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WESTERN DISTRICT OF WASHINGTON
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TY ANDERSON, et al.,

Defendant.

No. C00-1843P

ORDER ON STIPULATED
PRELIMINARY INJUNCTION

This matter came before the Court on a stipulated preliminary injunction. This Court hereby adopts the findings, and the majority of orders contained in the stipulated injunction. However, this Court declines to enjoin third parties who are not currently before it. For this reason, this Court will not adopt the stipulated preliminary injunction in its entirety. Paragraphs 8, 9, 10, and 11 shall be omitted from this Court's order. This Court hereby adopts the remaining provisions of the stipulated preliminary injunction. IT IS SO ORDERED.

Dated this 9 day of November, 2000.

Marsha J. Pechman
Marsha J. Pechman
United States District Judge

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Order on stipulated preliminary injunction to c, MSP

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WESTERN DISTRICT OF WASHINGTON
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TO JUDGE MR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION

Plaintiff,

v.

TY ANDERSON, *et al.*,

Defendants.

No. C00-1843P

STIPULATED PRELIMINARY
INJUNCTION

Plaintiff, the Federal Trade Commission ("Commission"), has filed a complaint for a permanent injunction and other relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). It applied for a Temporary Restraining Order ("TRO") pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65. Defendants Ty Anderson, 583 665 B.C. Ltd., Virtualynx Internet, Inc., and Charlo Barbosa have stipulated to the entry of a preliminary injunction without a hearing.

FINDINGS

It is the finding of this Court that:

1 1. This Court has jurisdiction of the subject matter of this case and there is good
2 cause to believe it will have jurisdiction of all named parties.

3 2. There is good cause to believe that irreparable harm to the public will continue
4 without entry of this Order.

5 3. Weighing the equities and considering the Commission's likelihood of ultimate
6 success, a preliminary injunction is in the public interest.

7 4. This Stipulated Preliminary Injunction does not constitute and shall not be
8 interpreted to constitute either an admission by defendants or a finding by this Court that the
9 defendants have engaged in violations of the FTC Act.
10
11

12 **ORDER**

13
14 **Definitions**

15
16 For purposes of this preliminary injunction, the following definitions shall apply:
17

18 A. "Document" is synonymous in meaning and equal in scope to the usage of the
19 term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings,
20 graphs, charts, photographs, audio and video recordings, computer records, and
21 other data compilations from which information can be obtained and translated, if
22 necessary, through detection devices into reasonably usable form. A draft or non-
23 identical copy is a separate document within the meaning of the term.

24 B. "Defendants" means Ty Anderson, 583 665 B.C. Ltd., Virtualynx Internet, Inc.,
25 and Charlo Barbosa, and each of them and their successors, assigns, officers,
26 agents, servants, employees, subsidiaries or affiliates, and those persons in active
27 concert or participation with them who receive actual notice of this Order by
28 personal service or otherwise, whether acting directly or through any entity,

1 corporation, subsidiary, division, or other device.

- 2 C. "Internet" means a worldwide system of linked computer networks that use a
3 common protocol to deliver and receive information. The "Internet" includes, but
4 is not limited to, the following forms of electronic communication: electronic mail
5 and mailing lists, the World Wide Web ("web"), bulletin boards and news groups,
6 chat groups, remote computer access (telnet), and file transfer protocol (ftp).
- 7 D. "URL" is an abbreviation for Uniform Resource Locator. Each Web page and
8 Web site has a distinct URL, such as www.pornopictures.com, that serves as a
9 unique Internet address for that Web site or Web page.
- 10 E. A "Web site" is a set of electronic documents, usually a home page and
11 subordinate pages, readily viewable on a computer by anyone with access to the
12 Internet, standard software, and knowledge of the Web site's URL.
- 13 F. A "Web page" is a single electronic document within a Web site, readily viewable
14 on a computer by anyone with access to the Internet, standard software, and
15 knowledge of the Web page or Web site's URL. Web site visitors generally first
16 link to its "home page," which is a Web page that serves as an index, or gateway,
17 to the rest of the Web site's contents.
- 18 G. "Line subscriber" means an individual or entity in the United States who has
19 arranged with a local exchange carrier to obtain local telephone service provided
20 through an assigned telephone number or numbers, and to be billed for such
21 service on a monthly or other periodic basis.
- 22 H. "LEC" or local exchange carrier means the telephone company in the United
23 States from which a line subscriber receives his or her telephone bill.
- 24 I. "Long-distance provider" means any entity that offers or provides line subscribers
25 with the capability to complete telephone calls outside of the service area of their
26 LEC.
- 27 J. "Telephone-billed transaction" means any purchase or purported purchase of a
28 good or service that is charged to a line subscriber's telephone bill, but excluding:

