at Closing or (C) a third party that acquires the Sellers or any of their Affiliates from operating a Media Business; provided, that with respect to clause (B), such party does not cause the Sellers or any Seller acquired Affiliate to operate a Media Business.

(ii) Each of the Sellers covenants and agrees that it is unlikely that it could undertake any of the activities described in this Section 5.10(a)(ii) without necessarily benefiting from and making use of the Confidential Information. Each of the Sellers therefore covenants and agrees that during the period beginning on the date hereof and ending on the second anniversary of the date hereof neither it nor any of its Affiliates shall, for itself, themselves or any third party, directly or indirectly, (i) divert from any of the Buyers or any of their Affiliates any business of any kind in which either the Sellers were engaged with respect of the Media Business or the Buyers were engaged in at the Closing, including, without limitation, the solicitation or inducement of or interference with, any past, existing or prospective client, customer or source of financing of the Sellers, the Buyers or any Affiliate of the Buyers, (ii) employ or solicit for employment person employed by any of the Buyers, any Affiliate of the Buyers or any Transferring Employees or induce any Transferring Employee or employee of any of the Buyers or any Affiliate of the Buyers to leave the employ of the Buyers or any Affiliate of the Buyers for any reason whatsoever, unless such person will have ceased to be employed or engaged by a Buyer for a period of at least six months prior thereto or (iii) attempt to do any of the foregoing; provided, however, that nothing herein shall prevent any Seller or any of its Affiliates from engaging in general media advertising or solicitation that may be targeted to a particular geographic or technical area but that is not targeted toward Transferring Employees; or

(iii) disparage the Buyers or any of their Affiliates in any way that could adversely affect the goodwill, reputation or business relationships of the Media Business, the Buyers or any of their Affiliates with the public generally, or with any of their customers, suppliers or employees.

(b) Each of the Buyers covenants and agrees that during the period beginning on the date hereof and ending on the second anniversary of the date hereof neither it nor any of its Affiliates shall, for itself, themselves or any third party, directly or indirectly, (i) employ or solicit for employment person employed by any of the Sellers or any Affiliate of the Buyers (other than the Transferring Employees) or induce any employee of any of the Sellers or any Affiliate of the Sellers (other than the Transferring Employees) to leave the employ of the Sellers or any Affiliate of the Sellers for any reason whatsoever, unless such person will have ceased to be employed or engaged by a Seller for a period of at least six months prior thereto or

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(ii) attempt to do any of the foregoing; provided, however, that nothing herein shall prevent any Buyer or any of its Affiliates from (A) engaging in general media advertising or solicitation that may be targeted to a particular geographic or technical area but that is not targeted toward Transferring Employees or (B) within 60 days of Closing, offering employment to those Business Employees set forth in Schedule 5.10(b) of the Seller Disclosure Schedules and, if and upon such person's acceptance, employing such person(s).

(c) Each of the Sellers acknowledges and agrees that its compliance with the covenants contained in this Section 5.10 hereof is necessary to protect the value of the ongoing business and assets (including the goodwill) and other proprietary interests being acquired pursuant to this Agreement. Each of the Sellers further acknowledges and agrees that a breach of the covenants in this Section 5.10 will result in irreparable and continuing damage to the Buyers for which there will be no adequate remedy at law, and agrees that in the event of any breach or threatened breach of such covenants, the Buyers shall be entitled to interim relief in the form of a temporary restraining order, preliminary injunction or injunction and to have such covenants specifically enforced by any court having equity jurisdiction in addition to such other and further relief as may be proper.

(d) Subject to Section 5.10(a)(i), it is the intention of the parties hereto that the scope and effect of the covenants contained in this Section 5.10 shall be as broad in time and geography, and in all other respects, as is permitted pursuant to applicable Law. The provisions of this Section 5.10 are severable and independent and shall be interpreted and applied consistently with requirements of reasonableness and equity. If any provision of this Section 5.10 shall be held to restrict competition to a greater degree than is permitted by applicable Law or to be invalid or otherwise unenforceable, in whole or in part, such term or provision shall be adjusted rather than voided, and the remainder of the provisions, or enforceable parts thereof, shall not be affected thereby, and shall remain in full force and effect to the maximum extent possible.

Section 5.11 Public Announcements. The Sellers and the Buyers shall consult with each other before issuing, and provide each other the opportunity to review and comment upon, any press release or other public statement with respect to the transactions contemplated hereby, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law or any securities exchange regulation, in which case the party proposing to issue such publication or press release shall make reasonable efforts to consult in good faith with the other party or parties before issuing any such publication or press release and shall provide a copy thereof to the other party or parties prior to such issuance.

Section 5.12 Litigation Support. In the event and for so long as a Seller actively is pursuing, contesting or defending against any action, investigation, charge, claim, or demand by a third party (including any stockholder derivative action) in connection with (a) any transaction contemplated by this Agreement, or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action failure to act, or transaction on or before the Closing Date involving the Media Business, the Buyers will, and will cause their Affiliates to, upon reasonable advanced written notice from the Sellers, reasonably cooperate

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with the Sellers and the Sellers' Affiliates and their counsel in the contest or defense of such causes of action, reasonably make available its personnel, and reasonably provide such testimony and access to their books, records and other materials as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the Sellers (including, without limitation, travel expenses and the pro-rated reimbursement of the Buyers for such person's wages allocable to the time such person is providing assistance hereunder). Notwithstanding the foregoing, the Buyers and their Affiliates will not be required to provide the cooperation called for by this Section 5.12 if in the reasonable opinion of the Buyers the rendering of such cooperation would be reasonably likely to jeopardize an attorney-client privilege of a Buyer, violate any applicable Law or create a material conflict of interest to a Buyer.

ARTICLE VI TAX MATTERS

Section 6.1 Price Allocation. Within one hundred and twenty (120) days following the Closing Date, the Buyers shall prepare and deliver to the Sellers a schedule allocating (i) the U.S. Purchase Price (plus any U.S. Assumed Liabilities that are treated as consideration for the U.S. Media Assets for Tax purposes) among the U.S. Media Assets and (ii) the European Purchase Price (plus any European Assumed Liabilities that are treated as consideration for the European Media Assets) among the European Media Assets for Tax purposes (collectively, the "Price Allocation"). Within thirty (30) days of delivery of the Price Allocation, the Sellers shall notify the Buyers of any proposed changes. The parties shall consult with each other and attempt in good faith to resolve any issues arising as a result of the Price Allocation. If the parties cannot agree on the Price Allocation, the dispute shall be resolved by an independent nationally recognized accounting firm acceptable to the Buyers and the Sellers. The Price Allocation with respect to the U.S. Media Assets shall be prepared in a manner consistent with Section 1060 of the Code and the Treasury regulations promulgated thereunder. Each party agrees to timely file an IRS Form 8594 reflecting the Price Allocation with respect to the U.S. Media Assets for the taxable year that includes the Closing Date and to make any timely filing required by applicable state or local laws. To the extent the Purchase Price is adjusted after the Closing Date, the parties agree to revise IRS Form 8594 as appropriate. The Price Allocation made pursuant to this Section 6.1 shall be binding on the Buyers and the Sellers for all Tax reporting purposes. Neither the Buyers nor the Sellers shall take any position inconsistent with the Price Allocation in connection with any Tax proceeding, except that the Buyers' cost for the Transferred Assets may differ from the amount so allocated to the extent necessary to reflect its capitalized acquisition costs not included in the amount realized by Transferred Assets. If any taxing authority disputes the Price Allocation, the party receiving notice of the dispute shall promptly notify the other party hereto of such dispute and the parties hereto shall cooperate in good faith in responding to such dispute in order to preserve the effectiveness of the Price Allocation.

Section 6.2 Tax Indemnity Adjustment. Any indemnification payment under the terms of this Agreement shall be treated as an adjustment to the Purchase Price for federal and United Kingdom income Tax purposes. Any payments subsequent to the Closing Date (such as indemnity payments under the terms of this Agreement) that are treated as an adjustment to the

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Purchase Price of the Transferred Assets for Tax purposes shall be reflected as an adjustment to the price allocated to either the U.S. Media Assets or the European Media Assets that gave rise to the adjustment. The amount of any such adjustment shall be allocated among the U.S. Media Assets or the European Media Assets in accordance with the Price Allocation provided in Section 6.1.

Section 6.3 Transfer Taxes. Transfer Taxes arising as a result of the transactions contemplated by this Agreement shall be the responsibility of the party on whom the Transfer Tax is imposed under the laws of the applicable taxing jurisdiction, provided, however, that (a) responsibility for VAT shall be dealt with in accordance with Section 6.5 of this Agreement, and (b) for the sake of clarity, the Buyers shall not be liable for any Transfer Taxes that are imposed on a Seller under the laws of the applicable taxing jurisdiction, but for which a Buyer becomes liable as a result of transferee liability, successor liability, or as a result of such Taxes giving rise to a lien on the Transferred Assets.

Section 6.4 Information. The Buyers and the Sellers agree to utilize the standard procedure set forth in Rev. Proc. 2004-53 with respect to wage reporting.

Section 6.5 VAT. All sums payable under the Transaction Documents are exclusive of and Buyers shall be responsible for and bear the cost of any VAT. Buyers shall be responsible for any VAT payable in addition to the Consideration. MIVA UK and European Acquisition Sub agree that the sale of the UK Media Assets constitutes the transfer of a business as a going concern, and shall use all reasonable efforts to procure that the provisions of Section 49 and article 5 of the Value Added Tax (Special Provisions) Order 1995 (SI/1995/1268) (the "Order") apply to the sale and purchase of the UK Media Assets such that the sale of such UK Media Assets falls to be treated as neither a supply of goods nor a supply of services for VAT purposes and that no VAT shall be chargeable in respect thereof. If, notwithstanding the foregoing, HM Revenue & Customs determine in writing that VAT is chargeable in respect of the sale of any of the UK Media Assets, MIVA UK shall forthwith provide to European Acquisition Sub a copy of such written determination, together with a valid VAT invoice complete in all respects in relation to any VAT chargeable. The VAT so chargeable shall be paid by European Acquisition Sub Buyer to MIVA UK on the later of two Business Days after the receipt by European Acquisition Sub of credit or repayment from HM Revenue & Customs in respect of such VAT and two Business Days prior to the date on which MIVA UK is liable to account for the same to HM Revenue & Customs. Buyers represent and warrant that the European Acquisition Sub has applied to become a registered taxable person for the purposes of VAT and is not a member of a partly exempt VAT group.

ARTICLE VII INDEMNIFICATION

Section 7.1 Survival of Representations, Warranties. The representations and warranties of each of the Sellers and each of the Buyers contained in this Agreement and any schedule, certificate or other document delivered pursuant hereto shall survive the Closing for a period of [***] following the Closing Date; provided, however, that:

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(a) the representations and warranties set forth in [***] shall survive [***],[***] shall survive [***] ([***] are collectively referred to herein as the "[***]"), [***] shall survive [***];

(b) any representation in the case of [***], shall survive [***].

Neither the Sellers nor the Buyers shall have any liability whatsoever with respect to any such representations and warranties unless a claim is made hereunder prior to the expiration of the survival period for such representation and warranty, in which case such representation and warranty shall survive as to such claim until such claim has been finally resolved.

Section 7.2 Indemnification by the Sellers.

(a) Subject to Section 7.2(b), the Sellers shall jointly and severally save, defend, indemnify and hold harmless each of the Buyers and their Affiliates and their respective Representatives, successors and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, diminution of value, interest, awards, judgments, penalties, costs and expenses (including attorneys' fees, costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (hereinafter collectively, "Losses"), asserted against, incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to:

(i) any breach of any representation or warranty made by either Seller contained in this Agreement or any schedule, certificate or other document delivered pursuant hereto (without giving effect to any materiality, Material Adverse Effect or similar qualification);

(ii) any breach of any covenant or agreement by either Seller contained in this Agreement or any schedule, certificate or other document delivered pursuant hereto;

(iii) any and all Excluded Liabilities (including, without limitation, any Seller Taxes); and

(iv) any Action brought by shareholders of the Sellers and relating to the transactions contemplated hereby.

(b) [***].

Section 7.3 Indemnification by the Buyers. The Buyers shall jointly and severally save, defend, indemnify and hold harmless the Sellers and their Affiliates and the respective Representatives, successors and assigns of each of the foregoing from and against any and all Losses asserted against, incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to:

(a) any breach of any representation or warranty made by either Buyer contained in this Agreement or any schedule, certificate or other document delivered pursuant hereto (without giving effect to any materiality, Material Adverse Effect or similar qualification);

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(b) any breach of any covenant or agreement by either Buyer contained in this Agreement or any schedule, certificate or other document delivered pursuant hereto or in connection with the transactions contemplated hereby; and

(c) any Assumed Liability.

Section 7.4 Tax Allocation. All Taxes and similar *ad valorem* obligations levied with respect to the Transferred Assets for a taxable period that includes (but does not end on) the Closing Date shall be apportioned between Sellers, on the one hand, and the Buyers, on the other hand, as of the Closing Date based on the number of days of such taxable period included in the period through and including the Closing Date ("Pre-Closing Tax Period") and the number of days of such taxable period included in the period commencing on the day after the Closing Date ("Post-Closing Tax Period"). The Sellers shall be jointly and severally liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and the Buyers shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period. Within a reasonable period, the Sellers and the Buyers shall present a statement to the other setting forth the amount of reimbursement to which each is entitled under this Section 7.4, together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the party owing it to the other party within ten (10) days after delivery of such statement. Any payment required under this Section 7.4 and not made within ten (10) days after delivery of the statement shall bear interest at the rate per annum determined, from time to time, under the provisions of Section 6621(a)(2) of the Code for each day until paid.

Section 7.5 Procedures.

(a) In order for a party (the "Indemnified Party") to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a Loss or a claim or demand made by any person against the Indemnified Party (a "Third Party Claim"), such Indemnified Party shall deliver notice thereof to the party against whom indemnity is sought (the "Indemnifying Party") with reasonable promptness after receipt by such Indemnified Party of written notice of the Third Party Claim and shall provide the Indemnifying Party with such information with respect thereto as the Indemnifying Party may reasonably request. The failure to provide such notice, however, shall not release the Indemnifying Party from any of its obligations under this Article VIII except to the extent that the Indemnifying Party is significantly prejudiced by such failure.

(b) If (i) the Indemnifying Party acknowledges in writing, within 30 days after receipt of notice from the Indemnified Party of the commencement of a Third Party Claim, its obligation to indemnify the Indemnified Party against any and all Losses involving claims that may result from such Third Party Claim pursuant to the terms of this Agreement; (ii) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against such Third Party Claim and fulfill its indemnification obligations hereunder; (iii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief; (iv) settlement or an adverse judgment of the Third Party Claim will not

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materially adversely affect the continuing business interests of the Indemnified Party, the Indemnifying Party shall have the right, upon written notice to the Indemnified Party provided within thirty (30) days after receipt of notice from the Indemnified Party of the commencement of a Third Party Claim, to assume the defense thereof at the expense of the Indemnifying Party (which expenses shall not be applied against any indemnity limitation herein) with counsel selected by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnifying Party shall be liable for the fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has failed to assume the defense thereof if and to the extent that it is ultimately determined that such Indemnifying Party has an indemnity obligation for indemnifiable Losses as provided under Section 7.2 or 7.3, as applicable, with respect to such counsel fees and expenses. If the Indemnifying Party does not expressly elect to assume the defense of such Third Party Claim within the time period and otherwise in accordance with the first sentence of this Section 7.5(b), the Indemnified Party shall have the right to assume the defense of and to settle such Third Party Claim; provided, however, that the Indemnifying Party may, at its own option and at its own expense, participate in the defense of such Third Party Claim through Representatives and counsel of its own choosing, cost and expense. If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnified Party shall have the right to employ separate counsel and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless (i) the employment of such counsel shall have been specifically authorized in writing by the Indemnifying Party or (ii) the Indemnified Party reasonably determines that representation by counsel to the Indemnifying Party of both the Indemnifying Party and such Indemnified Party would present such counsel with a conflict of interest. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnified Party shall, at the Indemnifying Party's expense, cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, enter into any settlement or compromise or consent to the entry of any judgment with respect to such Third Party Claim if such settlement, compromise or judgment (i) involves a finding or admission of wrongdoing, (ii) does not include an unconditional written release by the claimant or plaintiff of the Indemnified Party from all liability in respect of such Third Party Claim or (iii) imposes equitable remedies or any obligation on the Indemnified Party other than solely the payment of money damages for which the Indemnified Party will be indemnified hereunder.

(c) If, in connection with a Third Party Claim, the Indemnifying Party has, in accordance with Section 7.5(b), acknowledged in writing its obligation to indemnify the Indemnified Party against any and all Losses in respect thereof, the indemnification required hereunder in respect of that Third Party Claim shall be made by prompt payment by the Indemnifying Party of the amount of actual Losses in connection therewith, as and when bills are received by the Indemnifying Party or Losses incurred have been notified to the Indemnifying Party, together with interest on any amount not repaid as necessary to the Indemnified Party by the Indemnifying Party within ten Business Days after receipt of notice of

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such Losses, from the date such Losses have been notified to the Indemnifying Party, at the rate of interest described in Section 2.7 (d).

(d) The Indemnifying Party shall not be entitled to require that any action be made or brought against any other Person before action is brought or claim is made against it hereunder by the Indemnified Party.

(e) In the event any Indemnified Party should have a claim against any Indemnifying Party hereunder that does not involve a Third Party Claim being asserted against or sought to be collected from such Indemnified Party, the Indemnified Party shall deliver notice of such claim with reasonable promptness to the Indemnifying Party. The failure to provide such notice, however, shall not release the Indemnifying Party from any of its obligations under this Article VIII except to the extent that the Indemnifying Party is significantly prejudiced by such failure and shall not relieve the Indemnifying Party from any other obligation or liability that it may have to the Indemnified Party or otherwise than pursuant to this Article VIII. If the Indemnifying Party does not notify the Indemnified Party within 30 days following its receipt of such notice that the Indemnifying Party disputes its liability to the Indemnified Party hereunder, such claim specified by the Indemnified Party in such notice shall be conclusively deemed a liability of the Indemnifying Party hereunder and the Indemnifying Party shall pay the amount of such liability to the Indemnified Party on demand. If the Indemnifying Party agrees that it has an indemnification obligation but asserts that it is obligated to pay a lesser amount than that claimed by the Indemnified Party, the Indemnifying Party shall pay such lesser amount promptly to the Indemnified Party, without prejudice to or waiver of the Indemnified Party's claim for the difference.

(f) Notwithstanding the provisions of Section 8.9 (Arbitration), in the event an Action is brought against any Indemnified Party in respect of a Third Party Claim, such Indemnified Party may, at its sole option, join any Indemnifying Party to such Action for purposes of resolving any claim the Indemnified Party may have under this Agreement with respect to such Action or the matters alleged therein. Each Indemnifying Party hereby consents to the jurisdiction of any court in which such Action is pending and hereby irrevocably and unconditionally agrees that process may be served by satisfying the notice requirements set forth in Section 8.4 or in any other manner permitted by law.

Section 7.6 Limits on Indemnification.

(a) Notwithstanding anything to the contrary contained in this Agreement:

(i) the maximum aggregate amount of indemnifiable Losses that may be recovered from the Sellers or the Buyers pursuant to [***], as the case may be, shall be [***], except with respect to (i) the [***], for which the maximum aggregate amount of indemnifiable Losses that may be recovered from the Sellers or the Buyers, as the case may be, when aggregated with all other indemnifiable Losses that may be recovered from the Sellers or the Buyers, pursuant to [***], as the case may be, shall be [***] (the "Cap"), and (ii) [***], for which the maximum aggregate amount of indemnifiable Losses that may be recovered from the Sellers, when aggregated with all other indemnifiable Losses that may be recovered from the

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Sellers pursuant to [***], shall be [***]). The maximum aggregate amount of indemnifiable Losses that may be recovered from the Sellers or the Buyers pursuant to [***], as the case may be, shall in no event exceed an amount equal to [***];

(ii) an Indemnifying Party shall not be liable to any Indemnified Party for any claim for indemnification pursuant to [***], as the case may be, unless and until the aggregate amount of indemnifiable Losses that may be recovered from such Indemnifying Party equals or exceeds [***]; and

(iii) no party hereto shall have any liability under any provision of this Agreement for any incidental, consequential, special or indirect damages, including business interruption, loss of future revenue, profits or income, or loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement;

~~provided~~ that the foregoing clauses (i) and (ii) shall not apply to [***]; ~~provided, further~~, that clause (ii) shall not apply to any Losses arising out of or relating to [***]. The Indemnified Party may not make a claim for indemnification under [***], as the case may be, for breach by the Indemnifying Party of a particular representation or warranty after the expiration of the survival period thereof specified in Section 7.1, except as otherwise provided in such Section.

(b) The Buyers and the Sellers shall cooperate reasonably with each other with respect to resolving any claim, liability or Loss for which indemnification may be required hereunder.

(c) [***].

(d) The Indemnified Party will use its commercially reasonable efforts to mitigate any Losses with respect to which it may be entitled to seek indemnification pursuant to this Agreement.

(e) No Party shall be entitled to indemnification under this Article VII for any Losses with respect to any matter to the extent that such matter was raised in the calculation of the adjustment of the Purchase Price pursuant to Section 2.7.

Section 7.7 Exclusivity. Except as specifically set forth in this Agreement, effective as of the Closing, in the absence of fraud, intentional misrepresentation of fact by an Indemnifying Party, the Indemnified Party, on behalf of itself and the other Indemnified Parties, waives any rights and claims any Indemnified Party may have against the Indemnifying Party, whether in law or equity, relating to the Media Business, the Transferred Assets, the Assumed Liabilities and/or the transactions contemplated hereby. After the Closing, subject to the foregoing, this Article VIII will provide the exclusive remedy against the a party hereto for any breach of any representation, warranty, covenant or other claim arising out of or relating to this Agreement and/or the transactions contemplated hereby.

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**ARTICLE VIII
GENERAL PROVISIONS**

~~Section 8.1 **Fees and Expenses.** Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby shall be paid by the party incurring such fees or expenses, whether or not such transactions are consummated.~~

Section 8.2 **Amendment and Modification.** This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of the Sellers, on the one hand, and the Buyers, on the other hand.

Section 8.3 **Waiver.** No failure or delay of either party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder. Any agreement on the part of any of the parties to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party.

Section 8.4 **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed duly given ~~(a) on the date of delivery~~ if delivered personally, or if by facsimile, upon written confirmation of receipt by facsimile, e-mail or otherwise, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

- (i) if to any Seller, to:

MIVA, Inc.
5220 Summerlin Commons Blvd.
Suite 500
Ft. Myers, Florida 33907
Attention: John B. Pizaris
Facsimile: (239) 561-7224

with a copy (which shall not constitute notice) to:

Baker & McKenzie LLP
One Prudential Plaza, Suite 3500
Chicago, Illinois, 60601
Attention: Edward J. West
Facsimile: (312) 861-2899

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(ii) if to any Buyer, to:

Adknowledge, Inc.
4600 Madison
10th Floor
Kansas City, MO 64112
Attention: Scott Lynn
Facsimile: 816-931-1769

with a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
Attention: J. Keith Biancamano
Facsimile: 213-229-6775

Section 8.5 Interpretation. When a reference is made in this Agreement to a Section or Article such reference shall be to a Section or Article of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. The word "including" and words of similar import when used in this Agreement will mean "including, without limitation," unless otherwise specified.

Section 8.6 Entire Agreement. This Agreement (including the Disclosure Schedules hereto), the Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings between the parties with respect to the subject matter hereof and thereof. Notwithstanding any oral agreement or course of action of the parties or their Representatives to the contrary, no party to this Agreement shall be under any legal obligation to enter into or complete the transactions contemplated hereby unless and until this Agreement shall have been executed and delivered by each of the parties.

Section 8.7 No Third-Party Beneficiaries. Except as provided in Article VIII, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

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Section 8.8 Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of New York, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of New York.

Section 8.9 Arbitration.

(a) Any dispute, controversy, or claim arising out of or relating to any provision of this Agreement or the Ancillary Agreements, or the interpretation, enforceability, performance, breach, termination, or validity of this Agreement or the Ancillary Agreements, including, without limitation, this arbitration clause, shall be solely and finally settled by arbitration in Kansas City, Missouri in accordance with the Commercial Arbitration Rules and Supplementary Procedures for International Commercial Arbitration of the American Arbitration Association ("AAA") in effect as of the date hereof as modified by the provisions of this Section 8.9.

(b) The award shall be deemed a United States award for purposes of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"). The English language shall be used in the arbitral proceedings, and all documents, exhibits, and other evidence shall be translated into the English language. If any party so elects, iterative translation into languages other than English may be provided at said party's expense.

(c) All papers, documents, or evidence, whether written or oral, filed with or presented to the arbitrator shall be deemed by the parties and the arbitrator to be confidential information. No party, expert, or arbitrator shall disclose in whole or in part to any other person any confidential information submitted by any other person in connection with the arbitration proceedings, except to the extent (i) required by law or regulation, (ii) reasonably necessary to assist counsel in the arbitration or preparation for arbitration of the dispute, or (iii) that such "confidential" information was previously (or subsequently becomes) known to the disclosing party without restrictions on disclosure, was independently developed by such disclosing party, or becomes publicly known through no fault of the disclosing party. Confidential information may be disclosed to (1) attorneys, (2) parties, and (3) "qualified outside experts" requested by any party's counsel to furnish technical or expert services or to give testimony at the arbitration proceedings. Outside experts shall be qualified by agreement of the parties or by order of the arbitrator in the following manner: before disclosure of confidential information is made to a proposed outside expert (the "Proposed Expert"), all parties (the "Disclosing Parties") whose confidential information will be disclosed to the Proposed Expert shall be provided with the Proposed Expert's identity, address, and a brief description of the Proposed Expert's professional and employment background and qualifications. The Disclosing Parties shall, prior to the disclosure, be entitled to object to such disclosure on the ground that it could reasonably be expected that the disclosed information will not remain confidential. Such objection shall be served to all other parties within ten Business Days after receipt of notice, shall be stated in reasonable detail, and shall be in writing. If the parties are unable to agree as to the merits of the objection within ten Business Days after its receipt, the matter shall be submitted to the

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arbitrator. Before a Proposed Expert shall be qualified, the Proposed Expert shall deliver to counsel for the Disclosing Parties a legally binding written statement that the Proposed Expert (x) is fully familiar with the terms of this Section 8.9, (y) agrees to comply with the confidentiality terms of this Section 8.9, and (z) will not use any disclosed confidential information for personal or business advantage.

(d) The arbitrator is empowered to render awards in accordance with any provision of this Agreement by: (i) enjoining a party from performing any act prohibited, or compelling a party to perform any act required, by the terms of this Agreement and any order entered pursuant to this Agreement or deemed necessary by the arbitrator to resolve disputes arising under or relating to this Agreement or any order; (ii) where, and only where, violations of this Agreement have been found, shortening or lengthening any period established by this Agreement or any order; and (iii) ordering such other legal or equitable relief, including any provisional legal or equitable relief, or specifying such procedures as the arbitrator deems appropriate, to resolve any dispute submitted to it for arbitration. There shall be no pre-hearing discovery of any kind, nor shall either party be required to produce documents or witnesses either at or prior to the arbitration hearing. The arbitrator shall not be empowered to award consequential or punitive damages.

(e) Either party may file an application in any proper court for a provisional remedy in connection with an arbitrable controversy hereunder, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without provisional relief.

(f) The arbitrator shall issue a written explanation of the reasons for the award and a full statement of the facts as found and the rules of law applied in reaching the decision to both parties.

(g) Any monetary awards shall be made and shall be payable in U.S. dollars free of any tax or any other deduction. Monetary awards shall include interest from the date of breach or other violation of this Agreement to the date when the award is paid in full. The interest rate or rates applied during such period shall be that set forth in Section 2.7(d) of this Agreement.

(h) The award of the arbitral tribunal will be the sole and exclusive remedy between the parties regarding any and all claims and counterclaims with respect to the subject matter of the arbitrated dispute. An award rendered in connection with an arbitration pursuant to this Section 8.9 shall be final and binding upon the parties, and any judgment upon such an award may be entered and enforced in any court of competent jurisdiction. The parties hereby waive all jurisdictional defenses in connection with any arbitration hereunder or the enforcement of an order or award rendered pursuant thereto (assuming that the terms and conditions of this arbitration clause have been complied with) and defenses based on the general invalidity of the underlying Agreement or this arbitration clause. For purposes of the New York Convention, the relationship between the parties is commercial in nature, and any disputes between the parties related to this Agreement shall be deemed commercial. With respect to any order issued by the arbitrator pursuant to this Agreement, the parties expressly agree and consent (i) to the bringing of an action by one party against the other in the courts of Missouri, California or New York to enforce and confirm such order; (ii) that such order shall be conclusive proof of the validity of

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the determination(s) of the arbitrator(s) underlying such order; and (iii) that either the State or any federal court sitting in Missouri, California or New York may enter judgment upon and enforce such order, whether pursuant to the New York Convention, the U.S. Arbitration Act, or otherwise.

(i) Whether or not this Section 8.9 is deemed a separate agreement, independent from this Agreement, Sections 7.6, 8.1, 8.4, and 8.8 are incorporated herein by reference.

Section 8.10 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any of the parties without the prior written consent of the Sellers and the Buyers, and any such assignment without such prior written consent shall be null and void; provided, however, that the Buyers may assign this Agreement to any Affiliate of either Buyer without the prior consent of the Sellers; provided still further, that no assignment shall limit the assignor's obligations hereunder. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 8.11 Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any California state or federal court sitting in the City of Los Angeles (or, if such court lacks subject matter jurisdiction, in any appropriate California state or federal court), this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the parties hereby further waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief. The non-prevailing party or parties with respect to any enforcement brought under this Section 8.11 shall be liable to pay all costs, including reasonable attorneys' fees and expenses that the prevailing party or parties may incur, whether or not litigation is actually commenced and including litigation of any appeal.

Section 8.12 Currency. All references to "dollars" or "\$" or "US\$" in this Agreement or any Ancillary Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement and any Ancillary Agreement.

Section 8.13 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

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Section 8.14 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 8.15 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

Section 8.16 Facsimile Signature. This Agreement may be executed by facsimile signature and a facsimile signature shall constitute an original for all purposes.

Section 8.17 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

Section 8.18 No Presumption Against Drafting Party. Each of the Buyers and the Sellers acknowledges that each party to this Agreement has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

Section 8.19 Joint and Several. Notwithstanding anything else contained herein, All obligations of the Sellers hereunder shall be joint and several among the Sellers and all obligations of the Buyers hereunder shall be joint and several among the Buyers.

[The remainder of this page is intentionally left blank.]

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IN WITNESS WHEREOF, the Sellers and the Buyers have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

MIVA, INC.

By: /s/ Peter A. Corrao
Name: Peter A. Corrao
Title: Chief Executive Officer

B&B ADVERTISING, INC.

By: /s/ Peter A. Corrao
Name: Peter A. Corrao
Title: Chief Executive Officer

MIVA (UK) LIMITED

By: /s/ Peter A. Corrao
Name: Peter A. Corrao
Title: Director

ASSET PURCHASE AGREEMENT SIGNATURE PAGE

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U.S. ACQUISITION SUB, INC.

By: /s/ Scott Lynn
Name: Scott Lynn
Title: President

AJAX MEDIA LTD.

By: /s/ Scott Lynn
Name: Scott Lynn
Title: Director

ADKNOWLEDGE, INC.

By: /s/ Scott Lynn
Name: Scott Lynn
Title: Chief Executive Officer

ASSET PURCHASE AGREEMENT SIGNATURE PAGE

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APPENDIX CC

(4 Pages Total- Including This Page)

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"MIVA NAME CHANGE, INC.", A DELAWARE CORPORATION, WITH AND INTO "MIVA, INC." UNDER THE NAME OF "VERTRO, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIFTH DAY OF JUNE, A.D. 2009, AT 5:05 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE NINTH DAY OF JUNE, A.D. 2009, AT 9 O'CLOCK A.M.

3503180 8100M

111300852

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9233717

DATE: 12-16-11

TRADEMARK
REEL: 004783 FRAME: 0775

CERTIFICATE OF OWNERSHIP

MERGING

MIVA Name Change, Inc.

INTO

MIVA, Inc.

