

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark one)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Quarterly Period Ended December 31, 2005

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission File Number 0-12699

ACTIVISION, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

95-4803544

(I.R.S. Employer Identification No.)

3100 Ocean Park Boulevard, Santa Monica, CA

(Address of principal executive offices)

90405

(Zip Code)

(310) 255-2000

(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check One):

Large accelerated filer

Accelerated filer

Non-accelerated filer

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

The number of shares of the registrant's Common Stock outstanding as of February 3, 2006 was 276,541,773.

ACTIVISION, INC. AND SUBSIDIARIES

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Part I. Financial Information.

Item 1. Financial Statements.

ACTIVISION, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)

	<u>December 31, 2005</u>	<u>March 31, 2005</u>
	(Unaudited)	
Assets		
Current assets:		
Cash and cash equivalents	\$ 267,069	\$ 313,608
Short-term investments	497,537	527,256
Accounts receivable, net of allowances of \$175,280 and \$69,191 at December 31, 2005 and March 31, 2005, respectively	414,492	109,144
Inventories	84,828	48,018
Software development	24,528	73,096
Intellectual property licenses	5,382	21,572
Deferred income taxes	8,861	6,760
Other current assets	23,751	23,010
Total current assets	1,326,448	1,122,464
Software development	11,799	18,518
Intellectual property licenses	80,073	14,154
Property and equipment, net	39,180	30,490
Deferred income taxes	36,758	28,041
Other assets	1,234	1,635
Goodwill	100,462	91,661
Total assets	\$ 1,595,954	\$ 1,306,963
Liabilities and Shareholders' Equity		
Current liabilities:		
Accounts payable	\$ 213,874	\$ 108,984
Accrued expenses	171,384	98,067
Total current liabilities	385,258	207,051
Other liabilities	1,216	—
Total liabilities	386,474	207,051
Commitments and contingencies (Note 13)		
Shareholders' equity:		
Preferred stock, \$.000001 par value, 3,750,000 shares authorized, no shares issued at December 31, 2005 and March 31, 2005	—	—
Series A Junior Preferred stock, \$.000001 par value, 1,250,000 shares authorized, no shares issued at December 31, 2005 and March 31, 2005	—	—
Common stock, \$.000001 par value, 450,000,000 and 225,000,000 shares authorized, 275,932,907	—	—

and 268,040,831 shares issued and outstanding at December 31, 2005 and March 31, 2005, respectively

Additional paid-in capital	812,435	741,680
Retained earnings	397,732	346,614
Accumulated other comprehensive income	2,521	11,618
Unearned compensation	(3,208)	—
Total shareholders' equity	<u>1,209,480</u>	<u>1,099,912</u>
Total liabilities and shareholders' equity	<u>\$ 1,595,954</u>	<u>\$ 1,306,963</u>

The accompanying notes are an integral part of these consolidated financial statements.

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ACTIVISION, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)

(In thousands, except per share data)

	For the three months ended December 31,		For the nine months ended December 31,	
	2005	2004	2005	2004
Net revenues	\$ 816,242	\$ 680,094	\$ 1,279,875	\$ 1,201,996
Costs and expenses:				
Cost of sales – product costs	367,685	316,494	617,021	528,759
Cost of sales – software royalties and amortization	104,264	58,200	139,267	116,846
Cost of sales – intellectual property licenses	26,376	22,598	55,765	57,797
Product development	53,139	25,068	99,013	66,054
Sales and marketing	155,999	105,248	258,957	200,216
General and administrative	24,712	15,407	65,780	44,854
Total costs and expenses	<u>732,175</u>	<u>543,015</u>	<u>1,235,803</u>	<u>1,014,526</u>
Operating income	84,067	137,079	44,072	187,470
Investment income, net	9,162	3,197	22,840	7,954
Income before income tax provision	93,229	140,276	66,912	195,424
Income tax provision	25,284	43,014	15,794	60,662
Net income	<u>\$ 67,945</u>	<u>\$ 97,262</u>	<u>\$ 51,118</u>	<u>\$ 134,762</u>
Basic earnings per share	<u>\$ 0.25</u>	<u>\$ 0.39</u>	<u>\$ 0.19</u>	<u>\$ 0.55</u>
Weighted average common shares outstanding	<u>274,965</u>	<u>248,569</u>	<u>272,089</u>	<u>246,577</u>
Diluted earnings per share	<u>\$ 0.23</u>	<u>\$ 0.35</u>	<u>\$ 0.17</u>	<u>\$ 0.49</u>
Weighted average common shares outstanding assuming dilution	<u>298,752</u>	<u>276,608</u>	<u>295,963</u>	<u>274,521</u>