1 (1) purchases solely of common carrier transmission services; (2) purchases of
2 intrastate services regulated by a state public service or public utility commission;
3 (3) purchases of services accessed by dialing a 900 number or other number that
4 can be blocked by the line subscriber pursuant to 47 U.S.C. § 228(c). For
5 purposes of this Order, any service in which the service provider advertises,
6 promotes, directs, controls or provides the content of communications provided or
7 exchanged through the service is not a common carrier transmission service.

8 K. "Videotext services" means visual (and possibly audio) information or
9 entertainment services offered over the Internet through individual web sites.

10 L. "Audiotext services" means information or entertainment services offered over
11 the telephone through any dialing pattern.

12 M. "FTC" means the Federal Trade Commission.

13 N. "Dialer not approved by the FTC" means software or other device that directly or
14 indirectly causes a line subscriber's computer modem to dial a telephone number
15 to access videotext or audiotext services without express verifiable authorization
16 from the line subscriber, in a form acceptable to the plaintiff, that (1) the line
17 subscriber is the consumer who wishes to access the videotext or audiotext
18 services or (2) he or she accepts or authorizes the purchase of such services.

19
20
21 **PROHIBITED BUSINESS ACTIVITIES**

22 **I.**

23 **IT IS THEREFORE ORDERED** that, in connection with the billing and collection for
24 videotext services or audiotext services, defendants are hereby enjoined until further order of this
25 Court from offering or supplying any goods or services over the Internet to consumers in the
26 United States in which the consumers are given an opportunity to pay for such goods or services
27 with the use of a dialer not approved by the FTC.
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II.

IT IS FURTHER ORDERED that, in connection with the billing and collection for videotext services or audiotext services, defendants are hereby enjoined until further order of this Court from making, directly or through any intermediary, expressly or by implication, orally or in writing:

- A. Any representation that a line subscriber is obligated to pay for the purchase of any videotext services or audiotext services that the line subscriber did not expressly authorize.
- B. Any representation that a line subscriber is obligated to pay for any charge on the basis that videotext services or audiotext services were purchased or accessed by other consumers using the line subscriber's telephone line.
- C. Any misrepresentation that any charge for the purchase of videotext services or audiotext services relates to a common carrier transmission charge, including, but not limited to, misrepresenting that a charge is for long-distance telephone transmission.
- D. Any representation that a purchase of videotext services or audiotext services has been authorized by a line subscriber unless the defendants obtain express verifiable authorization from the line subscriber, in a form acceptable to the plaintiff, that (1) the line subscriber is the consumer who wishes to access the videotext or audiotext services or (2) he or she accepts or authorizes the purchase of such services.
- E. Any misrepresentation of the amount owed by the line subscriber for the services actually rendered.

III.

IT IS FURTHER ORDERED that the defendants are hereby enjoined until further order of this Court from billing any line subscriber or causing any line subscriber to be billed, or

1 collecting or attempting to collect payment, directly or indirectly, from any line subscriber, for
2 any videotext services or audiotext services without the express verifiable authorization from the
3 line subscriber that he or she accepts or authorizes the purchase of such services. It is further
4 provided that the fact that a telephone-billed transaction may have originated from a line
5 subscriber's telephone or telephone line does not in and of itself constitute express authorization
6 by the line subscriber to be billed for the charge for the transaction.