(Subsidiary into parent pursuant to Section 253 of the General Corporation Law of Delaware)

MIVA, Inc., a corporation incorporated on the 16th day of April, 2002, pursuant to the provisions of the General Corporation Law of the State of Delaware;

DOES HEREBY CERTIFY:

FIRST: That this corporation owns all of the capital stock of MIVA Name Change, Inc., a corporation incorporated on the 2nd day of June, 2009, pursuant to the provisions of the General Corporation Law of the State of Delaware, and that this corporation, by a resolution of its Board of Directors duly adopted on the 3rd day of June, 2009, determined to and did merge into itself MIVA Name Change, Inc., which resolution is in the following words to wit:

WHEREAS, this Corporation lawfully owns all the outstanding shares of MIVA Name Change, Inc. (the "Subsidiary"), a corporation organized and existing under the laws of Delaware;

WHEREAS, the Board of Directors deems it to be in the best interests of this Corporation and its stockholders that the Subsidiary be merged with and into this Corporation on June 9, 2009, at 9:00 a.m. eastern time (the "Effective Date");

WHEREAS, it is intended that the merger be considered a tax-free plan of reorganization of the Subsidiary pursuant to Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Board of Directors deems it to be in the best interest of this Corporation and its stockholders that the Corporation's name be changed to Vertro, Inc., pursuant to the authority granted by Section 253 of the General Corporation Law of Delaware, as of the Effective Date.

NOW, THEREFORE, BE IT RESOLVED, that this Corporation merge into itself the Subsidiary and assume all of said Subsidiary's liabilities and obligations as of the Effective Date.

FURTHER RESOLVED, that pursuant to the authority granted by Section 253 of the General Corporation Law of Delaware, the name of this Corporation is Vertro, Inc. as of the Effective Date and Article FIRST of the Amended and Restated Certificate of Incorporation of this Corporation is changed to read as follows:

FIRST: The name of the corporation is Vertro, Inc.

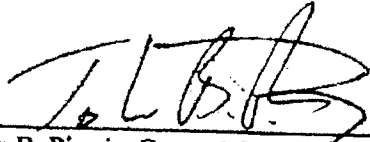
FURTHER RESOLVED, that the appropriate officers of this Corporation be and they hereby are directed to make, execute, and acknowledge a certificate of ownership setting forth a copy of the resolutions to merge Subsidiary into this Corporation and to assume Subsidiary's liabilities and obligations, and the date of adoption thereof, and to file the same in the office of the Secretary of State of Delaware, and a certified copy thereof in the office of the Recorder of Deeds of New Castle County.

FURTHER RESOLVED, that the appropriate officers of this Corporation are hereby authorized to do any and all things and to take any and all actions, whether within or without the State of Delaware, including executing, delivering, acknowledging, filing, recording, and sealing all documents, certificates, statements, or other instruments, and the making of any expenditures, which they deem necessary or advisable in order to carry out the intent and purposes of these resolutions.

SECOND: That anything herein or elsewhere to the contrary notwithstanding, this merger may be amended or terminated and abandoned by the Board of Directors of MIVA, Inc. at any time prior to the time that this merger filed with the Secretary of State becomes effective.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by an authorized officer this 5th day of June, 2009.

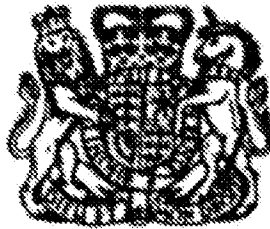
MIVA, Inc.



John B. Pizaris, General Counsel and Secretary

APPENDIX DD

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FILE COPY

**CERTIFICATE OF INCORPORATION
ON CHANGE OF NAME**

Company No. 3971244

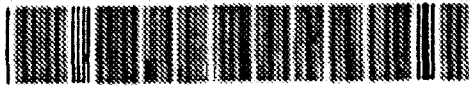
The Registrar of Companies for England and Wales hereby certifies that

MIVA (UK) LIMITED

having changed its name, is now incorporated under the name of

VARICK AND SPRING (UK) LIMITED

Given at Companies House on **11th June 2009**



C03971244A



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

TRADEMARK

REEL: 004783 FRAME: 0779

Company Number 03971244

000614 / £50

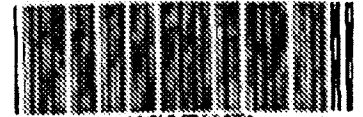
COMPANY LIMITED BY SHARES

WRITTEN RESOLUTION

of

MIVA (UK) LIMITED (the "Company")

passed on 5 June 2009



A20 11/06/2009 25
COMPANIES HOUSE

~~INCORPORATION~~
~~CHANGE OF NAME~~

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the following resolution was duly passed as a written resolution of the Company:

SPECIAL RESOLUTION

That the name of the Company be changed to Varick and Spring (UK) Limited.

John Boyd Pisars
Company Secretary

Mone-20090605-0060 (2)

APPENDIX EE

(5 Pages Total- Including This Page)

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT
NATURE OF CONVEYANCE:		CHANGE OF NAME
CONVEYING PARTY DATA		
Name		Execution Date
U.S. Acquisition Sub, Inc.		03/17/2009
RECEIVING PARTY DATA		
Name:	MIVA AK, Inc.	
Street Address:	4600 Madison Avenue	
Internal Address:	10th Floor	
City:	Kansas City	
State/Country:	MISSOURI	
Postal Code:	64112	
PROPERTY NUMBERS Total: 12		
Property Type	Number	
Application Number:	11369085	
Application Number:	09781500	
Application Number:	10331928	
Application Number:	11399914	
Application Number:	10654134	
Application Number:	10724548	
Application Number:	10978470	
Application Number:	11236460	
Application Number:	11284571	
Application Number:	11400469	
Application Number:	10296036	
Application Number:	10801199	

CORRESPONDENCE DATA

500871824

PATENT
 REEL: 022751 FRAME: 0936

TRADEMARK
 REEL: 004783 FRAME: 0782

022751 0936

Fax Number: (215)557-8477

Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

Phone: 215-599-0885

Email: denise@mendelip.com

Correspondent Name: Jerome R. Smith, Jr.

Address Line 1: Mendelsohn, Drucker, & Associates, P.C.

Address Line 2: 1500 John F. Kennedy Blvd., Suite 405

Address Line 4: Philadelphia, PENNSYLVANIA 19102

ATTORNEY DOCKET NUMBER:

1182.001

NAME OF SUBMITTER:

Jerome R. Smith, Jr.

Total Attachments: 2

source=MIVA_004_1182_001_Change_Of_Name_#page1.tif

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PATENT
REEL: 022751 FRAME: 0936

TRADEMARK
REEL: 004783 FRAME: 0783

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "U.S. ACQUISITION SUB, INC.", CHANGING ITS NAME FROM "U.S. ACQUISITION SUB, INC." TO "MIVA AK, INC.", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF MARCH, A.D. 2009, AT 3:45 O'CLOCK P.M.

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

4661445 8100

090275564

You may verify this certificate online
at corp.delaware.gov/authvar.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7192327

DATE: 03-17-09

TRADEMARK
REEL: 004783 FRAME: 0784

STATE OF DELAWARE
CERTIFICATE OF AMENDMENT
OF CERTIFICATE OF INCORPORATION

U.S. Acquisition Sub, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation") does hereby certify:

FIRST: That pursuant to an action by unanimous written consent of the director without a meeting taken in accordance with Section 141 of the General Corporation Law of the State of Delaware, resolutions were duly adopted by the board of directors of the Corporation, setting forth a proposed amendment of the certificate of incorporation of the corporation, declaring said amendment to be advisable and calling a meeting of the sole stockholder of the Corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Certificate of Incorporation of the Corporation be amended by changing the Article thereof numbered "ARTICLE I" so that, as amended, said Article shall be and read as follows:

ARTICLE I

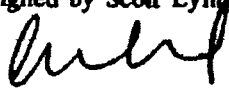
The name of the corporation (which is hereinafter referred to as the "Corporation") is:

MIVA AK, Inc.

SECOND: That thereafter, in lieu of a meeting, the sole stockholder of the Corporation voted all issued and outstanding shares of capital stock of the Corporation in favor of the amendment pursuant to an action by written consent of the sole stockholder in lieu of a meeting taken in accordance with Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of Certificate of Incorporation to be signed by Scott Lynn, an authorized officer, this 17th day of March, 2009.

By: 
Name: Scott Lynn
Title: President and Chief Executive Officer

APPENDIX FF

(110 Pages Total- Including This Page)

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Use these links to rapidly review the document

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

Form 10-K

(Mark One)

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the Fiscal Year Ended December 31, 2008

or

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from to

Commission File Number: 0-30428

MIVA, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

88-0348835
(I.R.S. Employer
Identification No.)

5220 Summerlin Commons Blvd
Fort Myers, Florida 33907
(Address of principal executive offices,
including zip code)

(239) 561-7229
(Registrant's telephone number,
including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class:
Common Stock, par value \$0.001 per share

Name of Each Exchange on which Registered:
The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act:

None

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REEL: 004783 FRAME: 0787

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to the filing requirements for at least the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and no disclosure will be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of the Registrant's common equity held by non-affiliates of the Registrant was approximately \$35.2 million on June 30, 2008.

There were 35,069,239 shares of the Registrant's Common Stock outstanding on February 28, 2009.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's Definitive Proxy Statement for the 2009 Annual Meeting of Stockholders are incorporated by reference in Part III.

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Table of Contents**PART I****Safe Harbor Statement Under the Private Securities Litigation Reform Act of 1995**

Some of the statements in this report constitute forward-looking statements that are based upon current expectations and involve certain risks and uncertainties within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. In some cases, you can identify forward-looking statements by terminology such as "will", "should", "intend", "expect", "plan", "anticipate", "believe", "estimate", "predict", "potential", or "continue", or the negative of such terms or other comparable terminology. This report includes, among others, statements regarding our:

- revenue;
- primary operating costs and expenses;
- capital expenditures;
- operating lease arrangements;
- evaluation of possible acquisitions of, or investments in businesses, products and technologies; and
- existing cash and investments being sufficient to meet operating requirements.

These statements involve known and unknown risks, uncertainties and other factors that may cause our or our industry's results, levels of activity, performance, or achievements to be materially different from any future results, levels of activity, performance, or achievements expressed or implied by such forward-looking statements. Such factors include, among others, those listed in Part I, Item 1A Risk Factors and elsewhere in this report. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, events, levels of activity, performance, or achievements. We do not assume responsibility for the accuracy and completeness of the forward-looking statements. We do not intend to update any of the forward-looking statements after the date of this report to conform them to actual results.

Explanatory Note

References to "we," "us," "our," "MIVA" or "the Company" in this Annual Report on Form 10-K mean MIVA, Inc. and its wholly-owned subsidiaries. On March 12, 2009, we and certain of our subsidiaries entered into and consummated an Asset Purchase Agreement with Adknowledge, Inc. and certain of its subsidiaries pursuant to which we sold to Adknowledge certain assets relating to our MIVA Media division, including the MIVA name, for cash consideration of approximately \$11.6 million, plus assumption of certain balance sheet liabilities, and subject to certain retained assets and liabilities, including assets and liabilities of the MIVA Media division in France, and post-closing adjustments (the "MIVA Media Sale"). Following the MIVA Media Sale on March 12, 2009, we no longer operate the MIVA Media business and we anticipate restructuring our French subsidiary beginning in the second quarter of 2009. References to the MIVA Media division or business in this Annual Report on Form 10-K are to the MIVA Media business and operations as they were conducted by us prior to the MIVA Media Sale and during the period required to be covered by this report. Please see Part I, Item 1A—Risk Factors and elsewhere in this report for risks you should consider in light of the MIVA Media Sale.

ITEM 1. BUSINESS**Overview**

We are an Internet company that owns and operates the ALOT product portfolio. We were organized under the laws of the State of Nevada in October 1995 under the name Collectibles America, Inc. and, in June 1999, we merged with BeFirst Internet Corporation, a Delaware corporation ("BeFirst"). As a result of the merger, BeFirst became our wholly-owned subsidiary. On June 17, 1999, we changed our name to

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BeFirst.com and, in September 1999, we changed our name again to FindWhat.com. In September 2004, we reincorporated from the State of Nevada to the State of Delaware, as a result of a merger. The reincorporation did not cause any change in our personnel, management, assets, liabilities, net worth, or the location of our headquarters. In June 2005, we created one global brand name—MIVA.

During the period covered by this report, we offered a range of products and services through two divisions—MIVA Direct and MIVA Media.

MIVA Direct offers home page, desktop application and Internet browser toolbar products under the ALOT brand. Our customizable ALOT Home Page, ALOT Desktop and ALOT Toolbar are designed to make the Internet easy for consumers by providing direct access to affinity content and search results. These products generate over 2 million Internet searches per day.

Prior to the MIVA Media Sale, MIVA Media was an auction based pay-per-click advertising network that we operated across North America and in Europe. MIVA Media connected buyers and sellers online by displaying advertisements in response to consumer search or browsing activity on select Internet properties

MIVA Direct

Our affinity oriented ALOT products offer consumers direct links to a variety of relevant content and provide search functionality, utilizing search results and ad listings primarily from third-party providers. Our ALOT Home Page website at <http://home.alot.com> is freely offered to consumers as a default destination for their internet browser and our ALOT Desktop and ALOT Toolbar products are made available as a free, convenient download. We believe our products improve the consumer experience through innovative features including one-click access to Buttons displaying dynamic content such as news headlines and local weather conditions, as well as links to websites featuring searchable content such as cooking recipes and dictionary definitions. Our user footprint generates additional direct marketing opportunities with engaged consumers through e-commerce, comparison shopping, and lead generation programs.

Revenue Model

The majority of our revenue is generated through Internet search queries at our website. Our products generate search queries to our website <http://search.alot.com>, where we provide algorithmic and sponsored search functionality to consumers through our contractual relationships with third-party providers. When consumers conduct their search through our website and subsequently click-through on relevant ad listings, MIVA Direct earns a percentage of the total click-through revenue provided by the third-party providers that serviced the advertisement. Our search revenue is not subject to further revenue share arrangements and we recognize 100% of the revenue received.

In addition to search revenue, our ALOT products display third-party content in Buttons that generate Internet traffic that is monetized through pay-per-click and cost-per-action relationships with publishing partners and advertisers. Our website page-views are also monetized through cost-per-thousand display ads. We are also able to utilize user behavioral data to improve the targeting of our product offerings and to generate other forms of revenue. As we continue to build a consumer audience in various marketable affinity segments, we believe we will be positioned to monetize our properties through behavioral, video and other new advertising formats.

For the year ended December 31, 2008, Google accounted for approximately 33.3% of our consolidated revenue. Excluding revenue from our MIVA Media business, which we sold in March 2009, Google accounted for approximately 85.7% of our revenue for the year ended December 31, 2008.

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Competition

MIVA Direct competitors include: IAC, MSN, Google, Yahoo!, and Conduit.com. Each of these entities offers a form of online media or entertainment through websites or downloadable products. These offerings can include web search, online news and information and other content and services.

MIVA Media—Pay-Per-Click Advertising and Publishing Network

Prior to the MIVA Media Sale, MIVA Media operated an online auction based Pay-Per-Click Advertising network within North America and in Europe. Advertisers and advertising agencies used the MIVA Media network to create, manage, and execute targeted pay-per-click advertising campaigns to reach potential customers. MIVA Media then syndicated its advertising listings to online publishers who use the MIVA Media network to generate recurring revenue from their online properties.

Advertiser Overview

The MIVA Media pay-per-click network primarily operated in the United States, United Kingdom, and France. We offered advertisers a 'bid for position' auction model where the advertiser specified the amount they were willing to pay for their desired placement in our listings.

We offered a number of targeting options to advertisers depending on their specific campaign objectives. These options included: (1) 'run of network', where advertisers got broad, low-cost, untargeted distribution of their ads; (2) 'keyword targeting', where advertisers specified keywords that triggered their ads to appear on the MIVA Network; and (3) 'precision or custom' targeting where ads were displayed only on a customer selected set of publishers based on the advertiser's objectives.

Benefits for MIVA Media advertisers included:

- *Pay for Results:* advertisers only paid when consumers undertook a predetermined action such as clicking on an ad;
- *Range of Targeting Options:* advertisers could choose from a range of targeting methods depending on their specific business objectives;
- *Custom Campaign Management:* advertisers could utilize a suite of tools to manage their campaigns. Advertisers had the ability to control, track and monitor their keywords and campaigns. In addition, advertisers controlled their total expenditures and their cost per lead down to the individual click. As a result, advertisers could effectively measure and optimize their return on investment;
- *Customer Service:* advertisers could leverage our team of knowledgeable customer service team members to assist in setting-up, testing, evaluating and optimizing their online campaigns.

Publisher Overview

The MIVA Media publisher network was comprised of third party and MIVA owned online properties, including portals, vertical and category specific content websites, commerce websites, community websites, search engines and directories. We offered our publishers a number of ways to monetize their Internet properties, including a combination of one or more of the following:

- *Content Ads:* keyword or contextually targeted pay-per-click ads that were displayed in fully customized implementations alongside website content;
- *Search Ads:* pay-per-click ads displayed in response to specific key words entered as search queries or hypertext link clicks; and
- *InLine Ads:* pay-per-click ads that appeared when users move their mouse over select keywords within actual

TRADEMARK

editorial content.

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Revenue Model

The MIVA Media business derived its revenue primarily from online advertising by delivering relevant contextual and search ad listings on a pay-for-performance basis. Advertisers and advertising agencies only paid when a predetermined action occurred, such as when an Internet user clicked on an ad.

The MIVA Media revenue was determined by multiplying the number of ad listing actions by the amount bid for each applicable listing or keyword, less any credits or adjustments. Click-through revenue was earned based on activity to the extent that the advertiser had deposited sufficient funds with us or we believed collection is probable. We recognized 100% of the revenue when an action was taken on the advertiser's listing and then shared a portion of that revenue with the website publisher that displayed the ad listing where the action occurred. Revenue share and other terms varied by website publisher.

We also generated revenue from a private label agreement that was renewed in 2008. This private label agreement enabled third parties to utilize MIVA's technology platform to offer branded pay-per-click products to advertisers and publishers.

Competition

MIVA Media's competitors included companies that offer various forms of performance marketing solutions. Typically these competitors serve ad listings to consumers through branded search properties and/or through relationships with third-party website publishers, through an advertising network similar to MIVA Media. Examples of competitors that offer pay-per-click based ad solutions for their own and third-party use include Google, MSN, Yahoo!, IAC/InteractiveCorp (Ask.com), InfoSpace, LookSmart, Marchex and 7Search.

Technology and Operations

MIVA Direct

Our high-traffic websites and high volume of content and software downloads require a fast, reliable and secure infrastructure that can be easily scaled to maintain acceptable response times under the stress of growth. We believe that we have an infrastructure for MIVA Direct that provides us with a platform from which to operate and grow our business, including core product engineering operations in our New York City location, and redundant offsite co-location facilities and content delivery networks.

MIVA Media

We believe high traffic, keyword-targeted advertising networks, especially those that distribute their results to third-party partners, require a reliable and secure infrastructure. We believe that we created an infrastructure for MIVA Media that provided us with a platform from which to operate our business, including technical operations in Fort Myers and New York and in hosted facilities in Atlanta, New York City, San Diego, Virginia, and London, which was transitioned to Amsterdam at the end of 2008.

On May 11, 2007, we entered into a Master Services Agreement with Perot Systems Corporation (the "Master Services Agreement"), pursuant to which we outsourced a portion of our MIVA Media information technology infrastructure services, application development and maintenance, MIVA Media US support services, and transactional accounting functions. On February 1, 2009, we entered into an amendment to the Master Services Agreement ("the Amendment"). Under the terms of the amendment, the Master Services Agreement will expire on April 30, 2009, and certain other provisions of the Master Services Agreement have either been modified or terminated. The Amendment was entered as part of our ongoing cost reduction measures and to facilitate the streamlining of our MIVA Media operations and the anticipated operational efficiencies resulting from the Company's new technology platform.

On April 10, 2008, we entered into an approximate \$2.4 million software development statement of work with Perot Systems, pursuant to which the Company paid Perot Systems to develop a new global

TRADEMARK

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advertiser and distribution partner application called the "Transformation Project". The Transformation Project involves the development and implementation of a single enhanced consolidated global system to replace MIVA Media's existing Internet advertising management and distribution partner management systems. As of December 31, 2008, in connection with the Transformation Project, we have incurred approximately \$2.4 million of costs, including \$1.9 million of cost with Perot Systems, and \$0.5 million of internal development costs, all of which had been capitalized with a plan to amortize the cost over an estimated useful life of five years. This Transformation Project was sold in March 2009 as part of the MIVA Media Sale.

Intellectual Property

We rely on a combination of patent, copyright, trademark and trade secret laws, employee and third party nondisclosure agreements, and other intellectual property protection methods to protect our services and related products. We own patents related to our MIVA Direct division and have several patent applications pending for various aspects of our products and services filed with the U.S. Patent and Trademark Office. We own several domestic and international trade and service mark registrations related to our products or services, including U.S. Federal Registration for ALOT® and we have additional registrations pending.

We relied on a patent license from Yahoo! for the operation of certain portions of our MIVA Media business. We received the license on August 15, 2005, when we settled a patent infringement lawsuit brought by Overture Services ("Overture Services") and Yahoo! Inc. (collectively with Overture Services "Yahoo!") against us regarding U.S. Patent No. 6,269,361 and received a royalty bearing non-exclusive license from Yahoo! regarding certain patents. The license agreement may be terminated by Yahoo! or by us upon the occurrence of certain events, including upon certain material breaches by either party to the agreement or if we were to challenge the validity or enforceability of the Yahoo! patents.

Regulations

We are not currently subject to direct regulation by any government agency, other than regulations applicable to businesses generally, and there are currently few laws or regulations directly applicable to access to, or commerce on, the Internet. However, due to the increasing popularity and use of the Internet, it is possible that various laws and regulations may be adopted with respect to the Internet, covering issues such as taxation, user privacy and characteristics, and quality of products and services. In 1998, the United States Congress established the Advisory Committee on Electronic Commerce, which is charged with investigating and making recommendations to Congress regarding the taxation of sales by means of the Internet. The adoption of any such laws or regulations upon the recommendation of this Advisory Committee or otherwise, in any or all of the countries we serve, may decrease the growth of the Internet, which could in turn decrease the demand for our products or services, increase our cost of doing business, or otherwise have an adverse effect on our business, financial condition, and results of operations. Moreover, the applicability to the Internet of existing laws governing issues such as property ownership, libel, and personal privacy is uncertain. Future international, federal, or state legislation or regulations could have a material adverse effect on our business, financial conditions, and results of operations. For instance, legislation has been introduced and, in one instance, enacted, that, if upheld, may impact our ability to display contextual ads.

Additionally, the U.S. Congress and some state legislatures have introduced legislation designed to regulate spyware, which has not been precisely defined, but which is often defined as software installed on consumers' computers without their informed consent that is designed to gather and, in some cases, disseminate information about those consumers, including personally identifiable information. Our internal policies prohibit reliance on "spyware" for any purpose and it is not part of our product offerings, but the definition of spyware or proposed legislation relating to spyware may be broadly defined or interpreted to include legitimate ad-serving software, including toolbar offerings currently provided by our

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MIVA Direct division. Currently, legislation has focused on providing Internet users with notification of and the ability to consent to or decline the installation of such software, but there can be no guarantee that future legislation will not provide more burdensome standards by which software can be downloaded onto consumers' computers. Currently all downloadable software that we distribute requires an express consent of the consumer and provides consumers with an easy mechanism to delete the software once downloaded. However, if future legislation is adopted that makes the consent, notice, or uninstall procedures more onerous, we may have to develop new technology or methods to provide our services or discontinue those services in some jurisdictions altogether. There is no guarantee we will be able to develop this new technology at all or in a timely fashion or on commercially reasonable terms.

As a result of our international operations, we are exposed to international laws and proposed legislation relating to user privacy and related matters. For example, the European Union has adopted directives designed to address privacy and electronic data collection concerns. These directives have been implemented into each of the member states and limit the manner in which personal data of Internet users may be collected and processed.

Moreover, the applicability to the Internet of existing laws governing issues such as property ownership, libel, and personal privacy is uncertain. Future international, federal, or state legislation or regulations could have a material adverse effect on our business, financial conditions, and results of operations.

Employees

As of December 31, 2008, we had 129 full-time employees. We had approximately 61 employees in marketing, sales and service (which includes, but is not limited to departments such as business development, sales, marketing, customer service, credit transactions, business affairs, corporate development, and affiliate relations), 45 employees in our technical, product development, and product management departments, and 23 in our general and administrative departments.

Following the MIVA Media Sale in March 2009, we anticipate having approximately 50 employees at March 31, 2009.

Our MIVA Direct sales and marketing activities are concentrated in New York. Our MIVA Media sales were located in Florida, London, New York, New Jersey, and France.

We have never had a work stoppage and our employees are not represented by any collective bargaining unit. We consider our relations with our employees to be good.

Available Information

We maintain an Internet website at <http://www.miva.com>. We make available free of charge on our website links to our annual reports on Form 10-K, our quarterly reports on Form 10-Q, current reports on Form 8-K, and any amendments to those reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934 as soon as practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. We are providing the address to our Internet website solely for the information of investors. None of the information on our Internet website is part of this report. Additionally, individuals can access our electronically filed reports, proxy statements and other information through the Internet site maintained by the Securities and Exchange Commission at <http://www.sec.gov>. The public may also read and copy any materials we file with the Securities and Exchange Commission at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

Table of Contents**ITEM 1A. RISK FACTORS**

We desire to take advantage of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. The following factors have affected or could affect our actual results and could cause such results to differ materially from those expressed in any forward-looking statements we may make. Investors should consider carefully the following risks and speculative factors inherent in and affecting our business and an investment in our common stock. Factors that might cause such a difference include, but are not limited to, those discussed below. Additional risks and uncertainties that we are unaware of, or that we currently deem immaterial, also may become important factors that affect us.

On March 12, 2009, we completed the MIVA Media Sale. See Part I Explanatory Note for a discussion of the MIVA Media Sale. For risk factors relating to our historical MIVA Media business please see our Form 10-Q for the period ending September 30, 2008.

Risks Related to Our Business

One paid listings provider, which is a competitor of ours, accounts for a significant portion of our consolidated revenue and substantially all of our revenue following the MIVA Media Sale and any adverse change in that relationship would likely result in a significant decline in our revenue and our business operations could be significantly harmed.

In December 2006, we entered into an agreement with Google pursuant to which we agreed to utilize Google's paid listings and algorithmic search services for approved MIVA Direct websites and applications. We renewed our agreement with Google in November 2008 for a two year term beginning on January 1, 2009. We receive a share of the revenue generated by the paid listing services supplied to us from Google. The amount of revenue we receive from Google depends upon a number of factors outside of our control, including the amount Google charges for advertisements, the depth of advertisements available from Google, and the ability of Google's system to display relevant ads in response to our end-user queries. For the year ended December 31, 2008, Google accounted for approximately 33.3% of our consolidated revenue. Excluding revenue from our MIVA Media business, which was sold in March 2009, Google accounted for approximately 85.7% of our revenue for the year ended December 31, 2008. Our agreement with Google contains broad termination rights. Google also competes with our MIVA Direct business. If (i) we fail to have websites and applications approved by Google; (ii) Google's performance deteriorates, (iii) we violate Google's guidelines, or (iv) Google exercises its termination rights, we likely will experience a significant decline in revenue and our business operations could be significantly harmed. If any of these circumstances were to occur, we may not be able to find another suitable alternate paid listings provider or otherwise replace the lost revenues.

The success of MIVA Direct is dependent on our ability to maintain and grow our active consumer base.

MIVA Direct operates a portfolio of consumer-oriented interactive products including toolbars, homepages, desktop and applications. MIVA Direct derives the majority of its revenue from advertisements directed towards consumers. The amount of revenue generated by MIVA Direct is dependent on our ability to maintain and grow our active consumer installed base. Factors that could negatively influence our ability to maintain and grow our active consumer base include, but are not limited to, government regulation, acceptance of our toolbar products by consumers, the availability of advertising to promote our toolbar products, third-party designation of our toolbar and/or other products as undesirable or malicious, user attrition, competition, and sufficiency of capital to purchase advertising. For example, advertising spend at MIVA Direct, which is used to promote and acquire consumers, was strategically reduced throughout 2008 to meet acquisition cost targets and to ensure cash balances were maintained and conserved. We believe this reduction will have a dampening effect on the level of MIVA Direct's revenue in 2009. If we are unable to maintain and grow our active consumer base, it could have a material adverse effect on our business, financial condition, and results of operations.

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The business of MIVA Direct is dependent upon our ability to deliver qualified leads to Google, our primary paid listings provider.

Our primary paid listings provider utilizes MIVA Direct to deliver high quality Internet traffic to its advertisers. We believe our primary paid listings provider will only use our services if we deliver high quality Internet traffic. If our primary paid listings provider is not satisfied with the quality of Internet traffic delivered from us it may take remedial action. We may not be successful in delivering high quality traffic to our primary paid listings provider, which could have a material adverse effect on our business, financial position, and results of operations.

New technologies could limit the effectiveness of our products and services, which would harm our business.

New technologies may be developed by others that can block the display of ads or sponsored listings or prevent Internet users from downloading our products. Since most of our net revenue is derived from fees paid to us by our advertising feed provider, ad-blocking or similar technology could materially adversely affect our results of operations.

Our business is difficult to evaluate because we have recently sold a significant portion of our business and operate in an emerging and rapidly evolving market.

We began operating our business in 1998 and since that time we have undergone significant changes:

- we launched the Findwhat.com Network (which subsequently became MIVA Media US) in September 1999;
- in 2004, we acquired several companies, including a U.S. performance-based, keyword-targeted advertising business (B & B Advertising, which subsequently became a part of MIVA Media); a provider of performance-based, keyword-targeted Internet advertising services in Europe (espotting, which subsequently became a part of MIVA Media); and a desktop software company (that is now MIVA Direct);
- in March 2009, we sold our MIVA Media business, which accounted for 61.2% of our consolidated revenues for the fiscal year ended December 31, 2008.

Accordingly, we have a limited operating history upon which an investor can make an evaluation of the likelihood of our success. As of March 12, 2009, we operate only the MIVA Direct business. Moreover, we derive nearly all of our net revenue from online advertising, which is a rapidly evolving market. An investor should consider the likelihood of our future success to be speculative in light of our limited operating history, as well as the problems, limited resources, expenses, risks, and complications frequently encountered by similarly situated companies in emerging and changing markets, such as e-commerce. To address these risks, we must, among other things:

- maintain and increase our user base;
- implement and successfully execute our business and marketing strategy;
- continue to develop and upgrade our technology;
- continually update and improve our service offerings and features;
- find and integrate strategic transactions;
- respond to industry and competitive developments; and
- attract, retain, and motivate qualified personnel.

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We may not be successful in addressing these risks, particularly as some of these are largely outside of our control. If we are unable to do so, our business, financial condition, and results of operations would be materially and adversely affected.

We have made and anticipate making additional significant investments in new initiatives related to current and future product and service offerings that may not meet our expectations in terms of the viability, success, or profitability of such initiatives.

We have made and anticipate making significant investments in new initiatives related to current and proposed product and service offerings, such as our investments in MIVA Direct. All such new and proposed initiatives require the expenditure of significant time, money, personnel and other resources. There can be no assurance that any of these initiatives will be timely, viable, successful, and profitable or will enjoy the same margins as our historical business. An investor should consider the likelihood of our future success with respect to these and other initiatives to be speculative in light of our limited history in successfully developing, introducing, and commercially exploiting new initiatives of this nature, as well as the problems, limited resources, expenses, risks, and complications frequently encountered by similarly situated companies in emerging and changing markets, such as e-commerce, with respect to the development and introduction of initiatives of this nature. Any inability by us to successfully develop, introduce, or implement these or other products or services could materially adversely affect our business, financial condition, and results of operations.

We have recently divested our MIVA Media Division pursuant to an Asset Purchase Agreement and we have certain ongoing obligations to the buyer.

In March 2009, we sold our MIVA Media division pursuant to an Asset Purchase Agreement. Under the terms of the Asset Purchase Agreement, we made certain representations and warranties and covenants in favor of the buyer and we have certain indemnification obligations to the buyer. Because the transaction was structured as an asset purchase, we also retained potential liability to third parties for the pre-closing operation of the MIVA Media business. These obligations and retained liabilities could subject us to potential claims in the future, which could result in the diversion of management's time and attention and could cause us to incur expenditures defending ourselves against such claims or could cause us to have to make payments to the buyer or third parties.

In addition, in connection with the MIVA Media Sale, we agreed to provide to the buyer and receive from the buyer certain transition services. Examples of services under the arrangement include finance, accounting, technology, office space, expense reimbursement and similar matters. If (i) the buyer of our MIVA Media division breaches its obligations under these agreements, (ii) we are unable to fulfill our obligations to provide services, or (iii) we are unable to obtain required consents to the transactions, it could materially adversely affect our business, financial condition, and results of operations.

We have in the past and may in the future implement restructuring programs, which may subject us to claims and liabilities.

Over the past few years, we have implemented a number of restructuring programs to reduce our headcount, reduce expenses and streamline our operations. We may implement further restructurings in the future, and we anticipate restructuring our French subsidiary beginning in the second quarter of 2009. These restructurings may subject us to claims and liabilities from employees and third parties, which could result in us making payments to such persons and could materially adversely affect our financial condition.

We face substantial and increasing competition in the market for Internet-based marketing services.

