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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF UTAH

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TRAFFIC MONSOON, LLC, a Utah Limited
Liability Company, and CHARLES DAVID
SCOVILLE, an individual,

Defendants.

**DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
RESPONSE TO THE COURT'S
NOVEMBER 3, 2016, REQUEST FOR
SUPPLEMENTAL BRIEFING**

Civil No.: 2:16-cv-00832 DB
Judge Jill Parrish

Defendant Charles D. Scoville, by and through his counsel of record, hereby respectfully submits this Memorandum of Points and Authorities in response to the Court's November 3, 2016, request for additional briefing. At the conclusion of the evidentiary hearing on the SEC's Motion for a Preliminary Injunction and Defendant Scoville's Motion to Set Aside the Receivership, the Court requested that the parties brief two issues: (1) where the sales of AdPacks took place, and

(2) whether the terms and conditions on the Traffic Monsoon website are the measure of Traffic Monsoon's obligations to its clients. The following Memorandum of Points and Authorities addresses these two issues.

TABLE OF CONTENTS

INTRODUCTION.....	<u>54</u>
ARGUMENT.....	<u>65</u>
I. THE ADPACK SALES TOOK PLACE OUTSIDE OF THE UNITED STATES....	<u>65</u>
A. The Location of the Sales is Not a Straightforward Factual Question.....	<u>65</u>
B. After Morrison Only Purchases or Sales of Securities in the United States Implicate the Anti-Fraud Provisions of the Securities Laws.....	<u>76</u>
C. The Tests for Whether a Sale Took Place in the United States Suggest That the Sales At Issue Did Not Take Place in the United States.....	<u>87</u>
D. Under EU Law Irrevocable Liability Arose 14 Days After the Consumers Clicked the Button on Their Browsers.....	<u>98</u>
E. Under a Related Securities Regulation the AdPack Sales to Buyers Outside the United States Were Offshore Transactions.....	<u>1140</u>
F. The Only Evidentiary Basis for Finding the Sales Took Place in the United States is the Servers, Which Are Insufficient Under the Law.....	<u>1244</u>
II. THE TERMS OF THE ADPACKS WERE DEFINED BY TRAFFIC MONSOON’S WEBSITE AND ITS OBLIGATIONS TO ITS CLIENTS SHOULD BE MEASURED AGAINST THE PROMISES MADE BY THE COMPANY.....	<u>1312</u>
A. Purchasers of AdPacks Agreed to the Terms and Conditions on the Traffic Monsoon Website by Clicking and Proceeding with their Purchase for Services.....	<u>1443</u>
1. There Was No \$55 Guarantee and No Promised Return or Rate of Return.....	<u>1645</u>
2. Traffic Monsoon Could Pay All Monies it Was Contractually Obligated to Pay if It Never Sold Another AdPack.....	<u>2120</u>
3. Traffic Monsoon Provided Customers with The Advertising Services it Was Obligated to Provide Under the AdPack Contract.....	<u>2224</u>
B. Under the Contracts with Its Clients, Traffic Monsoon Was Not a Ponzi Scheme Because It Was Solvent at All Times and Required No Additional “Investments” To Meet Its Contractual Obligations to Its Customers.....	<u>2322</u>
CONCLUSION	<u>2625</u>

TABLE OF AUTHORITIES

CASES

Absolute Activist Value Master Fund Ltd. v. Ficeto, 677 F.3d 60, 69 (2d Cir. 2012)	7, 10
Anderson v. Spirit Aerosystems Holdings, Inc., 827 F.3d 1229 (10th Cir. 2016).....	15
Cunningham v. Brown, 265 U.S. 1, 44 S. Ct. 424, 68 L. Ed. 873 (1924)	23
Fireclean LLC v. Tuohy, No. 1:16-CV-294-JCC-MSN, 2016 WL 4414845 (E.D. Va. June 14, 2016).....	11
Hancock v. Am. Tel. & Tel. Co., 701 F.3d 1248 (10th Cir. 2012).....	14, 15
In re Bernard L. Madoff Inv. Sec. LLC, 458 B.R. 87 (Bankr. S.D.N.Y. 2011)	23
In re Indep. Clearing House Co., 77 B.R. 843 (D. Utah 1987).....	23
In re Petrobras Sec. Litig., 150 F. Supp. 3d 337 (S.D.N.Y. 2015)	8
Maritan v. Birmingham Properties, 875 F.2d 1451 (10th Cir. 1989)	14
Morrison v. National Australia Bank Ltd., 561 U.S. 247, 130 S.Ct. 2869, 177 L.Ed.2d 535 (2010)	6, 9
Orin S. Kerr, The Next Generation Communications Privacy Act, 162 U. Pa. L. Rev. 373 (2014)	12
S.E.C. v. Mgmt. Sols., Inc., No. 2:11-CV-1165-BSJ, 2013 WL 4501088 (D. Utah Aug. 22, 2013)	23
SEC v. W.J. Howey & Co., 328 U.S. 293 (1946).....	13
Trans-W. Petroleum, Inc. v. U.S. Gypsum Co., 584 F.3d 988 (10th Cir. 2009)	13
Z-Corp v. Ancestry.Com Inc., 2016 UT App 192, 382 P.3d 652, 654	19

STATUTES

2011/83/EU Article 9(1)	9
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TREATISES

17A Am. Jur. 2d Contracts § 7 (2016).....	19
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REGULATIONS

17 C.F.R. §§ 230.901 et seq.....	10
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MEMORANDUM OF POINTS & AUTHORITIES

INTRODUCTION

For the 90% of AdPack purchasers who completed their purchases outside of the United States, the sale of AdPacks amounted to a purchase from a company operated by a man living in Manchester, United Kingdom, by counter-parties who were outside the United States at the time they completed their transaction. In these instances, no person involved was in the United States during these sales¹ because they took place where the purchasers were at the time of the purchase; or, from a more technical perspective, where the laws of the various nations say they were when they incurred irrevocable liability to complete the transaction under the laws applicable to the buyer.

The AdPacks were contracts between Traffic Monsoon and its customers, and those contracts had terms, as do all contracts. The terms offered the purchasers advertising services and a revenue sharing opportunity for the purchase price. Both the advertising services and the revenue sharing possibility were described on the Traffic Monsoon website. There, Traffic Monsoon promised to share a portion of its revenue from the prior 24 hours' sales with any purchaser who qualified, subject to a limit of \$55 per Adpack, but did not and could not guarantee that there would be revenue to share. In that regard, Traffic Monsoon's website explained: "[W]e do not guarantee reaching \$55, because earnings from revenue sharing is completely dependent upon the sales of ad services." Exhibit 1–3 at p. 21. These terms and promises were not illusory and reflect the economic reality of Traffic Monsoon's business. Indeed, at present, Traffic Monsoon has more than enough money to fully pay all AdPack purchasers the revenue sharing they were entitled to receive per the terms they accepted when they purchased their AdPacks.

The SEC's position at the evidentiary hearing was that the sales took place in the United States even if the parties were outside the United States because Traffic Monsoon's servers were in the United States. As to the terms of the contract, the SEC and the Receiver's accounting expert

¹ Or at least the SEC has offered no evidence that any sale of an AdPack to a non-U.S. resident took place when either Scoville or the purchaser was in the United States.

took the position—implicitly, if not explicitly—that the actual terms and practice of the revenue sharing offered by Traffic Monsoon are irrelevant. Instead, it appears the SEC’s position is dependent on rewriting the terms of the AdPack sales agreement from what Traffic Monsoon and its clients agreed upon and practiced to an unconditional guaranteed return of \$55 on every AdPack even though the SEC offered no evidence: (i) that Scoville or Traffic Monsoon ever offered or made such a guarantee, (ii) that this was the customary practice, or (iii) that any customer actually understood the AdPacks sales contracts to operate with an unconditional \$55 guarantee.

As further explained below, the SEC’s positions lack merit. Sales between two parties not residing in the United States do not take place in the United States merely because a computer server used to facilitate the transaction is in the United States. Similarly, in making a claim of securities fraud, the SEC cannot manufacture promises for the apparent purpose of later claiming that these manufactured promises were not kept, and therefore the defendant committed fraud for failing to keep promises he did not make.

ARGUMENT

I. THE ADPACK SALES TOOK PLACE OUTSIDE OF THE UNITED STATES.

A. The Location of the Sales is Not a Straightforward Factual Question.

The first question the Court asked the parties to brief—where the AdPack transactions took place—does not lend itself to a simple and intuitive answer. However, the operative facts can be summarized as follows: (1) 90% of the AdPack purchasers were outside of the United States at the time they purchased AdPacks; (2) Scoville lived in Manchester, England, but traveled to Utah for short durations related to child custody each month; (3) the purchase and sale of AdPacks was accomplished entirely through the Traffic Monsoon website: no physical contracts were signed; (4) the AdPacks were contracts of adhesion—offers from Traffic Monsoon to buyers, who needed only to accept the offer on Traffic Monsoon’s website by clicking on a button in their web browser to form the contract; and (5) the computer servers that hosted Traffic Monsoon’s website were located in the United States, either in Georgia or in California. Unlike the sale of a physical product

in a face-to-face transaction, such a virtual transaction of entirely digital goods does not have an obvious geographical location.

B. After Morrison Only Purchases or Sales of Securities in the United States Implicate the Anti-Fraud Provisions of the Securities Laws.

The location of a sale is a key consideration in determining whether the anti-fraud provisions of U.S. securities law apply. This issue has already been extensively briefed in this case, but in short, the anti-fraud provisions reach only “purchases and sales of securities in the United States since U.S. Securities Laws do not punish deceptive conduct, but rather they punish deceptive conduct in connection with the purchase or sale of any domestic transactions in securities.” *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 130 S.Ct. 2869, 2883, 177 L.Ed.2d 535 (2010) (emphasis added). As the Supreme Court has explained, “unless there is the affirmative intention of the Congress clearly expressed to give a statute extraterritorial effect, we must presume it is primarily concerned with domestic conditions.” *Id.* at 2877. The Court then found that it was only “domestic transactions in [securities not listed on a U.S. exchange], to which § 10(b) applies.” *Id.* at 2884. The Court warned that not every sale with some connection to the United States is a domestic sale:

[I]t is a rare case of prohibited extraterritorial application that lacks *all* contact with the territory of the United States. But the presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case.

Id. The location of a sale is important then because, as the Supreme Court pointed out, Congress only indicated an intent to apply the anti-fraud provisions of the laws to sales within the United States.²

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² The parties have also extensively briefed the import of Congress’s alleged “*Morrison* fix” which did not address the issue identified by the Supreme Court.

C. The Tests for Whether a Sale Took Place in the United States Suggest That the Sales At Issue Did Not Take Place in the United States.

Since the Supreme Court’s decision in *Morrison* did not fully elaborate on what qualifies as a “domestic transaction,” the Second Circuit has taken the lead in defining the contours of a “domestic sale” under *Morrison*. The key Second Circuit case is *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 69 (2d Cir. 2012) (hereinafter sometimes referred to as “*Absolute Activist*”). In *Absolute Activist*, the plaintiffs were nine Cayman Islands-based hedge funds that hired Absolute Activist to act as their investment manager. Absolute Activist then caused the hedge funds to purchase thinly traded shares of U.S.-based companies whose stock was quoted on the OTC bulletin boards. The funds purchased the stock directly from the companies, all of which were located in the United States. The principals of Absolute Activist, including two who were residents and registered broker-dealers in the United States, already owned shares in the companies they caused the hedge funds to invest in. The Absolute Activist principals used their holdings in these same companies to execute a “pump and dump” to their personal benefit and to the hedge funds’ detriment. The plaintiff hedge funds alleged that Absolute Activist’s purchase of the penny stocks directly from the companies constituted fraud.

Despite the arguably strong presence of U.S. activity, the Second Circuit still examined whether these transactions met the “domestic transaction” requirement under *Morrison* and explained:

[R]ather than looking to the identity of the parties, the type of security at issue, or whether each individual defendant engaged in conduct within the United States, we hold that a securities transaction is domestic when the parties incur irrevocable liability to carry out the transaction within the United States or when title is passed within the United States.

Absolute Activist, 677 F.3d at 69. The Court then concluded that, although the funds purchased securities directly from the U.S.-based issuers, that allegation in the Complaint was insufficient to establish that any domestic transaction took place within the United States, and therefore, Section 10(b) did not apply under *Morrison*.

Since the decisions in *Morrison* and *Absolute Activist*, courts have provided additional guidance on what constitutes a domestic transaction. In *In re Petrobras Sec. Litig.*, 150 F. Supp. 3d 337, 341 (S.D.N.Y. 2015) the plaintiffs argued that, because the sales of securities “settled through the Depository Trust Company (the “DTC”) in New York, New York,” the sales took place in the United States.³ Although the court there agreed that settlement of the sales took place on DTC’s servers in New York, Judge Rakoff held that this fact was insufficient to bring the transactions under U.S. Securities laws. Instead, he found that settlement of a trade through servers based in the United States was the kind of “actions needed to carry out . . . transactions” that are “insufficient to satisfy *Morrison*.” *Id.* at 342 (quoting *Loginovskaya v. Batratchenko*, 764 F.3d 266, 275 (2d Cir.2014)). Computer servers settling trades are not “the transactions themselves” and therefore alleging that the servers were in the United States did not establish a domestic sale. *Id.*

Here, the foreign purchasers were outside the United States when they made their purchases of AdPacks. They entered contracts in foreign jurisdictions that are governed by foreign laws that determine when irrevocable liability arises. And, under the laws where many of the purchasers were located, irrevocable liability did not arise at the time the sale was logged in the U.S.-based servers but some 14 days later, as explained in the following section.

D. Under EU Law Irrevocable Liability Arose 14 Days After the Consumers Clicked the Button on Their Browsers.

Before delving into foreign law, it is worth revisiting the context and purpose of the inquiry: the Supreme Court held in *Morrison* that the presumption against extraterritoriality limited application of Section 10(b) to “domestic” transactions. *See* Section I(0), *supra*. Here, the SEC is attempting to call sales that took place between a company whose owner and sole employee lived in Manchester, England, and buyers who were located outside the United States “domestic” merely

³ “DTC is the nation's principal securities depository. It operates an automated, centralized system for book-entry transfers of securities positions among its participants, the beneficial owners of the securities, in accordance with their instructions.” *Whistler Investments, Inc. v. Depository Trust & Clearing Corp.*, 539 F.3d 1159, 1163 (9th Cir. 2008)

because the company maintained servers in the United States. Under the SEC's theory, a sale of electronic goods or services (say an ebook) between a woman in Bangladesh and a man in London would be "domestic" and not "extraterritorial" if through some happenstance a computer server involved in the sale was in the United States. The SEC's position would make the presumption against extraterritoriality not merely a craven watchdog, as the Supreme Court warned, but a virtually non-existent one in the modern world where nearly every transaction touches computer servers all over the world in locales the parties may not even be aware of. *Morrison* 130 S.Ct. at 2884.

Determining when and where irrevocable liability takes place requires consulting the law of the jurisdiction where the buyer was at the time of the purchase. For example, in the European Union, under the EU Directive 2011/83/EU, on consumer rights, "the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason."⁴ 2011/83/EU Article 9(1) (See Exhibit A hereto). AdPacks purchases were "distance contracts," so purchasers in the EU had 14 days to withdraw without giving any reason after their initial "purchase." Thus, their liability to purchase did not become "irrevocable" until the expiration of their right of withdrawal. In other words, at the time the U.S. servers logged the sale there was no irrevocable liability. Instead, irrevocable liability rose later and had nothing to do with servers, or for that matter anything else, in the United States. Under these conditions the SEC's reliance on the location of the servers has nothing to do with whether the sale was domestic.

Aside from this international regulation, the parties' meeting of the minds took place outside the United States. As noted by the Second Circuit in *Absolute Activist*, "'Commitment' is a simple and direct way of designating the point at which, in the classic contractual sense, there was a meeting of the minds of the parties; it marks the point at which the parties obligated

⁴ Under the same law, a "distance contract means any contract concluded between the trader and the consumer under an organized distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded." DIRECTIVE 2011/83/EU Article 2(7).

themselves to perform what they had agreed to perform even if the formal performance of their agreement is to be after a lapse of time.” 677 F.3d at 67–68. The territory of the United States had nothing to with the meeting of the minds of the parties. The meeting of the minds between Traffic Monsoon and its customers happened when the consumer, having visited Traffic Monsoon’s website, elected to press the button on their web browser that consummated a purchase of an AdPack; the final commitment took place when the buyer did not exercise her unconditional right of withdrawal within the statutory 14 days thereafter—not when the use of an internet server was implicated.

Either (a) choosing to press the button on the web browser, or (b) choosing not to exercise the right of withdrawal was the moment of the meeting of the minds and the act that caused irrevocable liability. These were the last volitional acts by either party to the contract. In either case, that act took place where the purchaser was located. Indeed, with regard to the sales by foreign AdPack buyers from Traffic Monsoon, there is no evidence that any volitional act took place in the United States; or to put it another way, no part of the parties’ meeting of the minds took place in the United States. At most a non-volitional act of computer record keeping took place in the United States after the meeting of the minds occurred.

E. Under a Related Securities Regulation the AdPack Sales to Buyers Outside the United States Were Offshore Transactions.

While not directly related to *Morrison*, the SEC has issued regulations regarding when a securities transaction take place offshore. Regulation S exempts certain sales to foreign buyers from the ordinary registration requirements of Section 5. *See* 17 C.F.R. §§ 230.901 *et seq.* The purpose of Regulation S is to exempt sales of securities that occur outside the United States. In its definition section, Regulation S explains that a sale of securities is an “offshore transaction” if: “(i) The offer is not made to a person in the United States” and “(ii) [a]t the time the buy order is originated, the buyer is outside the United States. . .” Thus, under Regulation S the location of a sale of securities is defined by the location of the buyer at the time of the offer and of the buy order.