7
8 **IV.**

9 **SERVICE OF ORDER**

10
11 **IT IS FURTHER ORDERED** that agents of the Commission may serve copies of this
12 Order by any means, including facsimile transmission or electronic mail, upon any entity or
13 person that may be subject to any provision of this Order.

14
15 **V.**

16 **DISTRIBUTION OF ORDER BY DEFENDANTS**

17
18 **IT IS FURTHER ORDERED** that defendants shall immediately provide a copy of this
19 Order to:

20 A. Each affiliate, subsidiary, division, successor, assign, officer, director, employee,
21 or Web master of the defendants;

22 B. Any party supplying dialers not approved by the FTC to any of the defendants;
23 and

24 C. Any party with whom any of the defendants have contractual relations and whom
25 the defendants know are using dialers not approved by the FTC,

26 and shall, within ten (10) days from the date of entry of this Order, provide the Commission with
27 a sworn statement that defendants have complied with this provision of the Order, which
28 statement shall include the names, addresses, telephone numbers, and (if known) the e-mail

1 addresses of each such person or entity who received a copy of the Order.

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3 **VI.**

4 **CONSUMER REPORTS**

5
6 **IT IS FURTHER ORDERED** that, pursuant to Section 604 of the Fair Credit Reporting
7 Act, 15 U.S.C. § 1681b, any consumer reporting agency may furnish the Commission with a
8 consumer report concerning any defendant.

9
10 **VII.**

11 **CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF**

12
13 **IT IS FURTHER ORDERED** that for the purposes of this Order, all correspondence
14 and pleadings to the Commission shall be addressed to:

15
16 Patricia A. Hensley
17 Attorney
18 Federal Trade Commission
19 Suite 2896, Jackson Federal Building
20 915 Second Avenue
21 Seattle, WA 98174
22 (206) 220-4483 (voice)
23 (206) 220-6366 (facsimile)

24
25 **VIII.**

26 **PRESERVATION OF RECORDS**

27 **IT IS FURTHER ORDERED** that, until further order of this Court, defendants, and
28 their affiliates, subsidiaries, agents, independent sales organizations, officers, servants, and
attorneys, and those persons in active concert or participation with them who receive actual
notice of this order by personal service or otherwise, are hereby restrained and enjoined from:

- 1 A. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise
2 disposing of, in any manner, any: books; contracts; written or printed records;
3 computer tapes, discs or other computerized records; handwritten notes;
4 accounting data; personal and business canceled checks (fronts and backs) and
5 check registers; correspondence; forms; advertisements; brochures; manuals; bank
6 statements and banking records; customer lists; customer files; invoices;
7 telephone records; ledgers; payroll records; scripts; postal receipts; appointment
8 books; copies of federal, provincial, state, or local business or personal income or
9 property tax returns; or other documents or records of any kind that relate to the
10 business or personal finances of the defendants in their possession, custody, or
11 control.
- 12 B. Failing to make and keep books, records, bank statements, documents indicating
13 title to real or personal property, and any other data which, in reasonable detail,
14 accurately and fairly reflect the transactions and dispositions of the assets of
15 defendants.

16
17 **IX.**

18 **OBLIGATIONS OF LOCAL EXCHANGE CARRIERS AND LONG-DISTANCE**
19 **PROVIDERS**

20
21 **IT IS FURTHER PROVIDED** that, until further order of this Court, any LEC or long-
22 distance provider that holds, controls, or maintains custody of any account or asset of any
23 defendant, or any person in active concert or participation with any defendant, or has held,
24 controlled, or maintained custody of any such account or asset at any time since January 1, 2000,
25 shall:

- 26
27 A. Prohibit the defendants and any person in active concert or participation with any
28 defendant, from withdrawing, removing, assigning, transferring, pledging,

1 encumbering, disbursing, dissipating, converting, selling, or otherwise disposing
2 of any such asset except as directed by further order of the Court.