We face substantial competition in every aspect of our business, and particularly from other companies that seek to connect people with information on the Internet and provide them with relevant

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advertising and commerce-enabling services, either directly or through a network of partners. Some of our principal competitors include MSN, Google, Yahoo!, IAC/InteractiveCorp (Ask.com) and Conduit.com. Our principal competitors have longer operating histories, larger customer bases, greater brand recognition and significantly greater financial, marketing, personnel, and other resources than we have. These competitors historically have developed and expanded their portfolios of products and services more rapidly than we have. In addition, these and other competitors may have or obtain certain intellectual property rights that may interfere with or prevent the use of one or more of our business models. These and other competitors can use their experience and resources against us in a variety of competitive ways, including by acquiring complementary companies or assets, investing aggressively in research and development, and competing more aggressively for consumers. We expect that these competitors will increasingly use their financial and technological resources to compete with us.

Additionally, to the extent we pursue strategic transactions, we may compete with other companies with similar growth strategies, some of which may be larger and have greater financial and other resources than we have. Competition for any such acquisition targets likely also will result in increased prices of acquisition targets and a diminished pool of companies available for acquisition.

If we do not continue to innovate and provide products and services that are useful to users, we may not remain competitive.

Our success depends on providing products and services that provide consumers with a high quality Internet experience. Our competitors are constantly developing innovative Internet products. As a result, we must continue to seek to enhance our technology and our existing products and services and introduce new high-quality products and services that businesses and/or consumers will use. Our success will depend, in part, on our ability to:

- enhance and improve the responsiveness and functionality of our Internet products and our other primary traffic services;
- license, develop or acquire technologies useful in our business on a timely basis, to enhance our existing services and develop new services and technology that address the increasingly sophisticated and varied needs of the business; and
- respond to technological advances and emerging industry standards and practices on a cost-effective and timely basis.

Because our markets are still developing and rapidly changing, we must allocate our resources based on our predictions as to the future development of the Internet and our markets. These predictions ultimately may not prove to be accurate. If our competitors introduce new products and services embodying new technologies, or if new industry standards and practices emerge, our existing services, technology and systems may become obsolete and we may not have the funds or technical know-how to upgrade our services, technology and systems. If we are unable to predict user preferences or industry changes, or to modify our products and services on a timely basis, we may lose consumers, which could cause a material adverse effect on our business, financial condition, and results of operations.

We have in the past and may in the future incur impairment charges that could materially adversely affect our earnings and our operating results.

Our total assets as of December 31, 2008 include \$5.0 million in tangible assets. We assess whether indicators of impairment are present and perform the necessary analysis to ensure the carrying value of our tangible assets are substantiated. If future operating performance at our MIVA Direct business does not meet expectations, we may be required to reflect, under current applicable accounting rules, non-cash charges to operating results for impairment. The recognition of an impairment of a significant portion of

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tangible assets would negatively affect our results of operations and total capitalization, the effect of which could be material.

During the fourth quarter of 2008, in connection with our annual impairment testing we performed a step 1 impairment test of our two reporting units, Searchfeed and Miva Direct, with remaining recorded indefinite lived intangible assets and goodwill for potential impairment. As a result of this analysis, we determined that the estimated fair value of the reporting units exceeded their carrying values, which could result in potential impairment. We then performed an assessment of the long-lived assets of our Searchfeed and MIVA Direct divisions and determined these assets were impaired under the provisions of Financial Accounting Standards Board Statement No. 144, "Accounting for the Impairment or Disposal of Long-Lived Asset ("SFAS 144")". Accordingly, in the fourth quarter of 2008, we recorded approximately \$2.9 million in non-cash impairment charges to reduce the carrying value of the remaining long-lived tangible and intangible assets to their estimated fair values. We then performed a step 2 impairment test to determine if the remaining carrying values of recorded goodwill and other indefinite lived intangible assets, in these divisions was impaired under the provisions of Financial Accounting Standards Board Statement No. 142, "Goodwill and Other Intangible Assets," ("SFAS 142"). The step 2 impairment test resulted in a non-cash impairment charge of \$14.7 million and \$1.1 million, respectively, to reduce the carrying value of goodwill, and other indefinite lived intangible assets to their implied fair value. As a result of these impairment charges, the carrying value of all of the Company's goodwill and other indefinite lived intangible assets was reduced to zero as of December 31, 2008.

In the fourth quarter of 2007, as a result of continued operating losses related to our MIVA Media US business, we performed an impairment analysis to determine recoverability of the recorded long-lived assets of this division. As a result of this analysis, we determined that certain long-lived assets of our MIVA Media US division were impaired under the provisions of SFAS No. 144. During the fourth quarter of 2007, we recorded approximately \$4.7 million in non-cash impairment charges to reduce the carrying value of certain long-lived tangible and intangible assets to their estimated fair value.

In the second quarter of 2007, events occurred that caused us to reconsider and lower our operating projections for our MIVA Media Europe division, acquired in 2004, primarily as a result of its reduced revenue trend initially beginning in the middle to latter half of 2006 and continuing into, and throughout, 2007. As a result, we performed an impairment test to determine if the value of goodwill, intangible assets, and other long-lived assets of this division were recoverable under the provisions of SFAS 142 and SFAS 144, and it was determined that an impairment existed. Therefore, as provided under the provisions of these Statements we recorded a preliminary estimated non-cash impairment charge of \$14.0 million to reduce the carrying value of goodwill to its fair value as of June 30, 2007. During the third quarter of 2007, we finalized this impairment test of our long-lived assets and the second steps of this impairment analysis, which resulted in an additional impairment charge of \$1.4 million related to the long-lived assets of our MIVA Media Europe division.

We will continue to assess the potential of impairment for tangible assets and other long-lived assets in future periods in accordance with SFAS 144. Should our business prospects change, and our expectations for acquired business be further reduced, or other circumstances that affect our business dictate, we may be required to recognize additional impairment charges.

We cannot assure you that future impairments will not occur. If we determine that a significant impairment has occurred in the future, we would be required to write off additional goodwill. Any future impairment charges could have a material adverse effect on our financial condition and results of operations and could cause our stock price to decline.

Table of Contents***If we fail to grow or manage our growth, our business will be adversely affected.***

To succeed, we must grow. We may make additional acquisitions in the future as part of our growth initiatives. These may include acquisitions of international companies or other international operations. We have limited experience in acquiring and integrating companies, and we may also expand into new lines of business in which we have little or no experience. Additionally, we may fail to achieve anticipated synergies from such acquisitions. Accordingly, our growth strategy subjects us to a number of risks, including the following:

- we may incur substantial costs, delays, or other operational or financial problems in integrating acquired businesses, including integrating each company's accounting, management information, human resource, and other administrative systems to permit effective management;
- we may not be able to identify, acquire, or profitably manage any additional businesses;
- with smaller acquired companies, we may need to implement or improve controls, procedures, and policies appropriate for a public company;
- the acquired companies may adversely affect our consolidated operating results, particularly since some of the acquired companies may have a history of operating losses;
- acquisitions may divert our management's attention from the operation of our businesses;
- we may not be able to retain key personnel of acquired businesses;
- there may be cultural challenges associated with integrating employees from our acquired companies into our organization; and
- we may encounter unanticipated events, circumstances, or legal liabilities.

Any of these factors could materially adversely affect our business, financial condition, and results of operations.

We may not be able to return to our historical growth rates and operating margins in the future.

In 2004, we grew rapidly through multiple acquisitions and a significant merger and these events assisted in achieving higher than normal growth rates. In March 2009, we divested a significant portion of our business through the sale of our MIVA Media division. We may not be able to return to the 2004 historical growth rates and our future growth rates may continue to decline as a result of various factors. Additionally, our growth rate could continue to decline into and throughout 2009, due to, among other things:

- reduction in advertising spend at MIVA Direct throughout 2008, which we believe will have a dampening effect on the level of MIVA Direct's revenue in 2009;
- operating in an environment of increased competition both domestically and internationally;
- increased expenditures for certain aspects of our business as a percentage of our net revenues, which may include product development expenditures, sales, advertising and marketing expenses, and increased public company costs; and
- increased expenditures as a result of our divested operations.

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Certain members of our management team and many of our employees have recently joined us and must be integrated into our operations.

As of December 31, 2008, we had 129 full-time employees. Our new employees include certain key managerial, technical, financial, marketing, and operations personnel, including our Chief Financial Officer who joined the company in December 2006 and was named Chief Financial Officer in March 2009. Some of our new employees may not yet have been fully integrated into our operations. Our failure to attract and fully integrate our new employees into our operations or to successfully manage and retain such employees could have a material adverse effect on our business, financial condition, and results of operations.

We depend on third parties for certain software and services to operate our business.

We depend on third-party software and services to operate our business. Although we believe that several alternative sources for this software are available, any failure to obtain and maintain the rights to use such software on commercially reasonable terms would have a material adverse effect on our business, financial condition, and results of operations. We also are dependent on third parties to provide Internet services to allow us to connect to the Internet with sufficient capacity and bandwidth so that our business can function properly and our websites can handle current and anticipated traffic. We currently have contracts with certain telecommunications providers for these services. Any restrictions or interruption in our connection to the Internet, or any failure of these third-party providers to handle current or higher volumes of use, could have a material adverse effect on our business, financial condition, and results of operations, and our brand could be damaged if clients or prospective clients believe our system is unreliable. Any financial or other difficulties our providers face may have negative effects on our business, the nature and extent of which we cannot predict. We exercise little control over these third party vendors, which increases our vulnerability to problems with the services they provide. We have experienced occasional system interruptions in the past and we cannot assure you that such interruptions will not occur again in the future.

Our technical systems are vulnerable to interruption, security breaches, and damage, which could harm our business and damage our brands if our clients or prospective clients believe that our products are unreliable.

Our systems and operations are vulnerable to damage or interruption from fire, floods, hurricanes, power loss, telecommunications failures, break-ins, sabotage, computer viruses, penetration of our network by unauthorized computer users, or "hackers," and similar events. Any such events could interrupt our services and severely damage our business. The occurrence of a natural disaster or unanticipated problems at our technical operations facilities could cause material interruptions or delays in our business, loss of data, or render us unable to provide services to our customers. In addition, we may be unable to provide services and websites due to a failure of the data communications capacity we require, as a result of human error, natural disaster, or other operational disruptions. The occurrence of any or all of these events could materially adversely affect our business, financial condition, and results of operations, and damage our brands if clients or prospective clients believe that our products are unreliable.

Our intellectual property rights may not be protectable or of significant value in the future.

We depend upon confidentiality agreements with specific employees, consultants, and subcontractors to maintain the proprietary nature of our technology. These measures may not afford us sufficient protection, and others may independently develop know-how and services similar to ours, otherwise avoid our confidentiality agreements, or produce patents and copyrights that would materially adversely affect our business, financial condition, and results of operations.

Legal standards relating to the validity, enforceability, and scope of the protection of certain intellectual property rights in Internet-related industries are uncertain and still evolving. The steps we take

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to protect our intellectual property rights may not be adequate to protect our future intellectual property. Third parties may also infringe or misappropriate any copyrights, trademarks, service marks, trade dress and other proprietary rights we may have. Any such infringement or misappropriation could have a material adverse effect on our business, financial condition, and results of operations.

In addition, the relationship between regulations governing domain names and laws protecting trademarks and similar proprietary rights is unclear. We may be unable to prevent third parties from acquiring domain names that are similar to, infringe upon, or otherwise decrease the value of our trademarks and other proprietary rights, which may result in the dilution of the brand identity of our services.

Our business has historically been and may continue to be partially subject to seasonality, which may impact our quarterly growth rate.

We have historically experienced, and may continue to experience, seasonal fluctuations in the number of click-throughs to advertisements available to MIVA Direct. Historically, during the first and fourth quarters of each calendar year, we have realized more activity than the second and third quarters, due to increased overall Internet usage during the first and fourth quarters related to colder weather and holiday purchases. These seasonal fluctuations may continue in the future.

We are subject to a patent settlement and license agreement from Yahoo! for certain portions of a divested business.

We are subject to a patent settlement and license agreement from Yahoo! for certain portions of our MIVA Media business that were divested in March 2009. On August 15, 2005, we settled a patent infringement lawsuit brought by Overture Services ("Overture Services") and Yahoo!, Inc. (collectively with Overture Services, "Yahoo!") against us regarding U.S. Patent No. 6,269,361 and took a royalty bearing non-exclusive license from Yahoo! regarding certain patents. We divested our MIVA Media business in March 2009; however, we are still subject to the terms of and have continuing obligations, including for the payment of minimum royalty fees, under the settlement and license agreement, which requires minimum payments totaling \$1,200,000 through August 2010. The settlement and license agreement contains terms and conditions that may be unacceptable to a third party and could negatively impact our ability to be sold or enter into a change of control transaction.

We cannot predict our future capital needs and may not be able to secure additional financing.

We have no material long-term agreements or short-term commitments for the funding of capital expenditures. We currently anticipate that our cash and cash equivalents of \$6.7 million as of December 31, 2008, along with the proceeds of the MIVA Media Sale and cash inflows during 2009, will be sufficient to meet the anticipated liquidity needs for working capital and capital expenditures over the next 12 months.

Our future liquidity and capital requirements will depend on numerous factors. The pace of expansion of our operations will affect our capital requirements. We may also have increased capital requirements in order to respond to competitive pressures. In addition, we may need additional capital to fund acquisitions of complementary products, technologies, or businesses. Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement that involves risks and uncertainties and actual results could vary materially as a result of the factors described in this report. As we require additional capital resources, we may seek to sell debt securities or additional equity securities, or obtain a bank line of credit. There can be no assurance that any financing arrangements will be available in amounts, or on terms, acceptable to us, if at all.

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Our loan agreement with Bridge Bank imposes significant restrictions. Failure to comply with these restrictions could result in the acceleration of a substantial portion of our debt, which we may not be able to repay or refinance.

On November 7, 2008, we entered into a Loan and Security Agreement with Bridge Bank, N.A., which provides for a revolving credit facility of up to \$10.0 million. The Loan Agreement contains a number of covenants that, among other things, restrict our ability and certain of our subsidiaries to:

- dispose of assets;
- incur additional indebtedness and issue preferred stock;
- pay dividends or make other distributions;
- enter into certain acquisitions;
- repurchase equity interests or subordinated indebtedness;
- issue or sell equity interests of our subsidiaries; and
- engage in mergers or consolidations or certain other transactions with entities other than subsidiaries and affiliates.

In connection with the MIVA Media Sale, we entered into a Consent and Amendment to the Loan Agreement with Bridge Bank. The Amendment required us to repay from the MIVA Media Sale all outstanding advances plus any accrued interest in the amount of approximately \$4.4 million. In addition, the Amendment suspended any further borrowings under the Loan Agreement until new terms and conditions for borrowing are agreed to between Bridge Bank and us. Our ability to comply with the provisions of the Loan Agreement, including any subsequent amendment, will be dependent upon our future performance, which may be affected by events beyond our control. There can be no assurance that we will be able to successfully renegotiate the borrowing base or any other loan covenants, and if they are renegotiated, comply with such restrictions and limitations, or that they will not adversely affect our ability to finance our future operations or capital needs, or engage in other business activities that would otherwise be in our interest.

A breach of any of our covenants or our inability to comply with the required financial ratios or profitability targets under the Loan Agreement could result in a default under the Loan Agreement. In the event of any such default, Bridge Bank could elect to declare all borrowings outstanding under such Loan Agreement, together with any accrued interest and other fees, to be due and payable, as well as require us to apply all available cash to repay the amounts. If we were unable to repay the indebtedness upon its acceleration, Bridge Bank could proceed against the underlying collateral. There can be no assurance that our assets would be sufficient to repay the amount in full, that we would be able to borrow sufficient funds to refinance the indebtedness, or that we would be able to obtain a waiver to cure any such default.

Virtually all of our debt is subject to variable interest rates; and therefore rising interest rates could negatively impact our business.

Borrowings under our Loan Agreement bear interest at a variable rate. In addition, we may incur other variable rate indebtedness in the future. Carrying indebtedness subject to variable interest rates makes us more vulnerable to economic and industry downturns and reduces our flexibility in responding to changing business and economic conditions. Increases in interest rates on this indebtedness would increase our interest expense, which could adversely affect our cash flows and our ability to service our debt as well as our ability to grow the business.

Current borrowings, as well as potential future financings, may substantially increase our current indebtedness.

No assurance can be given that we will be able to generate the cash flows necessary to permit us to meet our payment obligations with respect to our debt. We could be required to incur additional

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indebtedness to meet these payment obligations and there is no assurance that we would be able to secure such financing on acceptable terms or at all, especially in light of the current economic, credit and capital markets environment. Should we incur additional debt, among other things, such increased indebtedness could:

- adversely affect our ability to expand our business, market our products, and make investments and capital expenditures;
- adversely affect the cost and availability of funds from commercial lenders, debt financing transactions, and other sources; and
- create competitive disadvantages compared to other companies with lower debt levels.

Any inability to service our fixed charges and payment obligations, or the incurrence of additional debt, would have a material adverse effect on our cash flows, results of operations and business.

We are subject to income taxes in both the United States and numerous international jurisdictions.

We are subject to income taxes in both the United States and numerous international jurisdictions. Significant judgment is required in determining our worldwide provision for income taxes. In the ordinary course of our business, there are many transactions and calculations where the ultimate tax determination is uncertain. Although we believe our tax estimates are reasonable and appropriate, the final determination of tax audits and any related tax litigation could be materially different than that which is reflected in historical income tax provisions and accruals. Based on the results of tax audits or tax litigation, our income tax provision, net loss, or cash flows in the period or periods for which that determination is made could be materially adversely affected.

Risks Related to Our Industry

Regulatory and legal uncertainties could harm our business.

While there are currently relatively few laws or regulations directly applicable to Internet access, commerce, or commercial search activity, there is increasing awareness and concern regarding some uses of the Internet and other online services, leading federal, state, local, and international governments to consider adopting civil and criminal laws and regulations, amending existing laws and regulations, conducting investigations, or commencing litigation with respect to the Internet and other online services covering issues such as:

- user privacy;
- trespass;
- defamation;
- database and data protection;
- limitations on the distribution of materials considered harmful to children;
- liability for misinformation provided over the web;
- user protection, pricing, taxation, and advertising restrictions (including, for example, limitation on the advertising on Internet gambling websites or of certain products);
- delivery of contextual advertisements via connected desktop software;
- intellectual property ownership and infringement, including liability for listing or linking to third-party websites that include materials infringing copyrights or other rights;

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- distribution, characteristics, and quality of products and services; and
- other consumer protection laws.

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Legislation has also been introduced in the U.S. Congress and some state legislatures that is designed to regulate spyware, which does not have a precise definition, but often defined as software installed on consumers' computers without their informed consent and designed to gather and, in some cases, disseminate information about those consumers, including personally identifiable information. We do not rely on spyware for any purpose and it is not part of our product offerings, but the definition of spyware or proposed legislation relating to spyware may be broadly defined or interpreted to include legitimate ad-serving software, including toolbar offerings and other downloadable software currently provided by our MIVA Direct division. Currently, legislation has focused on providing Internet users with notification of and the ability to consent or decline the installation of such software, but there can be no guarantee that future legislation will not provide more burdensome standards by which software can be downloaded onto consumers' computers. Currently all downloadable software that we distribute requires an express consent of the consumer and provides consumers with an easy mechanism to delete the software once downloaded. However, if future legislation is adopted which makes the consent, notice or uninstall procedures more onerous, we may have to develop new technology or methods to provide our services or discontinue those services in some jurisdictions or altogether. There is no guarantee we will be able to develop this new technology at all or in a timely fashion or on commercially reasonable terms. The adoption of any additional laws or regulations, application of existing laws to the Internet generally or our industry, or any governmental investigation or litigation related to the Internet generally, our industry, or our services may decrease the growth of the Internet or other online services, which could, in turn:

- decrease the demand for our services;
- increase our cost of doing business;
- preclude us from developing additional products or services;
- result in adverse publicity to us; and
- subject us to fines, litigation, or criminal penalties, enjoin us from conducting our business or providing any of our services, otherwise have a material adverse effect on our business, financial condition, and results of operations, or result in a substantial decline in the market price of our common stock.

The regulatory environment with respect to online marketing practices is also evolving. The Federal Trade Commission, or FTC, has increasingly focused on issues affecting online marketing, particularly online privacy and security issues. One of the key areas of focus for the FTC is the difference between spyware and ad-serving software, such as our downloadable toolbar applications.

New legislation, which could be proposed or enacted at any time in the future, new regulations or changes in the regulatory climate, or the expansion, enforcement or interpretation of existing laws could prevent us from offering some or all of our services or expose us to additional costs and expenses requiring substantial changes to our business or otherwise substantially harm our business.

Due to the global nature of the Internet, it is possible that multiple state, federal, or international jurisdictions might inconsistently regulate Internet activities, which would increase our costs of compliance and the risk of violating the laws of a particular jurisdiction, both of which could have a material adverse effect on our business, financial condition, and results of operations.

We may face third party intellectual property infringement claims that could be costly to defend and result in the loss of significant rights.

Our current and future business activities may infringe upon the proprietary rights of others, and third parties may assert infringement claims against us, including claims alleging, among other things, copyright, trademark, or patent infringement. We are aware of allegations from time to time concerning these types of claims and in particular in respect of copyright and trademark infringement claims. While we believe

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that we have defenses to these types of claims under appropriate trademark legislation, we may not prevail in our defenses to any intellectual property infringement claims. In addition, we may not be adequately insured for any judgments awarded in connection with any litigation. Any such claims and resulting litigation could subject us from time to time to significant liability for damages, or result in the invalidation of our proprietary rights, which would have a material adverse effect on our business, financial condition, and results of operations. Even if we were to prevail, these claims could be time-consuming, expensive to defend, and could result in the diversion of our management's time and attention.

Risks Relating to an Investment in Our Common Stock

Our stock price may result in our failure to maintain NASDAQ Marketplace Rules related to minimum stock price requirements, which could result in NASDAQ delisting our common stock.

NASDAQ Marketplace Rules require us to have a minimum closing bid price of \$1.00 per share for our common stock. In the event that our common stock closing bid price falls below \$1.00 per share for 30 consecutive business days we would likely receive notice from NASDAQ that we are not in compliance with Marketplace Rules, which could ultimately lead to the delisting of our common stock from the NASDAQ Global Market if we were unable to maintain the requisite minimum stock price during the subsequent probationary period. On October 16, 2008 we received notice from NASDAQ immediately suspending the enforcement of the rules requiring the minimum \$1.00 closing bid price. In addition, NASDAQ also suspended the enforcement of the rules requiring a minimum market value of publicly held shares. The suspension of the minimum bid price and market value will remain in effect through April 30, 2009 at which time these rules are expected to be reinstated unless they are further extended.

Recently our stock price has traded below \$1.00 and even though we received a temporary reprieve from this notice, if our stock continues to trade below \$1.00 once the rules are reinstated we would likely receive notice from NASDAQ that ultimately could lead to the delisting of our stock. In the event that we were delisted from the NASDAQ Global Market, our common stock would become significantly less liquid, which would likely adversely affect its value. Although our common stock would likely be traded over-the-counter or on pink sheets, these types of listings involve more risk and trade less frequently and in smaller volumes than securities traded on the NASDAQ Global Market.

The market price of our common stock has been and may continue to be volatile.

The market price of our common stock has in the past and may in the future experience significant volatility as a result of a number of factors, many of which are outside of our control. Each of the risk factors listed in this Part I, Item 1A—Risk Factors, and the following factors, may affect the market price for our common stock:

- our quarterly results and ability to meet analysts' and our own published expectations;
- our ability to continue to attract and retain users and paid listings providers;
- the amount and timing of operating costs and capital expenditures related to the maintenance and expansion of our businesses, operations, and infrastructure;
- patents issued or not issued to us or our competitors;
- announcements of technological innovations, new services or service enhancements, strategic alliances, mergers, acquisitions, dispositions, or significant agreements by us or by our competitors;
- commencement or threat of litigation or new legislation or regulation that adversely affects our business;
- general economic conditions and those economic conditions specific to the Internet and Internet advertising;

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- our ability to keep our products and services operational at a reasonable cost and without service interruptions;
- recruitment or departure of key personnel;
- geopolitical events such as war, threat of war, or terrorist actions;
- sales of substantial amounts of our common stock, including shares issued upon the exercise of outstanding options or warrants; and
- potential of industry consolidation in our sector.

Because our business is changing and evolving, our historical operating results may not be useful in predicting our future operating results. In addition, advertising spending has historically been cyclical in nature, reflecting overall economic conditions as well as budgeting and buying patterns. Also, online user traffic tends to be seasonal.

In addition, the stock market has experienced significant price and volume fluctuations that particularly have affected the trading prices of equity securities of many technology and Internet companies. Frequently, these price and volume fluctuations have been unrelated to the operating performance of the affected companies. Following periods of volatility in the market price of a company's securities such as we have recently experienced, securities class action litigation is often instituted against such a company, as we have recently had a number of such suits instituted against us. See "We have had a number of purported class action lawsuits filed against us and certain of our officers and directors alleging violations of securities laws" below. This type of litigation, regardless of the outcome, could result in substantial costs and a diversion of management's attention and resources, which could materially adversely affect our business, financial condition, and results of operations.

Significant dilution will occur if outstanding options are exercised or restricted stock unit grants vest.

As of December 31, 2008, we had stock options outstanding to purchase a total of approximately 1.6 million shares at an average weighted price of \$8.94 per share under our stock incentive plans.

Also, as of December 31, 2008, we had approximately 2.3 million restricted stock units outstanding including approximately 0.3 million in restricted stock units that would vest upon the Company's common stock reaching, and closing, at share prices exceeding \$4.00 per share for ten consecutive trading days. Additionally, approximately 0.2 million shares would vest under similar vesting criteria but with stock prices of \$8.00, \$10.00 and \$12.00, respectively. The remaining approximate 1.8 million restricted stock units will vest predominately over the next three years in equal increments. Any such exercise of outstanding stock options or vesting of restricted stock units will dilute our shareholders' ownership interest.

Our certificate of incorporation authorizes us to issue additional shares of stock, which could impede a change of control that is beneficial to our stockholders.

We are authorized to issue up to 200 million shares of common stock that may be issued by our board of directors for such consideration as they may consider sufficient without seeking stockholder approval, subject to stock exchange rules and regulations. Our certificate of incorporation also authorizes us to issue up to 500,000 shares of preferred stock, the rights and preferences of which may be designated by our board of directors. These designations may be made without stockholder approval. The designation and issuance of preferred stock in the future could create additional securities that have dividend and liquidation preferences prior in right to the outstanding shares of common stock. These provisions could be used by our board to impede a non-negotiated change in control, even though such a transaction may be beneficial to holders of our securities, and may deprive you of the opportunity to sell your shares at a

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premium over prevailing market prices for our common stock. The potential inability of our shareholders to obtain a control premium could reduce the market price of our common stock.

We have had a number of purported class action lawsuits filed against us and certain of our officers and directors alleging violations of securities laws.

Beginning on May 6, 2005, five putative securities fraud class action lawsuits were filed against us and certain of our former officers and directors in the United States District Court for the Middle District of Florida. The complaints allege that we and the individual defendants violated Section 10(b) of the Securities Exchange Act of 1934 (the "Act") and that the individual defendants also violated Section 20(a) of the Act as "control persons" of MIVA. Plaintiffs purport to bring these claims on behalf of a class of our investors who purchased our stock between September 3, 2003 and May 4, 2005.

Plaintiffs allege generally that, during the putative class period, we made misleading statements and omitted material information regarding (1) the goodwill associated with a recent acquisition, (2) certain material weaknesses in our internal controls, and (3) the Internet traffic generated by and business relationships with certain distribution partners. Plaintiffs assert that we and the individual defendants made these misstatements and omissions in order to keep our stock price high to allow certain individual defendants to sell stock at an artificially inflated price. Plaintiffs seek unspecified damages and other relief.

If it is determined that we or our officers or directors have engaged in the types of activities alleged by these plaintiffs, we and our officers and directors could be subject to damages and may be subject to further prosecution. Regardless of the outcome, these litigations could have a material adverse impact on us because of harm to our and our officers' and directors' reputations, defense costs, diversion of management's attention and resources, and other factors.

A putative derivative action has been filed against certain of our officers and directors, purportedly on behalf of the Company.

On July 25, 2005, a shareholder, Bruce Verduyn, filed a putative derivative action purportedly on behalf of us in the United States District Court for the Middle District of Florida, against certain of our directors and officers. This action is based on substantially the same facts alleged in the securities class action litigation described above. The complaint is seeking to recover damages in an unspecified amount.

If it is determined that our officers or directors have engaged in the types of activities alleged in the putative derivative action, our officers and directors could be subject to damages and may be subject to further prosecution. We have agreed to indemnify our officers and directors in connection with the defense of this action. Accordingly, regardless of the outcome, this litigation could have a material adverse impact on us because of harm to our reputation, defense costs, diversion of management's attention and resources, and other factors.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

Table of Contents**ITEM 2. PROPERTIES**

Our primary administrative, sales, customer service, and technical facilities are leased in Fort Myers, Florida and London, U.K., which have historically served as the headquarters for MIVA Media US and MIVA Media Europe, respectively. We also lease offices both domestically and internationally as follows: New York, New York; Paris, France; Hamburg and Munich, Germany; Bridgewater, New Jersey; and other cities in the United States and Europe, which have served as regional business development and sales offices. Additionally, we maintain technical data center operations with third-party hosting facilities in the following locations: Atlanta, Georgia; Sterling, Virginia; San Diego, California; London; and Amsterdam.

Operating Leases

On September 30, 2008, we provided notice of termination for the operating lease agreements for both the Munich and Hamburg office locations. The Munich lease ends on December 31, 2009 and the Hamburg office lease expires on March 31, 2009. Additionally, on October 3, 2008, we provided notice to terminate the office lease for our Spain office, which is expected to expire on March 31, 2009.

On September 10, 2008, we entered into an operating lease agreement with an unrelated third party to lease work space for our London office for the term of 12 months commencing on December 1, 2008. The agreement includes a right to three month renewals. Base rent is approximately \$0.3 million per year.

Subleases

During the fourth quarter of 2008, we entered into two separate and non-cancelable sublease agreements covering the remaining lease obligations periods in both Germany (Hamburg) and France (Paris) leases with unrelated third parties. The sublease payments are expected to be received ratably over the next 12 months.

In August 2007, we entered into a real estate sublease agreement with an unrelated party to sublease 20,171 square feet (approximately 50% of our rented space) in our office located in Fort Myers, Florida. The term of the sublease agreement commenced on August 17, 2007 and ends on November 30, 2012, unless certain conditions (as defined) are met for earlier termination.

As of December 31, 2008, our leased properties provide us with an aggregate of approximately 53,000 square feet for all of our operations. This total does not include our allocated space for our technical data centers as noted above. We believe these facilities are adequate, at this time, for their intended use.

ITEM 3. LEGAL PROCEEDINGS**Shareholder Class Action Lawsuits**

Beginning on May 6, 2005, five putative securities fraud class action lawsuits were filed against us and certain of our former officers and directors in the United States District Court for the Middle District of Florida. The complaints allege that we and the individual defendants violated Section 10(b) of the Securities Exchange Act of 1934 (the "Act") and that the individual defendants also violated Section 20(a) of the Act as "control persons" of MIVA. Plaintiffs purport to bring these claims on behalf of a class of our investors who purchased our stock between September 3, 2003 and May 4, 2005.

Plaintiffs allege generally that, during the putative class period, we made certain misleading statements and omitted material information. Plaintiffs seek unspecified damages and other relief.

On July 27, 2005, the Court consolidated all of the outstanding lawsuits under the case style *In re MIVA, Inc. Securities Litigation*, selected lead plaintiff and lead counsel for the consolidated cases, and granted Plaintiffs leave to file a consolidated amended complaint, which was filed on August 16, 2005. We and the other defendants moved to dismiss the complaint on September 8, 2005.

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On December 28, 2005, the Court granted Defendants' motion to dismiss. The Court granted Plaintiffs leave to submit a further amended complaint, which was filed on January 17, 2006. On February 9, 2006, Defendants filed a renewed motion to dismiss. On March 15, 2007, the Court granted in large part Defendants' motion to dismiss. On March 29, 2007, Defendants filed a motion for amendment to the March 15, 2007, order to include certification for interlocutory appeal or, in the alternative, for reconsideration of the motion to dismiss. On July 17, 2007, the Court (1) denied the motion for amendment to the March 15, 2007, order to include certification for interlocutory appeal and (2) granted the motion for reconsideration as to the issue of whether Plaintiffs pled a strong inference of scienter in light of intervening precedent. The Court requested additional briefing on the scienter issue, and on February 15, 2008, entered an Order dismissing one of the individual defendants from the lawsuit and limiting the claims that could be brought against another individual defendant. In addition, Plaintiffs previously had moved the Court to certify a putative class of investors, and Defendants had filed briefs in opposition thereto. On March 12, 2008, the Court entered an Order certifying a class of those investors who purchased the Company's common stock from February 23, 2005, to May 4, 2005. The Court also dismissed two of the proposed class representatives for lack of standing. Plaintiffs have served discovery requests on Defendants, and the discovery phase of the lawsuit is presently underway.