Under the definition contained in Regulation S, whose purpose is to define when a sale occurs outside the United States, the AdPack sales took place outside the United States as Offshore Transactions because at the time of the offers and sales, the foreign buyers were outside the United States. This provides yet another basis to conclude that the sales took place where the buyers were: outside the United States.

F. The Only Evidentiary Basis for Finding the Sales Took Place in the United States is the Servers, Which Are Insufficient Under the Law.

During the evidentiary hearing, the SEC called D. Ray Strong, who testified that the servers based in the United States acted as virtual salespeople and receptionists and that the sales were analogous to the buyers travelling from wherever they are to the location of the servers to execute the purchase of AdPacks. (*See* Evidentiary Hr’g Tr. 241:13–16 (Nov. 3, 2016)).⁵ This is the only apparent basis for the SEC to argue that the transactions took place in the United States.

There is no principled difference between the SEC’s position here and the position rejected by Judge Rakoff in the *Petrobras* case. The role of the server here was comparable to that of the DTC’s computers in their office in New York City. As explained above, in that case the mere fact that a computer processed and stored information “needed to carry out . . . transactions” was insufficient. Instead, Judge Rakoff looked at where the sales transaction itself took place, not where the computers that facilitated it were. This approach is sensible because, as other courts have recognized, “the physical location of a server where information published to the internet is stored will often be a matter of happenstance, known neither to the writer nor the reader.” *Fireclean LLC v. Tuohy*, No. 1:16-CV-294-JCC-MSN, 2016 WL 4414845, at *6 (E.D. Va. June 14, 2016).

Basing territoriality analysis on the location of a server is fraught for another reason. The location of a computer server in a particular geographic location is, in important ways, merely virtual. “[T]he very idea of online data being located in a particular physical ‘place’ is becoming

⁵ It is not clear why Strong chose this analogy. Since any network communication is a two-way communication he could just as easily have chosen to say that it was as if the whole company had picked-up and travelled to where the buyer was, but adopting that analogy (no less strained than the one he chose) would not have served the SEC’s or his own financial interests.

rapidly outdated” because computer files can be fragmented and dispersed across many servers. *See* Orin S. Kerr, The Next Generation Communications Privacy Act, 162 U. Pa. L. Rev. 373, 408 (2014).

In any event, there is no case post-*Morrison* finding that the anti-fraud provisions of U.S. securities laws apply to transactions that are otherwise-extraterritorial merely because a server located in the United States was involved in the transaction. This is even more relevant as cloud-computing makes server location more and more difficult to ascertain or control, finding a purchase to have taken place in the United States merely because a server was located here risks the kind of conflicting regulatory regimes that the Supreme Court warned against in *Morrison*.

Simply put, the parties to the sale of AdPacks were not within the United States in 90 percent of the transactions at issue in this case. The SEC’s reliance on the server location to effectively eliminate the presumption against extraterritoriality has been rejected by a respected court in the Southern District of New York in a similar context and should be disregarded by this Court as well. The sales took place where the purchasers were, which in this case, is outside the United States.

II. THE TERMS OF THE ADPACKS WERE DEFINED BY TRAFFIC MONSOON’S WEBSITE AND ITS OBLIGATIONS TO ITS CLIENTS SHOULD BE MEASURED AGAINST THE PROMISES MADE BY THE COMPANY.

Whether Traffic Monsoon’s actions are judged against the contract it actually offered to its customers on its website or against some other contract imputed by the SEC is perhaps the key legal question in this case. Under ordinary contract law, the terms and conditions on the website formed the enforceable agreement between the parties and there is no indication that Traffic Monsoon ever modified, or failed to comply with, those terms. Those terms create an advertising business with a revenue sharing aspect that allows Traffic Monsoon to market its services effectively and profitably. If it is not subjected to compliance with contracts it never entered, Traffic Monsoon is a solvent company offering market-leading traffic exchange services to satisfied customers. It is not a Ponzi scheme.

The SEC's theory of its case hinges on a promise of and automatic and unconditional "returns" of \$55 from Traffic Monsoon to its clients on each AdPack sale. The fatal flaw in this theory is that Traffic Monsoon never made such a promise. From the initial filing of the SEC's complaint into the evidentiary hearing, the Commission has consistently sought to ignore perhaps the most fundamental rule of contract interpretation: courts look to the unambiguous agreement of the parties evidenced by the language within the four corners of the contract to determine the legally binding terms. *Trans-W. Petroleum, Inc. v. U.S. Gypsum Co.*, 584 F.3d 988, 993 (10th Cir. 2009) (citing *Giusti v. Sterling Wentworth Corp.*, 201 P.3d 966, 975 (Utah 2009)). Instead of basing its case on the parties' agreement, the SEC has attempted to unilaterally re-write the agreements between Traffic Monsoon and the AdPack purchasers. Without rewriting the contract, the SEC's case crumbles.

The Court requested that the parties brief the question of what impact the terms on the Traffic Monsoon website have on the matters before the Court. Simply stated, to sustain its case the SEC must prove that Traffic Monsoon and Scoville made some misrepresentation to consumers or failed to make a material disclosure in connection with the sale of a security. Because the only evidence of representations to consumers introduced by the SEC in this matter are those on the Traffic Monsoon website, to prevail the SEC must demonstrate that something within the terms of Traffic Monsoon's website is inaccurate.

A. Purchasers of AdPacks Agreed to the Terms and Conditions on the Traffic Monsoon Website by Clicking and Proceeding with their Purchase for Services.

The SEC's theory of its case is that Traffic Monsoon sold customers "investment contracts." *See e.g.* D.E. 3 at 22 ("The AdPacks are securities because they satisfy the three-part test for investment contracts outlined in *SEC v. W.J. Howey & Co.*, 328 U.S. 293, 301 (1946)"). "Whether a particular investment constitutes a security depends upon the facts and circumstances of the case. Substance is exalted over form and emphasis is placed on economic reality." *Maritan v. Birmingham Properties*, 875 F.2d 1451, 1456 (10th Cir. 1989) (citations omitted).

Here the AdPack had a simple and finite number of terms as described by the Receiver during cross examination:

- Q. And so that if we were to look -- and I'm just asking you, if we were to look at the contract, it's if I pay \$50 for an AdPack, I get a thousand visits, 20 banner ads, the opportunity to participant in revenue sharing, and we didn't say this before, but up to \$55, correct?
- A. Right.
- Q. But the conditions for that are that I qualify and that there's revenue, correct?
- A. That's right. That's what the website says.
- Q. Do you understand -- do you have any understanding of any other contract that people entered into with Traffic Monsoon when they bought an AdPack?
- A. I was told there weren't any. It was all based on the website.
- Q. Okay. And what we have just described, that, in your mind, accurately describes the contract between the purchaser of an AdPack and Traffic Monsoon?
- A. That's what the website says that they were promising.

Evidentiary Hr'g Tr. 117:10–118:2 (Nov. 1, 2016) (emphasis added); *see also* Exhibit 1–3 introduced at Evidentiary Hr'g.⁶ The terms on the website, according to the Receiver, constitute the contract—or as the SEC would have it, “investment contract”—between Traffic Monsoon and AdPack purchasers.

The terms on the website, which the Receiver summarized, constitute an enforceable click-wrap contract. “Click-wrap” is a frequently-used term for agreements requiring a computer user to “consent to any terms or conditions by clicking on a dialog box on the screen to proceed with [a] . . . transaction.” *Hancock v. Am. Tel. & Tel. Co.*, 701 F.3d 1248, 1255 (10th Cir. 2012) (*citing Feldman v. Google, Inc.*, 513 F.Supp.2d 229, 236 (E.D.Pa.2007)). Click-wrap agreements are increasingly common and “have routinely been upheld.” *Id.* (internal citation omitted). In applying general contract principles, courts evaluate whether a click-wrap agreement's terms were clearly presented to the consumer, the consumer had an opportunity to read the agreement, and the consumer manifested an unambiguous acceptance of the terms. *Id.* (*citing Guadagno v. E*Trade Bank*, 592 F.Supp.2d 1263, 1271 (C.D.Cal. 2008)).

⁶ In case there is any ambiguity, the Receiver described qualifying: “you were required to qualify your AdPacks, you were required to be on the Web during a 24-hour period clicking 50 ads at five seconds each toward the end.”

Applying basic contract law, Traffic Monsoon entered two contracts with AdPack purchasers: (1) a bilateral contract for advertising services, and (2) a unilateral contract for the chance to participate in revenue sharing and earn a commission by qualifying.

Assuming *arguendo* that AdPacks are securities, in order to prevail the SEC would have to show that Traffic Monsoon made misrepresentations about the AdPacks or that the website failed to disclose some material fact related to the AdPacks. “Liability for securities fraud requires the making of a material misrepresentation.” *Anderson v. Spirit Aerosystems Holdings, Inc.*, 827 F.3d 1229, 1246 (10th Cir. 2016), as amended (July 6, 2016). The SEC, in its complaint lists several possible misrepresentations or omissions that are simply untrue based on the actual contract Traffic Monsoon entered with its customers:

1. Investors receive their \$50 back, plus a \$5 return, after about two months. Complaint at ¶ 27; *see also id.* at ¶ 29.
2. There is no way any returns could be paid to investors without the sale of new AdPacks. This fact is not, however, disclosed to Traffic Monsoon investors. *Id.* at ¶ 38.
3. Traffic Monsoon cannot in fact deliver the numbers of visitors it has promised to AdPack purchasers. *Id.* at ¶ 41.

For each representation, the SEC’s case rests upon a disregard for the actual contracts entered into between Traffic Monsoon and its customers or the disclosures made on Traffic Monsoon’s website. (See Exhibit B hereto, which is the updated pdf version of the Traffic Monsoon website provided to the Defendant’s counsel on Nov. 21, 2016, after the evidentiary hearing and illustrates that a customer must accept the Terms of Service by clicking the appropriate box.).

1. There Was No \$55 Guarantee and No Promised Return or Rate of Return.

The SEC’s gripe with Traffic Monsoon is largely concentrated around the issue of “returns” and the amount that would be paid. For example, while in one paragraph the Complaint alleges that, “[t]he website provides no assurance that the investor’s ‘bucket’ will ever reach the \$55 ‘fill

line,”” in literally the next paragraph the Complaint proceeds to equate historical revenue sharing to a promised rate of return of 10% on each AdPack. *Id.* at ¶¶ 26–27.

This rewriting of the contract is not limited to the Complaint. During his testimony at the evidentiary hearing the SEC’s witness and Receiver’s accountant, Ray Strong, testified repeatedly that Traffic Monsoon lost \$5 for every AdPack it sold.⁷ Indeed, when asked the terms of an AdPack, Strong ignored all aspects of the contract except the SEC’s manufactured \$55 return:

Q. What's your understanding of the terms of an AdPack?

A. Well, according to the website, if someone paid \$50, then they would get -
- they had the opportunity to receive \$55.

Evidentiary Hr’g Tr. 371:4–6. During questioning, the SEC’s counsel explicitly stated that each “additional [AdPack] purchase creates another \$5 obligation; isn’t that correct?” Evidentiary Hr’g Tr. 432:18–19. But that is not correct, unless you rewrite the contract as the SEC favors doing.

The fact that the SEC’s case depends upon an interpretation of the AdPack that includes a guarantee of a \$55 return is perhaps best illustrated by the comparison of the following exchange⁸ between the SEC and Strong with the exchange between Strong and Scoville’s counsel on cross examination:

Q. Did Traffic Monsoon make a profit on any AdPack it sold?

A. No, because once they qualified and gave credit for the \$55, there was a loss associated with that credit.

Q. So absent the sale of new AdPacks, was there any possible way that Traffic Monsoon could have paid an AdPack purchaser \$55?

A. No.

⁷ See Evidentiary Hr’g Tr. 246:10-12 (Nov. 3, 2016) (“Well, the profit sharing component, it would depend on which purchase of the AdPack. If there was new money that came into Traffic Monsoon, then, you know, \$55 would be credited to the member's account for a payment of \$50 for the AdPack service.”); 432:20–25 (“Each additional purchase creates another \$5 amount that when ultimately qualified and credit is provided into the account, that would be another amount. I mean, when those fully qualify, they are getting \$50 for that initial AdPack and they're qualifying them at \$5. So you're losing \$5 on them.”); 348:2–7 (“[F]rom the very beginning of a single AdPack the company lost \$5, because that individual paid \$50, they received \$55 in credit in their account which they could either remove or withdraw, or they could use that to purchase additional AdPacks, and those continue to escalate.”)

⁸ In reality there were a handful of similar exchanges between Strong and Attorney Wadley during the hearing.

Evidentiary Hr'g Tr. 422:18–25.

- A. No, but, I mean, the economics of this model indicate that from the very first sale of the AdPack, they have lost money. So the only way to recoup that money was from new money.
- Q. Well, let's go through that now.
- A. Sure.
- Q. You seem to keep wanting to bring that up. So how much does an AdPack cost?
- A. An AdPack -- people were paying \$50.
- Q. So \$50. And let's just assume that \$5 goes to a sponsor.
- A. Okay.
- Q. So that would get credited to their account. So there's 45 more dollars to be divvied up, correct?
- A. \$45, correct.
- Q. And let's imagine this is the only AdPack that anyone ever sold, okay?
- A. Okay.
- Q. Now, at least according to what we've seen, Mr. Scoville represented that he would -- that between the company and the programmer, they would take six percent. So that would be another \$3, correct?
- A. Okay.
- Q. And so then there would be \$42 left, correct?
- A. Correct.
- Q. Now let's imagine the person who purchased the AdPack -- so there's \$42 in what Traffic Monsoon deemed revenue on day one, correct?
- A. What they deemed revenue, sure.
- Q. And then on day two, they are the only one who ever bought an AdPack and they qualified.
- A. Okay.
- Q. How much would be shared to them?
- A. Well, there would be \$42 at that point in time, but that's not what was happening here.
- Q. Well, there was \$42 at that time, and then how much more revenue would ever get shared to them if no one else ever bought an AdPack?
- A. Under that scenario, with one AdPack, it would be \$42.
- Q. And at least according to -- if you assume that the terms of the contract only required Traffic Monsoon to pay them if they qualified and there was revenue, then Traffic Monsoon would fully have met the terms of its contract at that point, correct, if it never got another penny in revenue?
- A. Assuming it was a contract, there would be \$42 available that it could only pay.
- Q. Sure. So that person would never get for the \$55, correct?
- A. That person would never get to the \$55.

Evidentiary Hr'g Tr. 372:10–374:9.

As demonstrated by these two exchanges, Strong's conclusion that selling AdPacks lost money is entirely a product of his stubborn insistence that each AdPack must automatically "mature" to \$55 regardless of the terms and practices related to the sale of AdPacks.

The SEC has not established that Traffic Monsoon or Scoville ever promised anyone any set return. Instead, the SEC seems to suggest that because Traffic Monsoon's revenue model allowed it to make payments in an amount equal to an average of a little more than \$1 per day per AdPack, that Traffic Monsoon created a guarantee. However, the SEC offered no evidence that Traffic Monsoon ever shared more revenue than it had received.⁹ Further, there is no evidence that Traffic Monsoon ever did anything other than share revenue it had earned.¹⁰ Unlike a Ponzi scheme, where the investment program must have new investors in order to meet its obligations to old investors, Traffic Monsoon could always afford to share the revenue it had already taken in, which is all it promised to do in its contract. If Traffic Monsoon never sold another AdPack, it would have less revenue (because about 97% of revenue allegedly came from AdPack sales) but would not have broken its promise because it only agreed to share its revenue.

In this way, the difference between the fixed return arrangement the SEC attempts to artificially create, and the actual arrangement Traffic Monsoon and its customers had, is the difference between the contract Traffic Monsoon made and could keep, and that contract Traffic Monsoon did not make and could not have kept.

⁹ In its Complaint and in testimony the SEC exhibits some confusion about the Reserve Fund that leads it to conclude that the Reserve Fund undermines the revenue sharing model. In fact, the Reserve Fund was merely a mechanism used by Traffic Monsoon to normalize sharing, eliminating wild hour-to-hour swings. The majority of daily revenue was put in reserve and then the same daily revenue was shared at roughly a one-dollar-per-AdPack-per-day rate out of the reserve fund to qualifying AdPack owners. It was only if Traffic Monsoon revenue for a day was less than \$1 per AdPack that reserves from the reserve fund (which would represent previously collected revenue that had been kept in reserve) would be shared out. If the reserve fund had no funds, or, in other words, if all revenue both past and present had been shared, then the reserve fund had no effect on the daily revenue sharing amounts. *See* Exhibit 110.

¹⁰ The reference to the Reserve Fund in the Complaint and in Scoville's testimony to the SEC is discussed in further detail below, but does not undermine this conclusion.

The SEC and its witnesses were not uniform in answering whether or when the \$55 guarantee arose, or, to put it another way, on whether the terms of the AdPack actually govern. For example, Strong testified that for AdPack purchasers who had never clicked—and thereby never qualified their AdPacks—they were not owed anything.¹¹ He described a unilateral contract offered by Traffic Monsoon to AdPack purchasers: the right to receive revenue sharing if they performed by qualifying AdPacks. “The concept of unilateral contract[is] where one party makes a promissory offer and the other accepts by performing an act rather than by making a return promise[.]”) *Z-Corp v. Ancestry.Com Inc.*, 2016 UT App 192, 382 P.3d 652, 654 (citation and internal quotation marks omitted). The essence of a unilateral contract is that one party's promise is conditional upon the other party's performance. . . .” 17A Am. Jur. 2d *Contracts* § 7 (2016). Furthermore, in a unilateral contract, the parties do not exchange promises; instead, one party makes a promise inviting the performance of an act that the other party may choose to accept (or not accept) through its performance (or nonperformance) of the specified act. *Id.*

Strong recognized that the receipt of revenue sharing was contingent on qualifying through performing, and this demonstrates that he understood that receipt of revenue sharing was conditional: an AdPack purchaser must qualify for Traffic Monsoon to be obligated to share revenue governs. However, if the “qualification” condition for revenue sharing under an AdPack is recognized as a precondition to Traffic Monsoon’s obligation to pay, the SEC and Strong have provided no explanation for why the other condition in the AdPack contract—that Traffic

¹¹ See Evidentiary Hr’g Tr. 380:20–381:7.