The accompanying notes are an integral part of these consolidated financial statements.

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ACTIVISION, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

(In thousands)

	For the nine months ended December 31,	
	2005	2004
Cash flows from operating activities:		
Net income	\$ 51,118	\$ 134,762
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Deferred income taxes	(10,819)	34,214
Realized gain on investments	(4,295)	(471)
Depreciation and amortization	10,228	7,742

Amortization and write-offs of capitalized software development costs and intellectual property licenses	168,351	125,682
Amortization of stock compensation expense	292	—
Tax benefit of stock options and warrants exercised	26,612	13,802
Changes in operating assets and liabilities:		
Accounts receivable	(305,305)	(282,317)
Inventories	(36,810)	(15,229)
Software development and intellectual property licenses	(162,793)	(96,947)
Other assets	321	(214)
Accounts payable	104,895	83,502
Accrued expenses and other liabilities	74,273	91,852
Net cash provided by (used in) operating activities	(83,932)	96,378
Cash flows from investing activities:		
Capital expenditures	(20,174)	(8,030)
Cash payment to effect business combinations, net of cash acquired	(7,081)	—
Increase in restricted cash	(7,500)	—
Purchases of short-term investments	(143,162)	(457,828)
Proceeds from sales and maturities of short-term investments	182,504	458,760
Net cash provided by (used in) investing activities	4,587	(7,098)
Cash flows from financing activities:		
Proceeds from issuance of common stock to employees	37,850	30,134
Net cash provided by financing activities	37,850	30,134
Effect of exchange rate changes on cash	(5,044)	7,757
Net (decrease) increase in cash and cash equivalents	(46,539)	127,171
Cash and cash equivalents at beginning of period	313,608	165,120
Cash and cash equivalents at end of period	\$ 267,069	\$ 292,291

The accompanying notes are an integral part of these consolidated financial statements.

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ACTIVISION, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CHANGES IN SHAREHOLDERS' EQUITY
For the Nine Months ended December 31, 2005
(Unaudited)
(In thousands)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income	Unearned Compensation	Shareholders' Equity
	Shares	Amount					
Balance, March 31, 2005	268,041	\$ —	\$ 741,680	\$ 346,614	\$ 11,618	\$ —	\$ 1,099,912
Components of comprehensive income:							
Net income	—	—	—	51,118	—	—	51,118
Unrealized loss on short-term investments	—	—	—	—	(2,172)	—	(2,172)
Foreign currency translation adjustment	—	—	—	—	(6,925)	—	(6,925)
Total comprehensive income	—	—	—	—	—	—	42,021
Issuance of common stock pursuant to employee stock option and stock purchase plans	7,694	—	37,950	—	—	—	37,950
Tax benefit attributable to employee stock options	—	—	26,612	—	—	—	26,612
Issuance of stock to effect business combination	205	—	2,793	—	—	—	2,793
Restricted stock grant	—	—	3,500	—	—	(3,500)	—
Cash distribution for fractional shares	(7)	—	(100)	—	—	—	(100)
Amortization of unearned compensation	—	—	—	—	—	292	292
Balance, December 31, 2005	275,933	\$ —	\$ 812,435	\$ 397,732	\$ 2,521	\$ (3,208)	\$ 1,209,480

The accompanying notes are an integral part of these consolidated financial statements.