Regardless of the outcome, this litigation could have a material adverse impact on our results because of defense costs, including costs related to our indemnification obligations, diversion of management's attention and resources, and other factors.

Derivative Stockholder Litigation

On July 25, 2005, a shareholder, Bruce Verduyn, filed a putative derivative action purportedly on behalf of us in the United States District Court for the Middle District of Florida, against certain of our directors and officers. This action is based on substantially the same facts alleged in the securities class action litigation described above. The complaint is seeking to recover damages in an unspecified amount. By agreement of the parties and by Orders of the Court, the case was stayed pending the resolution of Defendants' motion to dismiss and renewed motion to dismiss in the securities class action. On July 10, 2007, the parties filed a stipulation to continue the stay of the litigation. On July 13, 2007, the Court granted the stipulation to continue the stay and administratively closed the case pending notification by plaintiff's counsel that the case is due to be reopened. Regardless of the outcome, this litigation could have a material adverse impact on our results because of defense costs, including costs related to our indemnification obligations, diversion of management's attention and resources, and other factors.

Comet Systems, Inc.

The agent for the former shareholders of Comet Systems, Inc., a company that merged with and into one of our subsidiaries in March 2004, filed a lawsuit against us in Delaware Chancery Court on March 13, 2007. In the suit the shareholders' agent contended that our calculation and payment of contingent amounts payable under the merger agreement were not correct and we contended that we calculated and paid the contingent amounts correctly. On October 22, 2008, the Court granted summary judgment to the plaintiff in the amount of \$1.7 million, pre-judgment interest in the amount of \$0.6 million, and reimbursement of attorney fees of \$0.1 million. After receiving summary judgment we entered into negotiations with the plaintiffs and reached a binding settlement agreement to pay a lesser amount. We agreed to pay \$1.875 million to resolve this dispute and made payment, in full, in December 2008.

Other Litigation

We are a defendant in various other legal proceedings from time to time, regarded as normal to our business and, in the opinion of management, the ultimate outcome of such proceedings are not expected to have a material adverse effect on our financial position or our results of operations.

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No accruals for potential losses for litigation are recorded as of December 31, 2008, and although losses are possible in connection with the above litigation, we are unable to estimate an amount or range of possible loss, in accordance with SFAS 5, but if circumstances develop that necessitate a loss contingency being disclosed or recorded, we will do so. We expense all legal fees for litigation as incurred.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of 2008.

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PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.**Market for Common Stock**

Our common stock trades on the NASDAQ Global Market under the symbol "MIVA." The following table sets forth the high and low sales prices of our common stock for the periods indicated as reported by the NASDAQ Global Market:

	<u>Common Stock Market Price</u>	
	<u>High</u>	<u>Low</u>
2008		
Fourth Quarter	\$0.62	\$0.18
Third Quarter	1.11	0.62
Second Quarter	1.93	1.06
First Quarter	2.38	1.40
2007		
Fourth Quarter	\$4.64	\$1.83
Third Quarter	7.43	4.03
Second Quarter	6.53	3.76
First Quarter	4.47	3.64

Stockholders

We had 266 shareholders of record as of February 28, 2009.

Dividends

We have never paid cash dividends and currently do not intend to pay cash dividends on our common stock at any time in the near future.

Recent Sales of Unregistered Securities

We did not make any unregistered sales of our common stock during the 2008 fiscal year.

Issuer Purchases of Equity Securities

During the three months ended December 31, 2008, we acquired shares in connection with vesting of restricted stock units as described in the table below.

<u>Period</u>	<u>Issuer Purchases of Equity Securities</u>			
	<u>(a) Total Number of Shares Purchased</u>	<u>(b) Average Price Paid per Share</u>	<u>(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs</u>	<u>(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs</u>
Oct. 1, 2008 through Oct. 31, 2008	7,252	\$ 0.62	n/a	n/a
Nov. 1, 2008 through Nov. 30, 2008	—	—	n/a	n/a
Dec. 1, 2008 through Dec. 31, 2008	—	—	n/a	n/a
Total	<u>7,252</u> (1)	<u>\$ 0.62</u>	—	—

TRADEMARK

- (1) Represents shares withheld by us upon the vesting of restricted stock units to satisfy withholding taxes.

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Not applicable as a smaller reporting company.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Management's Discussion and Analysis of Financial Condition and Results of Operations contain forward-looking statements, the accuracy of which involves risks and uncertainties. We use words such as "anticipates," "believes," "plans," "expects," "future," "intends," "estimates," "projects," and similar expressions to identify forward-looking statements. This management's discussion and analysis of financial condition and results of operations also contains forward-looking statements attributed to certain third-parties relating to their estimates regarding the growth of the Internet, Internet advertising, and online commerce markets and spending. Readers should not place undue reliance on these forward-looking statements, which apply only as of the date of this report. Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons. Factors that might cause or contribute to such differences include, but are not limited to, those discussed under the section entitled "Risk Factors" under Item 1A of Part I of this Annual Report on Form 10-K.

Executive Summary

During the period covered by this report, we offered a range of products and services through two divisions—MIVA Direct and MIVA Media.

The majority of our revenue at MIVA Direct is generated through Internet search queries at our website. Our products generate search queries to our website <http://search.alot.com>, where we provide algorithmic and sponsored search functionality to consumers through our contractual relationships with third-party providers. When consumers conduct their search through our website and subsequently click-through on relevant ad listings, MIVA Direct earns a percentage of the total click-through revenue provided by the third-party providers that serviced the advertisement.

On March 12, 2009, we and certain of our subsidiaries entered into and consummated an Asset Purchase Agreement with Adknowledge, Inc. and certain of its subsidiaries pursuant to which we sold to Adknowledge certain assets relating to our MIVA Media division, including the MIVA name, for cash consideration of approximately \$11.6 million, plus assumption of certain balance sheet liabilities, and subject to certain retained assets and liabilities, including assets and liabilities of the MIVA Media division in France, and post-closing adjustments (the "MIVA Media Sale"). Following the MIVA Media Sale on March 12, 2009, we no longer operate the MIVA Media business and we anticipate restructuring our French subsidiary beginning in the second quarter of 2009. References to the MIVA Media division or business in this Annual Report on Form 10-K are to the MIVA Media business and operations as they were conducted by us prior to the MIVA Media Sale and during the period required to be covered by this report. Please see Part I, Item 1A-Risk Factors and elsewhere in this report for risks you should consider in light of the MIVA Media Sale.

Prior to the MIVA Media Sale, MIVA Media was an auction based pay-per-click advertising network that we operated across North America and in Europe. MIVA Media connected buyers and sellers online by displaying advertisements in response to consumer search or browsing activity on select Internet properties. MIVA Media derived its revenue primarily from online advertising by delivering relevant contextual and search ad listings to our third-party ad network and our consumer audiences on a performance basis.

Table of Contents**Recent Developments***Asset Sale—MIVA Media Business*

On March 12, 2009, we completed the MIVA Media Sale. The MIVA Media Sale further streamlined our operations and is another step in our overall strategy of developing and expanding our high margin, consumer-oriented toolbar, homepage and desktop search-related products. As a result of the transaction, we have reduced our total headcount from 129 on December 31, 2008, to approximately 50 we anticipate having at March 31, 2009. This includes transferring approximately 75 MIVA Media and certain corporate staff to the buyer. Our remaining employees will work predominantly out of the Company's New York offices, with a small number of our employees based in our Fort Myers, Florida office.

We incurred approximately \$1.3 million legal and financial advisory fees in connection with the MIVA Media Sale of the MIVA Media business.

Perot Master Services Agreement

On February 1, 2009, we entered into an amendment ("Amendment") to the Perot Master Services Agreement with Perot Systems, pursuant to which we had outsourced certain of its information technology infrastructure services, application development and customer services functions.

Under the terms of the amendment, the Master Services Agreement will expire on April 30, 2009, and certain other provisions of the Master Services Agreement have either been modified or terminated. The Amendment was entered as part of our ongoing cost reduction measures and to facilitate the streamlining of our MIVA Media operations and the anticipated operational efficiencies resulting from our new technology platform.

We expect Perot Systems to continue to provide application development services for our new technology platform and to work with us and the buyer of our MIVA Media assets on the transition of services related to the expiration of the Master Services Agreement. It is also expected that Perot Systems will continue to provide certain network operations monitoring and after-hours support services to us and the buyer of the MIVA Media assets on an ad hoc basis.

In connection with the Amendment, we have issued a letter of credit to Perot Systems for approximately \$1.0 million for a portion of the remaining application development costs related to our new technology platform. Additionally, we expect to incur approximately \$0.6 million in fees for transition services under the Amendment. It is expected that these fees will be incurred over February, March and April 2009 as the transition services from Perot Systems are received.

Impairment

During the fourth quarter of 2008, in connection with our annual impairment testing, we performed a step 1 impairment test of our two reporting units, Searchfeed and Miva Direct, with remaining recorded indefinite lived intangible assets and goodwill for potential impairment. As a result of this analysis, we determined that the estimated fair value of the reporting units exceeded their carrying values, which could result in potential impairment. We then performed an assessment of the long-lived assets of our Searchfeed and MIVA Direct divisions and determined these assets were impaired under the provisions of SFAS No. 144. Accordingly, in the fourth quarter of 2008, we recorded approximately \$2.9 million in non-cash impairment charges to reduce the carrying value of the remaining long-lived tangible and intangible assets to their estimated fair values. We then performed a step 2 impairment test to determine if the remaining carrying values of recorded goodwill and other indefinite lived intangible assets in these divisions was impaired under the provisions of SFAS No. 142. The step 2 impairment test resulted in a non-cash impairment charge of \$14.7 million and \$1.1 million, respectively, to reduce the carrying value of goodwill, and other indefinite lived intangible assets to their implied fair value. As a result of these

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impairment charges, the carrying value of all of the Company's goodwill and other indefinite lived intangible assets was reduced to zero as of December 31, 2008.

Google Services Agreement

On November 10, 2008, we entered into an amended and restated Google Services Agreement (the "Google Agreement"), effective January 1, 2009, which amends and restates MIVA's current Google Services Agreement that was to expire on December 31, 2008. Under the Amended and Restated Google Agreement, we agreed to utilize Google's WebSearch, on an exclusive basis, and AdSense Services, on a non-exclusive basis, for approved websites and applications. Approved websites and applications include websites and applications from MIVA Direct that has implemented Google WebSearch and AdSense Services under the prior Google Services Agreement. Pursuant to the terms of the Amended and Restated Google Agreement, we will generate revenues when consumers click through listings to Google advertisers' websites. The Agreement has a term of two years, but contains broad termination rights.

Loan and Security Agreement

On November 7, 2008, we entered into a Loan and Security Agreement with Bridge Bank. The Loan Agreement provides a revolving credit facility to the Company ("Facility"). Subject to the terms of the Loan Agreement, the borrowing base used to determine loan availability under the Facility is equal to 80% of the our eligible U.S. accounts receivable plus the lesser of \$3.5 million or 65% of eligible U.K. accounts receivable, with account eligibility measured in accordance with standard determinations. All amounts borrowed under the Facility are secured by a general security interest on the assets of the Company, including the Company's intellectual property, and a pledge of 65% of the outstanding shares of the Company's UK subsidiary, MIVA (UK) Limited. In addition, MIVA (UK) Limited and certain of the Company's domestic subsidiaries are guarantying the Company's obligations under the Facility, to be secured by general security interests in the assets of such companies. Except as otherwise set forth in the Loan Agreement, borrowings made pursuant to the Loan Agreement will bear interest at a rate equal to the greater of (i) 6.5% or (ii) the Prime Rate (as announced by Bridge Bank) plus 1.5%. At December 31, 2008, the Company was eligible to draw down a total of approximately \$6.8 million under the Facility, and had drawn down approximately \$4.0 million. As of December 31, 2008, of the total \$6.7 million in our cash and cash equivalents, and \$2.0 million in restricted cash, approximately \$2.8 million was held in our account at Bridge Bank. Under the terms of the Loan Agreement, we are required to maintain in an account at Bridge Bank an amount equal to or greater than 50% of the funded loan balance. The Facility expires on November 7, 2010, at which time all outstanding loan advances become due and payable.

On March 12, 2009, we entered into a Consent and Amendment to Loan and Security Agreement (the "Amendment") with Bridge Bank, which amends certain terms and conditions of the Loan Agreement. Pursuant to the Amendment, MIVA Direct became a borrower under the Loan Agreement and granted a general security interest in its assets to Bridge Bank. The Amendment further provides Bridge Bank's consent to the MIVA Media Sale, provided that the Company was required to repay immediately, out of the proceeds of the MIVA Media Sale, all outstanding advances plus any accrued interest under the Loan Agreement in the amount of approximately \$4.4 million. In addition, no further advances will be made under the Loan Agreement until the parties have agreed upon new terms and conditions for borrowing. The Amendment also provides that the letter of credit for the benefit of Perot Systems, Ltd. in the amount of \$693,628 issued by Bridge Bank be secured by a cash deposit.

Restructuring**August 2008**

On August 21, 2008, the Company initiated a restructuring plan that further consolidated the MIVA Media EU operations primarily in one office. The restructuring plan evolved to include a workforce

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reduction of approximately 40 employees, which involved cash payments totaling approximately \$2.1 million that is expected to be completed by April 2009. The restructuring plan resulted in the closure of our offices in Germany, reductions in headcount in our offices in Paris, Madrid and London, and exiting certain contractual relationships with third party contracts. In the quarter ended September 30, 2008 we recorded a restructuring charge of approximately \$2.7 million related to this restructuring program, which includes severance and related costs, legal fees, and other costs specific to the execution of this program. During the fourth quarter of 2008, we recorded additional charges of approximately \$0.5 million. These charges are consistent with this restructuring plan and primarily included severance and related costs, legal fees, and other costs specific to the execution of this program.

June 2008

On June 17, 2008, the Company initiated a restructuring plan in order to maximize efficiencies within the Company, eliminate certain unprofitable operations, and better position the Company for the future. The Company recorded a total of \$0.8 million in restructuring charges related to this action, excluding the approximate \$0.2 million included in the discontinued operations category related to the closure of our Italian operations. We have closed our MIVA Media Italian operations and eliminated other redundant positions within the Company. Management developed a formal plan that included the identification of a workforce reduction totaling 30 employees, which is expected to involve cash payments totaling approximately \$1.0 million, and that was completed in February 2009.

February 2008

On February 19, 2008, the Company announced a restructuring plan aimed at continued reduction of the overall cost structure of the Company. The Company recorded \$0.1 million in restructuring charges related to this action, which was designed to align the cost structures of our U.S. and U.K. operations with the operational needs of these businesses. Management developed a formal plan that included the identification of a workforce reduction totaling 8 employees, all of which involved cash payments of approximately \$0.1 million made in the quarter ended June 30, 2008.

Organization of Information

This management's discussion and analysis of financial condition and results of operations provides a narrative on our financial performance and condition that should be read in conjunction with the accompanying financial statements. It includes the following sections:

- Results of operations
- Liquidity and capital resources
- Contractual obligations
- Use of estimates and critical accounting policies

RESULTS OF OPERATIONS

For the Years Ended December 31, 2008 and 2007

We commercially launched the MIVA Media North America Network in September 1999, our first private label agreement commenced in September 2002, we acquired: (i) MIVA Small Business Solutions, Inc. ("MSB") in January 2004; (ii) MIVA Direct, Inc. ("MIVA Direct") in March 2004; and (iii) the assets of B&B Enterprises, Inc. (now B&B Advertising, Inc. or "B&B") in June 2004. In July 2004, through a subsidiary, we merged with MIVA Media International, Inc. (formerly Espotting Media, Inc.). We changed our name to MIVA, Inc. in June 2005, and at the same time also changed the names of many of our customer facing subsidiaries.

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We did not complete any acquisitions or mergers in the years ended December 31, 2008, or 2007. However, as of August 1, 2007, we divested our MIVA Small Business division as it was inconsistent with our current and future strategic goals. Its results are included in discontinued operations for the 2007 reporting period. In addition, on June 17, 2008, we initiated a restructuring plan that included, among other things, closing the MIVA Media Italian operations and accordingly their results are included in discontinued operations for both the 2007 and 2008 reporting periods.

Revenue

During 2008, we recorded revenue of \$116.4 million, a decrease of approximately 23.0% from the \$151.1 million recorded in 2007. For the year ended December 31, 2008, MIVA Media recorded revenue of \$75.1 million, a decrease of approximately 24.3% from the \$99.2 million recorded in the same period in 2007. For the year ended December 31, 2008, MIVA Direct recorded revenue of \$41.3 million, a decrease of approximately 20.5% from the \$51.9 million recorded in the same period in 2007. Additionally, MIVA Direct, as a percentage of total revenue, increased from approximately 34.4% for the year ended December 31, 2007 to approximately 35.5% in the same period in 2008.

A significant portion of our revenue decline at MIVA Media was attributed to the performance of MIVA Media Europe. Revenue at MIVA Media Europe declined \$17.7 million, or 40.0% for the year ended December 31, 2008 compared to the same period in 2007. Revenue at MIVA Media US declined \$6.3 million or 11.6% for the year ended December 31, 2008, compared to the same period in 2007.

A portion of the revenue decline at MIVA Media resulted from the restructuring actions we undertook to exit unprofitable revenue streams and operations in Europe. Additionally, some of the revenue decline at MIVA Media across both US and EU is also attributed to a decrease in our average revenue per click. Our average revenue per click in any given period is determined by dividing total click-through revenue by the number of paid clicks recorded during that same period. We have experienced declines in our average revenue per click for both our MIVA Media US and MIVA Media Europe operations since 2004. The decline in our average revenue per click may be caused by a number of factors, including, among others: (i) our overall mix of traffic sources; (ii) the bid prices submitted by our advertisers for a keyword advertisement; (iii) the bid prices of the more frequently clicked keyword terms; (iv) delayed updates to the MIVA Media technology platform; (v) general economic conditions; and the nexus between the five.

Additional factors negatively impacting our revenue at MIVA Media for the year ended December 31, 2008, include: (i) spending volatility from a segment of advertisers based on their needs and general economic conditions; (ii) the inability of certain advertisers to monetize large blocks of remnant keyword traffic; (iii) the impact of our on-going initiative to attempt to pro-actively screen Internet traffic sources to ensure that less desirable sources of Internet traffic are not sent to our advertiser base; and (iv) increased advertiser dissatisfaction with the limited features and functionality available in our legacy MIVA Media platform.

Our revenue decline at MIVA Direct for the year ended December 31, 2008, compared to the same period in 2007 is due primarily to a decline in our active toolbar installed base partially offset by increased revenue per user. Distribution of our new ALOT branded toolbars during the year ended December 31, 2008, increased at a rate sufficient to grow our active ALOT live user count from 1.0 million on December 31, 2007, to 3.1 million as of December 31, 2008. This growth combined with increased revenue per user performance metrics as compared to our legacy brands contributed to comparable growth in revenue contribution by the ALOT branded products. Distribution during the same periods in our legacy brands declined from 6.1 million to 1.6 million, as did revenue per user rates, leading to an overall decline in revenue contributed by legacy branded products. The decline in distribution and revenue from legacy brands outpaced the growth rate of ALOT branded products, leading to a net decline in total MIVA Direct revenue in the year ended December 31, 2008, as compared to the same period in 2007. Additionally, we

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believe the decline in our total active toolbar installed base is due in part to the following reasons: (i) reduction in advertising spend from approximately \$31.1 million in 2007 to approximately \$26.5 million in 2008, a 14.8% decrease primarily to assist in conserving cash balances; (ii) in Q1 2008 we experienced problems with a toolbar advertising partner that negatively impacted our ability to distribute our products; (iii) challenges in obtaining display advertising that met our conversion criteria; and (iv) general adverse economic conditions. We believe the foregoing factors will have a dampening effect on the level of MIVA Direct's revenue in 2009.

We are actively seeking to stop the decline in our active toolbar installed base. We are focusing on cost effective distribution of our ALOT branded products and limited distribution of our legacy brand because ALOT branded products deliver approximately 50% higher revenue per user rate than our legacy brands. Examples of on-going initiatives to expand distribution of ALOT products include: (i) diversifying our product line to include new platforms like Desktop, (ii) adding widget content to our products to expand the number of marketable verticals, (iii) optimizing landing pages for our advertisements, and (iv) seeking new distribution relationships. If our efforts to improve our active toolbars installed base is not successful, it will have a material adverse impact on our business, financial condition, and results of operations.

For the years ended December 31, 2008 and 2007, one customer of our MIVA Direct division, Google, accounted for approximately 33.3% and 28.8% of our consolidated revenue, respectively.

For the years ended December 31, 2008 and 2007, we did not have any individually significant distribution partner that represented over 10% of our consolidated revenue.

Our industry, as a whole, deals with the receipt of fraudulent clicks or "click-fraud", which occurs when a person or program clicks on an advertisement displayed on a website for the purpose of generating a click-through payment to MIVA and to the MIVA Media Networks partner, or to deplete the advertising account of a competitor, rather than to view the underlying content. We have proprietary automated screening applications and procedures to minimize the effects of these fraudulent clicks. Click-throughs received through the MIVA Media Networks are evaluated by these screening applications and procedures. We constantly evaluate the effectiveness of our efforts to combat click-through fraud, and may adjust our efforts for specific distribution partners or in general, depending on our ongoing analysis. These changes impact the number of click-throughs we record and bill to our advertisers, the bid prices our advertisers are willing to pay us for click-throughs, and the revenue we generate.

Additionally, we have been named in certain litigation, the outcome of which could directly or indirectly impact our revenue. For additional information regarding pending litigation, reference Item 3—Legal Proceedings above.

We plan to continue our efforts to invest in our MIVA Direct business. We cannot assure you that any of these efforts will be successful.

Cost of Services

Cost of services consists of traffic acquisition costs (revenue sharing or other arrangements with our MIVA Media distribution partners), obligations under the royalty bearing non-exclusive patent license agreement with Yahoo!, costs associated with designing and maintaining the technical infrastructure that supports our various services, cost of third-party providers of algorithmic search results, and fees paid to telecommunications carriers for Internet connectivity. Costs associated with our technical infrastructure, which supports our various services, include salaries of related technical personnel, depreciation of related computer equipment, co-location charges for our network equipment, and software license fees.

Cost of services decreased \$14.2 million or 19.9% from the year ended December 31, 2008 to the comparable period in 2007. This decrease is primarily the result of a reduction in our traffic acquisition costs of approximately \$10.9 million. Our traffic acquisition costs are calculated as a percentage of recorded revenue, therefore as our revenue declines a corresponding decrease will be realized in our traffic

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acquisition costs. Additionally, categories that decreased in 2008 from 2007 were the following: salaries, benefits, and other employee expenses (\$1.0 million), including the effects of the February 2008 and June 2008 workforce reductions; depreciation and amortization expense (\$2.3 million); and technology and telecom related expenses (\$0.2 million). Offsetting these decreases was an increase in 2008 from 2007 in consulting and outside services of approximately \$0.2 million.

Cost of services for the year ended December 31, 2008, compared to the same period in 2007, increased as a percentage of revenue from 47.4% to 49.5%. This increase is partially due to the revenue mix and related traffic acquisition costs within our domestic and international operations, and also attributed to the increase (34.4% to 35.5%) in MIVA Direct's revenue (which has more favorable margins) as a percentage of the consolidated revenue.

Operating Expenses

Operating expenses for the years ended December 31, 2008 and 2007, were as follows (in millions):

	For the Year Ended December 31,		2008 vs. 2007
	2008	2007	
Marketing, sales, and service	\$37.1	\$ 47.8	(10.7)
General and administrative	30.3	33.7	(3.4)
Product development	4.9	5.9	(1.0)
<i>Subtotal</i>	<u>72.3</u>	<u>87.4</u>	<u>(15.1)</u>
Impairment loss on goodwill and other assets	18.7	20.1	(1.4)
Amortization	2.2	4.9	(2.7)
Litigation settlement	1.7	1.3	0.4
Restructuring Charges	4.2	2.8	1.4
<i>Total</i>	<u>\$99.1</u>	<u>\$116.5</u>	<u>\$(17.4)</u>

Operating expenses as a percent of revenue for the years ended December 31, 2008 and 2007, were as follows:

	For the Year Ended December 31,		2008 vs. 2007
	2008	2007	
Marketing, sales, and service	31.9%	31.6%	(0.3)%
General and administrative	26.0%	22.3%	(3.7)%
Product development	4.2%	3.9%	(0.3)%
<i>Subtotal</i>	<u>62.1%</u>	<u>57.8%</u>	<u>(4.3)%</u>
Impairment loss on goodwill and other assets	16.1%	13.3%	(2.8)%
Amortization	1.9%	3.2%	1.3%
Litigation settlement	1.5%	0.9%	(0.6)%
Restructuring Charges	3.6%	1.9%	(1.7)%
<i>Total</i>	<u>85.2%</u>	<u>77.1%</u>	<u>(8.1)%</u>

Marketing, Sales, and Service

Marketing, sales, and service expense consists primarily of payroll and related expenses for personnel engaged in marketing, advertiser solutions, business development, sales functions, affiliate relations,

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business affairs, corporate development, and credit transactions. It also includes advertising expenditures, promotional expenditures such as sponsorships of seminars, trade shows, and expos, referral fees, other expenses to attract advertisers to our services, and fees to marketing and public relations firms.

Marketing, sales, and services decreased by \$10.7 million for the year ended December 31, 2008, as compared to the same period in 2007. The primary reason for this decrease was recognized in the following categories: salaries, benefits, and other employee expenses (\$4.1 million), inclusive of the effects of the 2008 workforce reductions; advertising expense (\$6.2 million); public relations related expenses (\$0.2 million); travel related expenses (\$0.2 million); and consulting and outside services (\$0.1 million). With respect to the \$6.2 million decrease in advertising expense from 2007 to 2008, \$4.6 million was associated directly with the ad spend in our MIVA Direct division. This ad spend which is used to promote and acquire consumers, was strategically reduced throughout 2008 to meet acquisition cost targets and to ensure cash balances were maintained and conserved. We believe this reduction will have a dampening effect on the level of MIVA Direct's revenue in 2009. Offsetting these decreases was an increase in miscellaneous expenses of \$0.1 million, which is mainly attributed to non-recurring expenses.

General and Administrative

General and administrative expense consists primarily of: payroll and related expenses for executive and administrative personnel; fees for professional services; costs related to leasing, maintaining, and operating our facilities; credit card fees; recruiting fees; travel costs for administrative personnel; insurance; depreciation of property and equipment not related to search serving or product development activities; expenses and fees associated with the reporting and other obligations of a public company; bad debts; and other general and administrative services. Fees for professional services include amounts due to lawyers, auditors, tax advisors, and other professionals in connection with operating our business, litigation, and evaluating and pursuing new opportunities.

General and administrative expenses decreased by \$3.4 million in the year ended December 31, 2008, compared to the same period in the previous year. Decreases were recognized in the following categories: salaries, benefits, and other employee expenses (\$3.1 million), including the effects of the 2008 workforce reductions; rent and related expenses (\$2.4 million); travel related expenses (\$0.6 million); and a decrease in depreciation and amortization expenses (\$0.4 million). Offsetting these decreases were increases in consulting and outside services (\$2.4 million) related to the additional expenses with Perot; and bad debt expense (\$0.7 million) due to specific bad debt reserves identified in the US (\$0.2 million) and within our European operations (\$0.5 million).

Product development

Product development expense consists primarily of payroll and related expenses for personnel responsible for the development and maintenance of features, enhancements, and functionality for our proprietary services, and depreciation for related equipment used in product development.

Product development costs decreased \$1.0 million for the year ended December 31, 2008, as compared to the same period in 2007. Decreases are reflected in the following categories: salaries, benefits, and other employee expenses (\$1.1 million); and travel related expenses (\$0.1 million). These decreases were offset by increased spending in public relations and promotional expenses (\$0.2 million).

Impairment loss

We review goodwill and other indefinite-lived intangible assets for indicators of impairment in accordance with SFAS No. 142, annually. The provisions of SFAS 142 require that a two-step impairment test be performed. In the first step, a comparison of the fair value of the reporting unit to its carrying value is performed. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill and other indefinite-lived intangible assets are not considered impaired and we are not

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required to perform further testing. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then we must perform the second step of the impairment test in order to determine the implied fair value of the reporting unit's goodwill. If the carrying value of the reporting unit's goodwill exceeds its implied fair value, we record an impairment charge equal to this calculated difference. Determining the fair value of the reporting unit is judgmental in nature and involves the use of significant estimates and assumptions. These estimates and assumptions include revenue growth rates and operating margins used to calculate projected future cash flows, risk-adjusted discount rates, future economic and market conditions, and determination of appropriate market comparables. We base our fair value estimates on assumptions we believe to be reasonable but these assumptions are inherently uncertain and unpredictable. Future results may differ from these estimates and the differences may be material.

In addition, we evaluate a reporting unit for impairment if events or circumstances change between annual tests, indicating a possible impairment. Examples of such events or circumstances include: (i) a significant adverse change in legal factors or in the business climate; (ii) an adverse action or assessment by a regulator; (iii) a more likely than not expectation that a reporting unit or a significant portion thereof will be sold; (iv) continued or sustained losses at a reporting unit; (v) a significant decline in our market capitalization as compared to our book value or (iv) the testing for recoverability under SFAS 144 of a significant asset group within the reporting unit.

In the years ended December 31, 2008 and 2007, we have recorded the following impairments:

During the fourth quarter of 2008, in connection with our annual impairment testing, we performed a step 1 impairment test of our two reporting units, Searchfeed and Miva Direct, with remaining recorded indefinite lived intangible assets and goodwill for potential impairment. As a result of this analysis, we determined that the estimated fair value of the reporting units exceeded their carrying values, which could result in potential impairment. We then performed an assessment of the long-lived assets of our Searchfeed and MIVA Direct divisions and determined these assets were impaired under the provisions of SFAS No. 144. Accordingly, in the fourth quarter of 2008, we recorded approximately \$2.9 million in non-cash impairment charges to reduce the carrying value of the remaining long-lived tangible and intangible assets to their estimated fair values. We then performed a step 2 impairment test to determine if the remaining carrying values of recorded goodwill and other indefinite lived intangible assets in these divisions was impaired under the provisions of SFAS No. 142. The step 2 impairment test resulted in a non-cash impairment charge of \$14.7 million and \$1.1 million, respectively, to reduce the carrying value of goodwill and other indefinite lived intangible assets to their implied fair value. As a result of these impairment charges, the carrying value of all of the Company's goodwill and other indefinite lived intangible assets was reduced to zero as of December 31, 2008.

In the second quarter of 2007, our revenue and earnings forecasts were updated for each of our divisions to reflect events that occurred during the quarter that updated our expected business prospects. Our MIVA Media Europe division's forecasts were particularly negatively affected by the continuation of the overall trends in declining traffic sources and the average traffic provided by: our distribution partners; slower than anticipated deployment of new services; and other factors. As a result of these indicators, we performed a test to determine if the carrying amount of goodwill and other long-lived assets at MIVA Media Europe were impaired.

The fair value estimates used in the initial impairment test were based on market approaches and the present value of future cash flows. These tests indicated that the carrying amount of MIVA Media Europe exceeded its fair value, and led us to conclude that goodwill could be impaired. We then performed a preliminary impairment test of long-lived assets, and a preliminary second step of the impairment analysis. As part of this required second step analysis, the implied fair value of goodwill was determined through the allocation of preliminary estimates of the fair value to the underlying assets and liabilities, and an estimated non-cash impairment charge of \$14.0 million was recorded to adjust the carrying value of

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goodwill to its preliminary estimated fair value. This non-cash charge was recorded at MIVA Media Europe and after this impairment charge, our MIVA Media European division had no remaining recorded goodwill.

In the third quarter of 2007, we finalized the impairment test of long-lived assets and the second step of the impairment analysis that commenced in the second quarter of 2007, and this finalization resulted in an additional impairment charge of \$1.4 million related to our long-lived assets in our MIVA Media Europe division.

In the fourth quarter of 2007, as a result of continued operating losses related to our MIVA Media US business, we performed an impairment analysis to determine recoverability of the recorded long-lived assets of this division. As a result of this analysis, we determined, under the provisions of SFAS No. 144 "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144"), that the value of certain long-lived assets of our MIVA Media US division was impaired. During the fourth quarter of 2007, we recorded approximately \$4.7 million in non-cash impairment charges to reduce the carrying value of certain long-lived tangible and intangible assets to their estimated fair value.

Amortization

Amortization expense in 2008 decreased to \$2.2 million from \$4.8 million recorded in the same period in 2007. This decrease is attributed to a reduction in our intangible asset base eligible for amortization primarily as a result of the analysis performed in conjunction with SFAS 144 as discussed above.