- “Q. Do you see that there were at least a thousand AdPack purchasers who bought AdPacks and then never clicked to qualify?
 A. Had never clicked, that's true.
 Q. So how much does Traffic Monsoon, in your understanding, owe them?
 A. I'm not sure I understand your question.
 Q. Well, they bought an AdPack for \$50 --
 A. Okay.
 Q. -- and then they never clicked. Does Traffic Monsoon owe them any money?
 A. Under that scenario, if they never clicked, they never qualified.”

Monsoon had revenue to share—also does not govern. If Traffic Monsoon was not obligated to share revenue unless it earned revenue, then it would never have financial obligations that it could not meet, meaning that it was always solvent and not a Ponzi scheme.

Whether the terms of Traffic Monsoon’s website or the SEC’s imputed \$55 guarantee is the measure of Traffic Monsoon’s business is crucial to the determination of this alleged misrepresentation. Only by ignoring the agreement Traffic Monsoon *actually* made, with its conditions on its obligation to share revenue, does the SEC’s allegation of a Ponzi scheme and fraud gain any traction at all.

2. Traffic Monsoon Could Pay All Monies it Was Contractually Obligated to Pay if It Never Sold Another AdPack.

The SEC also alleges that Traffic Monsoon made a material omission when it failed to tell investors that it could not pay “returns” without selling additional AdPacks. Complaint at ¶ 38. But again, by considering the actual contract between Traffic Monsoon and its clients, it is simple to demonstrate that both parts of this allegation are false: Traffic Monsoon could pay all it was obligated to pay even if it never sold another AdPack and it disclosed that it would only share revenue if it made revenue.

Taking those points in reverse order, the Frequently Asked Questions (FAQs) section on the Traffic Monsoon website explained, “[W]e do not guarantee reaching \$55, because earnings from revenue sharing is completely dependent upon the sales of ad services.” Exhibit 1–3 at pg. 23. Further, that the funds used to purchase an AdPack would be shared with others was also disclosed. Again, in the FAQs in answer to the question of whether a customer could get a refund, the website explained: “No refunds, because all revenues are already shared with all active members and commissions paid to your referring sponsor.” Thus, the fact that sharing of revenue would be dependent on selling advertising services and that funds used to purchase advertising were shared with earlier members were both explicitly disclosed on Traffic Monsoon’s website.

Second, Traffic Monsoon could pay all the returns it was obligated to pay even if it never sold another AdPack. Under the contract on its website, as described by the Receiver, the two

preconditions for Traffic Monsoon to be obligated to share revenue with an AdPack purchaser were that (1) the AdPacks qualified and (2) Traffic Monsoon received revenue to share. Thus, if Traffic Monsoon earned no revenue, it was not obligated to share any revenue and therefore could meet its contractual obligations to pay “returns” to its customers without paying anything at all. Or, if Traffic Monsoon ceased selling AdPacks and merely sold the other advertising services that comprised the remaining 3% of its revenue, it could still pay the “returns” it was obligated to pay by sharing a portion of the revenue it did receive from those sales. Because there was no guaranteed “rate of return” or time to reach the \$55 fill line in the terms of Traffic Monsoon’s agreements with its clients, none of this would be a violation of its contractual obligations to its clients.

Again, whether the terms of the contract Traffic Monsoon offered and its clients accepted govern or whether the SEC is allowed to effectively rewrite the contract to manufacture a fraud that it can then remedy is crucial to the determination of whether the SEC is likely to prevail in this lawsuit.

3. Traffic Monsoon Provided Customers with The Advertising Services it Was Obligated to Provide Under the AdPack Contract.

The SEC has alleged that Traffic Monsoon cannot provide all the advertising services that it has sold. This is not true as a matter of fact, and in any event the SEC has not introduced evidence that this was true prior to PayPal freezing the Traffic Monsoon accounts in a way that disrupted Traffic Monsoon’s business.

First, per the Receiver, each AdPack entitled the purchaser to “a thousand traffic exchange credits.” Evidentiary Hr’g Tr. 17:22. These views could be used at the owners’ discretion—meaning that the credits could be used to drive traffic in a way that the clients wanted, rather than all of the purchased visits simply happening at once. Evidentiary Hr’g Tr. 182:4–23.

Second, Traffic Monsoon’s business was seriously disrupted at around the same time that its sales were growing exponentially. When PayPal froze its funds in January 2016, Traffic Monsoon could no longer pay out balances from client accounts as it had done and had contracted to do. This led to customers ceasing to click and perform under the unilateral contract, which

decreased the number of visits it could produce to other customers' websites. This is not surprising. Indeed, even the Receiver guessed that if her large, reputable law firm had all its funds frozen it would lead to inability to provide services, client dissatisfaction, and claims of fraud, even though the Firm was not committing fraud. Evidentiary Hr'g Tr. 141:5–18.

The SEC has not provided any evidence to suggest that any AdPack purchaser attempted to use a credit to obtain a website visit but was unsuccessful in doing so, much less an incident that took place prior to the time PayPal froze Traffic Monsoon's accounts. Rather, the only two customers who testified were both extremely satisfied with the quality of advertising services they received. Evidentiary Hr'g Tr. 178:8–24; 201:3–8. Mr. Chaudhry also confirmed that, prior to Traffic Monsoon being shut down, he was regularly getting the traffic that he had paid for. *Id.* at 202:24–203:4.

B. Under the Contracts with Its Clients, Traffic Monsoon Was Not a Ponzi Scheme Because It Was Solvent at All Times and Required No Additional “Investments” To Meet Its Contractual Obligations to Its Customers.

Whether the terms contained on Traffic Monsoon's website govern the transactions is also necessary to the determination of this action because the SEC cannot prevail on its fraud claims without proving scienter, and its argument about scienter is based on Traffic Monsoon being a Ponzi scheme.

As noted above, Traffic Monsoon does not incur liability to share revenue with existing AdPack purchasers unless those existing AdPack owners qualify their AdPacks and Traffic Monsoon earns revenue that it can share. *See* Section II(A)(2), *supra*.

In Charles Ponzi's scheme, a 50%, in 45 days, or 100%, in 90 days, rate of return was promised and was to be generated by speculation in postage stamps. There was no postage stamp business and no business generating returns. Since that time, the label of Ponzi scheme has expanded. The District of Utah has issued an opinion giving perhaps the most comprehensive review of what constitutes a Ponzi scheme in the various circuits, naturally focusing primarily on the District of Utah and the 10th Circuit. *See generally, S.E.C. v. Mgmt. Sols., Inc.*, No. 2:11-CV-

1165-BSJ, 2013 WL 4501088 (D. Utah Aug. 22, 2013). There the Court warned against applying a Ponzi presumption in all securities cases, noting that “the ‘Ponzi presumption’ is no substitute for proof.” *Id.* at *19–20. Here, however, the SEC seems to apply the label of Ponzi scheme not because it fits the facts, but rather to avail itself of the benefit of applying that label—which, in this case, amounts to a presumption that the defendant acted with intent to defraud.¹²

The District of Utah, hearing an appeal from the bankruptcy court *en banc*, identified a number of characteristics of a Ponzi scheme:

A Ponzi scheme cannot work forever. The investor pool is a limited resource and will eventually run dry. The perpetrator must know that the scheme will eventually collapse as a result of the inability to attract new investors. The perpetrator nevertheless makes payments to present investors, which, by definition, are meant to attract new investors. He must know all along, from the very nature of his activities, that investors at the end of the line will lose their money.

In re Indep. Clearing House Co., 77 B.R. 843, 860 (D. Utah 1987).

The District of Utah also noted that “an enterprise engaged in a Ponzi scheme is insolvent from day one.” Indeed, this characteristic of insolvency was noted by the Supreme Court when it considered the cases arising from Ponzi’s fraud itself: “He was always insolvent, and became daily more so, the more his business succeeded.” *Cunningham v. Brown*, 265 U.S. 1, 8, 44 S. Ct. 424, 425, 68 L. Ed. 873 (1924). This pervasive insolvency as a hallmark of a Ponzi scheme was also noted by the bankruptcy court in the Bernie Madoff matter: “Ponzi schemes are, by definition, at all times insolvent.” *In re Bernard L. Madoff Inv. Sec. LLC*, 458 B.R. 87, 110, n.15 (Bankr. S.D.N.Y. 2011).

Under the contract it offered its clients Traffic Monsoon was not—and never would become—insolvent. Indeed, the business becomes more solvent the more AdPacks it sells. *See* Exhibit 112; Evidentiary Hr’g Tr. 386:10–409:3.

Further, unlike Ponzi or Madoff, who could not pay what they had promised their early investors without infusion of capital from later investors, Traffic Monsoon did not have fixed

¹² *See e.g.* D.E. 3 at 24.

obligations to its early customers to share revenue, and only became obligated to share revenue when it sold more advertising products, including AdPacks and when the performance obligations under the unilateral contract were completed. If at any point the “music stopped,” Traffic Monsoon could afford to pay all its obligations to its clients under its contracts. Evidentiary Hr’g Tr. 345:6–21. Put another way, unlike Ponzi or Madoff investors, no Traffic Monsoon customer could successfully mount a breach of contract claim against Traffic Monsoon for failure to make revenue sharing payments it promised under its contracts.¹³

The SEC must prove by a preponderance of the evidence the *sine qua non* of a Ponzi scheme: that is, the returns to earlier investors were paid by funds from later investors. *S.E.C. v. Mgmt. Sols., Inc.*, No. 2:11-CV-1165-BSJ, 2013 WL 4501088, at 19 (D. Utah Aug. 22, 2013) (citing *See American Cancer Society v. Cook*, 675 F.3d 524 (5th Cir.2012)). On the other hand, if an investment scheme generates sufficient funds from legitimate sources to pay investors, it is unlikely that the scheme is a fraudulent Ponzi scheme. *Id.* (emphasis added). Fairness and due process demands individual examination in the finding of Ponzi schemes and proof of inappropriate activity rather than the mere affixing of a label except in those cases as blatant and as plain as the original Charles Ponzi case and the more recent Madoff case: where the scheme was assetless and fraudulent from day one. *See Mgmt. Sols., Inc.* at 21 (emphasis added)

The SEC convolutes the timing of these facts related to payments made to Traffic Monsoon customers and equates Traffic Monsoon to a Ponzi scheme merely because Traffic Monsoon shared revenue with customers. In a Ponzi scheme the promoter needs to generate **future** income to meet current obligations. In contrast, under Traffic Monsoon’s contract with its customers, its current obligations are defined by and satisfied with revenue from the previous day that has already been collected from AdPack purchases. The SEC’s argument proceeds by ignoring the advertising services sold, labelling AdPack purchases as later “investments,” and by unilaterally rewriting the

¹³ As a technical matter at present many customers might bring such claims. Because of the PayPal freeze and the Court’s TRO and Receivership Order, customers have been unable to withdraw their funds. However,

AdPack contract to a fixed-return contract. In doing so the SEC ignores the evidence, claiming in an argument heading in its motion for a preliminary injunction that, “Investors are joining for the opportunity to receive a return, not for the advertising services” when, in fact, the evidence introduced to this Court demonstrates the contrary and that the SEC’s argument is false: both Traffic Monsoon customers who testified explained that they received substantial benefits from the advertising services they purchased from Traffic Monsoon. Evidentiary Hr’g Tr. 178:8–24; 173:18-175:7; 201:3–8.

If the advertising services are ignored, a return of 10% is guaranteed, and the timing of Traffic Monsoon’s receipt and disbursement of revenue is ignored, then many of the SEC’s arguments about a Ponzi scheme would have some credence. However, that is not this case. The terms on Traffic Monsoon’s website define the contract—in the SEC’s term, “the investment”—between Traffic Monsoon and its clients. If the terms Traffic Monsoon entered are given force, Traffic Monsoon operated a legitimate business that is solvent and can pay all its customers all that it owes them; it is only if those terms are ignored that the SEC’s claim that Traffic Monsoon operated a Ponzi scheme has any plausibility.

Because AdPacks are defined by valid, enforceable contracts as described on the Traffic Monsoon website, and because under those terms Traffic Monsoon was neither a Ponzi scheme nor a fraud, the court should not enter the Preliminary Injunction sought by the SEC.

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CONCLUSION

Based on the foregoing, Defendants respectfully request that the Court find (i) that 90% of AdPack purchases at issue in this case occurred outside the United States and therefore do not implicate U.S. Securities laws under *Morrison* and its progeny, and (ii) that the SEC cannot unilaterally rewrite the terms of the agreements that applied between Traffic Monsoon and its customers, and that under the actual terms of those agreements, no “Ponzi scheme” exists here.

DATED: November 28, 2016

WASHBURN LAW GROUP, LLC

/s/ D. Loren Washburn

D. LOREN WASHBURN

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2016, the foregoing **DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO THE COURT'S NOVEMBER 3, 2016, REQUEST FOR SUPPLEMENTAL BRIEFING** was served upon the person(s) named below, at the address set out below, via the Court's Electronic Filing System:

Daniel J. Wadley
Amy J. Oliver
Allison J. Okinaka
Cheryl M. Mori
SECURITIES AND EXCHANGE COMMISSION
351 South West Temple, Suite 6.100
Salt Lake City, UT 84101

/s/ Melina Hernandez
MELINA HERNANDEZ

Exhibit A

DIRECTIVES

DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2011

on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises ⁽⁴⁾ and Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts ⁽⁵⁾ lay down a number of contractual rights for consumers.

(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those two Directives by

a single Directive. This Directive should therefore lay down standard rules for the common aspects of distance and off-premises contracts, moving away from the minimum harmonisation approach in the former Directives whilst allowing Member States to maintain or adopt national rules in relation to certain aspects.

(3) Article 169(1) and point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through the measures adopted pursuant to Article 114 thereof.

(4) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer distance and off-premises contracts is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity.

(5) The cross-border potential of distance selling, which should be one of the main tangible results of the internal market, is not fully exploited. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential for further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over the last few years, in particular in the services sector, for instance utilities, the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium-sized enterprises (including individual traders) or agents of direct selling companies

⁽¹⁾ OJ C 317, 23.12.2009, p. 54.

⁽²⁾ OJ C 200, 25.8.2009, p. 76.

⁽³⁾ Position of the European Parliament of 23 June 2011 (not yet published in the Official Journal) and decision of the Council of 10 October 2011.

⁽⁴⁾ OJ L 372, 31.12.1985, p. 31.

⁽⁵⁾ OJ L 144, 4.6.1997, p. 19.

should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore the full harmonisation of consumer information and the right of withdrawal in distance and off-premises contracts will contribute to a high level of consumer protection and a better functioning of the business-to-consumer internal market.

- (6) Certain disparities create significant internal market barriers affecting traders and consumers. Those disparities increase compliance costs to traders wishing to engage in the cross-border sale of goods or provision of services. Disproportionate fragmentation also undermines consumer confidence in the internal market.
- (7) Full harmonisation of some key regulatory aspects should considerably increase legal certainty for both consumers and traders. Both consumers and traders should be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Union. The effect of such harmonisation should be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. Those barriers can only be eliminated by establishing uniform rules at Union level. Furthermore consumers should enjoy a high common level of protection across the Union.
- (8) The regulatory aspects to be harmonised should only concern contracts concluded between traders and consumers. Therefore, this Directive should not affect national law in the area of contracts relating to employment, contracts relating to succession rights, contracts relating to family law and contracts relating to the incorporation and organisation of companies or partnership agreements.
- (9) This Directive establishes rules on information to be provided for distance contracts, off-premises contracts and contracts other than distance and off-premises contracts. This Directive also regulates the right of withdrawal for distance and off-premises contracts and harmonises certain provisions dealing with the performance and some other aspects of business-to-consumer contracts.
- (10) This Directive should be without prejudice to Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ⁽¹⁾.
- (11) This Directive should be without prejudice to Union provisions relating to specific sectors, such as medicinal products for human use, medical devices, privacy and electronic communications, patients' rights in cross-border healthcare, food labelling and the internal market for electricity and natural gas.
- (12) The information requirements provided for in this Directive should complete the information requirements of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ⁽²⁾ and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') ⁽³⁾. Member States should retain the possibility to impose additional information requirements applicable to service providers established in their territory.
- (13) Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may therefore maintain or introduce national legislation corresponding to the provisions of this Directive, or certain of its provisions, in relation to contracts that fall outside the scope of this Directive. For instance, Member States may decide to extend the application of the rules of this Directive to legal persons or to natural persons who are not consumers within the meaning of this Directive, such as non-governmental organisations, start-ups or small and medium-sized enterprises. Similarly, Member States may apply the provisions of this Directive to contracts that are not distance contracts within the meaning of this Directive, for example because they are not concluded under an organised distance sales or service-provision scheme. Moreover, Member States may also maintain or introduce national provisions on issues not specifically addressed in this Directive, such as additional rules concerning sales contracts, including in relation to the delivery of goods, or requirements for the provision of information during the existence of a contract.
- (14) This Directive should not affect national law in the area of contract law for contract law aspects that are not regulated by this Directive. Therefore, this Directive should be without prejudice to national law regulating for instance the conclusion or the validity of a contract (for instance in the case of lack of consent). Similarly, this Directive should not affect national law in relation to the general contractual legal remedies, the rules on public economic order, for instance rules on excessive or extortionate prices, and the rules on unethical legal transactions.

⁽¹⁾ OJ L 177, 4.7.2008, p. 6.

⁽²⁾ OJ L 376, 27.12.2006, p. 36.