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ACTIVISION, INC. AND SUBSIDIARIES
Notes to Consolidated Financial Statements (Unaudited)
For the Three and Nine Months ended December 31, 2005

1. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying consolidated financial statements include the accounts of Activision, Inc. and its subsidiaries (“Activision” or “we”). The information furnished is unaudited and consists of only normal recurring adjustments that, in the opinion of management, are necessary to provide a fair statement of the results for the interim periods presented. The Consolidated Financial Statements should be read in conjunction with the Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended March 31, 2005 as filed with the Securities and Exchange Commission (“SEC”).

Software Development Costs and Intellectual Property Licenses

Software development costs include payments made to independent software developers under development agreements, as well as direct costs incurred for internally developed products.

We account for software development costs in accordance with SFAS No. 86, “Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed.” Software development costs are capitalized once technological feasibility of a product is established and such costs are determined to be recoverable. Technological feasibility of a product encompasses both technical design documentation and game design documentation. For products where proven technology exists, this may occur early in the development cycle. Technological feasibility is evaluated on a product-by-product basis. Prior to a product’s release, we expense, as part of cost of sales – software royalties and amortization, capitalized costs when we believe such amounts are not recoverable. Capitalized costs for those products that are cancelled or abandoned are charged to product development expense in the period of cancellation. Amounts related to software development which are not capitalized are charged immediately to product development expense. We evaluate the future recoverability of capitalized amounts on a quarterly basis. The recoverability of capitalized software development costs is evaluated based on the expected performance of the specific products for which the costs relate. Criteria used to evaluate expected product performance include: historical performance of comparable products using comparable technology; orders for the product prior to its release; and estimated performance of a sequel product based on the performance of the product on which the sequel is based.

Commencing upon product release, capitalized software development costs are amortized to cost of sales – software royalties and amortization based on the ratio of current revenues to total projected revenues, generally resulting in an amortization period of six months or less. For products that have been released in prior periods, we evaluate the future recoverability of capitalized amounts on a quarterly basis. The primary evaluation criterion is actual title performance.

Significant management judgments and estimates are utilized in the assessment of when technological feasibility is established, as well as in the ongoing assessment of the recoverability of capitalized costs. In evaluating the recoverability of capitalized costs, the assessment of expected product performance utilizes forecasted sales amounts and estimates of additional costs to be incurred. If revised forecasted or actual product sales are less than, and/or revised forecasted or actual costs are greater than, the original forecasted amounts utilized in the initial recoverability analysis, the net realizable value may be lower than originally estimated in any given quarter, which could result in an impairment charge.

Intellectual property license costs represent license fees paid to intellectual property rights holders for use of their trademarks, copyrights, software, technology, or other intellectual property or proprietary rights in the development of our products. Depending upon the agreement with the rights holder, we may obtain the rights to use acquired intellectual property in multiple products over multiple years, or alternatively, for a single product.

We evaluate the future recoverability of capitalized intellectual property licenses on a quarterly basis. The recoverability of capitalized intellectual property license costs is evaluated based on the expected performance of the specific products in which the licensed trademark or copyright is to be used. As many of our intellectual property licenses extend for multiple products over multiple years, we also assess the

recoverability of capitalized intellectual property license costs based on certain qualitative factors such as the success of other products and/or entertainment vehicles utilizing the intellectual property, whether there are any future planned theatrical releases or television series based on the intellectual property and the rights holder’s continued promotion and exploitation of the intellectual property. Prior to the related product’s release, we expense, as part of cost of sales – intellectual property licenses, capitalized intellectual property costs when we believe such amounts are not recoverable. Capitalized intellectual property costs for those products that are cancelled or abandoned are charged to product development expense in the period of cancellation. Criteria used to evaluate expected product performance include: historical performance of comparable products using comparable technology; orders for the product prior to its release; and estimated performance of a sequel product based on the performance of the product on which the sequel is based.

Commencing upon the related product’s release, capitalized intellectual property license costs are amortized to cost of sales – intellectual property licenses based on the ratio of current revenues for the specific product to total projected revenues for all products in which the licensed property will be utilized. As intellectual property license contracts may extend for multiple years, the amortization of capitalized intellectual property license costs relating to such contracts may extend beyond one year. For intellectual property included in products that have been released, we evaluate the future recoverability of capitalized amounts on a quarterly basis. The primary evaluation criterion is actual title performance.