Litigation Settlements

Litigation settlement costs increased approximately \$0.4 million for the year ended December 31, 2008, as compared to the same period in 2007. In 2008, we settled with the former shareholders of Comet Systems, Inc. for a net amount of \$1.9 million related to a dispute regarding the calculation of a contingent payment due for a company that was acquired in 2004. Also, in 2008 we settled a claim related to a patent infringement case for approximately \$0.2 million. Offsetting these items were two settlements that resulted in net gains recorded in litigation settlement. First, in July 2005, we received a payment of approximately \$1.3 million for a dispute with a Media EU distribution partner. This judgment was reversed on appeal and in 2008 we negotiated a repayment of less than \$1.3 million and, net of legal fees and foreign currency exchange, we recorded an approximate \$0.3 million gain. Second, we recorded a gain of approximately \$0.1 million related to a separate dispute with a Media EU distribution partner that involved their non-compliance with their contractual obligations.

In late 2007 we became aware of an impending litigation settlement with Lane's Gifts and Collectibles related to MIVA Media advertiser class action litigation. We recorded approximately \$1.3 million related to this settlement in 2007 that was subsequently paid in June 2008.

Interest Income

Interest income consists primarily of earnings on our cash and cash equivalents. Interest income was \$0.3 million and \$0.6 million for the years ended December 31, 2008 and 2007, respectively.

Interest Expense

Interest expense consists primarily of interest incurred as a result of our debt obligations and to a lesser extent the Loan Agreement entered into in the fourth quarter of 2008. Interest expense was approximately \$0.07 million and \$0.06 million for the years ended December 31, 2008 and 2007, respectively.

Table of Contents**Discontinued Operations**

On June 17, 2008, we closed the MIVA Media Italian operations and eliminated other redundant positions within the Company as part of a planned restructuring program. In the quarter ended June 30, 2008, we recorded a total of \$0.2 million related to termination benefits and one-time charges in connection with winding down our Italian operations.

On August 1, 2007, we sold the assets, net of liabilities assumed, of our MIVA Small Business division for \$0.2 million. Our decision to divest our MIVA Small Business division was due primarily to inconsistencies between the division's products and services and the Company's current and future strategic plan. A gain of approximately \$0.16 million was recorded as a result of the sale.

Income (loss) from these discontinued operations was \$(0.4) million and \$0.4 million for the years ended December 31, 2008 and 2007, respectively.

Income Taxes

For the years ended December 31, 2008 and 2007, we recorded the following tax provisions (benefits) (in thousands except percentages):

	<u>2008</u>	<u>2007</u>
Provision (benefit) for taxes	\$ (343)	\$ 557
Loss before provision for income taxes	\$(45,402)	\$(36,381)
Effective tax rates	0.8%	(1.5)%

The primary reasons for the relationship of income taxes to pretax losses in 2008 and 2007 are the non-deductibility of the goodwill and other indefinite lived asset portions of the impairment charges, the tax benefits related to our ability to carry back current losses to prior years, our inability to recognize the tax benefits of losses carried forward to future years, and the geographic distribution of profits and losses in the applicable tax jurisdictions. The tax benefit recorded in 2008 resulted from US State income tax expense and the current period interest charged on prior year FIN 48 liabilities offset by the benefit resulting from the release of certain estimated tax liabilities recorded at the time of prior year acquisitions, for which no goodwill remains, and which were determined during 2008 to no longer be payable. The tax provision recorded in 2007 represents US Federal, State, and Foreign taxes and the current period interest charge on prior year FIN 48 liabilities for which the Company elected to treat as tax expense.

Deferred income taxes are recognized for temporary differences between financial statement and income tax bases of assets and liabilities and loss carry-forwards for which income tax benefits or liabilities are expected to be realized in future years. A valuation allowance has been established to reduce deferred tax assets as it is more likely than not that some portion of these deferred tax assets will not be realized once consideration is given to both the positive and negative evidence as set forth in SFAS No. 109 *Accounting for Income Taxes* ("SFAS 109"). Included in this evaluation are estimates of our future taxable results by taxable jurisdiction and evaluation of our tax-planning strategies.

At December 31, 2008, we have recorded \$25.1 million in deferred tax assets, offset by valuation allowances of \$24.6 million, and deferred tax liabilities of \$0.5 million. Included in deferred tax assets at December 31, 2008, is \$16.9 million related to the tax benefits of net operating loss ("NOL") carry-forwards. The NOL carry-forwards include \$40.0 million gross NOL in the United States of which \$36.5 million in losses is restricted to annual usage of \$3.5 million pursuant to Section 382 of the Internal Revenue Code. Any amounts not used may be carried forward to the following year. The balance of the US NOL was generated as a result of operations from 2005 to 2008, and is not limited in usage. At December 31, 2008, we had a United States net operating loss (NOL) carry-forward of \$40.0 million, of which \$36.5 million can currently be used at an annual rate of \$3.5 million pursuant to Internal Revenue Code Section 382. The balance of the US NOL was generated as a result of current operations from 2005 to 2008, and is not limited in usage. We have foreign NOL carry-forwards of \$39.0 million, however, due to

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the closing of offices in Germany, Italy, Spain, and Sweden, and the migration of those operations to the United Kingdom, \$30.0 million of the \$39.0 million of such NOLs have been written off as of December 31, 2008. As of December 31, 2008, the deferred tax assets from all remaining NOLs are fully offset by valuation allowances or deferred tax liabilities. Upon the adoption of SFAS 141R on January 1, 2009, subsequent releases, if any, of valuation allowances established for deferred tax assets resulting from net operating loss carryforwards at the time of acquisition will be recorded as a reduction of the income tax provision.

Net Loss

As a result of the factors described above, we generated a net loss from continuing operations of \$(45.1) million and \$(36.9) million for the years ended December 31, 2008 and 2007, respectively. The basic and diluted loss from continuing operations per share for the years ended December 31, 2008 and 2007, was \$(1.38) and \$(1.15), respectively.

Weighted average common shares used in the earnings per share computation increased 0.7 million shares from 31.9 million shares for the year ended December 31, 2007, to 32.6 million for the year ended December 31, 2008. This increase is primarily attributed to shares issued upon the vesting of restricted stock units.

Impact of Foreign Currency Translation

As a result of our European operations, our international net revenues were \$26.7 million and \$44.4 million for the years ended December 31, 2008 and 2007, respectively. Net revenues and related expenses generated from international locations are denominated in the functional currencies of the local countries, primarily British Pounds and Euros. The results of operations and certain of our intercompany balances associated with our international locations are exposed to foreign exchange rate fluctuations. The statements of operations of our international subsidiaries are translated into U.S. dollars at the average exchange rates in each applicable period. To the extent the U.S. dollar strengthens against foreign currencies, this translation methodology results in these local foreign currency transactions decreasing the consolidated net revenues, operating expenses, and net income. Similarly, our consolidated net revenues, operating expenses, and net income will increase when the U.S. dollar weakens against foreign currencies.

During 2008, the US Dollar strengthened against both the British Pound (1.9973 to 1.44790) and the Euro (1.4729 to 1.40970), respectively. If the exchange rates used in the financial statements had not changed from December 31, 2007, our net revenues for the year ended December 31, 2008, would have been approximately \$0.4 million higher than we reported. In addition, had the exchange rates used in the financial statements not changed from the end of 2007, cost of services and operating expenses for the year ended December 31, 2008, would have been \$0.4 million higher than we reported.

During 2007, the U.S. Dollar weakened against the British Pound (1.95910 to 1.9970) and the Euro (1.32030 to 1.4729). Had the exchange rates used in the financial statements not changed from December 31, 2006, our net revenues for the year ended December 31, 2007, would have been approximately \$1.1 million lower than we reported. In addition, had the exchange rates used in the financial statements not changed from the end of 2006, cost of services and operating expenses for the year ended December 31, 2007, would have been \$1.2 million lower than we reported.

LIQUIDITY AND CAPITAL RESOURCES

As of December 31, 2008, the Company had cash and cash equivalents (\$6.7 million) and restricted cash (\$2.0 million) totaling \$8.7 million, including approximately \$2.8 million in our account at Bridge Bank resulting from our draw of \$4.0 million in November 2008 under the Loan Agreement with Bridge Bank. Under the terms of the Loan Agreement, we are required to maintain in an account at Bridge Bank in an amount equal to or greater than 50% of the funded loan balance (See Recent Developments above and Note L—Debt to our Notes to Consolidated Financial Statements). Our cash and cash equivalents as

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of December 31, 2008, represented a \$23.2 million or 77.6% decrease from the total cash and cash equivalents position of \$29.9 million at December 31, 2007.

Operating Activities

Net cash used in operations totaled \$24.9 million in the year ended December 31, 2008. Cash flow from operations can be understood by starting with the amount of net income or loss and adjusting that amount for non-cash items and variations in the timing between revenue recorded and revenue collected and between expenses recorded and expenses paid. The net loss from operations \$(45.5 million) included non-cash items of a impairment of goodwill and other assets (\$18.7 million), bad debt provision related to doubtful accounts (\$0.8 million), depreciation and amortization (\$4.1 million), and compensation expense based on equity grants rather than cash (\$3.1 million). Thus, the cash used in operations before the effect of timing differences was \$18.8 million. With respect to revenue, the amount collected was more than the amount recorded (\$1.8 million decrease in accounts receivable) but offset by a decrease in the revenue collected but deferred to the future (\$1.2 million decrease in deferred revenue). With respect to expenses, the amount paid was more than the amount recorded by \$6.7 million. Payments on accounts payable, accrued expenses and other liabilities were higher than the related amount of expenses (\$8.0 million), but were offset by the decrease in prepaid expenses and other items (\$1.3 million).

With respect to the loss from operations, we continued to experience a decline in our revenue as it relates to our click-through business, both domestically and internationally, that is partially attributed to the overall decreases in our average revenue per click as discussed in the above Revenue section. Also, in 2008, our MIVA Direct division experienced period over period revenue declines as discussed in the above Revenue section.

Net cash provided by operations totaled \$1.1 million in the year ended December 31, 2007. The net loss from operations \$(36.5 million) included non-cash items of: a recovery for doubtful accounts (\$0.1 million), depreciation and amortization (\$9.4 million), impairment of goodwill and other long-lived assets (\$20.1 million), and compensation expense based on equity grants rather than cash (\$4.1 million). Thus, the cash used in operations before the effect of timing differences was \$3.0 million. With respect to revenue, the amount collected was more than the amount recorded (\$6.9 million decrease in accounts receivable) combined with a minimal increase in revenue collected but deferred to the future (\$0.07 increase in deferred revenue). With respect to expenses, the amount paid was more than the amount recorded by \$2.8 million. Payments on accounts payable, accrued expenses and other liabilities were higher than the related amount of expenses (\$3.7 million), as were the payments on prepaid expenses and other items (\$0.5 million), but this was offset by income tax refunds received in 2007 (\$1.4 million).

Investing Activities

Net cash used in investing activities totaled approximately \$5.2 million during the year ended December 31, 2008. This use of cash was for the purchase and development of capital assets, including internally developed software. We also had restricted cash of \$2.0 million required under our Loan Agreement with Bridge Bank.

Net cash used in investing activities totaled approximately \$0.1 million during the year ended December 31, 2007. Cash was used to purchase capital assets of approximately \$0.4 million. Offsetting this use of cash was proceeds received from the sale of our assets related to our discontinued operations (\$0.2 million) and the proceeds related to our sublease agreement (\$0.12 million).

Financing Activities

Net cash provided by financing activities totaled approximately \$2.7 million during the year ended December 31, 2008. We received proceeds of \$4.0 under our Loan Agreement with Bridge Bank. Offsetting these proceeds, we used cash of approximately \$0.5 million for payments on our capital lease obligations for the software and hardware related to our Transformation Project and approximately \$0.8 million in fees associated with the loan from Bridge Bank. We also incurred non-cash financing of approximately \$1.8 million related to our two capital lease obligations.

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Net cash used in financing activities during 2007 was \$0.9 million. During 2007, we made the final payments for our FAST Search and Transfer perpetual software license of \$1.4 million. Offsetting this use was the receipt of proceeds from the exercise of stock options of \$0.5 million.

Liquidity

In the ordinary course of business, we may provide indemnifications of varying scope and terms to advertisers, advertising agencies, distribution partners, vendors, lessors, business partners, and other parties with respect to certain matters, including, but not limited to, losses arising out of our breach of such agreements, services to be provided by us, or from intellectual property infringement claims made by third parties. In addition, we have entered into indemnification agreements with our directors and certain of our officers that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers. We have also agreed to indemnify certain former officers, directors, and employees of acquired companies in connection with the acquisition of such companies. We maintain director and officer insurance, which may cover certain liabilities arising from our obligation to indemnify our directors and officers and former directors, officers, and employees of acquired companies, in certain circumstances.

We evaluate estimated losses for such indemnifications under SFAS No. 5, "*Accounting for Contingencies*," as interpreted by FIN 45. At this time, it is not possible to determine any potential liability under these indemnification agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. Such indemnification agreements may not be subject to maximum loss clauses. Historically, we have not incurred material costs as a result of obligations under these agreements and we have not accrued any liabilities related to such indemnification obligations in our financial statements. If a need arises to fund any of these indemnifications, it could have an adverse effect on our liquidity.

Despite the Company's negative operating performance in 2008 and 2007, we currently anticipate that our working capital of approximately \$8.3 million, including cash and cash equivalents of approximately \$12.4 million as of March 12, 2009 along with cash flows from operations will be sufficient, at a minimum, to meet our liquidity needs for working capital and capital expenditures over at least the next 12 months.

In the future, we may seek additional capital through the issuance of debt or equity to fund working capital, expansion of our business and/or acquisitions, or to capitalize on market conditions. Our future liquidity and capital requirements will depend on numerous factors including the pace of expansion of our operations, competitive pressures, and acquisitions of complementary products, technologies or businesses. As we require additional capital resources, we may seek to sell additional equity or debt securities or look to enter into a new revolving loan agreement. The sale of additional equity or convertible debt securities could result in additional dilution to existing stockholders. There can be no assurance that any financing arrangements will be available in amounts or on terms acceptable to us, if at all. Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement that involves risks and uncertainties and actual results could vary materially as a result of the factors described above and in the section entitled "Risk Factors" included in Part I, Item 1A of this Annual Report on Form 10-K.

CONTRACTUAL OBLIGATIONS

We have ongoing contractual cash payment obligations to our distribution partners. These payments are funded by payments from our advertisers for the paid click-through (visitors), delivered to them via our distribution partners. Agreements with certain distribution partners contain guaranteed minimum payments through November 2010.

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We have minimum contractual payments as part of our royalty bearing non-exclusive license to certain Yahoo! patents payable quarterly through August 2010. In addition, we have ongoing royalty payments based on our use of those patents.

We have minimum contractual payments as part of the Perot Master Services Agreement and the Transformation Project as described in Note E—Restructuring and Master Services Agreement of the Notes to our Consolidated Financial Statements.

The following table illustrates the above commitments as of December 31, 2008 (in thousands):

	Payments Due by Period (in thousands)				
	Total	Due in 2009	Due in 2010 - 2011	Due in 2012 - 2013	More than 5 years
Perot Master Services Agreement(1)	26,863	5,382	9,780	9,676	2,025
Operating Leases	8,068	\$1,989	\$ 3,021	\$ 1,928	\$ 1,130
Sublease Income	(2,139)	(652)	(1,045)	(442)	—
Loan Agreement	4,000	—	4,000	—	—
Capital Leases	1,553	899	654	—	—
Guaranteed Royalty Payments	1,200	800	400	—	—
Transformation Project	1,100	1,100	—	—	—
Distribution Partner Payments	278	252	26	—	—
Total	<u>\$36,923</u>	<u>\$9,770</u>	<u>\$ 12,836</u>	<u>\$ 11,162</u>	<u>\$ 3,155</u>

Perot Master Services Agreement(1)

On February 1, 2009, the Company entered into an amendment to the Perot Master Services Agreement with Perot Systems. Under the terms of the amendment, the Master Services Agreement will expire on April 30, 2009, and certain other provisions of the Master Services Agreement have either been modified or terminated. In connection with the Amendment, the Company has issued a letter of credit to Perot Systems for approximately \$1.0 million for a portion of the remaining application development costs related to the Company's new technology platform. Additionally, the Company expects to incur approximately \$0.6 million in fees for transition services under the Amendment. It is expected that these fees will be incurred over February, March and April 2009 as the transition services are received. As a result of this amendment, payments due to Perot Systems after December 31, 2008 were reduced from the amounts in the table above to approximately \$2.1 million due in 2009.

Operating Leases

On September 30, 2008, we provided notice of termination for the operating lease agreements for both the Munich and Hamburg office locations. The Munich lease ends on December 31, 2009 and the Hamburg office lease expires on March 31, 2009. Additionally, on October 3, 2008, we provided notice to terminate the office lease for our Spain office, which is expected to expire on March 31, 2009.

On September 10, 2008, we entered into an operating lease agreement with an unrelated third party to lease work space for our London office for the term of 12 months commencing on December 1, 2008. The agreement includes a right to three month renewals. Base rent is approximately \$0.3 million per year.

On February 26, 2008, we entered into an agreement (the "Lease Amendment") amending the April 15, 2005 operating lease agreement for our London office. The Lease Amendment, among other items, provided each party with an early termination right to terminate the underlying Lease Agreement on or before December 31, 2008. We exercised this termination right and in accordance with the agreement received a one-time surrender premium of approximately \$0.4 million in the fourth quarter of 2008.

Table of Contents*Sublease Income*

During the fourth quarter of 2008, we entered into two separate and non-cancelable sublease agreements covering the remaining lease obligations periods in both Germany (Hamburg) and France (Paris) leases with unrelated third parties. The sublease payments are expected to be received ratably over the next 12 months.

In August 2007, we entered into a real estate sublease agreement with an unrelated party to sublease 20,171 square feet (approximately 50% of our rented space) in our office located in Fort Myers, Florida. The term of the sublease agreement commenced on August 17, 2007 and ends on November 30, 2012, unless certain conditions (as defined) are met for earlier termination.

Loan Agreement

Amounts outstanding under our Loan Agreement can be repaid at anytime prior to its maturity in November 2010. As such, we have not made any estimates with regard to future interest payments on this facility. Refer to Note L—Debt in our Notes to Consolidated Financial Statements included elsewhere in this annual report for information with respect to interest repayment provisions. On March 12, 2009, in connection with the MIVA Media Sale, the total amount outstanding under our Loan Agreement of \$4.4 million was repaid.

Capital Leases

In September 2008, we entered into non-cancelable leases with unrelated third parties for software and related maintenance, and hardware, for our new Transformation Project. The total fair market value of this software was approximately \$1.0 million with a lease term of nineteen months. The software lease has an imputed interest rate of 9% with quarterly cash outlays of approximately \$0.2 million. The total fair market value of the hardware was approximately \$1.1 million with a lease term of three years. The hardware lease has an imputed interest rate of 12.0%. These leases were classified as capital lease obligations are reported as long-term debt in our consolidated balance sheet, and represent non-cash investing and financing activities in our consolidated statement of cash flows for the year ended December 31, 2008. During 2008, we made cash payments, including interest, of approximately \$0.9 million on these lease obligations.

USE OF ESTIMATES AND CRITICAL ACCOUNTING POLICIES

This Management's Discussion and Analysis of Financial Condition and Results of Operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. When preparing our consolidated financial statements, we make estimates and judgments that affect the reported amounts on our balance sheets and income statements, and our related disclosure about contingent assets and liabilities. We continually evaluate our estimates, including those related to allowance for doubtful accounts and valuation allowance for deferred tax assets. We base our estimates on historical experience and on various other assumptions that we believe are reasonable in order to form the basis for making judgments about the carrying values of assets and liabilities that are not readily ascertained from other sources. Different results would be obtained if alternative assumptions or conditions are used and actual results will differ from these estimates and those differences may be material.

Revenue

When a MIVA Direct user clicks on a sponsored advertisement which is routed to a distribution partner's network, revenues and related profit are recognized in the amount of MIVA Direct's share of the partner's fee. Non-click-through-related revenue from MIVA Direct resulting from a variety of

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search-related applications is recognized when earned under the terms of the contractual arrangement with the advertiser or advertising agency, provided that collection is probable.

MIVA Media revenue is generated primarily through click-throughs on our managed advertisers' paid listings. Certain advertisers make deposits in advance of receiving click-throughs and these deposits are recorded as deferred revenue. When an Internet user clicks on a keyword advertisement, revenue is recognized in the amount of the advertiser's bid price. Revenue is also generated from our private label service and is recognized in accordance with the contractual payment agreements as the services are rendered and the click-throughs performed. In accordance with the guidance of Emerging Issue Task Force No. 99-19, *Reporting Revenue Gross as a Principal Versus Net as an Agent*, we record MIVA Media Network click-through revenue gross and private label revenue net.

Allowance for Doubtful Accounts

We maintain allowances for doubtful accounts for estimated losses resulting from non-payments by our billable advertisers for services rendered. A majority of our advertisers prepay for services. The allowance for doubtful accounts was approximately \$1.2 million and \$0.7 million as of December 31, 2008 and 2007, respectively. The following table illustrates the related bad debt expense (recovery) as a percentage of revenues for 2008 and 2007 (in thousands, except percentages):

	<u>2008</u>	<u>2007</u>
Revenues	\$116,363	\$151,050
Bad debt expense (recovery)	\$ 804	\$ (107)
Bad debt expense as a percent of revenue	0.7%	(0.1)%

The allowance for doubtful accounts is an estimate calculated based on an analysis of current business and economic risks, customer credit-worthiness, specific identifiable risks such as bankruptcies, terminations, or discontinued customers, or other factors that may indicate a potential loss. The allowance is reviewed on a periodic basis to provide for all reasonably expected losses in the receivable balances and an expense is recorded using a reserve rate based on the age of outstanding accounts receivable or when it is probable that a certain receivable will not be collected. An account may be determined to be uncollectible if all collection efforts have been exhausted, the customer has filed for bankruptcy and all recourse against the account is exhausted, or disputes are unresolved and negotiations to settle are exhausted. This uncollectible amount is written off against the allowance. If our billable advertisers' ability to pay our invoices were to suffer, resulting in the likelihood that we would not be paid for services rendered, additional allowances may be necessary, which would result in an additional general and administrative expense in the period such determination was made.

Historically, our actual results have been consistent with these allowances. However, future changes in trends could result in a material impact to future consolidated statement of income and cash flows. Based on our results for the year ended December 31, 2008, a 25 point basis deviation from our estimates would have resulted in an increase or decrease in operating income of approximately \$0.3 million. The following demonstrates, for illustrative purposes only, the potential effect such a change would have on our consolidated financial statements and is not intended to provide a range of exposure or expected deviation (in thousands, except share data):

	<u>-25 Basis Points</u>	<u>2008</u>	<u>+25 Basis Points</u>
Bad debt expense	\$ 513	\$ 804	\$ 1,095
Loss from continuing operations	(44,768)	(45,059)	(45,350)
Net loss	(45,162)	(45,453)	(45,744)
Diluted loss per share	\$ (1.37)	\$ (1.38)	\$ (1.40)

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Income Taxes

Deferred income taxes are recognized for temporary differences between financial statement and income tax bases of assets and liabilities, loss carry-forwards, and tax credit carry-forwards for which income tax benefits are expected to be realized in future years. A valuation allowance is established to reduce deferred tax assets if it is more likely than not that all, or some portion, of such deferred tax assets will not be realized after considering the positive and negative evidence as set forth in SFAS 109. This also requires us to make estimates of our future taxable results by taxable jurisdiction and to evaluate tax-planning strategies. As of December 31, 2008, we have deferred tax assets of \$25.1 million offset by valuation allowances of \$24.6 million, and deferred tax liabilities of approximately \$0.5 million.

At December 31, 2008, we had a United States net operating loss (NOL) carry-forward of \$40.0 million, of which \$36.5 million can currently be used at an annual rate of \$3.5 million pursuant to Internal Revenue Code Section 382. The balance of the US NOL was generated as a result of current operations from 2005 to 2008, and is not expected to be limited in usage. We have foreign NOL carry-forwards of \$39.0 million, however, due to the closing of offices in Germany, Italy, Spain, and Sweden, and the migration of those operations to the United Kingdom, \$30.0 million of the \$39.0 million of such NOLs have been written off as of December 31, 2008. As of December 31, 2008, the deferred tax assets from all remaining NOLs are fully offset by valuation allowances or deferred tax liabilities. Upon the adoption of SFAS 141R on January 1, 2009, subsequent releases, if any, of valuation allowances established for deferred tax assets resulting from net operating loss carryforwards at the time of acquisition will be recorded as a reductions of the income tax provision.

The following table illustrates the effective tax rates for 2008 and 2007 (in thousands, except percentages):

	<u>2008</u>	<u>2007</u>
Provision (benefit) for taxes	\$ (343)	\$ 557
Loss before provision for income taxes	\$(45,402)	\$(36,381)
Effective tax rates	0.8%	(1.5)%

Purchase Accounting

We have made estimates of the fair values of the assets and liabilities acquired as a part of our MIVA Small Business, MIVA Direct, B&B, and MIVA Media Europe transactions during 2004. In addition, we have estimated the economic lives of certain of these assets. These lives were used to calculate depreciation and amortization expense. The remaining estimated economic lives are assessed on a regular basis and are subject to change. If the asset amounts or the estimated lives were found to be different from the ones originally assigned, our amortization expense could vary. Our estimates of the economic useful lives of our definite-lived intangible assets range from 1 to 10 years, with a weighted average life of approximately four years.

Impairment Evaluations

Our methodology for allocating the purchase price relating to acquisitions is based on established valuation techniques that reflect the consideration of a number of factors. Goodwill is measured as the excess of the cost of an acquired entity over the net of the amounts assigned to identifiable assets acquired and liabilities assumed. We perform goodwill impairment tests on an annual basis or more frequently in certain circumstances, if necessary. We compare the fair value of the reporting unit to its carrying amount including goodwill. If the carrying amount of a reporting unit exceeds the fair value, we would perform an additional fair value measurement calculation to determine the impairment loss, which would be charged to operations.

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We evaluate the recoverability of long-lived assets, including property, plant and equipment and certain identifiable intangible assets, whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We perform indefinite-lived impairment tests on an annual basis or more frequently in certain circumstances, if necessary. Factors considered important that could trigger an impairment review include significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the assets, or the strategy for the overall business, significant decrease in the market value of the assets, declines in our market capitalization below our book value, and significant negative industry or economic trends. For example, unexpected increases in customer or distribution partner churn could affect our assessment about the recoverability of our intangible assets. When we determine that the carrying amount of long-lived assets may not be recoverable based on the existence of one or more of the indicators, the assets are assessed for impairment based on the estimated future undiscounted cash flows expected to result from the use of the asset and its eventual disposition. If the carrying amount of a long-lived asset exceeds its estimated future undiscounted cash flows, an impairment loss is recorded for the excess of the asset's carrying amount over its fair value.

Goodwill, other indefinite lived intangible asset and other long-lived asset impairment assessments are generally determined based on fair value techniques, including determining the estimated future discounted and undiscounted cash flows over the remaining useful life of the asset. Those models require estimates of future revenue, profits, capital expenditures, and working capital for each unit. We estimate these amounts by evaluating historical trends, current budgets, operating plans, and industry data. Discounted cash flows are calculated using a discount rate determined by management to be commensurate with the risk inherent in the current business model. Determining the fair value of reporting units and goodwill includes significant judgment by management and different judgments could yield different results. If these estimates or their related assumptions change in the future, we might be required to record impairment charges for the assets.

As disclosed in Note D to our consolidated financial statements, *Impairment of Goodwill, Other Intangibles and Long-lived Assets*, we recorded total goodwill and other tangible asset impairment charges of \$18.7 million in the fourth quarter of 2008. Of this amount, \$14.7 million of goodwill impairment charges \$1.1 million of other indefinite lived intangible asset impairment, and \$2.5 million of long-lived asset impairment was recorded in accordance with the provisions of SFAS 142 and SFAS 144, respectively. Additionally, we recorded total goodwill and other tangible asset impairment charges of \$20.1 million in the second, third and fourth quarters of 2007. Of this amount, \$14.0 million of goodwill impairment charges and \$6.1 million of long-lived asset impairment was recorded in accordance with the provisions of SFAS 142 and SFAS 144, respectively.

As of December 31, 2008, we have no remaining recorded goodwill or other indefinite lived intangible assets.

Share-Based Compensation

We account for share-based compensation in accordance with SFAS No. 123R, *"Shared Based Payment"* ("SFAS 123R"). Under the provisions of SFAS 123R, share-based compensation cost is estimated at the grant date based on the award's fair value as calculated by option-pricing models and is recognized as expense over the requisite service period. The option-pricing models require various highly judgmental assumptions including volatility, forfeiture rates, and expected option life. If any of the assumptions used in the models change significantly, share-based compensation expense may differ materially in the future from that recorded in the current period.

In November 2005, the FASB issued FASB Staff Position ("FSP") No. FAS 123(R)-3, *Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards* ("FSP 123R-3"). We have elected to adopt the alternative transition method provided in the FSP 123R-3 for calculating the tax effects of share-based compensation pursuant to SFAS 123R. The alternative transition method includes

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simplified methods to establish the beginning balance of the additional paid-in capital pool ("APIC pool") related to the tax effects of employee share-based compensation, and to determine the subsequent impact on the APIC pool and consolidated statements of cash flows of the tax effects of employee share-based compensation awards that are outstanding upon adoption of SFAS 123R. See Note F to the consolidated financial statements, *Accounting for Share-Based Compensation*, for a further discussion of share-based compensation.

Legal Contingencies

We are subject to lawsuits and other claims related to our business and operations. Periodically, we review the status of each significant matter and assess potential financial exposure. If the potential loss from any claim or legal proceeding is considered probable and the amount can be reasonably estimated, we accrue a liability for the estimated loss. Because of uncertainties related to these matters, accruals are based on the best information available at the time. As additional information becomes available, we reassess the potential liability related to pending claims and might revise our estimates. The lawsuits against us could result in material losses for us, both as a result of paying legal defense costs and any damages that may result if we are unsuccessful in our defense.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.**Foreign Currency Risk**

International revenues from our non-U.S. operations accounted for approximately 22.9% and 29.4% of total consolidated revenues during 2008 and 2007, respectively. International revenues are generated from our foreign subsidiaries and are denominated in the local currency of each country. Generally, these subsidiaries incur most of their expenses in their local currency, and accordingly use the local currency as their functional currency.

Our international operations are subject to risks, including, but not limited to differing economic conditions, changes in political climate, differing tax structures, other regulations and restrictions, and foreign exchange rate volatility when compared to the United States. Accordingly, our future results could be materially adversely impacted by changes in these or other factors.

Foreign exchange rate fluctuations may adversely affect our consolidated financial position as well as our consolidated results of operations. Foreign exchange rate fluctuations may adversely impact our financial position as the assets and liabilities of our foreign operations are translated into U.S. dollars in preparing our consolidated balance sheet. Our exposure to international exchange rate fluctuations arises in part from intercompany accounts in which costs incurred in the United States or the United Kingdom are charged to our subsidiaries. These intercompany accounts are typically denominated in the functional currency of the international subsidiary. The effect of foreign exchange rate fluctuations on our consolidated financial position for the years ended December 31, 2008 and 2007, was a net translation gain of approximately \$6.1 million and \$0.7 million, respectively. These gains are recognized as an adjustment to stockholders' equity through accumulated other comprehensive income. Additionally, foreign exchange rate fluctuations may significantly impact our consolidated results from operations as exchange rate fluctuations on transactions denominated in currencies other than our functional currencies result in gains and losses that are reflected in our consolidated statement of operations. Had the exchange rates used in our financial statements not changed from the end of the previous years, our net revenues for the years ended December 31, 2008 and 2007, would have been approximately \$0.4 million higher and \$1.1 million lower, respectively. Additionally, our cost of services and operating expenses, excluding non-cash impairment charges, for the year ended December 31, 2008 and 2007, would have been \$0.4 million higher and \$1.2 million lower, respectively, than we reported for those years.

Table of Contents**Interest Rate Risk**

As of December 31, 2008, we were exposed to variable interest rates under our Loan Agreement with Bridge Bank. As of December 31, 2008, the Loan Agreement is available to us at the greater of (i) 6.5% or (ii) the Prime Rate (as announced by Bridge Bank) plus 1.5%. A hypothetical 10.0% change in the Facility's interest rate relative to our Loan Agreement would increase annual cash interest expense by approximately \$0.03 million for 2009. We determine this impact by applying the hypothetical change to the variable interest rate at December 31, 2008, and then assessing this notional rate against the borrowings outstanding as at December 31, 2008.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

See index to Consolidated Financial Statements table of contents located on page F-1.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

ITEM 9A(T). CONTROLS AND PROCEDURES***Management's Evaluation of Disclosure Controls and Procedures.***

We carried out an evaluation required by the Securities Exchange Act of 1934, as amended (the "1934 Act"), under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the 1934 Act. Based on this evaluation, the Chief Executive Officer and Chief Financial Officer concluded that as of December 31, 2008, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the 1934 Act is recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures.