⁽³⁾ OJ L 178, 17.7.2000, p. 1.

- (15) This Directive should not harmonise language requirements applicable to consumer contracts. Therefore, Member States may maintain or introduce in their national law language requirements regarding contractual information and contractual terms.
- (16) This Directive should not affect national laws on legal representation such as the rules relating to the person who is acting in the name of the trader or on his behalf (such as an agent or a trustee). Member States should remain competent in this area. This Directive should apply to all traders, whether public or private.
- (17) The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.
- (18) This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with State aid rules, and which specific obligations they should be subject to.
- (19) Digital content means data which are produced and supplied in digital form, such as computer programs, applications, games, music, videos or texts, irrespective of whether they are accessed through downloading or streaming, from a tangible medium or through any other means. Contracts for the supply of digital content should fall within the scope of this Directive. If digital content is supplied on a tangible medium, such as a CD or a DVD, it should be considered as goods within the meaning of this Directive. Similarly to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, contracts for digital content which is not supplied on a tangible medium should be classified, for the purpose of this Directive, neither as sales contracts nor as service contracts. For such contracts, the consumer should have a right of withdrawal unless he has consented to the beginning of the performance of the contract during the withdrawal period and has acknowledged that he will consequently lose the right to withdraw from the contract. In addition to the general information requirements, the trader should inform the consumer about the functionality and the relevant interoperability of digital content. The notion of functionality should refer to the ways in which digital content can be used, for instance for the tracking of consumer behaviour; it should also refer to the absence or presence of any technical restrictions such as protection via Digital Rights Management or region coding. The notion of relevant interoperability is meant to describe the information regarding the standard hardware and software environment with which the digital content is compatible, for instance the operating system, the necessary version and certain hardware features. The Commission should examine the need for further harmonisation of provisions in respect of digital content and submit, if necessary, a legislative proposal for addressing this matter.
- (20) The definition of distance contract should cover all cases where a contract is concluded between the trader and the consumer under an organised distance sales or service-provision scheme, with the exclusive use of one or more means of distance communication (such as mail order, Internet, telephone or fax) up to and including the time at which the contract is concluded. That definition should also cover situations where the consumer visits the business premises merely for the purpose of gathering information about the goods or services and subsequently negotiates and concludes the contract at a distance. By contrast, a contract which is negotiated at the business premises of the trader and finally concluded by means of distance communication should not be considered a distance contract. Neither should a contract initiated by means of distance communication, but finally concluded at the business premises of the trader be considered a distance contract. Similarly, the concept of distance contract should not include reservations made by a consumer through a means of distance communications to request the provision of a service from a professional, such as in the case of a consumer phoning to request an appointment with a hairdresser. The notion of an organised distance sales or service-provision scheme should include those schemes offered by a third party other than the trader but used by the trader, such as an online platform. It should not, however, cover cases where websites merely offer information on the trader, his goods and/or services and his contact details.
- (21) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader, for example at the consumer's home or workplace. In an off-premises context, the consumer may be under potential psychological pressure or may be confronted with an element of surprise, irrespective of whether or not the consumer has solicited the trader's visit. The definition of an off-premises contract should also include situations where the consumer is personally and individually addressed in an off-premises context but the contract is concluded immediately afterwards on the business premises of the trader or through a means of distance communication. The definition of an off-premises contract should not cover situations in which the

trader first comes to the consumer's home strictly with a view to taking measurements or giving an estimate without any commitment of the consumer and where the contract is then concluded only at a later point in time on the business premises of the trader or via means of distance communication on the basis of the trader's estimate. In those cases, the contract is not to be considered as having been concluded immediately after the trader has addressed the consumer if the consumer has had time to reflect upon the estimate of the trader before concluding the contract. Purchases made during an excursion organised by the trader during which the products acquired are promoted and offered for sale should be considered as off-premises contracts.

- (22) Business premises should include premises in whatever form (such as shops, stalls or lorries) which serve as a permanent or usual place of business for the trader. Market stalls and fair stands should be treated as business premises if they fulfil this condition. Retail premises where the trader carries out his activity on a seasonal basis, for instance during the tourist season at a ski or beach resort, should be considered as business premises as the trader carries out his activity in those premises on a usual basis. Spaces accessible to the public, such as streets, shopping malls, beaches, sports facilities and public transport, which the trader uses on an exceptional basis for his business activities as well as private homes or workplaces should not be regarded as business premises. The business premises of a person acting in the name or on behalf of the trader as defined in this Directive should be considered as business premises within the meaning of this Directive.
- (23) Durable media should enable the consumer to store the information for as long as it is necessary for him to protect his interests stemming from his relationship with the trader. Such media should include in particular paper, USB sticks, CD-ROMs, DVDs, memory cards or the hard disks of computers as well as e-mails.
- (24) A public auction implies that traders and consumers attend or are given the possibility to attend the auction in person. The goods or services are offered by the trader to the consumer through a bidding procedure authorised by law in some Member States, to offer goods or services at public sale. The successful bidder is bound to purchase the goods or services. The use of online platforms for auction purposes which are at the disposal of consumers and traders should not be considered as a public auction within the meaning of this Directive.
- (25) Contracts related to district heating should be covered by this Directive, similarly to the contracts for the supply of

water, gas or electricity. District heating refers to the supply of heat, *inter alia*, in the form of steam or hot water, from a central source of production through a transmission and distribution system to multiple buildings, for the purpose of heating.

- (26) Contracts related to the transfer of immovable property or of rights in immovable property or to the creation or acquisition of such immovable property or rights, contracts for the construction of new buildings or the substantial conversion of existing buildings as well as contracts for the rental of accommodation for residential purposes are already subject to a number of specific requirements in national legislation. Those contracts include for instance sales of immovable property still to be developed and hire-purchase. The provisions of this Directive are not appropriate to those contracts, which should be therefore excluded from its scope. A substantial conversion is a conversion comparable to the construction of a new building, for example where only the façade of an old building is retained. Service contracts in particular those related to the construction of annexes to buildings (for example a garage or a veranda) and those related to repair and renovation of buildings other than substantial conversion, should be included in the scope of this Directive, as well as contracts related to the services of a real estate agent and those related to the rental of accommodation for non-residential purposes.
- (27) Transport services cover passenger transport and transport of goods. Passenger transport should be excluded from the scope of this Directive as it is already subject to other Union legislation or, in the case of public transport and taxis, to regulation at national level. However, the provisions of this Directive protecting consumers against excessive fees for the use of means of payment or against hidden costs should apply also to passenger transport contracts. In relation to transport of goods and car rental which are services, consumers should benefit from the protection afforded by this Directive, with the exception of the right of withdrawal.
- (28) In order to avoid administrative burden being placed on traders, Member States may decide not to apply this Directive where goods or services of a minor value are sold off-premises. The monetary threshold should be established at a sufficiently low level as to exclude only purchases of small significance. Member States should be allowed to define this value in their national legislation provided that it does not exceed EUR 50. Where two or more contracts with related subjects are concluded at the same time by the consumer, the total cost thereof should be taken into account for the purpose of applying this threshold.

- (29) Social services have fundamentally distinct features that are reflected in sector-specific legislation, partially at Union level and partially at national level. Social services include, on the one hand, services for particularly disadvantaged or low income persons as well as services for persons and families in need of assistance in carrying out routine, everyday tasks and, on the other hand, services for all people who have a special need for assistance, support, protection or encouragement in a specific life phase. Social services cover, inter alia, services for children and youth, assistance services for families, single parents and older persons, and services for migrants. Social services cover both short-term and long-term care services, for instance services provided by home care services or provided in assisted living facilities and residential homes or housing ('nursing homes'). Social services include not only those provided by the State at a national, regional or local level by providers mandated by the State or by charities recognised by the State but also those provided by private operators. The provisions of this Directive are not appropriate to social services which should be therefore excluded from its scope.
- (30) Healthcare requires special regulations because of its technical complexity, its importance as a service of general interest as well as its extensive public funding. Healthcare is defined in Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare⁽¹⁾ as 'health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices'. Health professional is defined in that Directive as a doctor of medicine, a nurse responsible for general care, a dental practitioner, a midwife or a pharmacist within the meaning of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications⁽²⁾ or another professional exercising activities in the healthcare sector which are restricted to a regulated profession as defined in point (a) of Article 3(1) of Directive 2005/36/EC, or a person considered to be a health professional according to the legislation of the Member State of treatment. The provisions of this Directive are not appropriate to healthcare which should be therefore excluded from its scope.
- (31) Gambling should be excluded from the scope of this Directive. Gambling activities are those which involve wagering at stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions. Member States should be able to adopt other, including more stringent, consumer protection measures in relation to such activities.
- (32) The existing Union legislation, inter alia, relating to consumer financial services, package travel and timeshare contains numerous rules on consumer protection. For this reason, this Directive should not apply to contracts in those areas. With regard to financial services, Member States should be encouraged to draw inspiration from existing Union legislation in that area when legislating in areas not regulated at Union level, in such a way that a level playing field for all consumers and all contracts relating to financial services is ensured.
- (33) The trader should be obliged to inform the consumer in advance of any arrangement resulting in the consumer paying a deposit to the trader, including an arrangement whereby an amount is blocked on the consumer's credit or debit card.
- (34) The trader should give the consumer clear and comprehensible information before the consumer is bound by a distance or off-premises contract, a contract other than a distance or an off-premises contract, or any corresponding offer. In providing that information, the trader should take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee. However, taking into account such specific needs should not lead to different levels of consumer protection.
- (35) The information to be provided by the trader to the consumer should be mandatory and should not be altered. Nevertheless, the contracting parties should be able to expressly agree to change the content of the contract subsequently concluded, for instance the arrangements for delivery.
- (36) In the case of distance contracts, the information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions on the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In such cases the trader should comply with a minimum set of information requirements and refer the consumer to another source of information, for instance by providing a toll free telephone number or a hypertext link to a webpage of the trader where the relevant information is directly available and easily accessible. As to the requirement to inform the consumer of the cost of returning goods which by their nature cannot normally be returned by post, it will be considered to have been met, for example, if the trader specifies one carrier (for instance the one he assigned for the delivery of the good) and one price concerning the cost of returning the goods. Where the

⁽¹⁾ OJ L 88, 4.4.2011, p. 45.

⁽²⁾ OJ L 255, 30.9.2005, p. 22.

cost of returning the goods cannot reasonably be calculated in advance by the trader, for example because the trader does not offer to arrange for the return of the goods himself, the trader should provide a statement that such a cost will be payable, and that this cost may be high, along with a reasonable estimation of the maximum cost, which could be based on the cost of delivery to the consumer.

- (37) Since in the case of distance sales, the consumer is not able to see the goods before concluding the contract, he should have a right of withdrawal. For the same reason, the consumer should be allowed to test and inspect the goods he has bought to the extent necessary to establish the nature, characteristics and the functioning of the goods. Concerning off-premises contracts, the consumer should have the right of withdrawal because of the potential surprise element and/or psychological pressure. Withdrawal from the contract should terminate the obligation of the contracting parties to perform the contract.
- (38) Trading websites should indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.
- (39) It is important to ensure for distance contracts concluded through websites that the consumer is able to fully read and understand the main elements of the contract before placing his order. To that end, provision should be made in this Directive for those elements to be displayed in the close vicinity of the confirmation requested for placing the order. It is also important to ensure that, in such situations, the consumer is able to determine the moment at which he assumes the obligation to pay the trader. Therefore, the consumer's attention should specifically be drawn, through an unambiguous formulation, to the fact that placing the order entails the obligation to pay the trader.
- (40) The current varying lengths of the withdrawal periods both between the Member States and for distance and off-premises contracts cause legal uncertainty and compliance costs. The same withdrawal period should apply to all distance and off-premises contracts. In the case of service contracts, the withdrawal period should expire after 14 days from the conclusion of the contract. In the case of sales contracts, the withdrawal period should expire after 14 days from the day on which the consumer or a third party other than the carrier and indicated by the consumer, acquires physical possession of the goods. In addition the consumer should be able to exercise the right to withdraw before acquiring physical possession of the goods. Where multiple goods are ordered by the consumer in one order but are delivered separately, the withdrawal period should

expire after 14 days from the day on which the consumer acquires physical possession of the last good. Where goods are delivered in multiple lots or pieces, the withdrawal period should expire after 14 days from the day on which the consumer acquires the physical possession of the last lot or piece.

- (41) In order to ensure legal certainty, it is appropriate that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits⁽¹⁾ should apply to the calculation of the periods contained in this Directive. Therefore, all periods contained in this Directive should be understood to be expressed in calendar days. Where a period expressed in days is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place should not be considered as falling within the period in question.
- (42) The provisions relating to the right of withdrawal should be without prejudice to the Member States' laws and regulations governing the termination or unenforceability of a contract or the possibility for the consumer to fulfil his contractual obligations before the time determined in the contract.
- (43) If the trader has not adequately informed the consumer prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended. However, in order to ensure legal certainty as regards the length of the withdrawal period, a 12-month limitation period should be introduced.
- (44) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for traders selling cross-border. The introduction of a harmonised model withdrawal form that the consumer may use should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the Union-wide model form relating for example to the font size. However, the consumer should remain free to withdraw in his own words, provided that his statement setting out his decision to withdraw from the contract to the trader is unequivocal. A letter, a telephone call or returning the goods with a clear statement could meet this requirement, but the burden of proof of having withdrawn within the time limits fixed in the Directive should be on the consumer. For this reason, it is in the interest of the consumer to make use of a durable medium when communicating his withdrawal to the trader.

⁽¹⁾ OJ L 124, 8.6.1971, p. 1.

- (45) As experience shows that many consumers and traders prefer to communicate via the trader's website, there should be a possibility for the trader to give the consumer the option of filling in a web-based withdrawal form. In this case the trader should provide an acknowledgement of receipt for instance by e-mail without delay.
- (46) In the event that the consumer withdraws from the contract, the trader should reimburse all payments received from the consumer, including those covering the expenses borne by the trader to deliver goods to the consumer. The reimbursement should not be made by voucher unless the consumer has used vouchers for the initial transaction or has expressly accepted them. If the consumer expressly chooses a certain type of delivery (for instance 24-hour express delivery), although the trader had offered a common and generally acceptable type of delivery which would have incurred lower delivery costs, the consumer should bear the difference in costs between these two types of delivery.
- (47) Some consumers exercise their right of withdrawal after having used the goods to an extent more than necessary to establish the nature, characteristics and the functioning of the goods. In this case the consumer should not lose the right to withdraw but should be liable for any diminished value of the goods. In order to establish the nature, characteristics and functioning of the goods, the consumer should only handle and inspect them in the same manner as he would be allowed to do in a shop. For example, the consumer should only try on a garment and should not be allowed to wear it. Consequently, the consumer should handle and inspect the goods with due care during the withdrawal period. The obligations of the consumer in the event of withdrawal should not discourage the consumer from exercising his right of withdrawal.
- (48) The consumer should be required to send back the goods not later than 14 days after having informed the trader about his decision to withdraw from the contract. In situations where the trader or the consumer does not fulfil the obligations relating to the exercise of the right of withdrawal, penalties provided for by national legislation in accordance with this Directive should apply as well as contract law provisions.
- (49) Certain exceptions from the right of withdrawal should exist, both for distance and off-premises contracts. A right of withdrawal could be inappropriate for example given the nature of particular goods or services. That is the case for example with wine supplied a long time after the conclusion of a contract of a speculative nature where the value is dependent on fluctuations in the market ('vin en primeur'). The right of withdrawal should neither apply to goods made to the consumer's specifications or which are clearly personalised such as tailor-made curtains, nor to the supply of fuel, for example, which is a good, by nature inseparably mixed with other items after delivery. The granting of a right of withdrawal to the consumer could also be inappropriate in the case of certain services where the conclusion of the contract implies the setting aside of capacity which, if a right of withdrawal were exercised, the trader may find difficult to fill. This would for example be the case where reservations are made at hotels or concerning holiday cottages or cultural or sporting events.
- (50) On the one hand, the consumer should benefit from his right of withdrawal even in case he has asked for the provision of services before the end of the withdrawal period. On the other hand, if the consumer exercises his right of withdrawal, the trader should be assured to be adequately paid for the service he has provided. The calculation of the proportionate amount should be based on the price agreed in the contract unless the consumer demonstrates that that total price is itself disproportionate, in which case the amount to be paid shall be calculated on the basis of the market value of the service provided. The market value should be defined by comparing the price of an equivalent service performed by other traders at the time of the conclusion of the contract. Therefore the consumer should request the performance of services before the end of the withdrawal period by making this request expressly and, in the case of off-premises contracts, on a durable medium. Similarly, the trader should inform the consumer on a durable medium of any obligation to pay the proportionate costs for the services already provided. For contracts having as their object both goods and services, the rules provided for in this Directive on the return of goods should apply to the goods aspects and the compensation regime for services should apply to the services aspects.
- (51) The main difficulties encountered by consumers and one of the main sources of disputes with traders concern delivery of goods, including goods getting lost or damaged during transport and late or partial delivery. Therefore it is appropriate to clarify and harmonise the national rules as to when delivery should occur. The place and modalities of delivery and the rules concerning the determination of the conditions for the transfer of the ownership of the goods and the moment at which such transfer takes place, should remain subject to national law and therefore should not be affected by this Directive. The rules on delivery laid down in this Directive should include the possibility for the consumer to allow a third party to acquire on his behalf the physical possession or control of the goods. The consumer should be considered to have control of the goods where he or a third party indicated by the consumer has access to the goods to use them as an owner, or the ability to resell the goods (for example, when he has received the keys or possession of the ownership documents).