3 B. Provide counsel for the Commission, within five (5) business days of receiving a
4 copy of this Order, a sworn statement setting forth, for any services provided on
5 behalf of the defendants or on behalf of any person in active concert or
6 participation with defendants:

- 7 1. The number of consumers billed per month;
- 8 2. The number of telephone calls completed each month;
- 9 3. The number of minutes billed to consumers each month;
- 10 4. The total charges billed to consumers each month;
- 11 5. The number of telephone calls adjusted each month;
- 12 6. The number of minutes adjusted each month; and
- 13 7. The total amount of charges adjusted each month.

14 C. Preserve and, upon request by the Commission, promptly provide the Commission
15 with copies of all records or other documentation pertaining to such account or
16 asset, including but not limited to copies of contracts, correspondence with
17 defendants, and correspondence from consumers concerning the services provided
18 on behalf of defendants. Any such LEC or long distance provider may arrange for
19 the Commission to obtain copies of any such records which the Commission
20 seeks, provided that such LEC or long distance provider may charge a reasonable
21 fee not to exceed fifteen cents per page copied.

22
23 X.

24 **OBLIGATIONS OF WEB SITE HOSTS**

25
26 **IT IS FURTHER ORDERED** that, until further order of this Court, the defendants and
27 any party hosting any Web pages or Web sites for defendants shall:

- 1 A. Immediately take whatever steps may be necessary to ensure that Web pages or
2 Web sites operated, in whole or in part, under the names pornopictures.com,
3 cartoonporn.com, and alienporn.com cannot be accessed by residents of the
4 United States if such Web pages or Web sites utilize dialers not approved by the
5 FTC.
- 6 B. Prevent the destruction or erasure of Web pages or Web sites that are or have been
7 operated, in whole or in part, under the names pornopictures.com,
8 cartoonporn.com, and alienporn.com by preserving such documents in CD Rom
9 format, or the format in which they are currently maintained.
- 10 C. Within 10 calendar days of the date of this Order, notify counsel for the FTC of all
11 telephone numbers that have programmed to be dialed to access defendants'
12 videotext or audiotext services, and the dates during which they were programmed
13 to be dialed to access these services.
- 14 D. Within 10 calendar days of the date of this Order, notify counsel for the FTC of
15 any other Web page or Web sites operated, controlled, or hosted by defendants
16 which are known by the defendants to utilize dialers not approved by the FTC.

17
18 **XI.**

19 **OBLIGATIONS OF DOMAIN NAME REGISTRARS**

20
21 **IT IS FURTHER ORDERED** that, until further order of this Court, in the event
22 defendants violate Paragraph I of this Order with respect to the pornopictures.com,
23 cartoonporn.com or alienporn.com Web sites, counsel for the Commission, after giving 24 hours'
24 notice to the defendants, may notify Network Solutions, Inc., and any other domain name
25 registrar for such Web site, and upon such notification, the domain name registrar shall
26 immediately suspend the registration of the domain name for such Web site, provided that any
27 notice to the defendants and to the domain name registrar shall be in the form of a sworn
28 declaration by counsel for the Commission specifying the nature of the alleged violation.

11/08/00 17:14 FAX 604 662 8321

TAYLOR WRAY

013/013

11/08/00 15:20 FAX 206 220 6366

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XII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this _____ day of _____, 2000, at _____ m.

United States District Judge

Presented by:

Patricia A. Hensley
Patricia A. Hensley
Thomas P. Rowan
Attorneys for Plaintiff
Federal Trade Commission

Ty Anderson
Ty Anderson

Charles Barbosa
Charles Barbosa

583 665 B.C. Ltd.

by: *Charles Barbosa*
Authorized Signatory
Virtualynx Internet, Inc.

by: *Charles Barbosa*
Authorized Signatory