Management's Annual Report on Internal Control Over Financial Reporting

The Company's management is responsible for establishing and maintaining an adequate system of internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

All internal control systems, no matter how well designed, have inherent limitations. A system of internal control over financial reporting can provide only reasonable assurance and may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only

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reasonable assurance with respect to financial statement preparation and presentation. Further, because of changes in conditions, effectiveness of internal control over financial reporting may vary over time.

An internal control material weakness is a deficiency or a combination of deficiencies in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit the attention of those responsible for oversight of the company's financial reporting.

Management of the Company conducted an evaluation of the effectiveness of the Company's internal control over financial reporting based on the *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on that evaluation, the Company's management concluded that its internal control over financial reporting was effective as of December 31, 2008.

This annual report does not include an attestation report of the Company's independent registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's independent registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the Company to provide only management's report in this annual report.

Changes in Internal Control Over Financial Reporting

The Company has made no changes in its internal control over financial reporting in connection with its fourth quarter 2008 evaluation that would materially affect, or are reasonably likely to materially affect, its internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

Not applicable.

PART III**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required by this item is incorporated by reference herein from MIVA, Inc.'s Proxy Statement for its 2009 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2008.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference herein from MIVA, Inc.'s Proxy Statement for its 2009 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2008.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item is incorporated by reference herein from MIVA, Inc.'s Proxy Statement for its 2009 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2008.

Table of Contents**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this item is incorporated by reference herein from MIVA, Inc.'s Proxy Statement for its 2009 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2008.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item is incorporated by reference herein from MIVA, Inc.'s Proxy Statement for its 2009 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2008.

PART IV**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.**

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) The following financial statements are included in this report under Item 8:

- Report of Independent Registered Public Accounting Firm.
- Consolidated Balance Sheets as of December 31, 2008 and 2007.
- Consolidated Statements of Operations for the years ended December 31, 2008 and 2007.
- Consolidated Statements of Stockholders' Equity for the years ended December 31, 2008 and 2007.
- Consolidated Statements of Cash Flows for the years ended December 31, 2008 and 2007.
- Notes to the Consolidated Financial Statements.

(2) Exhibits: Financial Statement Schedules (Certain schedules to the Financial Statements have been omitted because the information required to be set forth therein is not applicable or is shown in the accompanying Financial Statements or notes thereto).

- Valuation and Qualifying Accounts
- Exhibits

Table of Contents**Exhibits**

The following exhibits are filed as part of and incorporated by reference into this report:

Exhibit No.	Footnote	Description
2.1	a	Certificate of Ownership and Merger, Merging MIVA Renaming Corp. into Findwhat.com, Inc.
2.2	k*	Asset Purchase Agreement dated March 12, 2009 among MIVA, Inc., B & B Advertising, Inc., MIVA (UK) Limited, U.S. Acquisition Sub, Inc., Ajax Media Ltd., and Adknowledge, Inc.
3.1	b	Amended and Restated Certificate of Incorporation of FindWhat.com, Inc.
3.2	b	Amended and Restated By-laws of FindWhat.com, Inc.
10.1	p+	Executive Employment Agreement between MIVA, Inc. and Lowell Robinson.
10.2	p+	Executive Employment Agreement between MIVA, Inc. and John Pizaris.
10.3	p+	2007 Long Term Incentive Compensation Program.
10.4	c+	FindWhat.com 1999 Stock Incentive Plan, as amended.
10.5	d*	Settlement and License Agreement with Overture Services, Inc. and Yahoo! Inc.
10.6	d+	Executive Employment Agreement between MIVA, Inc. and Peter Corrao.
10.7	e+	Form of Non-Qualified Stock Option Agreement.
10.8	f+	Service Based RSU Agreement for 2006 Stock Award and Incentive Plan.
10.9	f+	Performance Based RSU Agreement for 2006 Stock Award and Incentive Plan.
10.10	g+	MIVA, Inc. 2006 Stock Award and Incentive Plan.
10.11	i	Lease dated February 29, 2000 by and between MIVA Direct, Inc. (formerly Comet Systems, Inc.) and The Rector, Church-Wardens and Vestrymen of Trinity Church in New York, a religious corporation in the State of New York, including the previous amendment dated August 8, 2000.
10.12	i	Lease Modification and Extension Agreement by and between MIVA Direct, Inc. and The Rector, Church-Wardens and Vestrymen of Trinity Church in New York, dated February 23, 2006.
10.13	j	Colonial Bank Plaza Office Building Lease, dated January 31, 2002, as amended.
10.14	+	MIVA, Inc. Policy for Compensation For Independent Members of the Board of Directors, as amended and restated December 29, 2008
10.15	l+	Form of Restricted Stock Unit Agreement for Non-Employee Directors.
10.16	l+	Form of Restricted Stock Unit Agreement for the Chairman of the Board and Lead Independent Director.
10.17	m+	Executive Employment Agreement between MIVA, Inc. and Subhransu "Brian" Mukherjee.
10.18	o+	Form of Incentive Stock Option Agreement.

10.19 r+ Form of Performance Based RSU Agreement for the MIVA, Inc. 2006 Stock Award and Incentive Plan.

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<u>Exhibit No.</u>	<u>Footnote</u>	<u>Description</u>
10.20	s*	Master Services Agreement and Statements of Work between MIVA, Inc. and Perot Systems Corporation dated May 11, 2007.
10.21	*	Amendment No. 1 to the Agreement and Work Order No. 3 dated September 1, 2008 between MIVA, Inc. and Perot Systems Corporation.
10.22	*	Amendment No. 2 to the Agreement and Work Order No. 3 dated February 1, 2009 between MIVA, Inc. and Perot Systems Corporation.
10.23	o+	FindWhat.com 2004 Stock Incentive Plan.
10.24	h+	Summary of the Material Terms of the MIVA, Inc. 2008 Long Term Incentive Compensation Program.
10.25	o+	Form of Stock Option Agreement for the FindWhat.com 2004 Stock Incentive Plan.
10.26	*	Loan and Security Agreement dated November 7, 2008 between MIVA, Inc. and Bridge Bank, National Association.
10.27		Consent and Amendment to Loan and Security Agreement dated March 12, 2009 among MIVA, Inc., MIVA Direct, Inc. and Bridge Bank, National Association.
10.28	*	Amended and Restated Google Services Agreement dated November 10, 2008 between MIVA, Inc. and Google, Inc.
10.29	*	Google Services Agreement Order Form dated November 10, 2008 between MIVA, Inc. and Google, Inc.
10.30	t+	Description of the Material Terms of the MIVA 2009 Bonus Program
10.31	t+	Amendment I to Employment Agreement with Lowell Robinson.
10.32	t+	Amendment I to Employment Agreement with John B. Pizaris.
10.33	t+	Amendment I to Employment Agreement with Subhransu Mukherjee.
10.34	t+	Amendment I to Employment Agreement with Peter Corrao.
10.35	t+	First Amendment to MIVA, Inc. (fka FindWhat.com, Inc.) 1999 Stock Incentive Plan.
10.36	t+	First Amendment to MIVA, Inc. (fka FindWhat.com, Inc.) 2004 Stock Incentive Plan.
10.37	t+	First Amendment to MIVA, Inc. 2006 Stock Award and Incentive Plan.
10.38	+	Summary of the Material Terms of the MIVA, Inc. 2009 Long Term Incentive Compensation Program.
14.1	n	Code of ethics.
21.1		List of Subsidiaries.
23.1		Consent of Independent Registered Public Accounting Firm.
24.1		Power of Attorney.
31.1		Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

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31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

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<u>Exhibit No.</u>	<u>Footnote</u>	<u>Description</u>
32.1		Certification of Chief Executive Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.
32.2		Certification of Chief Financial Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.

Footnote References:

- a. Incorporated by reference to the exhibit previously filed on June 16, 2005 with MIVA's Form 8-K/A.
- b. Incorporated by reference to the exhibit previously filed on September 3, 2004 with MIVA's Form 8-K.
- c. Incorporated by reference to the exhibit previously filed on March 17, 2004 with FindWhat.com's Form S-8.
- d. Incorporated by reference to the exhibit previously filed on November 9, 2005 with MIVA's Form 10-Q.
- e. Incorporated by reference to the exhibit previously filed on August 6, 2004 with FindWhat.com's Form 10-Q.
- f. Incorporated by reference to the exhibit previously filed on November 13, 2006 with MIVA's Form 10Q/A.
- g. Incorporated by reference to the exhibit previously filed on August 22, 2006 with MIVA's Form 8-K.
- h. Incorporated by reference to the exhibit previously filed on March 14, 2008 with MIVA's Form 10-K.
- i. Incorporated by reference to the exhibit previously filed on March 1, 2006 with MIVA's Form 8-K.
- j. Incorporated by reference to the exhibit previously filed on November 6, 2002 with MIVA's Form 10-QSB.
- k. Incorporated by reference to the exhibit previously filed on March 18, 2009 with MIVA's Form 8-K.
- l. Incorporated by reference to the exhibit previously filed on June 20, 2006 with MIVA's Form 8-K.
- m. Incorporated by reference to the exhibit previously filed on July 14, 2006 with MIVA's Form 8-K.
- n. Incorporated by reference to the exhibit previously filed on March 5, 2004 with MIVA's Form 10-K.
- o. Incorporated by reference to the exhibit previously filed on March 16, 2005 with FindWhat.com's Form 10-K.
- p. Incorporated by reference to the exhibit previously filed on March 16, 2007 with MIVA's Form 10-K.
- q. Incorporated by reference to the exhibit previously filed on December 19, 2007 with MIVA's Form 8-K.
- r. Incorporated by reference to the exhibit previously filed on December 21, 2007 with MIVA's Form 8-K.
- s. Incorporated by reference to the exhibit previously filed on August 8, 2007 with MIVA's Form 10-Q.
- t. Incorporated by reference to the exhibit previously filed on December 23, 2008 with MIVA's Form 8-K.
- + Management compensatory contract or plan.
- * Portions of this exhibit have been omitted pursuant to a request for confidential treatment filed with the Commission under Rule 24b-2. The omitted confidential material has been filed separately with the Commission. The location of the

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omitted confidential information is indicated in the exhibit with asterisks (***)

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The Agreements that have been filed or incorporated herein by reference (the "Agreements") are included to provide investors and security holders with information regarding their terms. They are not intended to provide any other financial information about the Company or its subsidiaries and affiliates. The representations, warranties and covenants contained in each of the Agreements were made only for purposes of the Agreements and as of specific dates; were solely for the benefit of the parties to the Agreements; may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Agreement instead of establishing these matters as facts; and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors should not rely on the representations, warranties and covenants or any description thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Agreements, which subsequent information may or may not be fully reflected in public disclosures by the Company.

Table of Contents**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MIVA, INC.

Date: March 31, 2009

By: /s/ PETER A. CORRAO

President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the registrant and in the capacities indicated on the 31st day of March 2009.

<u>Signature</u>	<u>Title</u>
<u> /s/ PETER A. CORRAO </u> Peter A. Corrao	President, Chief Executive Officer, and Director (principal executive officer)
<u> /s/ MICHAEL CUTLER </u> Michael Cutler	Chief Financial Officer (principal financial and accounting officer)
<u> */s/ LAWRENCE WEBER* </u> Lawrence Weber	Chairman of the Board of Directors
<u> */s/ GERALD W. HEPP* </u> Gerald W. Hepp	Director
<u> */s/ JOSEPH P. DURRETT* </u> Joseph P. Durrett	Director
<u> */s/ ADELE GOLDBERG* </u> Adele Goldberg	Director
<u> */s/ LEE S. SIMONSON* </u> Lee S. Simonson	Director
<u> */s/ PETER A. CORRAO </u>	Attorney-in-Fact

Table of Contents**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

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<u>Consolidated Statements of Operations for each of the two years in the period ended December 31, 2008</u>	<u>57</u>
<u>Consolidated Statements of Stockholders' Equity for each of the two years in the period ended December 31, 2008</u>	<u>58</u>
<u>Consolidated Statements of Cash Flows for each of the two years in the period ended December 31, 2008</u>	<u>59</u>
<u>Notes to Consolidated Financial Statements</u>	<u>60</u>
Financial Statement Schedules:	
<u>Valuation and Qualifying Accounts for each of the two years in the period ended December 31, 2008</u>	<u>88</u>
All other schedules are omitted because they are not applicable or the required information is shown in the Consolidated Financial Statements or Notes thereto	

Table of Contents**Report of Independent Registered Public Accounting Firm**

Board of Directors and Stockholders
MIVA, Inc.
Fort Myers, Florida

We have audited the accompanying consolidated balance sheets of MIVA, Inc. (the "Company") as of December 31, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity and comprehensive income (loss), and cash flows for each of the two years in the period ended December 31, 2008. In connection with the audits of the consolidated financial statements, we have also audited the financial statement schedule listed in the accompanying index. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements and schedule are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements and schedule. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of MIVA, Inc. at December 31, 2008 and 2007, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2008, in conformity with accounting principles generally accepted in the United States of America.

Also, in our opinion, the schedule, when considered in relation to the consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

Miami, Florida
March 31, 2009

/s/ BDO Seidman, LLP
Certified Public Accountants

Table of Contents**PART 1. FINANCIAL INFORMATION****ITEM 1. Financial Statements****MIVA, Inc.****CONSOLIDATED BALANCE SHEETS**

(in thousands, except par values)

	<u>December 31, 2008</u>	<u>December 31, 2007</u>
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	\$ 6,699	\$ 29,905
Accounts receivable, less allowances of \$1,242 and \$723 at December 31, 2008 and 2007	11,204	14,421
Deferred tax assets	167	751
Income tax receivable	247	—
Prepaid expenses and other current assets	1,584	2,027
TOTAL CURRENT ASSETS	<u>19,901</u>	<u>47,104</u>
Property and equipment, net	4,975	2,745
Restricted cash	2,000	—
Intangible assets		
Goodwill	—	14,743
Vendor agreements, net	—	1,318
Other intangible assets, net	—	4,038
Other assets	703	1,109
TOTAL ASSETS	<u>\$ 27,579</u>	<u>\$ 71,057</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable	\$ 6,609	\$ 11,957
Accrued expenses	9,620	14,844
Current portion of long-term debt	783	—
Deferred revenue	1,914	3,427
TOTAL CURRENT LIABILITIES	<u>18,926</u>	<u>30,228</u>
Deferred tax liabilities long-term	167	751
Long-term debt	4,595	—
Other long-term liabilities	1,305	1,237
TOTAL LIABILITIES	<u>24,993</u>	<u>32,216</u>
STOCKHOLDERS' EQUITY		
Preferred stock, \$.001 par value; authorized, 500 shares; none issued and outstanding	—	—
Common stock, \$.001 par value; authorized, 200,000 shares; issued 34,480 and 33,934, respectively; outstanding 32,731 and 32,204, respectively	34	34
Additional paid-in capital	268,841	265,721
Treasury stock; 1,749 and 1,730 shares at cost, respectively	(6,719)	(6,694)
Accumulated other comprehensive income	12,393	6,294
Accumulated Deficit	(271,963)	(226,514)
TOTAL STOCKHOLDERS' EQUITY	<u>2,586</u>	<u>38,841</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u>\$ 27,579</u>	<u>\$ 71,057</u>

The accompanying notes are an integral part of these consolidated statements.

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MIVA, Inc.

CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)

	For the Years Ended December 31,	
	2008	2007
Revenues	\$ 116,363	\$ 151,050
Cost of services	57,428	71,671
Gross profit	58,935	79,379
Operating expenses		
Marketing, sales, and service	37,090	47,798
General and administrative	30,331	33,691
Product development	4,921	5,914
Amortization	2,211	4,826
Impairment loss on goodwill and other assets	18,725	20,134
Restructuring Charges	4,165	2,820
Litigation settlements	1,683	1,312
Total operating expenses	99,126	116,495
Loss from operations	(40,191)	(37,116)
Interest income	293	640
Interest expense	(71)	(62)
Exchange rate gain (loss)	(5,433)	157
Loss before provision for income taxes	(45,402)	(36,381)
Income tax expense (benefit)	(343)	557
Net loss from continuing operations	(45,059)	(36,938)
Income (loss) from discontinued operations	(394)	403
Net loss	\$ (45,453)	\$ (36,535)
Basic Earnings (loss) per share		
Continuing operations	\$ (1.38)	\$ (1.15)
Discontinued operations	\$ (0.01)	\$ 0.01
Diluted Earnings (loss) per share		
Continuing operations	\$ (1.38)	\$ (1.15)
Discontinued operations	\$ (0.01)	\$ 0.01
Weighted-average number of common shares outstanding		
Basic	32,621	31,935
Diluted	32,621	31,935

The accompanying notes are an integral part of these consolidated statements.

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MIVA, Inc.

**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND
COMPREHENSIVE INCOME (LOSS)**

(in thousands)

	For the Year Ended December 31,	
	2008	2007
Common stock		
Balance, beginning of year	\$ 34	\$ 33
Common stock issued related to stock option and warrant exercises	—	1
Balance, end of year	<u>\$ 34</u>	<u>\$ 34</u>
Additional paid-in-capital		
Balance, beginning of year	\$ 265,721	\$ 259,353
Common stock issued related to stock option and warrant exercises	—	2,275
Compensation charge related to restricted stock unit issuance and non-employee options	3,120	4,093
Balance, end of year	<u>\$ 268,841</u>	<u>\$ 265,721</u>
Treasury stock		
Balance, beginning of year	\$ (6,694)	\$ (4,744)
Treasury stock received to satisfy accrued liabilities	(25)	(1,950)
Balance, end of year	<u>\$ (6,719)</u>	<u>\$ (6,694)</u>
Accumulated deficit		
Balance, beginning of year	\$(226,514)	\$(189,281)
Equity Transition Adjustment	4	(698)
Net loss	(45,453)	(36,535)
Balance, end of year	<u>\$(271,963)</u>	<u>\$(226,514)</u>
Accumulated other comprehensive income		
Balance, beginning of year	\$ 6,294	\$ 5,548
Foreign currency translation adjustment	6,099	746
Balance, end of year	<u>\$ 12,393</u>	<u>\$ 6,294</u>
Stockholders' Equity	<u>\$ 2,586</u>	<u>\$ 38,841</u>
Comprehensive loss		
Net loss	\$ (45,453)	\$ (36,535)
Other comprehensive income foreign currency translation	6,099	746
Comprehensive loss	<u>\$ (39,354)</u>	<u>\$ (35,789)</u>

	Number of Shares	
Common stock		
Balance, beginning of year	33,934	32,805
Common stock issued related to stock option and restricted stock unit issuances	546	1,129
Balance, end of year	<u>34,480</u>	<u>33,934</u>

The accompanying notes are an integral part of these consolidated statements.

Table of Contents**MIVA, Inc.****CONSOLIDATED STATEMENTS OF CASH FLOWS**

(in thousands)

	<u>Year ended</u> <u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Cash Flows from Operating Activities		
Net loss	\$(45,453)	\$(36,535)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities		
Provision for (recovery of) doubtful accounts	804	(107)
Depreciation and amortization	4,069	9,414
Impairment loss on goodwill and other assets	18,725	20,134
Equity based compensation	3,120	4,093
Gain on disposal of discontinued operations	—	(160)
Gain on sale of assets	(75)	(45)
Changes in operating assets and liabilities		
Accounts receivable	1,764	6,920
Prepaid expenses and other current assets	1,226	(313)
Income taxes receivable	174	1,378
Deferred revenue	(1,221)	72
Accounts payable, accrued expenses and other liabilities	(7,990)	(3,756)
Net Cash (used in) provided by operating activities	<u>24,857</u>	<u>1,095</u>
Cash Flows from Investing Activities		
Proceeds from the sale of property and equipment	—	120
Proceeds from the sale of discontinued operations assets	—	200
Portion of secured line of credit—restricted	(2,000)	—
Purchase of capital items including internally developed software	(3,190)	(397)
Net Cash (used in) provided by investing activities	<u>(5,190)</u>	<u>(77)</u>
Cash Flows from Financing Activities		
Proceeds from secured line of credit	4,000	—
Payments to secure line of credit	(796)	—
Payments made on capital leases and notes payable	(476)	—
Payments made on software license obligation	—	(1,400)
Proceeds received from exercise of stock options and warrants	—	521
Net Cash (used in) provided by financing activities	<u>2,728</u>	<u>(879)</u>
Effect of Foreign Currency Exchange Rates	4,113	178
(Decrease) / Increase in Cash and Cash Equivalents	<u>(23,206)</u>	<u>317</u>
Cash and Cash Equivalents, Beginning of Year	29,905	29,588
Cash and Cash Equivalents, End of Year	<u>\$ 6,699</u>	<u>\$ 29,905</u>
Supplemental Disclosures of Cash Flow Information:		
Interest paid	<u>\$ 165</u>	<u>\$ 137</u>
Income taxes paid	<u>\$ 297</u>	<u>\$ 816</u>
Supplemental Schedule of Noncash Investing and Financing Activities:		
Treasury stock received to satisfy tax withholding liabilities	<u>\$ (25)</u>	<u>\$ (1,950)</u>
Purchase of capital items under capital lease obligation	<u>\$ 1,836</u>	<u>\$ —</u>

The accompanying notes are an integral part of these consolidated statements.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****NOTE A—NATURE OF BUSINESS**

MIVA, Inc., together with its wholly-owned subsidiaries, collectively, the "Company", "we", "us" or "MIVA", is an online media and advertising network company.

In 2008 we offered a range of products and services through the following divisions:

MIVA Direct

MIVA Direct offers home page, desktop application and Internet browser toolbar products under the ALOT brand. Our customizable ALOT Home Page, ALOT Desktop and ALOT Toolbar are designed to make the Internet easy for consumers by providing direct access to affinity content and search results. These products generate over 2 million Internet searches per day.

MIVA Media

On March 12, 2009, we sold certain assets relating to our MIVA Media division. Following the sale, we no longer operate the MIVA Media business (see NOTE T—Subsequent Events). Our MIVA Media division was an auction based pay-per-click advertising and publishing network that operates across North America and Europe. MIVA Media connected millions of buyers and sellers online by displaying relevant and timely text ads in response to consumer search or browsing activity on select Internet properties. Such interactions between online buyers and sellers result in highly targeted, cost-effective leads for MIVA's advertisers and a source of recurring revenue for MIVA's publisher partners.

The majority of our revenue at MIVA Direct is generated through Internet search queries at our website. MIVA Direct products generate search queries to our website <http://search.alot.com>, where we provide algorithmic and sponsored search functionality to consumers through our contractual relationships with third-party providers.

For our MIVA Media division, which comprised a majority of our overall revenue in 2008, we derived our revenue primarily from online advertising by delivering relevant contextual and search ad listings to our third-party ad network and our consumer audiences on a performance basis. Marketers only paid for advertising when a predetermined action occurs, such as when an Internet user clicks on an ad.

NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**Basis of Presentation**

These consolidated financial statements include the accounts and operations of MIVA, Inc. and our wholly-owned domestic and international operating subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation. Certain prior period amounts have been reclassified to conform to the current year presentation.

Liquidity

Despite the Company's negative operating performance in 2008 and 2007, we currently anticipate that our working capital of approximately \$8.3 million, including cash and cash equivalents of approximately \$12.4 million as of March 12, 2009, along with cash flows from operations will be sufficient, at a minimum, to meet our liquidity needs for working capital and capital expenditures over at least the next 12 months.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

In the future, we may seek additional capital through the issuance of debt or equity to fund working capital, expansion of our business and/or acquisitions, or to capitalize on market conditions. Our future liquidity and capital requirements will depend on numerous factors including the pace of expansion of our operations, competitive pressures, and acquisitions of complementary products, technologies or businesses. As we require additional capital resources, we may seek to sell additional equity or debt securities or look to enter into a new revolving loan agreement. The sale of additional equity or convertible debt securities could result in additional dilution to existing stockholders. There can be no assurance that any financing arrangements will be available in amounts or on terms acceptable to us, if at all. Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement that involves risks and uncertainties and actual results could vary materially as a result of the factors described above.

Use of Estimates

The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions in determining the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Significant estimates in these consolidated financial statements include estimates of: asset impairment; income taxes; tax valuation reserves; restructuring reserve; loss contingencies; allowances for doubtful accounts; share-based compensation; and useful lives for depreciation and amortization. Actual results could differ materially from these estimates.

Revenue Recognition

When a MIVA Direct user clicks on a sponsored advertisement on a partner's network, revenues are recognized in the amount of the partner's fee due to MIVA Direct. Non-click-through-related revenue from MIVA Direct is recognized when earned under the terms of the contractual arrangement with the advertiser or advertising agency, provided that collection is probable.

In our Media Division, revenue was generated primarily through click-throughs on our managed advertisers' paid listings. When an Internet user clicks on a keyword advertisement, revenue was recognized in the amount of the advertiser's bid price. Click-through revenue was recognized as the click-throughs were performed in accordance with the guidance of Emerging Issue Task Force No. 99-19, "Reporting Revenue Gross as a Principal Versus Net as an Agent." We recorded the MIVA Media Network click-through revenue gross, and private label revenue net.

Cost of Services

The Company's cost of services consists of revenue-sharing or other payments to our MIVA Media distribution partners and other directly related expenses associated with the production and usage of MIVA Media that includes our third party patent license royalty payments.

Cash and Cash Equivalents

Cash equivalents consist of highly liquid investments with original maturities of three months or less. We did not maintain a balance in short-term investments as of December 31, 2008 or 2007.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)****Allowance for Doubtful Accounts**

The Company records its allowance for doubtful accounts based on its assessment of various factors. The Company considers historical experience, the age of the accounts receivable balances, the credit quality of its customers, current economic conditions, and other factors that may affect our customers' ability to pay to determine the level of allowance required.

Concentration of Credit Risk

Financial instruments that potentially subject us to significant concentration of credit risk consist primarily of cash, cash equivalents, and accounts receivable. As of December 31, 2008, substantially all of our cash and cash equivalents were managed by a number of financial institutions. As of December 31, 2008 our cash and cash equivalents and restricted cash with certain of these financial institutions exceed FDIC insured limits. Accounts receivable are typically unsecured and are derived from revenue earned from customers primarily located in the United States and Europe. As of December 31, 2008, one customer (Google) accounted for approximately 21.8% of the accounts receivable balance and represented approximately 33.3% of consolidated revenues for 2008. This same customer, as of December 31, 2007, represented approximately 26.9% of the accounts receivable balance and approximately 28.4% of the consolidated revenues for 2007.

Capitalized Software

Product development costs for internal use software are expensed as incurred or capitalized into property and equipment in accordance with Statement of Position 98-1 "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use" ("SOP 98-1"). SOP 98-1 requires that costs incurred in the preliminary project and post-implementation stages of an internal use software project be expensed as incurred and that certain costs incurred in the application development stage of a project be capitalized. Capitalized costs are amortized over the estimated useful life of two to five years using the straight line method. During 2008 and 2007, the amortization of capitalized costs totaled approximately \$2.2 million and \$2.2 million, respectively.

Fair Value of Financial Instruments

At December 31, 2008, our financial instruments included cash and cash equivalents, accounts receivable, accounts payable, and other long-term debt, including approximately \$4.0 million under our credit facility with Bridge Bank that was entered into on November 7, 2008.

The fair values of these financial instruments approximated their carrying values based on either their short maturity or current terms for similar instruments.

Advertising Costs

Advertising costs are expensed as incurred, and are included in Marketing, Sales and Service expense. We incurred approximately \$27.8 million and \$34.1 million in advertising expense during 2008 and 2007, respectively. The majority of this was spent by MIVA Direct to promote its desktop consumer software product in 2008 and 2007.

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MIVA, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Income Taxes

Income taxes are accounted for in accordance with SFAS 109, *Accounting for Income Taxes*. Under SFAS 109, deferred income taxes are recognized for temporary differences between financial statement and income tax bases of assets and liabilities, loss carry-forwards, and tax credit carry-forwards for which income tax benefits are expected to be realized in future years. A valuation allowance is established to reduce deferred tax assets if it is more likely than not that all, or some portion, of such deferred tax assets will not be realized. See Note P—"Income Taxes" for additional information.

Property and Equipment

Equipment and furniture are stated at cost except in the case of items acquired as a part of business acquisitions, which are recorded at fair value on the date of acquisition. Equipment and furniture are depreciated using the straight-line method over the estimated useful lives for the respective assets, which range from two to five years. Depreciation expense consists of depreciation of computer equipment and furniture. Improvements to leased premises are capitalized and amortized over the shorter of the related lease term or the useful lives of the improvements, which periods range from three to ten years.

Goodwill and Other Long-Lived Assets

Our methodology for allocating the purchase price of acquisitions is based on established valuation techniques. Goodwill is measured as the excess of the cost of an acquired entity over the net of the amounts assigned to identifiable assets acquired and liabilities assumed. We account for goodwill and other indefinite lived intangible assets in accordance with SFAS No. 142, *"Goodwill and other Intangible Assets."* We perform goodwill and indefinite lived intangible asset impairment tests on an annual basis as of October 1st or more frequently in certain circumstances, if necessary. We compare the fair value of the reporting unit to its carrying amount including goodwill. If the carrying amount of a reporting unit exceeds the fair value, we perform an additional fair value measurement calculation to determine the impairment loss, which would be charged to operations.

We evaluate the recoverability of long-lived assets, including property and equipment, and certain identifiable intangible assets, whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Additionally, on an annual basis, we review the useful lives of these assets to ensure they remain appropriate. Factors considered important that could trigger an impairment review include significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the assets or the strategy for the overall business, significant decrease in the market value of the assets, an increase in competition or loss of affiliates, and significant negative industry or economic trends. For example, unexpected increases in customer or distribution partner churn could affect our assessment about the recoverability of our intangible assets. When we determine that the carrying amount of long-lived assets may not be recoverable based on the existence of one or more of the indicators, the assets are assessed for impairment based on the estimated future undiscounted cash flows expected to result from the use of the asset and its eventual disposition. If the carrying amount of a long-lived asset exceeds its estimated future undiscounted cash flows, an impairment loss is recorded for the excess of the asset's carrying amount over its fair value.

Goodwill, indefinite life, and long-lived asset impairment assessments are generally determined based on fair value techniques, including determining the estimated future discounted and undiscounted cash flows over the remaining useful life of the asset. Those models require estimates of future revenue, profits,

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

capital expenditures and working capital for each unit. We estimate these amounts by evaluating historical trends, current budgets, operating plans and industry data. Discounted cash flows are calculated using a discount rate determined by management to be commensurate with the risk inherent in the current business model. Determining the fair value of reporting units and goodwill includes significant judgment by management and different judgments could yield different results. If these estimates or their related assumptions change in the future, we might be required to record impairment charges for the assets.

Share Based Compensation

Effective January 1, 2006, we adopted the fair value recognition provisions SFAS 123(R), *Share-Based Payment*, using the modified-prospective-transition method. Under that transition method, compensation cost recognized in 2007 and 2008 includes: (a) compensation cost for all share-based payments granted prior to, but not yet vested as of January 1, 2006, based on the grant-date fair value estimated in accordance with the original provisions of SFAS 123(R); and (b) compensation cost for all share-based payments granted subsequent to January 1, 2006, based on the grant-date fair value estimated in accordance with the provisions of SFAS 123(R). In addition, in March 2005, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 107 ("SAB 107") relating to SFAS 123(R). We have applied the provisions of SAB 107 in our adoption of SFAS 123(R).

Foreign Currency Translation

MIVA Media Europe operated in several European countries and used the local currency of these international subsidiaries as the functional currency. The financial statements of these subsidiaries are translated into United States dollars using period-end rates of exchange for assets and liabilities and average rates of exchange for the period for revenues and expenses. Translation gains (losses) are recorded in other comprehensive income (loss) as a component of stockholders' equity.

Operating Leases

The Company leases office space and data centers under operating lease agreements with original lease periods up to 11 years. Certain of the lease agreements contain rent holidays and rent escalation provisions. Rent holidays and rent escalation provisions are considered in determining straight-line rent expense to be recorded over the lease term. The lease term begins on the date of initial possession of the lease property for purposes of recognizing lease expense on a straight-line basis over the term of the lease. Lease renewal periods are considered on a lease-by-lease basis and generally are not included in determining the initial lease term rent expense.