- (52) In the context of sales contracts, the delivery of goods can take place in various ways, either immediately or at a later date. If the parties have not agreed on a specific delivery date, the trader should deliver the goods as soon as possible, but in any event not later than 30 days from the day of the conclusion of the contract. The rules regarding late delivery should also take into account goods to be manufactured or acquired specially for the consumer which cannot be reused by the trader without considerable loss. Therefore, a rule which grants an additional reasonable period of time to the trader in certain circumstances should be provided for in this Directive. When the trader has failed to deliver the goods within the period of time agreed with the consumer, before the consumer can terminate the contract, the consumer should call upon the trader to make the delivery within a reasonable additional period of time and be entitled to terminate the contract if the trader fails to deliver the goods even within that additional period of time. However, this rule should not apply when the trader has refused to deliver the goods in an unequivocal statement. Neither should it apply in certain circumstances where the delivery period is essential such as, for example, in the case of a wedding dress which should be delivered before the wedding. Nor should it apply in circumstances where the consumer informs the trader that delivery on a specified date is essential. For this purpose, the consumer may use the trader's contact details given in accordance with this Directive. In these specific cases, if the trader fails to deliver the goods on time, the consumer should be entitled to terminate the contract immediately after the expiry of the delivery period initially agreed. This Directive should be without prejudice to national provisions on the way the consumer should notify the trader of his will to terminate the contract.
- (53) In addition to the consumer's right to terminate the contract where the trader has failed to fulfil his obligations to deliver the goods in accordance with this Directive, the consumer may, in accordance with the applicable national law, have recourse to other remedies, such as granting the trader an additional period of time for delivery, enforcing the performance of the contract, withholding payment, and seeking damages.
- (54) In accordance with Article 52(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market ⁽¹⁾, Member States should be able to prohibit or limit traders' right to request charges from consumers taking into account the need to encourage competition and promote the use of efficient payment instruments. In any event, traders should be prohibited from charging consumers fees that exceed the cost borne by the trader for the use of a certain means of payment.
- (55) Where the goods are dispatched by the trader to the consumer, disputes may arise, in the event of loss or damage, as to the moment at which the transfer of risk takes place. Therefore this Directive should provide that the consumer be protected against any risk of loss of or damage to the goods occurring before he has acquired the physical possession of the goods. The consumer should be protected during a transport arranged or carried out by the trader, even where the consumer has chosen a particular delivery method from a range of options offered by the trader. However, that provision should not apply to contracts where it is up to the consumer to take delivery of the goods himself or to ask a carrier to take delivery. Regarding the moment of the transfer of the risk, a consumer should be considered to have acquired the physical possession of the goods when he has received them.
- (56) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be afforded the right to initiate proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.
- (57) It is necessary that Member States lay down penalties for infringements of this Directive and ensure that they are enforced. The penalties should be effective, proportionate and dissuasive.
- (58) The consumer should not be deprived of the protection granted by this Directive. Where the law applicable to the contract is that of a third country, Regulation (EC) No 593/2008 should apply, in order to determine whether the consumer retains the protection granted by this Directive.
- (59) The Commission, following consultation with the Member States and stakeholders, should look into the most appropriate way to ensure that all consumers are made aware of their rights at the point of sale.
- (60) Since inertia selling, which consists of unsolicited supply of goods or provision of services to consumers, is prohibited by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive') ⁽²⁾ but no contractual remedy is provided therein, it is necessary to introduce in this Directive the contractual remedy of exempting the consumer from the obligation to provide any consideration for such unsolicited supply or provision.

⁽¹⁾ OJ L 319, 5.12.2007, p. 1.

⁽²⁾ OJ L 149, 11.6.2005, p. 22.

- (61) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ⁽¹⁾ already regulates unsolicited communications and provides for a high level of consumer protection. The corresponding provisions on the same issue contained in Directive 97/7/EC are therefore not needed.
- (62) It is appropriate for the Commission to review this Directive if some barriers to the internal market are identified. In its review, the Commission should pay particular attention to the possibilities granted to Member States to maintain or introduce specific national provisions including in certain areas of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ⁽²⁾ and Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees ⁽³⁾. That review could lead to a Commission proposal to amend this Directive; that proposal may include amendments to other consumer protection legislation reflecting the Commission's Consumer Policy Strategy commitment to review the Union *acquis* in order to achieve a high, common level of consumer protection.
- (63) Directives 93/13/EEC and 1999/44/EC should be amended to require Member States to inform the Commission about the adoption of specific national provisions in certain areas.
- (64) Directives 85/577/EEC and 97/7/EC should be repealed.
- (65) Since the objective of this Directive, namely, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (66) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (67) In accordance with point 34 of the Interinstitutional agreement on better law-making ⁽⁴⁾, Member States are

encouraged to draw up, for themselves and in the interests of the Union, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts concluded between consumers and traders.

Article 2

Definitions

For the purpose of this Directive, the following definitions shall apply:

- (1) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;
- (2) 'trader' means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;
- (3) 'goods' means any tangible movable items, with the exception of items sold by way of execution or otherwise by authority of law; water, gas and electricity shall be considered as goods within the meaning of this Directive where they are put up for sale in a limited volume or a set quantity;
- (4) 'goods made to the consumer's specifications' means non-prefabricated goods made on the basis of an individual choice of or decision by the consumer;
- (5) 'sales contract' means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;

⁽¹⁾ OJ L 201, 31.7.2002, p. 37.

⁽²⁾ OJ L 95, 21.4.1993, p. 29.

⁽³⁾ OJ L 171, 7.7.1999, p. 12.

⁽⁴⁾ OJ C 321, 31.12.2003, p. 1.

- (6) 'service contract' means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;
- (7) 'distance contract' means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;
- (8) 'off-premises contract' means any contract between the trader and the consumer:
- (a) concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
 - (b) for which an offer was made by the consumer in the same circumstances as referred to in point (a);
 - (c) concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer; or
 - (d) concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer;
- (9) 'business premises' means:
- (a) any immovable retail premises where the trader carries out his activity on a permanent basis; or
 - (b) any movable retail premises where the trader carries out his activity on a usual basis;
- (10) 'durable medium' means any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (11) 'digital content' means data which are produced and supplied in digital form;
- (12) 'financial service' means any service of a banking, credit, insurance, personal pension, investment or payment nature;
- (13) 'public auction' means a method of sale where goods or services are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services;
- (14) 'commercial guarantee' means any undertaking by the trader or a producer (the guarantor) to the consumer, in addition to his legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;
- (15) 'ancillary contract' means a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and where those goods are supplied or those services are provided by the trader or by a third party on the basis of an arrangement between that third party and the trader.

Article 3

Scope

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.

2. If any provision of this Directive conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall apply to those specific sectors.

3. This Directive shall not apply to contracts:

- (a) for social services, including social housing, childcare and support of families and persons permanently or temporarily in need, including long-term care;
- (b) for healthcare as defined in point (a) of Article 3 of Directive 2011/24/EU, whether or not they are provided via healthcare facilities;
- (c) for gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions;

- (d) for financial services;
- (e) for the creation, acquisition or transfer of immovable property or of rights in immovable property;
- (f) for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;
- (g) which fall within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽¹⁾;
- (h) which fall within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts ⁽²⁾;
- (i) which, in accordance with the laws of Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope;
- (j) for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;
- (k) for passenger transport services, with the exception of Article 8(2) and Articles 19 and 22;
- (l) concluded by means of automatic vending machines or automated commercial premises;
- (m) concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer.

4. Member States may decide not to apply this Directive or not to maintain or introduce corresponding national provisions to off-premises contracts for which the payment to be made by the consumer does not exceed EUR 50. Member States may define a lower value in their national legislation.

⁽¹⁾ OJ L 158, 23.6.1990, p. 59.

⁽²⁾ OJ L 33, 3.2.2009, p. 10.

5. This Directive shall not affect national general contract law such as the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated in this Directive.

6. This Directive shall not prevent traders from offering consumers contractual arrangements which go beyond the protection provided for in this Directive.

Article 4

Level of harmonisation

Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive.

CHAPTER II

CONSUMER INFORMATION FOR CONTRACTS OTHER THAN DISTANCE OR OFF-PREMISES CONTRACTS

Article 5

Information requirements for contracts other than distance or off-premises contracts

1. Before the consumer is bound by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context:

- (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
- (b) the identity of the trader, such as his trading name, the geographical address at which he is established and his telephone number;
- (c) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (d) where applicable, the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling policy;

- (e) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;
 - (f) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
 - (g) where applicable, the functionality, including applicable technical protection measures, of digital content;
 - (h) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.
2. Paragraph 1 shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium.
3. Member States shall not be required to apply paragraph 1 to contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion.
4. Member States may adopt or maintain additional pre-contractual information requirements for contracts to which this Article applies.
- (d) if different from the address provided in accordance with point (c), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints;
 - (e) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;
 - (f) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
 - (g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;

CHAPTER III

CONSUMER INFORMATION AND RIGHT OF WITHDRAWAL FOR DISTANCE AND OFF-PREMISES CONTRACTS

Article 6

Information requirements for distance and off-premises contracts

1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:
- (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
 - (b) the identity of the trader, such as his trading name;
 - (c) the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;
 - (i) where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
 - (j) that, if the consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall be liable to pay the trader reasonable costs in accordance with Article 14(3);
 - (k) where a right of withdrawal is not provided for in accordance with Article 16, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;

- (l) a reminder of the existence of a legal guarantee of conformity for goods;
- (m) where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees;
- (n) the existence of relevant codes of conduct, as defined in point (f) of Article 2 of Directive 2005/29/EC, and how copies of them can be obtained, where applicable;
- (o) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- (p) where applicable, the minimum duration of the consumer's obligations under the contract;
- (q) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
- (r) where applicable, the functionality, including applicable technical protection measures, of digital content;
- (s) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;
- (t) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

2. Paragraph 1 shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium.

3. In the case of a public auction, the information referred to in points (b), (c) and (d) of paragraph 1 may be replaced by the equivalent details for the auctioneer.

4. The information referred to in points (h), (i) and (j) of paragraph 1 may be provided by means of the model instructions on withdrawal set out in Annex I(A). The trader shall have fulfilled the information requirements laid down in points (h), (i) and (j) of paragraph 1 if he has supplied these instructions to the consumer, correctly filled in.

5. The information referred to in paragraph 1 shall form an integral part of the distance or off-premises contract and shall not be altered unless the contracting parties expressly agree otherwise.

6. If the trader has not complied with the information requirements on additional charges or other costs as referred to in point (e) of paragraph 1, or on the costs of returning the goods as referred to in point (i) of paragraph 1, the consumer shall not bear those charges or costs.

7. Member States may maintain or introduce in their national law language requirements regarding the contractual information, so as to ensure that such information is easily understood by the consumer.

8. The information requirements laid down in this Directive are in addition to information requirements contained in Directive 2006/123/EC and Directive 2000/31/EC and do not prevent Member States from imposing additional information requirements in accordance with those Directives.

Without prejudice to the first subparagraph, if a provision of Directive 2006/123/EC or Directive 2000/31/EC on the content and the manner in which the information is to be provided conflicts with a provision of this Directive, the provision of this Directive shall prevail.

9. As regards compliance with the information requirements laid down in this Chapter, the burden of proof shall be on the trader.

Article 7

Formal requirements for off-premises contracts

1. With respect to off-premises contracts, the trader shall give the information provided for in Article 6(1) to the consumer on paper or, if the consumer agrees, on another durable medium. That information shall be legible and in plain, intelligible language.

2. The trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on another durable medium, including, where applicable, the confirmation of the consumer's prior express consent and acknowledgement in accordance with point (m) of Article 16.

3. Where a consumer wants the performance of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating to begin during the withdrawal period provided for in Article 9(2), the trader shall require that the consumer makes such an express request on a durable medium.

4. With respect to off-premises contracts where the consumer has explicitly requested the services of the trader for the purpose of carrying out repairs or maintenance for which the trader and the consumer immediately perform their contractual obligations and where the payment to be made by the consumer does not exceed EUR 200:

- (a) the trader shall provide the consumer with the information referred to in points (b) and (c) of Article 6(1) and information about the price or the manner in which the price is to be calculated together with an estimate of the total price, on paper or, if the consumer agrees, on another durable medium. The trader shall provide the information referred to in points (a), (h) and (k) of Article 6(1), but may choose not to provide it on paper or another durable medium if the consumer expressly agrees;
- (b) the confirmation of the contract provided in accordance with paragraph 2 of this Article shall contain the information provided for in Article 6(1).

Member States may decide not to apply this paragraph.

5. Member States shall not impose any further formal pre-contractual information requirements for the fulfilment of the information obligations laid down in this Directive.

Article 8

Formal requirements for distance contracts

1. With respect to distance contracts, the trader shall give the information provided for in Article 6(1) or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. In so far as that information is provided on a durable medium, it shall be legible.

2. If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in points (a), (e), (o) and (p) of Article 6(1).

The trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader. If the trader has not complied with this subparagraph, the consumer shall not be bound by the contract or order.

3. Trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.

4. If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to in points (a), (b), (e), (h) and (o) of Article 6(1). The other information referred to in Article 6(1) shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 of this Article.

5. Without prejudice to paragraph 4, if the trader makes a telephone call to the consumer with a view to concluding a distance contract, he shall, at the beginning of the conversation with the consumer, disclose his identity and, where applicable, the identity of the person on whose behalf he makes that call, and the commercial purpose of the call.

6. Where a distance contract is to be concluded by telephone, Member States may provide that the trader has to confirm the offer to the consumer who is bound only once he has signed the offer or has sent his written consent. Member States may also provide that such confirmations have to be made on a durable medium.

7. The trader shall provide the consumer with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins. That confirmation shall include:

- (a) all the information referred to in Article 6(1) unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract; and
- (b) where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with point (m) of Article 16.

8. Where a consumer wants the performance of services, or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, to begin during the withdrawal period provided for in Article 9(2), the trader shall require that the consumer make an express request.

9. This Article shall be without prejudice to the provisions on the conclusion of e-contracts and the placing of e-orders set out in Articles 9 and 11 of Directive 2000/31/EC.

10. Member States shall not impose any further formal pre-contractual information requirements for the fulfilment of the information obligations laid down in this Directive.

Article 9

Right of withdrawal

1. Save where the exceptions provided for in Article 16 apply, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those provided for in Article 13(2) and Article 14.

2. Without prejudice to Article 10, the withdrawal period referred to in paragraph 1 of this Article shall expire after 14 days from:

- (a) in the case of service contracts, the day of the conclusion of the contract;
- (b) in the case of sales contracts, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods or:
 - (i) in the case of multiple goods ordered by the consumer in one order and delivered separately, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last good;
 - (ii) in the case of delivery of a good consisting of multiple lots or pieces, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last lot or piece;
 - (iii) in the case of contracts for regular delivery of goods during defined period of time, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first good;
- (c) in the case of contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium, the day of the conclusion of the contract.

3. The Member States shall not prohibit the contracting parties from performing their contractual obligations during

the withdrawal period. Nevertheless, in the case of off-premises contracts, Member States may maintain existing national legislation prohibiting the trader from collecting the payment from the consumer during the given period after the conclusion of the contract.

Article 10

Omission of information on the right of withdrawal

1. If the trader has not provided the consumer with the information on the right of withdrawal as required by point (h) of Article 6(1), the withdrawal period shall expire 12 months from the end of the initial withdrawal period, as determined in accordance with Article 9(2).

2. If the trader has provided the consumer with the information provided for in paragraph 1 of this Article within 12 months from the day referred to in Article 9(2), the withdrawal period shall expire 14 days after the day upon which the consumer receives that information.

Article 11

Exercise of the right of withdrawal

1. Before the expiry of the withdrawal period, the consumer shall inform the trader of his decision to withdraw from the contract. For this purpose, the consumer may either:

- (a) use the model withdrawal form as set out in Annex I(B); or
- (b) make any other unequivocal statement setting out his decision to withdraw from the contract.

Member States shall not provide for any formal requirements applicable to the model withdrawal form other than those set out in Annex I(B).

2. The consumer shall have exercised his right of withdrawal within the withdrawal period referred to in Article 9(2) and Article 10 if the communication concerning the exercise of the right of withdrawal is sent by the consumer before that period has expired.

3. The trader may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer to electronically fill in and submit either the model withdrawal form set out in Annex I(B) or any other unequivocal statement on the trader's website. In those cases the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal on a durable medium without delay.

4. The burden of proof of exercising the right of withdrawal in accordance with this Article shall be on the consumer.

*Article 12***Effects of withdrawal**

The exercise of the right of withdrawal shall terminate the obligations of the parties:

- (a) to perform the distance or off-premises contract; or
- (b) to conclude the distance or off-premises contract, in cases where an offer was made by the consumer.

*Article 13***Obligations of the trader in the event of withdrawal**

1. The trader shall reimburse all payments received from the consumer, including, if applicable, the costs of delivery without undue delay and in any event not later than 14 days from the day on which he is informed of the consumer's decision to withdraw from the contract in accordance with Article 11.

The trader shall carry out the reimbursement referred to in the first subparagraph using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of such reimbursement.

2. Notwithstanding paragraph 1, the trader shall not be required to reimburse the supplementary costs, if the consumer has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by the trader.

3. Unless the trader has offered to collect the goods himself, with regard to sales contracts, the trader may withhold the reimbursement until he has received the goods back, or until the consumer has supplied evidence of having sent back the goods, whichever is the earliest.

*Article 14***Obligations of the consumer in the event of withdrawal**

1. Unless the trader has offered to collect the goods himself, the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive the goods, without undue delay and in any event not later than 14 days from the day on which he has communicated his decision to withdraw from the contract to the trader in accordance with Article 11. The deadline shall be met if the consumer sends back the goods before the period of 14 days has expired.

The consumer shall only bear the direct cost of returning the goods unless the trader has agreed to bear them or the trader failed to inform the consumer that the consumer has to bear them.

In the case of off-premises contracts where the goods have been delivered to the consumer's home at the time of the conclusion of the contract, the trader shall at his own expense collect the goods if, by their nature, those goods cannot normally be returned by post.