New Accounting Pronouncements

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "Business Combinations" ("SFAS 141(R)"). SFAS 141(R) establishes the principles and requirements for how an acquirer: (i) recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed and any noncontrolling interest in the acquiree; (ii) recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase; and (iii) determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS 141(R) is to be applied prospectively to business combinations consummated on or after the beginning of the first annual reporting period on or after December 15, 2008.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

with early adoption prohibited. Previously any release of valuation allowances, for certain deferred tax assets would serve to reduce goodwill whereas under the new standard any release of the valuation allowance related to acquisitions currently or in prior periods will serve to reduce our income tax provision in the period in which the reserve is released. Additionally, under SFAS 141(R) transaction related expenses, which were previously capitalized as "deal cost", will be expensed as incurred. We have no capitalized deal costs or acquisitions pending at December 31, 2008, therefore, we do not expect to have any transition adjustments resulting from our adoption of SFAS 141(R) on January 1, 2009.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51" ("SFAS 160"). SFAS 160 establishes accounting and reporting standards that require (i) noncontrolling interests to be reported as a component of equity, (ii) changes in a parent's ownership interest while the parent retains its controlling interest to be accounted for as equity transactions, and (iii) any retained noncontrolling equity investment upon the deconsolidation of a subsidiary to be initially measured at fair value. SFAS 160 is effective for fiscal years and interim periods within those fiscal years, beginning on or after December 15, 2008, with early adoption prohibited. We do not expect the adoption of SFAS 160 to have a material effect on our financial position or results of operations.

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements," ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with accounting principles generally accepted in the United States, and expands disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007, with earlier application encouraged. In February 2008, the FASB deferred the effective date of SFAS 157 by one year for certain non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). On January 1, 2008, we adopted the provisions of SFAS 157, except as it applies to those nonfinancial assets and nonfinancial liabilities for which the effective date has been delayed by one year. The adoption of SFAS 157 did not have a material effect on our financial position or results of operations. The book values of cash and cash equivalents, accounts receivable and accounts payable approximate their respective fair values due to the short-term nature of these instruments.

NOTE C—DISCONTINUED OPERATIONS*June 2008 MIVA Media—Italy*

On June 17, 2008, we initiated a restructuring plan in order to maximize efficiencies within the Company, eliminate certain unprofitable operations, and better position the Company for the future. In connection with this restructuring, the Company has closed the MIVA Media Italian operations and eliminated other redundant positions within the Company. As a result of this restructuring plan, we recorded in the quarter ended June 30, 2008, a total of \$0.2 million related to termination benefits and one-time charges in connection with winding down our Italian operations.

August 2007—MIVA Small Business

On August 1, 2007, we sold the assets, net of liabilities assumed, of our MIVA Small Business division for \$0.2 million. Our decision to divest our MIVA Small Business division was due primarily to inconsistencies between the division's products and services and the Company's current and future strategic plan. A gain of approximately \$0.16 million was recorded as a result of the sale.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE C—DISCONTINUED OPERATIONS (Continued)**

In accordance with the provisions of SFAS No. 144 "Accounting for the Impairment or Disposal of Long-Lived Assets," ("SFAS 144") the financial data for our Italian and MIVA Small Business Operations have been accounted for as discontinued operations and, accordingly, these operating results are segregated and reported as discontinued operations in the accompanying consolidated statements of operations in all periods presented:

	For the Year Ended December 31,	
	<u>2008</u>	<u>2007</u>
Revenues	\$ 803	\$3,058
Gain on sale of discontinued operations	—	160
Income (loss) before provision for income taxes	(394)	403
Income tax expense	—	—
Income (loss) from discontinued operations	<u>\$(394)</u>	<u>\$ 403</u>

See NOTE T—Subsequent Events regarding the March 12, 2009 MIVA Media Sale.

NOTE D—IMPAIRMENT OF GOODWILL, OTHER INTANGIBLES, AND LONG-LIVED ASSETS

We have experienced significant impairment losses in 2008 and 2007.

During the fourth quarter of 2008, in connection with our annual impairment testing, we performed a step 1 impairment test of our two reporting units, Searchfeed and Miva Direct, with remaining recorded indefinite lived intangible assets and goodwill for potential impairment. The fair value estimates used in the initial impairment test were based on market approaches and the present value of future cash flows. As a result of this analysis, we determined that the estimated fair value of the reporting units exceeded their carrying values which could result in potential impairment. We then performed an assessment of the long-lived assets of our Searchfeed and MIVA Direct divisions and determined these assets were impaired under the provisions of SFAS No. 144. Accordingly, in the fourth quarter of 2008, we recorded approximately \$2.9 million in non-cash impairment charges to reduce the carrying value of the remaining long-lived tangible and intangible assets to their estimated fair values. We then performed a step 2 impairment test to determine if the remaining carrying values of recorded goodwill and other indefinite lived intangible assets in these divisions was impaired under the provisions of SFAS No. 142. The step 2 impairment test resulted in a non-cash impairment charge of \$14.7 million and \$1.1 million, respectively, to reduce the carrying value of goodwill and other indefinite lived intangible assets to their implied fair value. As a result of these impairment charges, the carrying value of all of the Company's goodwill and other indefinite lived intangible assets was reduced to zero as of December 31, 2008.

In the fourth quarter of 2007, as a result of continued operating losses related to our MIVA Media US business, we performed an impairment analysis to determine recoverability of the recorded long-lived assets of this division. As a result of this analysis, we determined that certain long-lived assets of our MIVA Media US division were impaired under the provisions of Financial Accounting Standards Board Statement No. 144 "Accounting for the Impairment or Disposal of Long-Lived Assets (SFAS 144)." Accordingly, during the fourth quarter of 2007 we recorded approximately \$4.7 million in non-cash impairment charges to reduce the carrying value of certain long-lived tangible and intangible assets to their estimated fair value.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE D—IMPAIRMENT OF GOODWILL, OTHER INTANGIBLES, AND LONG-LIVED ASSETS (Continued)**

In the second quarter of 2007 our revenue and earnings forecasts were updated for each of our divisions to reflect events that occurred during the quarter that changed our expected business prospects. Our MIVA Media Europe division's forecasts were particularly negatively affected by: the continuation of reduced traffic generated by our distribution partners; slower than anticipated deployment of new services; and other factors. As a result of these indicators, we performed a test to determine if the carrying amount of goodwill and other long-lived assets at MIVA Media Europe were impaired. The fair value estimates used in the initial impairment test were based on market approaches and the present value of future cash flows. These tests indicated that the carrying amount of MIVA Media Europe exceeded its fair value, and led us to conclude that goodwill could be impaired. We then performed a preliminary impairment test of long-lived assets, and a preliminary second step of the impairment analysis. As part of the two step analysis required, the implied fair value of goodwill was determined through the allocation of preliminary estimates of the fair value to the underlying assets and liabilities, and an estimated non-cash impairment charge of \$14.0 million was recorded to adjust the carrying value of goodwill to its preliminary estimated fair value. This non-cash charge was recorded at MIVA Media Europe and after this impairment charge, MIVA Media Europe has no remaining goodwill.

At the time of the filing of our 2007 second quarter Form 10-Q, the second step of the analysis had not been finalized, therefore, as discussed above, we recorded our best estimate of the impairment, at the time, \$14.0 million. The finalization of the impairment test of long-lived assets and the second step of the impairment analysis was completed in the third quarter of 2007, resulting in an additional impairment charge of \$1.4 million related to our long-lived assets in our MIVA Media Europe division. At December 31, 2007, the total remaining carrying value of the Company's goodwill and other intangible assets was \$20.1 million, representing those of our U.S. operations.

We will continue to assess the potential of impairment for other long-lived assets in future periods in accordance with SFAS 144. Should our business prospects change, and our expectations for acquired business be further reduced, or other circumstances that affect our business dictate, we may be required to recognize additional impairment charges.

NOTE E—RESTRUCTURING AND MASTER SERVICES AGREEMENT**Restructuring—August 2008 United Kingdom, Germany, France, and Spain Operations**

On August 21, 2008, the Company initiated a restructuring plan that further consolidated the MIVA Media EU operations primarily in one office. The restructuring plan evolved to include a workforce reduction of approximately 40 employees, which involved cash payments totaling approximately \$2.1 million that is expected to be completed by April 2009. The restructuring plan resulted in the closure of our offices in Germany, reductions in headcount in our offices in Paris, Madrid and London, and exiting certain contractual relationships with third party contracts. In the quarter ended September 30, 2008 we recorded a restructuring charge of approximately \$2.7 million related to this restructuring program, which includes severance and related costs, legal fees, and other costs specific to the execution of this program. During the fourth quarter of 2008, we recorded additional charges of approximately \$0.5 million. These charges are consistent with this restructuring plan and primarily included severance and related costs, legal fees, and other costs specific to the execution of this program.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE E—RESTRUCTURING AND MASTER SERVICES AGREEMENT (Continued)****Restructuring—June 2008**

On June 17, 2008, the Company initiated a restructuring plan in order to maximize efficiencies within the Company, eliminate certain unprofitable operations, and better position the Company for the future. The Company recorded a total of \$0.8 million in restructuring charges related to this action, excluding the approximate \$0.2 million included in the discontinued operations category related to the closure of our Italian operations. We have closed our MIVA Media Italian operations and eliminated other redundant positions within the Company. Management developed a formal plan that included the identification of a workforce reduction totaling 30 employees, which is expected to involve cash payments totaling approximately \$1.0 million, that was completed in February 2009.

Restructuring—February 2008

On February 19, 2008, the Company announced a restructuring plan aimed at continued reduction of the overall cost structure of the Company. The Company recorded \$0.1 million in restructuring charges related to this action, which was designed to align the cost structures of our U.S. and U.K. operations with the operational needs of these businesses. Management developed a formal plan that included the identification of a workforce reduction totaling 8 employees, all of which involved cash payments of approximately \$0.1 million made in the quarter ended June 30, 2008.

Master Services Agreement and Transformation Project

On May 11, 2007, the Company entered into a master services agreement (the "Master Services Agreement") with Perot Systems Corporation ("Perot Systems"), pursuant to which the Company outsourced certain of its information technology infrastructure services, application development and maintenance, MIVA Media US support services, and transactional accounting functions.

The Master Services Agreement had a term of 84 calendar months commencing June 1, 2007, unless earlier terminated or extended pursuant to its terms. Aggregate fees payable by the Company to Perot Systems under the Master Services Agreement were expected to be approximately \$41.8 million, but as a result of the August 2008 amendment to the Master Services Agreement described below, the total was reduced to approximately \$37.9 million. As of December 31, 2008, the Company incurred approximately \$12.6 million of operating expenses for services received under the agreement since the agreement's inception.

As a result of the Master Services Agreement, the Company's active employee base declined by approximately 50 employees and the full workforce reduction was completed in September 2007. Approximately 29 Company employees transitioned to become employees of Perot Systems as a result of this agreement.

With respect to the workforce reductions, the Company incurred total restructuring charges related to one-time employee severance (\$0.2 million) and related costs (\$0.3 million) of approximately \$0.5 million in the quarter ended June 30, 2007. These related costs were attributed to legal fees incurred as part of both the February 2007 and May 2007 restructuring plans.

On April 10, 2008, we entered into an approximate \$2.4 million software development statement of work with Perot Systems, pursuant to which the Company will pay Perot Systems to develop a new global advertiser and distribution partner application called the "Transformation Project". The Transformation Project involves the development and implementation of one enhanced consolidated global system to

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MIVA, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE E—RESTRUCTURING AND MASTER SERVICES AGREEMENT (Continued)

replace MIVA Media's existing Internet advertising management and distribution partner management systems. As of December 31, 2008, in connection with the Transformation Project, we have incurred approximately \$2.4 million of costs, including \$1.9 million of cost with Perot Systems, and \$0.5 million of internal development costs, all of which has been capitalized and will be amortized over the five year estimated useful life of the software once it is placed in service. This Transformation Project was sold in March 2009 as part of the MIVA Media Sale.

On August 26, 2008, we entered into an amendment to the Master Services Agreement with Perot, which, among other things, allowed us to "in-source" certain functions (MIVA EU Information Technology functionality and administration and finance and accounting support). These changes took effect immediately and eliminated the related charges for those services without termination fees as called for in the original contract. In return, we agreed to a reduction in certain service level agreement ("SLA") requirements, the elimination of benchmarking pricing, a modified termination payment schedule, and a 10 day payment cycle for invoices.

The Company accounted for the services received under the Master Services Agreement using the guidance in AICPA Statement of Position 98-1 "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use" and EITF No. 97-13 "Accounting for Costs Incurred in Connection with a Consulting Contract or an Internal Project That Combines Business Process Reengineering and Information Technology Transformation".

See NOTE T—Subsequent Events regarding amendment of the Master Services Agreement.

Restructuring—February 2007

On February 8, 2007, the Company announced a restructuring plan aimed at reducing the overall cost structure of the Company. The Company initially recorded \$3.1 million (adjusted to \$2.8 million in the quarter ended June 30, 2007) in restructuring charges related to this action, which was designed to align the cost structures of our U.S. and U.K. operations with the operational needs of these businesses. Management developed a formal plan that included the identification of a workforce reduction totaling 56 employees, all of which involved cash payments of approximately \$0.5 million made in April 2007 and approximately \$0.5 million made by the end of April 2008.

The following reserve for restructuring is included in accrued expenses in the accompanying consolidated balance sheet as of December 31, 2008 and 2007 (in thousands):

	<u>Employee Severance</u>	<u>Other Charges</u>	<u>Total</u>
Balance as of January 1, 2007	—	—	—
Restructuring charges in 2007	\$ 2.4	\$ 0.4	\$ 2.8
Adjustments in 2007	(0.3)	—	(0.3)
Cash payments in 2007	(2.0)	(0.4)	(2.4)
Balance as of December 31, 2007	<u>\$ 0.1</u>	<u>\$ —</u>	<u>\$ 0.1</u>
Restructuring charges in 2008	\$ 3.0	\$ 1.1	\$ 4.1
Adjustments in 2008	(0.1)	(0.2)	(0.3)
Cash payments in 2008	(1.9)	(0.4)	(2.3)
Balance as of December 31, 2008	<u>\$ 1.1</u>	<u>\$ 0.5</u>	<u>\$ 1.6</u>

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE E—RESTRUCTURING AND MASTER SERVICES AGREEMENT (Continued)**

All actions under the February 8, 2007, restructuring plan, other than cash payments, were completed by May 31, 2007. All cash payments with respect to the May 11, 2007, restructuring plan were completed by April 30, 2008. All actions under the February 19, 2008, restructuring plan were completed by March 31, 2008. All actions under the June 17, 2008, restructuring plan were completed by January 31, 2009. All actions under the August 21, 2008, restructuring plan are expected to be completed by April 2009.

The Company accounted for and reported our restructuring plans using the guidance in the following: (i) SFAS No. 144, (ii) EITF 03-13, "*Applying the conditions in Paragraph 42 of FASB Statement No. 144 in Determining Whether to Report Discontinued Operations*", (iii) SFAS No 112, "*Employer's Accounting for Postemployment Benefits*", and (iv) SFAS 146, "*Accounting for Costs Associated with Exit or Disposal Activities*".

NOTE F—ACCOUNTING FOR SHARE-BASED COMPENSATION

In 2008 and 2007, the Company granted share-based compensation in the form of restricted stock units ("RSUs") to selected individuals within the management team. For the twelve months ended December 31, 2008, our total share-based employee compensation expense consisted of stock option expense of \$0.7 million and \$2.4 million in restricted stock unit expense. The RSU expense total includes approximately \$0.6 million in accelerated stock-based compensation expense resulting from the vesting of certain RSUs related to a former officer's resignation in August 2008. For the comparable period in 2007, the total share-based employee compensation expense was \$4.1 million. Of this amount \$1.6 million consisted of stock option expense and \$2.5 million related to restricted stock unit expense. Included within this 2007 total stock option expense is a net \$0.3 million in stock option expense that is recorded in restructuring expense as it relates to a terminated employee.

In June 1999, the Board of Directors adopted the 1999 Stock Incentive Plan and in June 2004 the Board of Directors adopted the 2004 Stock Incentive Plan and the EMI Replacement Option Plan. Awards permitted under the 1999 Plan and 2004 Plans consist of stock options (both qualified and non-qualified options), restricted stock awards, deferred stock awards, and stock appreciation rights. Under these plans, there were 9.2 million shares approved for issuance and, as of August 16, 2006, prior to consolidation with the 2006 Plan, there were 1.3 million shares available for equity awards under these prior plans.

At the Company's 2006 annual stockholders meeting, stockholders of the Company approved the 2006 Stock Award and Incentive Plan ("Plan"). The Plan, among other things, increased by 2.0 million the number of shares of common stock available for equity awards. Under the Plan, no further awards are to be granted under the 1999 Stock Incentive Plan and the 2004 Stock Incentive Plan, although any outstanding awards under those plans continue in accordance with their terms.

Collectively, as of December 31, 2008, there are approximately 1.5 million shares available for new equity awards after combining the shares of the 2006 Plan with the remaining shares of the superseded plans. Options issued to employees generally vest in a range of immediate vesting to up to four years vesting, and expire ten years following the grant date.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE F—ACCOUNTING FOR SHARE-BASED COMPENSATION (Continued)**

Stock option activity under the plans during the years ended December 31, 2008 and 2007, are summarized below (in thousands, except per share amounts):

	<u>Options</u>	<u>Weighted-Average Exercise Price</u>
Options outstanding at December 31, 2006	3,969	7.36
Granted	—	—
Exercised	(909)	2.50
Forfeited	(528)	4.91
Expired	(593)	8.86
Options outstanding at December 31, 2007	<u>1,939</u>	<u>\$ 9.85</u>
Granted	—	—
Exercised	—	—
Forfeited	(310)	14.17
Expired	(53)	11.44
Options outstanding at December 31, 2008	<u>1,576</u>	<u>\$ 8.94</u>

The following table summarizes information as of December 31, 2008, concerning outstanding and exercisable stock options under the plans (in thousands, except per share amounts):

<u>Range of Exercise Prices</u>	<u>Number Outstanding</u>	<u>Weighted Average Remaining Contractual Life (Years)</u>	<u>Weighted Average Exercise Price</u>	<u>Number Exercisable</u>	<u>Weighted Average Exercise Price</u>
\$ 1.00 - \$ 3.00	116	6.8	\$ 2.75	66	\$ 2.62
\$ 3.01 - \$ 6.00	1,029	6.4	4.87	808	4.87
\$ 6.01 - \$14.00	44	5.7	11.07	41	11.01
\$14.01 - \$23.14	387	5.4	21.38	387	21.39
	<u>1,576</u>	<u>6.2</u>	<u>\$ 8.94</u>	<u>1,302</u>	<u>\$ 9.86</u>

As of December 31, 2008, unrecognized compensation expense related to stock options totaled approximately \$0.2 million, which will be recognized over a weighted average period of approximately one year. The fair value of the stock options is estimated at the date of the grant using the Black-Scholes option-pricing model. No stock options were granted during the years ended December 31, 2008 or 2007.

In January 2008, we issued restricted stock units with service based vesting provisions (4 year vesting in equal increments), and market condition performance based restricted stock units that vest upon the Company's common stock reaching, and closing, at a share price at or exceeding \$4.00 per share, for ten consecutive trading days.

In January 2007, we issued restricted stock units with service based vesting provisions (4 year vesting in equal increments), and market condition performance based restricted stock units that: vest in equal tranches upon the Company's common stock reaching, and closing, at share prices at or exceeding \$6.00, \$8.00, \$10.00, and \$12.00, respectively, for ten consecutive trading days. In June 2007, all criteria was

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE F—ACCOUNTING FOR SHARE-BASED COMPENSATION (Continued)**

satisfied for the \$6.00 tranche of restricted stock units and accordingly 86,412 shares attributable to the achievement of the \$6.00 performance criteria were issued.

The fair value of our service based restricted stock units is the quoted market price of the Company's common stock on the date of grant. Further, we utilize a Monte Carlo simulation model to estimate the fair value and compensation expense related to our market condition performance based restricted stock units. The Company recognizes stock compensation expense for options or restricted stock units that have graded vesting on the graded vesting attribution method.

New stock options granted and new restricted stock units granted, each with the related expenses for the years ended December 31, 2008 and 2007, are summarized below (in thousands):

	For the Year Ended December 31,	
	2008	2007
Stock options granted—new	—	—
Stock option expense—new	\$ —	\$ —
Restricted stock units—new	1,963	1,992
Restricted stock unit expense—new	\$1,081	\$1,481

For the years ended December 31, 2008 and 2007, the following assumptions were used in our performance based restricted stock units with market based conditions:

	For the Year Ended December 31,	
	2008	2007
Volatility	70.5%	69.3%
Expected life	10 yrs	10 yrs
Risk-free rate	4.03%	4.41% - 5.16%

The restricted stock unit ("RSU") activity for the years ended December 31, 2008 and 2007 are summarized below (in thousands):

	Total RSUs	Service Based RSUs	Performance based RSUs with Market based conditions				
			\$4.00	\$6.00	\$8.00	\$10.00	\$12.00
Balance, December 31, 2006	424	368	—	14	14	14	14
Granted	1,992	1,611	—	87	98	98	98
Vested	(379)	(292)	—	(87)	—	—	—
Forfeited	(448)	(362)	—	(14)	(24)	(24)	(24)
Expired	—	—	—	—	—	—	—
Balance, December 31, 2007	<u>1,589</u>	<u>1,325</u>	<u>—</u>	<u>—</u>	<u>88</u>	<u>88</u>	<u>88</u>
Granted	1,963	1,600	363	—	—	—	—
Vested	(729)	(729)	—	—	—	—	—
Forfeited	(567)	(397)	(110)	—	(20)	(20)	(20)
Expired	—	—	—	—	—	—	—
Balance, December 31, 2008	<u>2,256</u>	<u>1,799</u>	<u>253</u>	<u>—</u>	<u>68</u>	<u>68</u>	<u>68</u>

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Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE G—PROPERTY AND EQUIPMENT**

Property and equipment at December 31, 2008 and 2007 consisted of the following (in thousands):

	<u>2008</u>	<u>2007</u>	<u>Estimated Useful Life</u>
Technical equipment	\$ 17,864	\$ 18,851	3 years
Furniture	1,488	1,947	5 years
Leasehold improvements	826	1,112	10 years
Capitalized software	12,833	10,364	1 to 5 years
Subtotal	<u>33,011</u>	<u>32,274</u>	
Accumulated Depreciation & Amortization	<u>(28,036)</u>	<u>(29,529)</u>	
	<u>\$ 4,975</u>	<u>\$ 2,745</u>	

Depreciation expense was \$1.9 million and \$4.6 million for the years ended December 31, 2008 and 2007, respectively.

NOTE H—INTANGIBLE ASSETS

The balance in intangible assets at December 31, 2008, consists of the following (in thousands, except years):

	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization and Impairment</u>	<u>Net Carrying Amount</u>	<u>Weighted Average Useful Economic Life (Years)</u>
Vendor agreements	\$ 2,707	\$ (2,707)	\$ —	3
Developed technology	8,776	(8,776)	—	4
Customer relationships	100	(100)	—	—
Other definite-lived intangibles	857	(857)	—	4
Indefinite-lived intellectual property	1,134	(1,134)	—	Indefinite
Goodwill	14,743	(14,743)	—	Indefinite
	<u>\$28,317</u>	<u>\$ (28,317)</u>	<u>\$ —</u>	

The balance in intangible assets as of December 31, 2007, consisted of the following (in thousands, except years):

	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>	<u>Weighted Average Useful Economic Life (Years)</u>
Vendor agreements	\$ 2,707	\$ (1,389)	\$ 1,318	3
Developed technology	8,776	(6,245)	2,531	4
Customer relationships	100	(100)	—	—
Other definite-lived intangibles	961	(588)	373	4
Indefinite-lived intellectual property	1,134	—	1,134	Indefinite
Goodwill	14,743	—	14,743	Indefinite
	<u>\$28,421</u>	<u>\$ (8,322)</u>	<u>\$20,099</u>	

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE H—INTANGIBLE ASSETS (Continued)**

Amortization expense related to intangible assets was \$2.2 million and \$2.5 million for the years ended December 31, 2008 and 2007, respectively.

The carrying amount of goodwill at December 31, 2008 and 2007 consisted of the following (in thousands):

Balance as of January 1, 2007	\$ 28,566
Goodwill impairment	(14,006)
Foreign currency translation adjustments	183
Balance as of December 31, 2007	<u>\$ 14,743</u>
Goodwill impairment	<u>(14,743)</u>
Balance as of December 31, 2008	<u>\$ —</u>

At December 31, 2008, we have no intangible assets that are not subject to amortization.

All of the intangible assets were acquired in 2004 in connection with the acquisition or merger of MIVA Small Business, MIVA Direct, B&B Advertising and MIVA Media Europe. The weighted average useful economic life for all definite-lived intangibles is approximately four years. It is estimated that there will be no significant residual value for the intangible assets. The amortization associated with our intangible assets is not deductible for income tax purposes.

NOTE I—ACCRUED EXPENSES

Accrued expenses at December 31, 2008 and 2007 consisted of the following (in thousands):

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Revenue-sharing agreements	\$4,146	\$ 5,493
Accrued compensation	1,777	1,843
Professional fees	1,198	1,960
Operating expenses	1,850	3,489
Value added tax payable	210	36
Other	439	2,023
	<u>\$9,620</u>	<u>\$14,844</u>

NOTE J—PER SHARE DATA

For the years ended December 31, 2008 and 2007, we incurred a net loss. Therefore, potentially dilutive shares (related to stock options and restricted stock units) are not included in the per share data, as they would have an anti-dilutive effect on net loss per share. Had we not recorded a net loss, the number of stock options excluded in the computation of diluted EPS and the range of exercise prices would have been: 2008—1.8 million shares at a price range of \$1.25 - \$23.14; and, 2007—1.6 million shares at a price range of \$4.37 - \$23.14.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE J—PER SHARE DATA (Continued)**

The following is the number of shares used in the basic and diluted computation of loss per share (in thousands):

	For the Year Ended December 31,	
	<u>2008</u>	<u>2007</u>
Weighted-average number of common shares outstanding basic and diluted	<u>32,621</u>	<u>31,935</u>

NOTE K—LITIGATION**Shareholder Class Action Lawsuits**

Beginning on May 6, 2005, five putative securities fraud class action lawsuits were filed against us and certain of our former officers and directors in the United States District Court for the Middle District of Florida. The complaints allege that we and the individual defendants violated Section 10(b) of the Securities Exchange Act of 1934 (the "Act") and that the individual defendants also violated Section 20(a) of the Act as 'control persons' of MIVA. Plaintiffs purport to bring these claims on behalf of a class of our investors who purchased our stock between September 3, 2003 and May 4, 2005.

Plaintiffs allege generally that, during the putative class period, we made certain misleading statements and omitted material information. Plaintiffs seek unspecified damages and other relief.

On July 27, 2005, the Court consolidated all of the outstanding lawsuits under the case style *In re MIVA, Inc. Securities Litigation*, selected lead plaintiff and lead counsel for the consolidated cases, and granted Plaintiffs leave to file a consolidated amended complaint, which was filed on August 16, 2005. We and the other defendants moved to dismiss the complaint on September 8, 2005.

On December 28, 2005, the Court granted Defendants' motion to dismiss. The Court granted Plaintiffs leave to submit a further amended complaint, which was filed on January 17, 2006. On February 9, 2006, Defendants filed a renewed motion to dismiss. On March 15, 2007, the Court granted in large part Defendants' motion to dismiss. On March 29, 2007, Defendants filed a motion for amendment to the March 15, 2007, order to include certification for interlocutory appeal or, in the alternative, for reconsideration of the motion to dismiss. On July 17, 2007, the Court (1) denied the motion for amendment to the March 15, 2007, order to include certification for interlocutory appeal and (2) granted the motion for reconsideration as to the issue of whether Plaintiffs pled a strong inference of scienter in light of intervening precedent. The Court requested additional briefing on the scienter issue, and on February 15, 2008, entered an Order dismissing one of the individual defendants from the lawsuit and limiting the claims that could be brought against another individual defendant. In addition, Plaintiffs previously had moved the Court to certify a putative class of investors, and Defendants had filed briefs in opposition thereto. On March 12, 2008, the Court entered an Order certifying a class of those investors who purchased the Company's common stock from February 23, 2005, to May 4, 2005. The Court also dismissed two of the proposed class representatives for lack of standing. Plaintiffs have served discovery requests on Defendants, and the discovery phase of the lawsuit is presently underway.

Regardless of the outcome, this litigation could have a material adverse impact on our results because of defense costs, including costs related to our indemnification obligations, diversion of management's attention and resources, and other factors.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE K—LITIGATION (Continued)****Derivative Stockholder Litigation**

On July 25, 2005, a shareholder, Bruce Verduyn, filed a putative derivative action purportedly on behalf of us in the United States District Court for the Middle District of Florida, against certain of our directors and officers. This action is based on substantially the same facts alleged in the securities class action litigation described above. The complaint is seeking to recover damages in an unspecified amount. By agreement of the parties and by Orders of the Court, the case was stayed pending the resolution of Defendants' motion to dismiss and renewed motion to dismiss in the securities class action. On July 10, 2007, the parties filed a stipulation to continue the stay of the litigation. On July 13, 2007, the Court granted the stipulation to continue the stay and administratively closed the case pending notification by plaintiff's counsel that the case is due to be reopened. Regardless of the outcome, this litigation could have a material adverse impact on our results because of defense costs, including costs related to our indemnification obligations, diversion of management's attention and resources, and other factors.

Comet Systems, Inc.

The agent for the former shareholders of Comet Systems, Inc., a company that merged with and into one of our subsidiaries in March 2004, filed a lawsuit against us in Delaware Chancery Court on March 13, 2007. In the suit the shareholders' agent contended that our calculation and payment of contingent amounts payable under the merger agreement were not correct and we contended that we calculated and paid the contingent amounts correctly. On October 22, 2008, the Court granted summary judgment to the plaintiff in the amount of \$1.7 million, pre-judgment interest in the amount of \$0.6 million, and reimbursement of attorney fees of \$0.1 million. After receiving summary judgment we entered into negotiations with the plaintiffs and reached a binding settlement agreement to pay a lesser amount. We agreed to pay \$1.875 million to resolve this dispute and made payment, in full, in December 2008.

Bid For Position, LLC

On December 13, 2007, a patent infringement case was filed in the United States District Court for the Eastern District of Virginia against AOL, Google, Microsoft, and us by Bid For Position, LLC. The complaint alleged that Bid For Position, LLC is the owner of U.S. Patent No. 7,225,151, which was issued on May 29, 2007, entitled "Online Auction Bid Management System and Method," ("the '151 patent") and further alleged that we infringed this patent. We settled the case in June 2008 without admitting any liability, and the case was dismissed on July 15, 2008.

Lane's Gifts and Collectibles Litigation

As previously disclosed we entered into an agreement with the plaintiffs to settle this case in January 2008 and received court approval in April 2008. Under the settlement agreement, all claims against us, including our indemnification obligations to a co-defendant, were dismissed without presumption or admission of any liability or wrongdoing. Pursuant to the agreement, we established a settlement fund of \$3,936,812, of which \$1,312,270 was accrued as litigation settlement expense as of December 31, 2007 and paid, in June 2008, for plaintiffs' attorneys' fees and class representative incentive awards, and the balance is in advertising credits relating to the class members' advertising spending with us during the class period. Advertising credits will be recorded as reductions to revenues in the periods they are redeemed. For the year ended December 31, 2008, approximately \$26,674 in advertising credits were redeemed.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE K—LITIGATION (Continued)****Other Litigation**

We are a defendant in various other legal proceedings from time to time, regarded as normal to our business and, in the opinion of management, the ultimate outcome of such proceedings are not expected to have a material adverse effect on our financial position or our results of operations.

No accruals for potential losses for litigation are recorded as of December 31, 2008, and although losses are possible in connection with the above litigation, we are unable to estimate an amount or range of possible loss, in accordance with SFAS 5, but if circumstances develop that necessitate a loss contingency being disclosed or recorded, we will do so. We expense all legal fees for litigation as incurred.

NOTE L—DEBT

On November 7, 2008, we entered into a Loan and Security Agreement with Bridge Bank. The Loan Agreement provides a revolving credit facility to the Company of up to \$10.0 million ("Facility"). Subject to the terms of the Loan Agreement, the borrowing base used to determine loan availability under the Facility is equal to 80% of the our eligible U.S. accounts receivable plus the lesser of \$3.5 million or 65% of eligible U.K. accounts receivable, with account eligibility measured in accordance with standard determinations. All amounts borrowed under the Facility are secured by a general security interest on the assets of the Company, including the Company's intellectual property, and a pledge of 65% of the outstanding shares of the Company's UK subsidiary, MIVA (UK) Limited. In addition, MIVA (UK) Limited and certain of the Company's domestic subsidiaries are guarantying the Company's obligations under the Facility, to be secured by general security interests in the assets of such companies. Except as otherwise set forth in the Loan Agreement, borrowings made pursuant to the Loan Agreement will bear interest at a rate equal to the greater of (i) 6.5% or (ii) the Prime Rate (as announced by Bridge Bank) plus 1.5%. The Facility expires on November 7, 2010, at which time all outstanding loan advances become due and payable. As of December 31, 2008, the effective interest rate was 6.5% and we had drawn approximately \$4.0 million, which is included in long-term debt within the consolidated balance sheet. Under the terms of the Loan Agreement, we are required to maintain in our account at Bridge Bank an amount equal to or greater than 50% of the funded loan balance.

The Loan Agreement contains certain covenants, including the following financial covenants: (i) minimum cash ratio, (ii) asset coverage ratio, (iii) Adjusted Earnings Before: Interest, Taxes, Depreciation, and Amortization ("AEBITDA"). At December 31, 2008, we believe we are in compliance with all covenants under the Loan Agreement. However, if we breach any of our covenants or are unable to comply with the required financial ratios under our Loan Agreement, the bank could elect to declare all borrowings outstanding under the Loan Agreement, together with any accrued interest and other fees, to be due and payable, as well as require us to apply all available cash to repay the amounts outstanding.

See Note T—Subsequent Events for information on a Consent and Amendment to The Loan and Security Agreement entered into on March 12, 2009.

NOTE M—COMMITMENTS AND CONTINGENCIES

In July 2005, we received payment of approximately \$1.3 million following our receipt of a favorable court judgment in a dispute with a Media EU distribution partner. The amount received, net of legal fees, was recorded as a deferred liability pending the appeal process. On May 22, 2008, we received notification

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE M—COMMITMENTS AND CONTINGENCIES (Continued)**

the original court's decision was reversed. This decision called for MIVA to refund the \$1.3 million payment to the MIVA Media EU distribution partner. During the quarter ended December 31, 2008, we negotiated and settled this dispute for approximately \$0.7 million that was paid in this same period.

We have ongoing contractual cash payment obligations to our distribution partners. These payments are funded by payments from our advertisers for the paid click-through (visitors), delivered to them via our distribution partners. Agreements with certain distribution partners contain guaranteed minimum payments through November 2010.

We have minimum contractual payments as part of our royalty bearing non-exclusive license to certain Yahoo! patents payable quarterly through August 2010. In addition, we have ongoing royalty payments based on our use of those patents.

We have minimum contractual payments as part of the Perot Master Services Agreement and the Transformation Project as described in Note E—Restructuring and Master Services Agreement (See NOTE T—Subsequent Events regarding the amendment of the Master Services Agreement on February 1, 2009.)

Operating Leases

On September 30, 2008, we provided notice of termination for the operating lease agreements for both the Munich and Hamburg office locations. The Munich lease ends on December 31, 2009 and the Hamburg office lease expires on March 31, 2009. Additionally, on October 3, 2008, we provided notice to terminate the office lease for our Spain office, which is expected to expire on March 31, 2009.

On September 10, 2008, we entered into an operating lease agreement with an unrelated third party to lease work space for our London office for the term of 12 months commencing on December 1, 2008. The agreement includes a right to three month renewals. Base rent is approximately \$0.3 million per year.

On February 26, 2008, we entered into an agreement (the "Lease Amendment") amending the April 15, 2005 operating lease agreement for our London office. The Lease Amendment, among other items, provided each party with an early termination right to terminate the underlying Lease Agreement on or before December 31, 2008. We exercised this termination right and in accordance with the agreement received a one-time surrender premium of approximately \$0.4 million in the fourth quarter of 2008.

For the years ended December 31, 2008 and 2007, we recorded approximately \$0.8 million and \$2.8 million, respectively, as rent expense under operating leasing arrangements. Included in the 2008 total is approximately \$0.07 million of rent expense recorded in restructuring expense as it relates to lease agreements associated with the various restructuring plans, and approximately \$0.05 million included in discontinued operations as it relates to the Italian operations closure.

Sublease Income

During the fourth quarter of 2008, we entered into two separate and non-cancelable sublease agreements covering the remaining lease obligations periods in both Germany (Munich) and France (Paris) leases with unrelated third parties. The sublease payments are expected to be received ratably over the next 12 months.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE M—COMMITMENTS AND CONTINGENCIES (Continued)**

In August 2007, we entered into a real estate sublease agreement with an unrelated party to sublease 20,171 square feet (approximately 50% of our space) in our office located in Fort Myers, Florida. The term of the sublease agreement commenced on August 17, 2007 and ends on November 30, 2012, unless certain conditions (as defined) are met for earlier termination.

Capital Leases

In September 2008, we entered into non-cancelable leases with unrelated third parties for software and related maintenance, and hardware, for our new Transformation Project. The total fair market value of this software was approximately \$1.0 million with a lease term of nineteen months. The software lease has an imputed interest rate of 9% with quarterly cash outlays of approximately \$0.2 million. The total fair market value of the hardware was approximately \$1.1 million with a lease term of three years. The hardware lease has an imputed interest rate of 12.0%. These leases were classified as capital lease obligations, are reported as long-term debt in our December 31, 2008, consolidated balance sheet, and represent non-cash investing and financing activities in our consolidated statement of cash flows for the year ended December 31, 2008. During 2008, we made cash payments, including interest, of approximately \$0.9 million on these lease obligations.

The following table summarizes our capital lease obligations as of December 31, 2008 and 2007 (in thousands):

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Software Lease Payments	728	—
Hardware Lease Payments	825	—
Less—Interest	(175)	—
Total debt	<u>\$1,378</u>	<u>\$—</u>
Current portion	783	—
Long-term debt	<u>\$ 595</u>	<u>\$—</u>

Interest expense related to these leases was approximately \$0.04 million in 2008.

As of December 31, 2008 our minimum contractual payment obligations for the commitments described herein are as follows (in thousands):

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>beyond</u>	<u>Total</u>
Perot Master Services Agreement	5,382	4,900	4,880	4,839	4,837	2,025	26,863
Operating Leases	1,989	1,557	1,464	1,411	517	1,130	8,068
Sublease Income	(652)	(565)	(480)	(442)	—	—	(2,139)
Capital Leases	899	428	226	—	—	—	1,553
Guaranteed Royalty Payments	800	400	—	—	—	—	1,200
Transformation Project	1,100	—	—	—	—	—	1,100
Distribution Partner Payments	252	26	—	—	—	—	278

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE M—COMMITMENTS AND CONTINGENCIES (Continued)***Indemnification Agreements*

In the ordinary course of business, we may provide indemnification of varying scope and terms to advertisers, agencies, distribution partners, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of our breach of such agreements, services to be provided by us, or from intellectual property infringement claims made by third parties. In addition, we have entered into indemnification agreements with our directors and certain of our officers that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers. We have also agreed to indemnify certain former officers, directors and employees of acquired companies in connection with the acquisition of such companies. We maintain director and officer insurance, which may cover certain liabilities arising from our obligation to indemnify our directors, and officers and former directors, officers and employees of acquired companies, in certain circumstances. Generally, it is not possible to determine the maximum potential amount under these indemnification agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. Such indemnification agreements may not be subject to maximum loss clauses. Historically, we have not incurred material costs as a result of obligations under these agreements and we have not accrued any liabilities related to such indemnification obligations in our financial statements, except, however, in the fourth quarter of 2007 we accrued plaintiffs' attorney fees and class representative incentive awards of \$1,312,270 regarding the Lane's Gifts and Collectibles class action litigation, a portion of which expense was related to our indemnification obligation to a private label partner.

See NOTE T—Subsequent Events regarding some of the matters discussed above.

NOTE N—SEGMENT INFORMATION

Historically, our merchant services segment did not meet the quantitative thresholds that required separate information to be reported. However, we have previously reported our operating results in two operating segments, performance marketing and merchant services. Further, as described in Note C—Discontinued Operations, on August 1, 2007, we divested our merchant services division, resulting in performance marketing becoming our one remaining operating segment. Our two remaining operating segments as of December 31, 2008, MIVA Media and MIVA Direct, aggregate into our one remaining reportable segment, performance marketing. Therefore no separate segment disclosures are presented as of and for the years ended December 31, 2008 and 2007.

Summarized information by geographical locations is as follows (in thousands):

	<u>Revenues</u>	<u>Long-Lived assets</u>
Year ended December 31, 2008		
United States	\$ 89,708	\$ 5,306
United Kingdom	12,307	205
Other International	14,348	167
Total	<u>\$116,363</u>	<u>\$ 5,678</u>

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE N—SEGMENT INFORMATION (Continued)**

	<u>Revenues</u>	<u>Long-Lived assets</u>
Year ended December 31, 2007		
United States	\$106,676	\$ 22,598
United Kingdom	17,329	1,154
Other International	27,045	201
Total	<u>\$151,050</u>	<u>\$ 23,953</u>

Amounts are attributed to the country of the legal entity that recognized the sale or holds the asset. Other international activity as reported in the table above relates to one of several European entities, including France that is a subsidiary of MIVA Media (UK) Ltd. In addition, activity from Sweden, Denmark, Norway and Finland is included to the extent of the private label agreement with Eniro AB. This private label agreement, originally signed in 2005, and renewed in 2008 is in conjunction with the sale of substantially all of the assets of our indirect, wholly owned subsidiary Espotting Scandinavia AB to Eniro AB.

NOTE O—RELATED PARTY TRANSACTIONS

On December 31, 2008, Seb Bishop, who resigned his position of Chief Marketing Officer and President of MIVA, Inc. on August 5, 2008, resigned from the Board of Directors. Mr. Bishop is a Director of Steakmedia Limited and also owns a 2.5% interest in Steakmedia. Steakmedia is an advertising agency owned predominately by Oliver Bishop, Mr. Bishop's brother. We used this agency to generate advertisers onto our MIVA Media Networks and invoice them for all revenue generated on our networks through their advertisers. Amounts invoiced to Steakmedia during the years ended December 31, 2008 and 2007, were \$210,447 and \$397,171, respectively.

In addition to Steakmedia, Mr. Bishop is a Director of Adjug, a company that entered into a non-cancelable sublease obligation with our MIVA Media EU division to sublet office space in Munich, Germany during the fourth quarter of 2008. This agreement has a term beginning December 1, 2008 through December 31, 2009 with annual sublease payments totaling approximately \$54,900.

Lawrence Weber, who joined our Board of Directors in June 2005, and was subsequently elected Chairman of the Board of Directors in April 2006, is the Chairman and Founder of W2 Group Inc., which owns Racepoint Group, Inc. The Company entered into an agreement in November 2005 with Racepoint for public relations professional services. For the years ended December 31, 2008 and 2007, we incurred fees from Racepoint of \$15,000 and \$84,141, respectively.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE P—INCOME TAXES**

The provision (benefit) for income taxes consists of the following (in thousands):

	For the Year Ended December 31,	
	<u>2008</u>	<u>2007</u>
Current:		
United States federal	\$ 160	\$ —
State	112	344
Foreign	(615)	153
	<u>(343)</u>	<u>497</u>
Deferred:		
United States federal and state	—	—
Foreign	—	60
	<u>—</u>	<u>60</u>
	<u><u>\$(343)</u></u>	<u><u>\$557</u></u>

The components of loss from continuing operations before income taxes are as follows (in thousands):

	For the Year Ended December 31,	
	<u>2008</u>	<u>2007</u>
United States	\$(28,951)	\$(10,605)
Foreign	(16,451)	(25,776)
	<u><u>\$(45,402)</u></u>	<u><u>\$(36,381)</u></u>

A reconciliation of the difference between the expected provision for income taxes using the statutory United States Federal tax rate and our actual provision is as follows (in thousands):

	For the Year Ended December 31,	
	<u>2008</u>	<u>2007</u>
Tax benefit using statutory United States federal tax rate	\$(15,891)	\$(12,683)
Effect of state income taxes	(32)	169
Write-down of non-deductible costs in excess of net assets of acquired companies	2,056	4,922
Non-U.S. exchange difference on intercompany loan	1,521	—
Non-U.S. tax rate differential	679	1,938
Deferred tax asset valuation allowances	9,799	5,124
Other	1,525	1,087
	<u><u>\$ (343)</u></u>	<u><u>\$ 557</u></u>

Our current tax provision (benefit) excludes the effect of stock option compensation deductible for tax purposes in the United States and overseas as these amounts were credited to additional paid-in-capital.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE P—INCOME TAXES (Continued)**

Due to our losses, there was no tax benefit recorded in 2008 and 2007. The net benefit for 2008 includes the release of an estimated US tax liability of approximately \$0.7 million, resulting from certain prior year acquisitions for which no goodwill remains, which was determined during 2008 to no longer be payable, offset by state income tax expense. The deferred tax assets were subject to corresponding valuation allowances.

Deferred taxes arise due to temporary differences in reporting of certain income and expense items for book purposes and income tax purposes. We anticipate that our taxable temporary differences will reverse over the same period as the deductible temporary differences, therefore assuring the realization of the non-reserved portion of our deferred tax assets. Details of the significant components of deferred tax assets and liabilities in the accompanying consolidated balance sheet before netting within tax jurisdictions are as follows (in thousands):

	December 31,	
	2008	2007
Deferred tax assets, short-term		
Accounts receivable allowances	\$ 92	\$ 151
Accruals	60	549
Other	15	51
Total	<u>\$ 167</u>	<u>\$ 751</u>
Fixed Assets	1,585	1,765
Intangibles	4,242	—
Accruals	2,220	1,825
Net operating losses	16,868	20,835
Valuation allowance	(24,579)	(23,989)
Total	<u>\$ 336</u>	<u>\$ 436</u>
Capitalized software	(298)	(101)
Intangibles	—	(1,086)
Other	(205)	—
Total	<u>\$ (503)</u>	<u>\$ (1,187)</u>
Net deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

Undistributed earnings in international subsidiaries are permanently invested abroad and will not be repatriated to the United States in the foreseeable future. In accordance with APB 23, because those earnings are considered to be indefinitely reinvested, no U.S. federal or state deferred income taxes have been provided thereon. Upon distribution of those earnings, in the form of dividends or otherwise, we would be subject to both U.S. income taxes (subject to an adjustment for foreign tax credits) and withholding taxes payable to the various international countries. Because of the availability of U.S. foreign tax credits, it is not practicable to determine the U.S. federal income tax liability that would be payable if such earnings were not reinvested indefinitely.

As of December 31, 2008, we had United States and non-U.S. net operating loss ("NOL") carry-forwards for tax purposes of approximately \$40.0 million and \$9.0 million, respectively. These U.S. NOL carry-forwards will expire at various dates beginning in 2019. The NOLs carry forward indefinitely in the non-U.S. entities. As of December 31, 2008, the deferred tax assets related to NOLs in the United States

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE P—INCOME TAXES (Continued)**

and international jurisdictions are fully offset by valuation allowances. We have foreign carry-forwards of \$39.0 million, however, due to the closing of offices in Germany, Italy, Spain, and Sweden, and the migration of those operations to the United Kingdom, \$30.0 million of the \$39.0 million of such NOLs have been written off by valuation allowances or deferred tax liabilities. Upon adoption of SFAS 141(R) on January 1, 2009, subsequent releases, if any, of valuation allowances established at the time of acquisition for deferred tax assets resulting from NOLs will be recorded as reductions to the income tax provision.

Utilization of the acquired United States NOLs is subject to annual limitation due to the ownership change provisions of the Internal Revenue Code. At December 31, 2008, the annual limitation is \$3.5 million, with any unused amounts eligible to be carried forward to future years. This annual limitation may result in the expiration of a portion of the affected NOLs before they are utilized.

We record liabilities for probable assessments in income taxes payable. These liabilities would relate to uncertain tax positions in a variety of taxing jurisdictions and are based on what we believe will be the ultimate resolution of these positions. The liabilities may be affected by changing interpretations of laws, rulings by tax authorities, or the expiration of the statute of limitations.

FIN48

In June 2006, the FASB issued Interpretation No. 48 ("FIN 48"), "Accounting for Uncertainty in Income Taxes—an interpretation of FASB Statement No. 109." FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition.

The Company adopted FIN 48 as of January 1, 2007. This standard modified the previous guidance provided by SFAS 5, "Accounting for Contingencies," and SFAS 109, "Accounting for Income Taxes" for uncertainties related to the Company's global income tax liabilities. In connection with this adoption of FIN 48, the Company recorded a net decrease to retained earnings of approximately \$0.7 million related to the measurement of a position previously taken with respect to certain transfer pricing adjustments reported on our foreign tax returns. This amount of unrecognized tax benefit did not materially change as of December 31, 2008.

A condensed summary of the Company's unrecognized tax benefits is presented as follows (in \$ millions):

	<u>Balance Jan-07</u>	<u>Adjustments in 2007</u>	<u>Balance Dec-07</u>	<u>Adjustments in 2008</u>	<u>Balance Dec-08</u>
Unrecognized tax benefits that affect effective tax rate upon recognition	\$ 0.6	\$ —	\$ 0.6	\$ —	\$ 0.6
Interest / Penalties	\$ 0.1	\$ —	\$ 0.1	\$ 0.1	\$ 0.2
Total Unrecognized Tax Benefits	<u>\$ 0.7</u>	<u>\$ —</u>	<u>\$ 0.7</u>	<u>\$ 0.1</u>	<u>\$ 0.8</u>

The Company recognized accrued interest and penalties related to these unrecognized tax benefits in income tax expense. As of January 1, 2008, the Company had recorded a liability of approximately \$0.1 million for interest and penalties.

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE P—INCOME TAXES (Continued)**

As of January 1, 2008, open tax years in major jurisdictions date back to 2002 due to the taxing authorities' ability to adjust operating loss carry-forwards.

It is expected that the amount of unrecognized tax benefits will change in the next twelve months. However, the Company does not expect the change to have a material impact on the results of operations or the financial position of the Company.

NOTE Q—QUARTERLY FINANCIAL SUMMARY (unaudited)

<u>2008</u>	<u>Three Months Ended</u>			
	<u>March 31</u>	<u>June 30</u>	<u>September 30</u>	<u>December 31(d)</u>
Statements of operations	(in thousands, except per share data)			
Revenues	\$32,671	\$30,163	\$ 28,167	\$ 25,362
Gross profit	17,000	15,194	14,288	12,453
Net loss	(5,127)	(6,465)	(10,526)	(23,335)
Net loss per share				
Basic	\$ (0.16)	\$ (0.20)	\$ (0.32)	\$ (0.70)
Diluted	(0.16)	(0.20)	(0.32)	(0.70)

<u>2007</u>	<u>Three Months Ended</u>			
	<u>March 31</u>	<u>June 30(a)</u>	<u>September 30(b)</u>	<u>December 31(c)</u>
Statements of operations	(in thousands, except per share data)			
Revenues	\$42,244	\$ 38,716	\$ 35,942	\$ 34,148
Gross profit	22,200	20,198	19,022	17,889
Net loss	(5,322)	(16,437)	(3,316)	(11,460)
Net loss per share				
Basic	\$ (0.17)	\$ (0.52)	\$ (0.10)	\$ (0.36)
Diluted	(0.17)	(0.52)	(0.10)	(0.36)

- (a) Includes impairment charge related to goodwill at MIVA Media Europe of \$14.0 million.
- (b) Includes impairment charge related to long-lived assets at MIVA Media Europe of \$1.4 million.
- (c) Includes impairment charge related to other tangible assets at MIVA Media US of \$4.7 million.
- (d) Includes impairment charges related to goodwill and other assets at MIVA Direct and Searchfeed of \$18.7 million.

NOTE R—EMPLOYEE BENEFIT PLAN

We provide retirement benefits to our employees through the MIVA, Inc. 401(k) Plan, pursuant to which employees may elect a number of investment options. As allowed under Section 401(k) of the Internal Revenue Code, the plan provides tax deferred salary deductions for eligible employees. The 401(k) Plan permits substantially all United States employees to contribute up to 92% of their base compensation (as defined) to the 401(k) Plan, limited to a maximum amount as set by the Internal Revenue Service. We may, at the discretion of the Board of Directors, make a matching contribution to the

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE R—EMPLOYEE BENEFIT PLAN (Continued)**

401(k) Plan. Costs charged to operations for matching contributions were \$0.06 million in 2008 and \$0.03 million in 2007.

NOTE S—TREASURY STOCK

For the year ended December 31, 2008, the Company's shares held in treasury increased by 23,340 shares or approximately \$0.03 million. This increase in treasury shares resulted from shares withheld to pay the withholding taxes upon the vesting of restricted stock units during the year.

For the year ended December 31, 2007, the Company's shares held in treasury increased by 433,178 shares or approximately \$1.9 million. This increase in treasury shares resulted from shares withheld to pay taxes in connection with the net issuances of stock options that were exercised by former executive officers. In addition, shares were withheld to pay withholding taxes upon the vesting of certain restricted stock units during the year.

NOTE T—SUBSEQUENT EVENTS*Amendment of Perot Master Services Agreement*

On February 1, 2009, the Company entered into an amendment to the Perot Master Services Agreement with Perot Systems. Under the terms of the amendment, the Master Services Agreement will expire on April 30, 2009, and certain other provisions of the Master Services Agreement have either been modified or terminated. In connection with the Amendment, the Company has issued a letter of credit to Perot Systems for approximately \$1.0 million for a portion of the remaining application development costs related to the Company's new technology platform. Additionally, the Company expects to incur approximately \$0.6 million in fees for transition services under the Amendment. It is expected that these fees will be incurred over February, March and April 2009 as the transition services are received. As a result of the February 1, 2009 amendment, payments due to Perot Systems after December 31, 2008 were reduced from 26.9 million in the table in Note M—Commitments and Contingencies to \$2.1 million due in 2009 above to \$2.1 million due in 2009.

Sale of MIVA Media Division

On March 12, 2009, we and certain of our subsidiaries entered into and consummated an Asset Purchase Agreement with Adknowledge, Inc. and certain of its subsidiaries pursuant to which we sold to Adknowledge certain assets relating to our MIVA Media Division, including the MIVA name, for cash consideration of approximately \$11.6 million, plus assumption of certain balance sheet liabilities, and subject to certain retained assets and liabilities, including assets and liabilities of the MIVA Media division in France, and post-closing adjustments (the "MIVA Media Sale").

The Company and Adknowledge made customary representations, warranties and covenants in the Asset Purchase Agreement and each party has certain indemnification obligations under the Asset Purchase Agreement. Further, the Asset Purchase Agreement prohibits the Company from competing in the business of owning and operating a pay-per-click network connecting advertisers and third party publishers for five years, and prohibits the Company from diverting or soliciting past, existing or prospective clients, customers or sources of financing of Adknowledge or from employing or soliciting for employment Adknowledge's employees (including the Company's employees that transferred to Adknowledge pursuant to the terms of the Asset Purchase Agreement) for two years. In addition, the

Table of Contents**MIVA, Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE T—SUBSEQUENT EVENTS (Continued)**

Asset Purchase Agreement prohibits Adknowledge from employing or soliciting for employment the Company's employees who did not transfer to Adknowledge pursuant to the terms of the Asset Purchase Agreement for two years.

As of December 31, 2008 the MIVA Media Sale was not yet considered to be probable, therefore, the assets and liabilities of the division are classified as held and used, and the operations are included in continuing operating in the accompanying consolidated financial statements. The approximate amount of major classes of assets and liabilities included as part of the disposal group in the consolidated balance sheet at December 31, 2008 are as follows:

Current Assets	\$4,119
Property and equipment, net	\$4,737
Current liabilities	\$5,150
Long-term debt	\$1,378

Amendment of Bank Loan Agreement

On March 12, 2009, we entered into a Consent and Amendment to Loan and Security Agreement (the "Amendment") with Bridge Bank, which amends certain terms and conditions of the Loan Agreement. Pursuant to the Amendment, MIVA Direct became a borrower under the Loan Agreement and granted a general security interest in its assets to Bridge Bank. The Amendment further provides Bridge Bank's consent to the MIVA Media Sale, provided that the Company was required to repay immediately, out of the proceeds of the MIVA Media Sale, all outstanding advances plus any accrued interest under the Loan Agreement in the amount of approximately \$4.4 million. In addition, no further advances under the Loan Agreement will be made until the parties have agreed upon new terms and conditions for borrowing. The Amendment also provides that the letter of credit for the benefit of Perot Systems, Ltd. in the amount of \$693,628 issued by Bridge Bank be secured by a cash deposit.

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Item 15—Schedule I
Valuation and Qualifying Accounts
Years ended December 31, 2008 and 2007

<u>Description</u>	<u>Balance at the Beginning of Period</u>	<u>Charges to Earnings</u>	<u>Charges to Other Accounts</u>	<u>Acquisitions</u>	<u>Deductions</u>	<u>Balance at End of Period</u>
Allowance for doubtful accounts:						
Year Ended December 31, 2008	\$ 723	\$ 804	\$ —	\$ —	\$ (285)(2)	\$ 1,242
Year Ended December 31, 2007	\$ 1,299	\$ (107)	\$ 50(1)	\$ —	\$ (519)(2)	\$ 723
Income tax valuation allowance:						
Year Ended December 31, 2008	\$23,989	\$ 1,014	\$ (424)(1)	\$ —	\$ —	\$24,579
Year Ended December 31, 2007	\$18,325	\$ 5,124	\$ 540 (1)	\$ —	\$ —	\$23,989

- (1) Change due to foreign currency translation, which is included in other comprehensive income
- (2) Write-off fully reserved accounts receivable

EX-21.1 10 a2192041zex-21_1.htm EXHIBIT 21.1
[QuickLinks](#) -- Click here to rapidly navigate through this document

Exhibit 21.1

List of Subsidiaries

<u>Name of Subsidiary</u>	<u>State/Country of Incorporation</u>
<i>Wholly-owned Direct Subsidiaries</i>	
B&B Advertising, Inc.	Delaware
MIVA Direct, Inc.	Delaware
MIVA Small Business Solutions, Inc.	Delaware
Who Midco Corporation	Delaware
<i>Wholly-owned Indirect Subsidiaries</i>	
MIVA Media International, Inc.	Delaware
MIVA (UK) Ltd.	United Kingdom
Spotting Media Ireland Ltd.	Ireland
Spotting Scandinavia AB	Sweden
MIVA (France) S.a.r.l	France
MIVA Media S.L.	Spain
MIVA (Deutschland) GmbH	Germany
MIVA (Italia) S.r.l.—a socio unico	Italy

QuickLinks

Exhibit 21.1

List of Subsidiaries

APPENDIX GG

(11 Pages Total- Including This Page)

Exhibit A



Trademarks

<u>Mark</u>	<u>Registration Number</u>
MIVA MEANS BUSINESS	858104
MIVA MEANS BUSINESS	858105
MIVA RAINMAKER	864839
MIVA MEDIA	868960

Also see Attachments 1,2, and 3.

Attachment 1

UNITED STATES FEDERAL TRADEMARK APPLICATIONS / REGISTRATIONS

<u>Mark</u>	<u>App. No./ App. Date</u>	<u>Reg. No. / Reg. Date</u>	<u>Current Owner</u>
MIVA INLINE	78/994,933 8/04/2006	3,503,165 9/16/2008	MIVA Small Business Solutions, Inc.
MIVA	75/371,296 10/10/1997	2,225,424 2/23/1999	MIVA Small Business Solutions, Inc.
MIVA MERCHANT	78/592,979 3/23/2005	3,119,681 7/25/2006	MIVA Small Business Solutions, Inc.
MIVA MARKETPLACE	78/686,752 8/05/2005	3,144,895 9/19/2006	MIVA Small Business Solutions, Inc.
MIVACENTRAL	78/493,151 10/01/2004	3,179,269 12/05/2006	MIVA Small Business Solutions, Inc.
MIVACENTRAL	78/492,440 9/30/2004	3,182,540 12/12/2006	MIVA Small Business Solutions, Inc.
	78/589,218 3/17/2005	3,254,184 6/19/2007	MIVA Small Business Solutions, Inc.
MIVA	78/589,227 3/17/2005	3,254,185 6/19/2007	MIVA Small Business Solutions, Inc.
	78/589,252 3/17/2005	3,254,186 6/19/2007	MIVA Small Business Solutions, Inc.
FINDWHAT.COM	75/651,445 3/10/1999	2,462,416 6/19/2001	MIVA, Inc.
FIND WHAT YOU'RE LOOKING FOR	75/680,567 5/6/1999	2,493,181 9/25/2001	MIVA, Inc.
TRAFFICBUILDER (Supplemental Register)	78/249,690 5/14/2003	2,878,070 8/24/2004	MIVA, Inc.
BIDOPTIMIZER	78/249,667 5/14/2003	2,893,286 10/12/2004	MIVA, Inc.



AUTO BID (Supplemental Register)	78/249,711 5/14/2003	2,896,470 10/19/2004	MIVA, Inc.
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UNITED STATES FEDERAL TRADEMARK APPLICATIONS / REGISTRATIONS

<u>Mark</u>	<u>App. No./ App. Date</u>	<u>Reg. No. / Reg. Date</u>	<u>Current Owner</u>
CRUISE CONTROL	78/249,700 5/14/2003	2,899,567 11/2/2004	MIVA, Inc.
AUTOREPLENISH	78/249,685 5/14/2003	2,901,597 11/9/2004	MIVA, Inc.
ADANALYZER	78/249,708 5/14/2003	2,901,598 11/9/2004	MIVA, Inc.
BUSINESSBUILDER	78/249,681 5/14/2003	2,904,802 11/23/2004	MIVA, Inc.
PERFORMANCE-DRIVEN MARKETING	78/249,655 5/14/2003	2,954,712 5/24/2005	MIVA, Inc.
FINDWHAT.COM	78/318,902 10/27/2003	2,964,997 7/5/2005	MIVA, Inc.
INTELLIMAP	78/337,404 12/6/2003	3,032,917 12/20/2005	MIVA, Inc.
ADREVENUE XPRESS	78/492,518 9/30/2004	3,188,692 12/26/2006	MIVA, Inc.

Attachment 2

EUROPEAN COMMUNITY TRADEMARK APPLICATION / REGISTRATIONS




<u>Mark</u>	<u>App. No./ App. Date</u>	<u>Reg. No./ Reg. Date</u>	<u>Current Owner</u>
MIVA	1456748 1/11/2000	1456748 2/15/2001	MIVA Small Business Solutions, Inc.
MIVA MERCHANT	4366712 4/1/2005	4366712 3/13/2006	MIVA Small Business Solutions, Inc.
MIVA	4366721 4/1/2005	4366721 6/8/2006	MIVA Small Business Solutions, Inc.
	4369021 4/1/2005	4369021 5/15/2006	MIVA Small Business Solutions, Inc.
	4369039 4/1/2005	4369039 5/15/2006	MIVA Small Business Solutions, Inc.
MIVA MEANS BUSINESS	4503082 6/10/2005	4503082 7/13/2006	MIVA Small Business Solutions, Inc.
MIVA MEDIA	4532883 7/8/2005	4532883 6/8/2006	MIVA Small Business Solutions, Inc.
MIVA MARKETPLACE	4625836 9/2/2005	4625836 7/26/2006	MIVA Small Business Solutions, Inc.
BEFIRST	1843671 9/7/2000	1843671 4/26/2002	MIVA, Inc.
FINDWHAT.COM	1844166 9/7/2000	1844166 4/24/2002	MIVA, Inc.
MIVA RAINMAKER	4619326 8/26/2005	4619326 7/27/2006	MIVA, Inc.

Attachment 3

CANADIAN TRADEMARK APPLICATIONS / REGISTRATIONS

<u>Mark</u>	<u>App. No./ App. Date</u>	<u>Reg. No./ Reg. Date</u>	<u>Current Owner</u>
	1,252,013 3/29/2005	TMA711,644 4/11/2008	MIVA Small Business Solutions, Inc.
	1,252,014 3/29/2005	TMA711,646 4/11/2008	MIVA Small Business Solutions, Inc.
MIVA	1,252,015 3/29/2005	TMA711,645 4/11/2008	MIVA Small Business Solutions, Inc.
MIVA MERCHANT	1,252,016 3/29/2005	TMA689,350 6/7/2007	MIVA Small Business Solutions, Inc.

INTERNATIONAL MARK APPLICATIONS AND REGISTRATIONS

<u>Mark</u>	<u>Reg. No. / Reg. Date</u>	<u>Country / Current Status</u>	<u>Current Owner</u>
MIVA MERCHANT	847182 3/29/2005	China - granted Japan - granted Norway - granted	MIVA Small Business Solutions, Inc.
	855911 3/29/2005	China - granted Japan - granted Korea - granted Norway - granted	MIVA Small Business Solutions, Inc.
MIVA	855913 3/29/2005	China - refusal appealed; awaiting decision Japan - granted Korea - granted Norway - granted	MIVA Small Business Solutions, Inc.
	855914 3/29/2005	China - refusal appealed; awaiting decision Japan - granted Korea - granted Norway - granted	MIVA Small Business Solutions, Inc.
MIVA MARKETPLACE	864086 8/17/2005	China - refusal appealed; awaiting decision Korea - granted Norway - granted	MIVA Small Business Solutions, Inc.
	821164 12/05/2003	China - granted Japan - granted Norway - granted	MIVA, Inc.
FINDWHAT.COM	824309 12/5/2003	Australia - granted China - granted Japan - granted Korea - granted	MIVA, Inc.

TRADEMARK