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods. The consumer shall in any event not be liable for diminished value of the goods where the trader has failed to provide notice of the right of withdrawal in accordance with point (h) of Article 6(1).

3. Where a consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall pay to the trader an amount which is in proportion to what has been provided until the time the consumer has informed the trader of the exercise of the right of withdrawal, in comparison with the full coverage of the contract. The proportionate amount to be paid by the consumer to the trader shall be calculated on the basis of the total price agreed in the contract. If the total price is excessive, the proportionate amount shall be calculated on the basis of the market value of what has been provided.

4. The consumer shall bear no cost for:

(a) the performance of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, in full or in part, during the withdrawal period, where:

(i) the trader has failed to provide information in accordance with points (h) or (j) of Article 6(1); or

(ii) the consumer has not expressly requested performance to begin during the withdrawal period in accordance with Article 7(3) and Article 8(8); or

(b) the supply, in full or in part, of digital content which is not supplied on a tangible medium where:

(i) the consumer has not given his prior express consent to the beginning of the performance before the end of the 14-day period referred to in Article 9;

(ii) the consumer has not acknowledged that he loses his right of withdrawal when giving his consent; or

(iii) the trader has failed to provide confirmation in accordance with Article 7(2) or Article 8(7).

5. Except as provided for in Article 13(2) and in this Article, the consumer shall not incur any liability as a consequence of the exercise of the right of withdrawal.

Article 15

Effects of the exercise of the right of withdrawal on ancillary contracts

1. Without prejudice to Article 15 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers ⁽¹⁾, if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 9 to 14 of this Directive, any ancillary contracts shall be automatically terminated, without any costs for the consumer, except as provided for in Article 13(2) and in Article 14 of this Directive.

2. The Member States shall lay down detailed rules on the termination of such contracts.

Article 16

Exceptions from the right of withdrawal

Member States shall not provide for the right of withdrawal set out in Articles 9 to 15 in respect of distance and off-premises contracts as regards the following:

- (a) service contracts after the service has been fully performed if the performance has begun with the consumer's prior express consent, and with the acknowledgement that he will lose his right of withdrawal once the contract has been fully performed by the trader;
- (b) the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period;
- (c) the supply of goods made to the consumer's specifications or clearly personalised;
- (d) the supply of goods which are liable to deteriorate or expire rapidly;
- (e) the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;
- (f) the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items;

(g) the supply of alcoholic beverages, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place after 30 days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;

(h) contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance. If, on the occasion of such visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in carrying out the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;

(i) the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery;

(j) the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications;

(k) contracts concluded at a public auction;

(l) the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance;

(m) the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgment that he thereby loses his right of withdrawal.

CHAPTER IV

OTHER CONSUMER RIGHTS

Article 17

Scope

1. Articles 18 and 20 shall apply to sales contracts. Those Articles shall not apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or the supply of digital content which is not supplied on a tangible medium.

2. Articles 19, 21 and 22 shall apply to sales and service contracts and to contracts for the supply of water, gas, electricity, district heating or digital content.

⁽¹⁾ OJ L 133, 22.5.2008, p. 66.

*Article 18***Delivery**

1. Unless the parties have agreed otherwise on the time of delivery, the trader shall deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay, but not later than 30 days from the conclusion of the contract.

2. Where the trader has failed to fulfil his obligation to deliver the goods at the time agreed upon with the consumer or within the time limit set out in paragraph 1, the consumer shall call upon him to make the delivery within an additional period of time appropriate to the circumstances. If the trader fails to deliver the goods within that additional period of time, the consumer shall be entitled to terminate the contract.

The first subparagraph shall not be applicable to sales contracts where the trader has refused to deliver the goods or where delivery within the agreed delivery period is essential taking into account all the circumstances attending the conclusion of the contract or where the consumer informs the trader, prior to the conclusion of the contract, that delivery by or on a specified date is essential. In those cases, if the trader fails to deliver the goods at the time agreed upon with the consumer or within the time limit set out in paragraph 1, the consumer shall be entitled to terminate the contract immediately.

3. Upon termination of the contract, the trader shall, without undue delay, reimburse all sums paid under the contract.

4. In addition to the termination of the contract in accordance with paragraph 2, the consumer may have recourse to other remedies provided for by national law.

*Article 19***Fees for the use of means of payment**

Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.

*Article 20***Passing of risk**

In contracts where the trader dispatches the goods to the consumer, the risk of loss of or damage to the goods shall pass to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods. However, the risk shall pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.

*Article 21***Communication by telephone**

Member States shall ensure that where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate.

The first subparagraph shall be without prejudice to the right of telecommunication services providers to charge for such calls.

*Article 22***Additional payments**

Before the consumer is bound by the contract or offer, the trader shall seek the express consent of the consumer to any extra payment in addition to the remuneration agreed upon for the trader's main contractual obligation. If the trader has not obtained the consumer's express consent but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.

CHAPTER V

GENERAL PROVISIONS*Article 23***Enforcement**

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.

2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions transposing this Directive are applied:

- (a) public bodies or their representatives;
- (b) consumer organisations having a legitimate interest in protecting consumers;
- (c) professional organisations having a legitimate interest in acting.

*Article 24***Penalties**

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall notify those provisions to the Commission by 13 December 2013 and shall notify it without delay of any subsequent amendment affecting them.

Article 25

Imperative nature of the Directive

If the law applicable to the contract is the law of a Member State, consumers may not waive the rights conferred on them by the national measures transposing this Directive.

Any contractual terms which directly or indirectly waive or restrict the rights resulting from this Directive shall not be binding on the consumer.

Article 26

Information

Member States shall take appropriate measures to inform consumers and traders of the national provisions transposing this Directive and shall, where appropriate, encourage traders and code owners as defined in point (g) of Article 2 of Directive 2005/29/EC, to inform consumers of their codes of conduct.

Article 27

Inertia selling

The consumer shall be exempted from the obligation to provide any consideration in cases of unsolicited supply of goods, water, gas, electricity, district heating or digital content or unsolicited provision of services, prohibited by Article 5(5) and point 29 of Annex I to Directive 2005/29/EC. In such cases, the absence of a response from the consumer following such an unsolicited supply or provision shall not constitute consent.

Article 28

Transposition

1. Member States shall adopt and publish, by 13 December 2013, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of these measures in the form of documents. The Commission shall make use of these documents for the purposes of the report referred to in Article 30.

They shall apply those measures from 13 June 2014.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a

reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. The provisions of this Directive shall apply to contracts concluded after 13 June 2014.

Article 29

Reporting requirements

1. Where a Member State makes use of any of the regulatory choices referred to in Article 3(4), Article 6(7), Article 6(8), Article 7(4), Article 8(6) and Article 9(3), it shall inform the Commission thereof by 13 December 2013, as well as of any subsequent changes.

2. The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia, on a dedicated website.

3. The Commission shall forward the information referred to in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on that information.

Article 30

Reporting by the Commission and review

By 13 December 2016, the Commission shall submit a report on the application of this Directive to the European Parliament and the Council. That report shall include in particular an evaluation of the provisions of this Directive regarding digital content including the right of withdrawal. The report shall be accompanied, where necessary, by legislative proposals to adapt this Directive to developments in the field of consumer rights.

CHAPTER VI

FINAL PROVISIONS

Article 31

Repeals

Directive 85/577/EEC and Directive 97/7/EC, as amended by Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services⁽¹⁾ and by Directives 2005/29/EC and 2007/64/EC, are repealed as of 13 June 2014.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex II.

⁽¹⁾ OJ L 271, 9.10.2002, p. 16.

*Article 32***Amendment to Directive 93/13/EEC**

In Directive 93/13/EEC, the following Article is inserted:

'Article 8a

1. Where a Member State adopts provisions in accordance with Article 8, it shall inform the Commission thereof, as well as of any subsequent changes, in particular where those provisions:

- extend the unfairness assessment to individually negotiated contractual terms or to the adequacy of the price or remuneration; or,
- contain lists of contractual terms which shall be considered as unfair,

2. The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia, on a dedicated website.

3. The Commission shall forward the information referred to in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on that information.'

*Article 33***Amendment to Directive 1999/44/EC**

In Directive 1999/44/EC, the following Article is inserted:

*'Article 8a***Reporting requirements**

1. Where, in accordance with Article 8(2), a Member State adopts more stringent consumer protection provisions than

those provided for in Article 5(1) to (3) and in Article 7(1), it shall inform the Commission thereof, as well as of any subsequent changes.

2. The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia, on a dedicated website.

3. The Commission shall forward the information referred to in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on that information.'

*Article 34***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 35***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 25 October 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

M. DOWGIELEWICZ

ANNEX I

Information concerning the exercise of the right of withdrawal

A. Model instructions on withdrawal

Right of withdrawal

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period will expire after 14 days from the day [1].

To exercise the right of withdrawal, you must inform us [2] of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model withdrawal form, but it is not obligatory. [3]

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

Effects of withdrawal

If you withdraw from this contract, we shall reimburse to you all payments received from you, including the costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), without undue delay and in any event not later than 14 days from the day on which we are informed about your decision to withdraw from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement. [4]

[5]

[6]

Instructions for completion:

[1. Insert one of the following texts between inverted commas:

- (a) in the case of a service contract or a contract for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium: 'of the conclusion of the contract.;
- (b) in the case of a sales contract: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods.;
- (c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last good.;
- (d) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.;
- (e) in the case of a contract for regular delivery of goods during a defined period of time: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first good.'

[2. Insert your name, geographical address and, where available, your telephone number, fax number and e-mail address.

[3. If you give the option to the consumer to electronically fill in and submit information about his withdrawal from the contract on your website, insert the following: 'You can also electronically fill in and submit the model withdrawal form or any other unequivocal statement on our website [insert Internet address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a withdrawal on a durable medium (e.g. by e-mail) without delay.'

[4. In the case of sales contracts in which you have not offered to collect the goods in the event of withdrawal insert the following: 'We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest.'

5. If the consumer has received goods in connection with the contract:

(a) insert:

- 'We will collect the goods.'; or,
- 'You shall send back the goods or hand them over to us or ... [insert the name and geographical address, where applicable, of the person authorised by you to receive the goods], without undue delay and in any event not later than 14 days from the day on which you communicate your withdrawal from this contract to us. The deadline is met if you send back the goods before the period of 14 days has expired.'

(b) insert:

- 'We will bear the cost of returning the goods.'
- 'You will have to bear the direct cost of returning the goods.'
- If, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: 'You will have to bear the direct cost of returning the goods, ... EUR [insert the amount].'; or if the cost of returning the goods cannot reasonably be calculated in advance: 'You will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately ... EUR [insert the amount].'; or
- If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer's home at the time of the conclusion of the contract: 'We will collect the goods at our own expense.'; and,

(c) insert 'You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.'

6. In the case of a contract for the provision of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, insert the following: 'If you requested to begin the performance of services or the supply of water/gas/electricity/district heating [delete where inapplicable] during the withdrawal period, you shall pay us an amount which is in proportion to what has been provided until you have communicated us your withdrawal from this contract, in comparison with the full coverage of the contract.'

B. Model withdrawal form

(complete and return this form only if you wish to withdraw from the contract)

- To [here the trader's name, geographical address and, where available, his fax number and e-mail address are to be inserted by the trader]:
- I/We (*) hereby give notice that I/We (*) withdraw from my/our (*) contract of sale of the following goods (*)/for the provision of the following service (*),
- Ordered on (*)/received on (*),
- Name of consumer(s),
- Address of consumer(s),
- Signature of consumer(s) (only if this form is notified on paper),
- Date

(*) Delete as appropriate.

ANNEX II

Correlation table

Directive 85/577/EEC	Directive 97/7/EC	This Directive
Article 1		Article 3 read in conjunction with Article 2, points 8 and 9, and Article 16, point (h)
	Article 1	Article 1 read in conjunction with Article 2, point 7
Article 2		Article 2, points 1 and 2
	Article 2, point 1	Article 2, point 7
	Article 2, point 2	Article 2, point 1
	Article 2, point 3	Article 2, point 2
	Article 2, point 4, first sentence	Article 2, point 7
	Article 2, point 4, second sentence	—
	Article 2, point 5	—
Article 3(1)		Article 3(4)
Article 3(2), point (a)		Article 3(3), points (e) and (f)
Article 3(2), point (b)		Article 3(3), point (j)
Article 3(2), point (c)		—
Article 3(2), point (d)		Article 3(3), point (d)
Article 3(2), point (e)		Article 3(3), point (d)
Article 3(3)		—
	Article 3(1), first indent	Article 3(3), point (d)
	Article 3(1), second indent	Article 3(3), point (l)
	Article 3(1), third indent	Article 3(3), point (m)
	Article 3(1), fourth indent	Article 3(3), points (e) and (f)
	Article 3(1), fifth indent	Article 6(3) and Article 16, point (k) read in conjunction with Article 2, point 13
	Article 3(2), first indent	Article 3(3), point (j)
	Article 3(2), second indent	Article 3(3), point (f) (for rental of accommodation for residential purposes), point (g) (for package travel), point (h) (for timeshare), point (k) (for passenger transport with some exceptions) and Article 16, point (l) (exemption from the right of withdrawal)
Article 4, first sentence		Article 6(1), points (b), (c) and (h), and Article 7(1) and (2)
Article 4, second sentence		Article 6(1), point a and Article 7(1)
Article 4, third sentence		Article 6(1)
Article 4, fourth sentence		Article 10
	Article 4(1), point (a)	Article 6(1), points (b) and (c)
	Article 4(1), point (b)	Article 6(1), point (a)

Directive 85/577/EEC	Directive 97/7/EC	This Directive
	Article 4(1), point (c)	Article 6(1), point (e)
	Article 4(1), point (d)	Article 6(1), point (e)
	Article 4(1), point (e)	Article 6(1), point (g)
	Article 4(1), point (f)	Article 6(1), point (h)
	Article 4(1), point (g)	Article 6(1), point (f)
	Article 4(1), point (h)	—
	Article 4(1), point (i)	Article 6(1), points (o) and (p)
	Article 4(2)	Article 6(1) read in conjunction with Article 8(1), (2) and (4)
	Article 4(3)	Article 8(5)
	Article 5(1)	Article 8(7)
	Article 5(2)	Article 3(3), point m
	Article 6(1)	Article 9(1) and (2), Article 10, Article 13(2), Article 14
	Article 6(2)	Article 13 and Article 14(1), second and third subparagraphs
	Article 6(3), first indent	Article 16, point (a)
	Article 6(3), second indent	Article 16, point (b)
	Article 6(3), third indent	Article 16, point (c) and (d)
	Article 6(3), fourth indent	Article 16, point (i)
	Article 6(3), fifth indent	Article 16, point (j)
	Article 6(3), sixth indent	Article 3(3), point (c)
	Article 6(4)	Article 15
	Article 7(1)	Article 18(1) (for sales contracts)
	Article 7(2)	Article 18(2), (3) and (4)
	Article 7(3)	—
	Article 8	—
	Article 9	Article 27
	Article 10	— (but see Article 13 of Directive 2002/58/EC)
	Article 11(1)	Article 23(1)
	Article 11(2)	Article 23(2)
	Article 11(3), point (a)	Article 6(9) for the burden of proof concerning pre-contractual information; for the rest: —
	Article 11(3), point (b)	Article 24(1)
	Article 11(4)	—
	Article 12(1)	Article 25
	Article 12(2)	—
	Article 13	Article 3(2)
	Article 14	Article 4

Directive 85/577/EEC	Directive 97/7/EC	This Directive
	Article 15(1)	Article 28(1)
	Article 15(2)	Article 28(1)
	Article 15(3)	Article 28(1)
	Article 15(4)	Article 30
	Article 16	Article 26
	Article 17	—
	Article 18	Article 34
	Article 19	Article 35
Article 5(1)		Articles 9 and 11
Article 5(2)		Article 12
Article 6		Article 25
Article 7		Articles 13, 14 and 15
Article 8		Article 4

Annex to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) ⁽¹⁾	To be construed as a reference to
Paragraphs 2 and 11	This Directive

⁽¹⁾ OJ L 364, 9.12.2004, p. 1.

Exhibit B

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Increase the number of visitors to your links

1,669,261,862

VISITS DELIVERED TOTAL



START PROMOTING YOUR SITE

Alexa Rank

Traffic Diversification In World's Leading Services



- Providing Low Cost Ad Services
- Delivering Best-In-Class & Long-Term Service
- Helping Our Advertisers Achieve Success

TrafficMonsoon.com is a specialized advertising and revenue sharing company that allows international participation of individuals and groups. Our services provide high quality advertising targeted for people seeking for a way to earn money online along with complete account privacy, top level online security, efficient account management, and a dedicated support team.

41

VISITS DELIVERED
TODAY

3,558,338

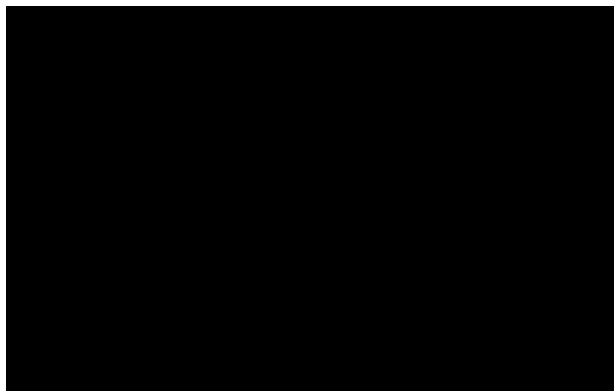
MEMBERS TOTAL

0

MEMBERS LAST
MONTH

0

MEMBERS ONLINE



Learn How You Can Use Traffic Monsoon to Make More Money Online

Our company's traffic generation resources are capable of sending your website several thousands of visitors quickly. All our members have equal opportunity to benefit from an attractive revenue sharing plan on a long-term basis. There is truly no risk to our revenue sharing plan, because the quality of advertising services you're paying for out-weigh the price. You'll really notice the difference with TrafficMonsoon in results, and profit sharing.

Monsoon Traffic Packages offer you the ability to promote your website through a myriad of advertising websites to help you

endlessly to earn the credits needed for the number of visitors you want to receive. Simply select the number of visitors you want, complete payment, and receive visitors!

gain greater control over your advertising and generate more overall revenue for your business. TrafficMonsoon is the only company that can help you do this.

	1000 visitor credits \$5.95
	2500 visitor credits \$13.95
	5000 visitor credits \$27.95
	7000 visitor credits \$37.95
	10000 visitor credits \$49.95
	15000 visitor credits \$74.95
	25000 visitor credits \$119.95
	50000 visitor credits \$229.95

	2500 visitor credits \$5.00
	5000 visitor credits \$9.00
	10000 visitor credits \$16.00
	25000 visitor credits \$38.00
	50000 visitor credits \$70.00
	100000 visitor credits \$130.00
	200000 visitor credits \$250.00
	500000 visitor credits \$600.00

TrafficMonsoon is intended to stay, grow, and compete in the field of internet advertising services. We'll do whatever it takes to become a leader you can trust and rely upon.

[READ ABOUT OUR HISTORY](#)



We've delivered **1,669,261,862** Visitors to Our Member's Websites to Date !

WE'RE ABSOLUTELY CAPABLE OF PROVIDING YOU A MASSIVE FLOW OF VISITORS AT PRICES YOU CAN AFFORD.

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Up To \$55

10% Affiliate Program

Our advertising & sharing plans were carefully thought through to provide a mutually beneficial experience over the long term. With such plans you can't go wrong, we strive to deliver member's advertising purchases as fast as possible and process withdrawals within 24 hours. Constant member satisfaction isn't an easy task and our main goal in today's changing market will stay the same: Member's Success!

If you wish to get more detailed information about our advertising services: [Visit Advertising Plans](#)



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New Account Registration

Account registration is currently open and we are accepting new members, please fill in the short form below to become a part of our growing community.

Your enroller's name is **Traffic Monsoon**

Your Enroller Username :

Personal Information

First Name :

Last name :

Date of Birth (MM/DD/YYYY) :

Contact Information

Email Address :

Retype E-mail :

*** Do Not Use Hotmail, MSN, Outlook, Live, AOL, Mail.RU Because You Won't Receive The Activation Email ***

It's Best to Use Gmail or Yahoo To Ensure Receiving Your Activation Email.

Address :

City :

State :

Country :

Postal Code :

Phone :

Afghanistan

Account Information

Enter Username :

Define Password (Letters and Numbers) :

Retype Password :

Define Withdrawal Password :

Retype Withdrawal Password :

Withdrawal Password is the password you enter at the time you request earnings to be sent to you from Traffic Monsoon

Payment Information

If you don't have any eCurrency account yet, please signup to one here:

[Payza](#) ; [SolidTrustPay](#) - They're fast, secure & free!

If you prefer to simply use your credit card, leave these fields blank.

Your credit card statement will read ALW*trafficmonsoon8776446714

Payza Email :

Solid Trust Pay Username :

Security Questions

1. What is the name of your best friend as a child?

2. What is the name of your elementary school?

3. In what city or town does your nearest sibling live?

Please remember the answers. When you will try to login from the different IP address you will be required to answer these questions.

Terms & Conditions

Posting false negative vote/s on feedback site/s without contacting us first is considered to be a strict violation that could lead to indefinite account suspension.

Therefore, if you have any kind of issue with your account, please always make sure to try and resolve it with our support team, we're always at your service!

I understand and fully agree to [TrafficMonsoon Terms and Conditions](#) Including that any purchase of service is non-refundable.

Turing number :



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About

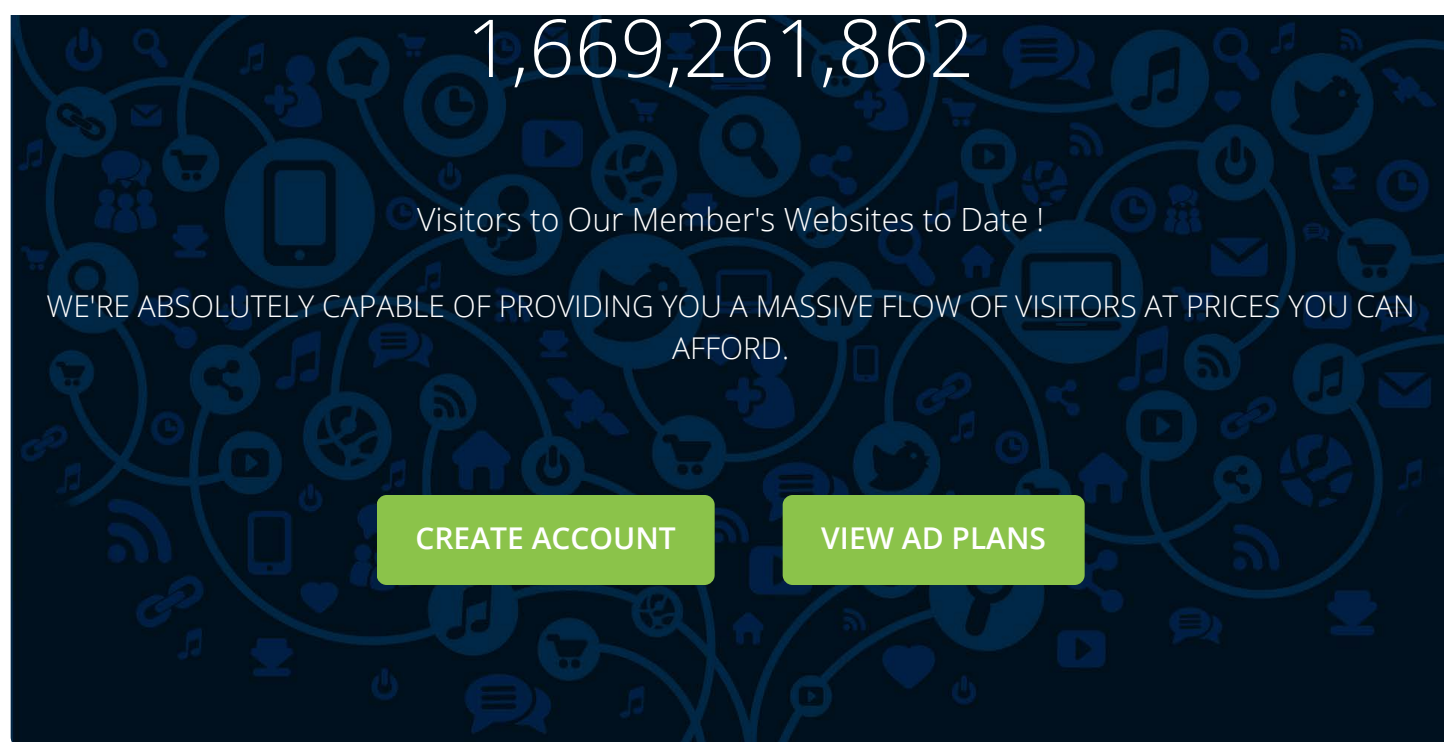
Main Objective

TrafficMonsoon was established with a clear mission in mind: to provide high quality ad services for affordable prices, and share revenues for a perfect winning combination that will lead to the ultimate success of our customers.

We've each been through a hard road, and faced struggles and challenges in our way. Each of these experiences have given us strength, and desire to offer solutions to others who might be struggling to obtain quality services, and make it easier for people to finally earn money online.

We aspire to go beyond the standards set by others, and progress forward to raise the bar of excellence. We believe that true prosperity & success can be accomplished as our community shares its goals, and focuses on efforts to bring these services into the hands of those who need them most.

If we succeed in our mission, then the services we offer will have repeat buyers due to the quality and ability to deliver massive amounts of traffic, which will generate continuous sharing of revenues with those who participate in the program.



1,669,261,862

Visitors to Our Member's Websites to Date !

WE'RE ABSOLUTELY CAPABLE OF PROVIDING YOU A MASSIVE FLOW OF VISITORS AT PRICES YOU CAN AFFORD.

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Company's History

Team Behind the Storm:

In 2014 we have decided to open an advertising service with a sharing relationship with our advertisers, because we see the needs these services can meet in the industry of internet marketing. We've learned from experience how difficult it can be to find quality ad services online, but always had great motivation to learn, explore, and try new advertising services to expand our successes online. From this background, we have the knowledge and expertise to provide top level advertising services for you.

Our team has combined experience in: Customer Service, Graphic Design, Programming, Internet Marketing, Business Management, Database Management, Internet Security, and Network Marketing.

In 2008 we witnessed an increase in home based business activity due to the global economic crisis. Hundreds of thousands, if not millions, of people around the world today are seeking for a way to make more money to either supplement or replace a full-time income. People from all walks of life were faced by a new challenge for income generation, and with it came multiple new opportunities to participate in referral based commission structures. The opportunity to earn additional income or full-time income online has already been realized by several thousands of people around the globe.

Expansion for anyone's internet income generation within any referral based income opportunities requires focus and development of skill of increasing your internet exposure. Reaching the target market of people seeking home based business opportunities, tools, and resources can pose as a major difficulty. Additionally, continually paying for more products, tools, and advertising services without earning a penny can be extremely frustrating. TrafficMonsoon has been built to make it easier for your offers to reach the internet income community, while at the same time give you opportunity to begin earning by simply participating in our traffic exchange services.

REGISTER FOR FREE TODAY!

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Ad Plans

Philosophy

Usually, the term monsoon is used to refer to the rainy phase of a seasonally-changing pattern. It's a time when quasi semi-deserts are turned into vivid green grasslands where all sorts of plants and crops can prosper.

We believe that monsoons are powerful and significant in nature, and symbolize a shift in desert conditions to a full vibrant period of growth and prosperity. This of course is accomplished through using a system of traffic that influences the circumstances of an internet business to reverse any failure, bring about much greater visibility in the market, and cause an excess of exposure for your business, cause strong word of mouth discussion "winds" and bring about heavy amounts of converting website visitors.

Cash Links

These are paid-to-click links which appear on your dashboard, and reward you with extra cash!

Cash links are a great way to show other members what else you're involved with, and invite them to join you.<

Basically

\$1.00 => 50 visitors = \$0.02 per click. \$0.01 goes to clicker, and \$0.01 goes to sponsor
Visitor remains on your site 30 seconds

\$1.00 => 25 visitors = \$0.04 per click. \$0.02 goes to clicker, and \$0.02 goes to sponsor
Visitor remains on your site 60 seconds

To qualify for referral click earnings from these links, you must have clicked a minimum of 10 ads in the traffic exchange within the last 24 hours.

Sharing

Only 1 of the services we offer includes a revenue sharing position. We do not sell "shares." We only sell advertising services. It's from the sales of all our services that we share revenues.

When our members purchase a service from TrafficMonsoon, the revenues from that purchase are held by the company. Then, you can qualify to receive share of the profits! Naturally there is cost associated with providing services. Each service provided generates a profit margin. We share those profits with you!

When you purchase an AdPack combo advertising campaign for \$50, you'll receive 20 clicks to your banner, 1,000 traffic exchange credits, and a revenue sharing position.

When you click a minimum of 50 ads in our traffic exchange and remain on the websites for 5 seconds each, you'll qualify yourself for 24 hours to share in site profits.

As long as you are qualified, each sharing position you receive with your AdPack Combo purchase will continue to share in revenues up to \$55.00. Reaching this maximum is not guaranteed, or affixed to any time frame. It's completely reliant upon sales of services, and you being qualified.

Earn Traffic Exchange Credits

Any purchase turns your account into a life-time paid member. Each 3 ad views in our traffic exchange will reward you 2 visitor credit in the traffic exchange.

FREE members can surf ads, and receive 1 visitor credit for every 3 sites you view in the traffic exchange.

There is no requirement to refer to share in site profits.

Services:

We share profits from all of the following services.

- ☐ **Pay-Per-Click Banner Ad Campaigns**
- ☐ **Pay-Per-Click Text Ad Campaigns**
- ☐ **Traffic Exchange Start Pages**
- ☐ **Traffic Exchange Credit Purchases**
- ☐ **Monsoon Traffic Packages**
- ☐ **Login Ads**

Pay-Per-Click Campaigns are \$0.25 per click and allow you to target your ads to specific countries for \$0.50 per click. Every click on your banners ads is worth a lot - those users who click on your ads may become your referrals or even clients. Users click simply because they are interested in the topic of your ads!

Traffic Exchange Start Pages is an offer we have for your site to be the first site viewed by all members. This is priced at \$35 per day. You'll receive a lot more attention to your ad this way and

stand out first in people's minds.

Traffic Exchange Credit Purchases offers you the ability to purchase more traffic exchange visitors without having to surf endlessly to earn the credits needed for the number of visitors you want to receive. Simply select the number of visitors you want, complete payment, and receive visitors!

Monsoon Traffic Packages offers you the ability to promote your website through a myriad of advertising websites to help you gain great exposure, increase recognition, and generate better overall results in gaining sign-ups, leads, and referrals.



1000 visitor credits \$5.95



2500 visitor credits \$13.95



5000 visitor credits \$27.95



7000 visitor credits \$37.95



10000 visitor credits **\$49.95**



15000 visitor credits **\$74.95**



25000 visitor credits
\$119.95



50000 visitor credits
\$229.95



2500 visitor credits \$5.00



5000 visitor credits \$9.00



10000 visitor credits \$16.00



25000 visitor credits \$38.00



50000 visitor credits **\$70.00**



100000 credits **\$130.00**



200000 credits **\$250.00**



500000 credits **\$600.00**

Login Ads places your website in a pop-up window upon login. This is priced at \$35 per day. This is limited to only 1 space of availability, so hurry and grab it if you see it available!

10% Affiliate Program

You've got the opportunity to invite your friends, family, or other groups to enjoy our services & benefit from our lucrative affiliate program. For each purchase of service (except cash links) one of your referrals makes, you'll gain an instant 10% commission. This alone can help you build a constant cash-flow.

CREATE AN ACCOUNT TODAY!

REGISTER FOR FREE TODAY!

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Get in touch

- ☐ Traffic Monsoon Global Limited, Imperial Offices, 2 Heigham Road, East Ham, London, UK, E6 2JG
- ☐ Traffic Monsoon LLC, 4927 S Murray Blvd Z9, Murray, UT, 84123 United States

☐ +1-877-644-6714

☐ +44 808 238 7548

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Web Exposure

728x90 Banner Ads

468x60 Banner Ads

468x60 Banner Ads

Banner

Banner

Calling all NFL Fans

Learn how YOU can make a HUGE
Income by sharing a free app

"The Business In A Box"

Free Report Reveals 7 Figure
Entrepreneur's Business

Get Active Referrals

Need active referrals ?
Let CSPro get them for you!

468x60 Banner Ads

468x60 Banner Ads

Banner

Banner

EARN \$537 A DAY OR MORE

FREE VIDEO! See How People are
Earning Multiple \$537 Daily!

Your DotCom Life Awaits!

Easy To Follow 3-Step System!
Online and IM Newbie Friendly!

We Do The Selling For You

Make \$5,000 Commissions
Let Me Show You FREE - LIVE

468x60 Banner Ads

468x60 Banner Ads

Banner

Banner

FRANCHISE FUNNEL SYSTEM

Invitation to One-Off Webinar
at 9pm UK time, 4pm EDT

More Cash Links

1/2cent cash links
100%referral matching bonus

Daily Passive Income

Fully transparent business
Market Leader

468x60 Banner Ads

468x60 Banner Ads

Banner

Banner

FREE Fitness eBook

Slim & Fit In 2 Weeks
The Untold Secret Revealed

(NEW!) FutureAdPro

ADPACKS. Up to 120%
Enjoy 5 levels Referrals

(NEW!) FutureAdPro

ADPACKS. Up to 120%
Enjoy 5 levels Referrals

Increase Traffic and Drive Sales With Pay Per Click

YES. I WANT MORE TRAFFIC

LEARN MORE

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Security

You can rest easy knowing that your personal information will be kept strictly private.

☐ **2048-Bit Private Key Encryption Comodo EV SSL**

Highest Assurance SSL Certificate

☐ **128-Bit Encrypted Connection**

☐ **Daily Offsite Back-Ups**

☐ **Server Has 2 Processors & 2 Hard Drives**

Extra Redundancy For Extra Data Protection

If for instance one of the processors would die on the server and the hard drive would fail, there would be no interruption to your service as the other CPU and hard drive would still be

- ☐ **McAfee Secure**

Tested To Ensure Hacker Safe

- ☐ **DDoS Protection**

Fully Managed 24/7 Monitoring and Mitigation

- ☐ **24 Hour Delay on Revenue Sharing**

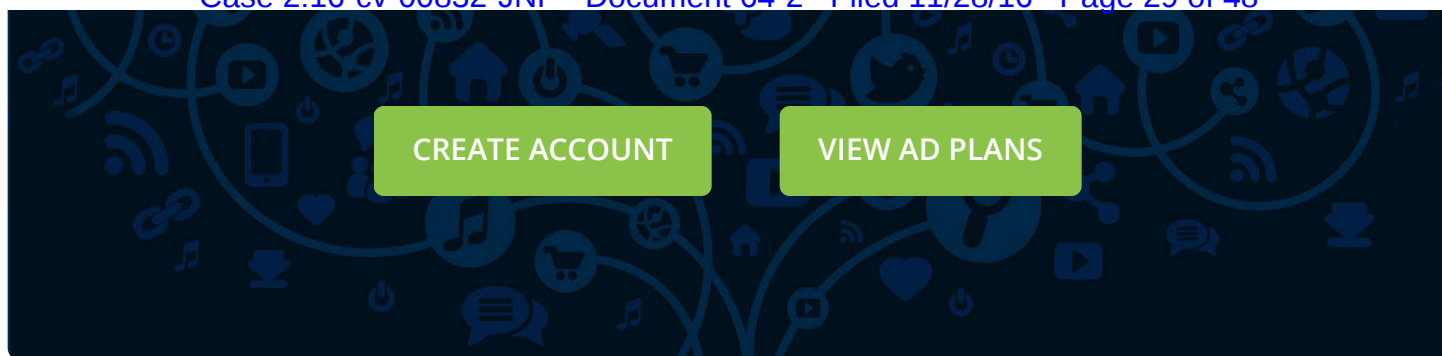
You'll share in revenues today from purchases made yesterday. This provides us a full day to catch fraudulent payments before they are shared. If we're ever attacked with a large fraudulent payment, it will be caught and blocked before it impacts member accounts.

- ☐ **Custom Website Script**

Developement built in patches to cover all the known vulnerabilities.

- ☐ **Secure Member Account Support**

We only provide account specific support for members who entered a support ticket from inside their account, after having entered their passwords. If you're unable to access your account, passwords will be sent to your email. For further account verification, we'll verify using a transaction number from a purchase made to TrafficMonsoon.



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FAQ

I need website visitors. Can I join TrafficMonsoon as a FREE Member and get visitors in your traffic exchange?

Yes. There's no requirement for you to purchase anything before using our traffic exchange services.

As a free member, you'll be able to enjoy a 1:3 surf ratio. That means, you'll surf 3 websites to receive 1 visitor credit.

When you purchase services, you'll enjoy a 2:3 surf ratio. That means, you'll surf 2 website to receive 3 visitor credits.

Is TrafficMonsoon a hyip, ponzi, pyramid scheme, or illegal?

What is a ponzi? ponzis are investment schemes which offer interest payments. they pay interest from new investor principle deposits. If you add together the interest earned total and principle total, there would be a debt balance created. Sufficient funds would not be available to pay people their principles and interest.

If everyone was to request their balance, the ponzi would not have money to pay everyone's account balances. ponzis need new money to cover cash out requests. They don't have enough money to cover existing earnings. They collapse when cash out requests can't be paid because the money isn't there.
(example, HYIPS)

Another example of a ponzi is something that guarantees some sort of income, and the system rewards the earnings (to make their guarantee appear real) even when real money isn't supporting those earnings. They also fail when they have insufficient funds to cover the total account balances, and collapse when cash out requests cannot be paid because money isn't there to pay people what they have earned.

Why is Traffic Monsoon not a ponzi?

Traffic Monsoon only offers ad services. Nothing else is for sale than ad service. There is no investment plan offered. Yes, you can qualify to share in the sales revenue generated when services are sold by actively viewing other people's websites, but this is not interest.

Interest is a formula of principle investment multiplied by $(1 + \text{rate multiplied by time})$. Traffic Monsoon does not offer interest. There is no rate, and no time, and no guarantee. In fact the website specifically states this on the ad plans page. There is no investment on Traffic Monsoon; only a purchase of advertising service.

A purchase of advertising service with Traffic Monsoon is not considered a deposit, nor investment. In fact members agree to this as part of our terms of service when they sign-up.

Traffic Monsoon has all the money to pay people what they have earned.

No one is making a principle deposits and no one is earning interest. They are only buying

an ad service. A service was selected and paid for, which was immediately made available upon successful purchase.

New sales of advertising service generate new earnings .. That's not a ponzi ..

What is a pyramid scheme?

"Pyramid scheme" means any sales device or plan under which a person gives consideration to another person in exchange for compensation or the right to receive compensation which is derived primarily from the introduction of other persons into the sales device or plan rather than from the sale of goods, services, or other property.

In otherwords, giving someone money for nothing more than meet a qualification to become able to have people give you money for nothing more than to qualify to receive money from others.

(example, cash gifting)

In contrast with Traffic Monsoon

1. Purchase of service is not required for anyone to receive sales commission compensation
2. Earnings are possible without referring anyone at all through clicking paid-to-click ads.
3. The services purchased are absolutely real, and can be compared with any other traffic exchange or paid-to-click website. Website visitor packages can be tracked as providing real visitors
4. There is no "recruiting" fee nor commission paid simply for "recruiting" -- only commissions for services sold which hold true value, and our pricing is below (or at least equal to) industry averages.

In conclusion, when looking at pure definitions, Traffic Monsoon is not a ponzi and is not a pyramid scheme. It's a business that sells advertising services, offers sales commissions, and allows members to qualify to share in the sales revenues by actively viewing other member websites.

How do I make money with TrafficMonsoon?

Think of Traffic Monsoon as a traffic exchange mixed with a paid-to-click site.

But instead of rental referrals, we have adpacks that give ad service + sharing positions that share up to \$55 .. You must click at least 10 ads in the traffic exchange to qualify for referral click earnings & sharing each day.. Qualifying lasts 24 hours, just like needing to qualify for referral clicks & rental earnings on a paid-to-click.

Some have wondered--- can earning on a paid-to-click site be profitable? If so, how?

More referrals will be more money for you.

10 referrals X \$0.10 earnings from cash links X 30 days = \$30 from your referral clicks

10 referrals X \$0.10 earnings from cash links X 365 days = \$365 from your referral clicks

500 referrals X \$0.10 earnings from cash links X 30 days = \$1,500 from your referral clicks

500 referrals X \$0.10 earnings from cash links X 365 days = \$18,250 from your referral clicks

1000 referrals X \$0.10 earnings from cash links X 30 days = \$3,000 from your referral clicks

1000 referrals X \$0.10 earnings from cash links X 365 days = \$36,500 from your referral clicks

This is not a guarantee of income, but an example of what you can earn by referring new members to Traffic Monsoon who click on cash links.

There are really 4 opportunities to earn with traffic monsoon.

- paid to click
- using ad services to generate leads to make money in your primary business
- revenue sharing
- direct sales commissions

Each one can be your main focus, or all of them. Naturally, the more you utilize all 4 of these ways to earn money, the more you'll earn.

You'll receive 10% commissions from all your referral purchases, except for cash link purchases. There's no commissions from cash link purchases, because all the money from those purchases are divided up to be rewarded to clickers and the sponsor of the clicker.

This site is really awesome. I want to setup more than 1 account. Can I do that?

No. We have it built in our system to disallow multiple sign-ups from the same IP address, and additionally will not allow multiple accounts to sign into accounts from the same IP within the day.

Can I refer my family member or friend to this site?

Yes. You may absolutely invite friends and family to use our services. Each account must have its own IP, email address, and payment processor account.

There's no stacking, nor creating accounts for loved ones using your payment processor account.

If for any reason an account is signed up from the same IP as yours, the account would be forced "unreferred"

What kind of sites do you allow?

We allow any site, as long as it is not a frame breaker, can be displayed inside an ad frame, and is not pornographic.

Websites with more than ONE pop-up are also disallowed. One pop-up is ok, but more than 1 is too annoying for our members.

Ads that break this rule will be suspended. Repeat offenders will have their account

suspended.

When is revenue shared from purchases?

Revenues are shared hourly, and delayed by 24 hours. This means you will receive share in revenues today from purchases made yesterday.

We do this for security purposes, and to protect our members from fraudulent funds needing to be removed from their account earnings.

What's your minimum payout?

You can request your first payment when your balance reaches \$2.00

This minimum increases by \$1.00 for each withdrawal until you reach \$10.00

(\$2.00, then \$3.00, then \$4.00, and so forth up to \$10.00)

Then, your minimum will remain at \$10.00

What payment processors do you accept?

We accept Payza, and Solid Trust Pay.

When I was surfing, I entered the code and I was given a message "wrong click"?

This means you need to turn off adblock within your browser add-ons. If you see this without this add-on, try another browser or update your current browser to the most recent version.

Are withdrawals handled instantly?

We process all requests within 24 hours. Sometimes it will be so fast it will feel instant.

How often can I request payout?

As soon as you've reached your minimum, you can request payment. This could happen multiple times per day.

If I choose to quit using your services after I've made a purchase, can I get a refund?

No refunds, because all revenues are already shared with all active members and commissions paid to your referring sponsor.

What does "share revenue up to \$55" mean?

This means we cannot guarantee the amount you'll receive per day, but as long as you are qualified to receive share in site revenues, you'll continue to receive of revenues on each sharing position up to \$55.

This also means we do not guarantee reaching \$55, because earnings from revenue sharing is completely dependent upon the sales of ad services, and also dependent upon you meeting the qualification to receive of revenues by surfing a minimum of 10 ads in a 24 hour period.

What is a Click or a Credit?

Some banner or text ad sites sell impressions. We sell clicks. You'll get unlimited impressions, until you reach the number of clicks on your banner or text ad.

Traffic exchanges generally describe the number of visitors you have remaining in the traffic exchange in terms of credits.

Both terms describe that 1 credit (or click) equals 1 visitor to your site.

What is a withdraw code?

This is a security feature to protect your withdrawals. Other sites might call this a transaction pin. This is what you'll enter inside your TrafficMonsoon back office when you request a payment to be sent to your payment processor.

I didn't receive referral cash link earnings. Why not?

You must click at least 10 ads in the traffic exchange to qualify for referral click earnings.

The qualification 10 click minimum will look at a window of 24 hours. If within that window 10 ads have been clicked, than you will still appear qualified. The count down timer will be based upon the oldest click in the 24 hour window.

So you can click on hour 23, and if you click 10 ads in a row at hour 23, your timer will display the new time of the 1st of your most recent clicks of 10.

How do I change my payment processor after sign-up?

When you signed up, you entered your payment details how you want to be paid.

Sorry, we do not allow processor changes for security reasons.

If you need to add a processor differently than you entered at sign-up, the only other way is to make a purchase.

When you make a purchase, it locks your account to the processor account used to make a purchase.

This is heightened security against hackers in case anyone gains access to your account.

I'm seeing this message: "It seems you are behind proxy or using VPN."

I'm sorry you're receiving the VPN/PROXY message

Solution:

Update your browser

Use google chrome.

If that doesnt work, switch your browser.

Make sure you're using the most updated version of your browser.

Make sure you're not accessing the site through a proxy, or VPN. Google translate might be causing the problem.

Login from the login page <http://trafficmonsoon.com/login> as another solution.

Internet Explorer and FireFox users are finding with the most updated versions of these browsers to have no problems, but I'm using Chrome and also have no problem.

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Support Center

For General Questions, Fill Out A Public Support Ticket
Or Call Us Mon-Fri 9:00am - 5:00pm Eastern Time

For Your Security & Protection, Any Account Related Questions Must Be Submitted From
Inside Your Account

Every transaction made between TrafficMonsoon and its members, is considered to be
private. Your credit card statement will read ALW*trafficmonsoon8776446714

If you already submitted a ticket and wish to check it, please click [Check a ticket](#).

Create ticket

[NEED HELP? CHAT](#)

First name :

Last name :

E-mail address :

Username (if you're member) :

Subject :

Message :

Turing number :



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Terms

Please read the following terms & conditions before using our services.

A By participation in TrafficMonsoon program, you must acknowledge and agree to the following terms:

1. You agree to be of legal age in your country, and in all the cases your minimal age is 18 years of age.
2. TrafficMonsoon service is only available to qualified members & individuals personally invited by them.
3. Every transaction made between TrafficMonsoon and its members, is considered to be private.
4. Every transaction made between TrafficMonsoon and its members, is considered to be private. Your credit card statement will read ALW*trafficmonsoon8776446714
5. All members information, financial reports, account balances, messages and other info

displayed and / or stored by TrafficMonsoon are of private nature, and will not be disclosed to third parties.

B TrafficMonsoon registered as a limited liability company and not a bank nor a security firm. A purchase of advertising service with us is not considered a deposit, nor investment.

C You are under the money laundering prevention law and other such international laws, therefore it is illegal to conduct or attempt to conduct a financial transaction with proceeds known to be from specified unlawful activity. Such an activity may include the intent to promote the carrying of unlawful activity, to evade taxes, and / or to conceal or disguise the nature of the proceeds and reporting requirements.

1. You accept sole responsibility for any and all appropriate taxes as charged in your country, and hereby indemnify TrafficMonsoon and its owners of such liability.
2. All transactions are deemed final. When we send you a payment, we intend for you to keep it and not refund us for the payment sent to you. If you choose to refund a payment sent to you, then you accept the refund is a gift back to Traffic Monsoon. We reserve the right to change payment processors as needed which we use in order to process payments to our members.
3. You agree that our past performance does not guarantee you the same results in the future.
4. You agree to hold TrafficMonsoon harmless from any loss and / or liability to your purchase, therefore do not purchase services that you can not afford to pay for, as you are spending it at your own risk.
5. TrafficMonsoon is not responsible and / or liable for any internal or external loss of funds due to password sharing and / or Identity theft.

D You agree that all discussed information and / or replies coming from TrafficMonsoon by any means of communication are of private nature, therefore must be kept confidential and protected by copyright from any disclosure.

1. If you are not a member you are prohibited from modifying, copying, distributing, transmitting, publishing, selling, creating derivative works and / or using any information available on and / or through TrafficMonsoon.
2. Only promote TrafficMonsoon using legal methods. Any income promises, or

guarantees inconsistent with the information provided by TrafficMonsoon may result in a permanent account suspension.

3. TrafficMonsoon will not be held responsible for any harm and / or loss made to any person or group by our members and/or visitors. Therefore, both members and visitors of TrafficMonsoon take full responsibility for their methods of promoting and marketing TrafficMonsoon, and it must fully comply to this written terms.
4. The information, communications and / or any materials TrafficMonsoon contains are for educational and informational purposes, and is not to be regarded as solicitation for investments in any jurisdiction which deems a non-public offers or solicitations unlawful, nor to any person whom it will be unlawful to make such an offer and / or solicitation.
5. You agree to recognize TrafficMonsoon as a true advertising company which shares its revenues, and not as any form of investment of any kind.

E You acknowledge that you are acting as an individual and not on behalf of any other entity and / or any authority. Our offer is void where prohibited by law

F TrafficMonsoon reserve the right to suspend and / or close the operation of this site or sections thereof when, as a result of political, economic, military, monetary events and / or any other circumstances outside the control, responsibility and power of TrafficMonsoon site and company. The continued operation of this site is contingent upon the company's profit margins being sufficient to cover business expenses to continue business. In such event, TrafficMonsoon will provide updates, and deliver services purchased where at all possible.

G TrafficMonsoon "Zero-Tolerance" Anti Spam Policy:

1. We will not tolerate SPAM, and / or any type of UBE/UCE in connection to this site.
2. You agree to not use our company name and / or TrafficMonsoon site name in any connection / relation to send spam, solicited emails, and / or any other way there is.
3. You agree to not post false negative votes on public forums and / or any rating sites without contacting us at first. There may have been a temporary technical problem, so please make sure to always resolve any kind of issues and / or difficulties with our dedicated support.
4. If you have violated this "Zero-Tolerance" Anti Spam Policy, you will lose the rights of using our service and all of your account privileges will be immediately revoked.

- H** Violation of any kind to the terms and / or conditions mentioned herebefore will get you permanently removed from this program, you will lose your rights to use TrafficMonsoon services, and all of your account privileges will be immediately revoked.
- I** We reserve the right to change the commissions, rates, terms and / or conditions mentioned this program at any given time and at our sole discretion, with respect the integrity and security of our members interests. You agree that it is your sole responsibility to review the most updated version of our terms & conditions of service listed in here, to which you are bound. Certain provisions of our terms and / or conditions of use may be superseded by other legal notice, located in other parts of our website.
- J** We will always do our best effort to stay in contact with you and keep the site up and running.
- K** TrafficMonsoon will not hold any responsibility for any ads placed on our site by advertisers. It is your sole responsibility to conduct due diligence before acting on any offer presented to you through our services.

1. In no event will TrafficMonsoon be liable for damages, losses, whether special circumstances, incidental, consequential, breech of contract, or otherwise which arise from clicking and acting on any of the offers displayed on TrafficMonsoon.com or anywhere else.
2. You are responsible for your website's downtime, or typographical errors which lead visitors to the wrong location. Before purchasing ad service and starting your campaign, it's your responsibility to ensure the banner image is correct, and the link is in working order. Any clicks you receive to the wrong link are your full responsibility.
3. You agree that we cannot guarantee results for your campaigns, but we can only ensure that you're able to receive all the visitors you've paid for. Results of campaigns vary upon the visitor's personal needs, and whether your offer adequately communicates ability to meet their need.
4. We accept all types of advertisements, except for websites that break out of the ad frame, sites that do not display in the ad frame (such as youtube, google, facebook links), adult content, gambling, interest/usury, illegal content, hate, racism, drugs, and alcohol.
5. We reserve the right to deny any advertisement that we do not see fit to be displayed.

- L** Any inquiries should be addressed in writing to our dedicated support via the contact page.

- M** Any accusation without proof, intimidation, threat or disrespect against TrafficMonsoon and / or TrafficMonsoon staff / assistants, here or elsewhere will be seen as disrespectful and may lead to the permanent suspension of your account, temporary suspension of membership or any other benefits.
- N** To prevent unauthorized access, maintain data accuracy, and ensure the correct use of information, trafficmonsoon.com goes above and beyond appropriate industry standard procedures to safeguard the confidentiality of member's personal information, such as firewall, encryption, token authentication, application proxies, monitoring technology, and adaptive analysis of the website's traffic to track abuse of the trafficmonsoon.com website and its data. However, no data transmitted over the internet can be 100% secure. As a result, while trafficmonsoon strives to protect its members personal information, cannot guarantee the security of any information that members transmit to or from the participating advertisers/merchants and member does so at his/her own risk.
- O** If the account holder dies, then we'll verify documents to ensure the person who was willed their account or estate would have access to their Traffic Monsoon account.
- P** If you do not agree with the above terms and conditions, please do not go any further.

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