Significant management judgments and estimates are utilized in the assessment of the recoverability of capitalized costs. In evaluating the recoverability of capitalized costs, the assessment of expected product performance utilizes forecasted sales amounts and estimates of additional costs to be incurred. If revised forecasted or actual product sales are less than, and/or revised forecasted or actual costs are greater than, the original forecasted amounts utilized in the initial recoverability analysis, the net realizable value may be lower than originally estimated in any given quarter, which could result in an impairment charge. Additionally, as noted above, as many of our intellectual property licenses extend for multiple products over multiple years, we also assess the recoverability of capitalized intellectual property license costs based on certain qualitative factors such as the success of other products and/or entertainment vehicles utilizing the intellectual property, whether there are any future planned theatrical releases or television series based on the intellectual property and the rights holder’s continued promotion and exploitation of the intellectual property. Material differences may result in the amount and timing of charges for any period if management makes different judgments or utilizes different estimates in evaluating these qualitative factors.

Revenue Recognition

We recognize revenue from the sale of our products upon the transfer of title and risk of loss to our customers. Certain products are sold to customers with a street date (the date that products are made widely available by retailers). For these products we recognize revenue no earlier than the street date. Revenue from product sales is recognized after deducting the estimated allowance for returns and price protection. With respect to license agreements that provide customers the right to make multiple copies in exchange for guaranteed amounts, revenue is recognized upon delivery of such copies. Per copy royalties on sales that exceed the guarantee are recognized as earned. In addition, in order to recognize revenue for both product sales and licensing transactions, persuasive evidence of an arrangement must exist and collection of the related receivable must be probable. Revenue recognition also determines the timing of certain expenses, including cost of sales – intellectual property licenses and cost of sales – software royalties and amortization.

Sales incentives or other consideration given by us to our customers is accounted for in accordance with the Financial Accounting Standards Board’s Emerging Issues Task Force (“EITF”) Issue 01-9, “Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor’s Products).” In accordance with EITF Issue 01-9, sales incentives and other consideration that are considered adjustments of the selling price of our products, such as rebates and product placement fees, are reflected as reductions of revenue. Sales incentives and other consideration that represent costs incurred by us for assets or services received, such as the appearance of our products in a customer’s national circular ad, are reflected as sales and marketing expenses.

Allowances for Returns, Price Protection, Doubtful Accounts and Inventory Obsolescence

In determining the appropriate unit shipments to our customers, we benchmark our titles using historical and industry data. We closely monitor and analyze the historical performance of our various titles, the performance of products released by other publishers and the anticipated timing of other releases in order to assess future demands of current and upcoming titles. Initial volumes shipped upon title launch and subsequent reorders are evaluated to ensure that quantities are sufficient to meet the demands from the retail markets but at the same time, are controlled to prevent excess inventory in the channel.

We may permit product returns from, or grant price protection to, our customers under certain conditions. In general, price protection refers to the circumstances when we elect to decrease the wholesale price of a product by a certain amount and, when granted and applicable, allows customers a credit against amounts owed by such customers to us with respect to open and/or future invoices. The conditions our customers must meet to be granted the right to return products or price protection are, among other things, compliance with applicable payment terms, delivery to us of weekly inventory and sell-through reports, and consistent participation in the launches of our premium title releases. We may also consider other factors, including the facilitation of slow-moving inventory and other market factors. Management must make estimates of potential future product returns and price protection related to current period product revenue. We estimate the amount of future returns and price protection for current period product revenue utilizing historical experience and information regarding inventory levels and the demand and acceptance of our products by the end consumer. The following factors are used to estimate the amount of future returns and price protection for a particular title: historical performance of titles in similar genres, historical performance of the hardware platform, historical performance of the brand, console hardware life cycle, Activision sales force and retail customer feedback, industry pricing, weeks of on-hand retail channel inventory, absolute quantity of on-hand retail channel inventory, our warehouse on-hand inventory levels, the title’s recent sell-through history (if available), marketing trade programs, and competing titles. The relative importance of these factors varies among titles depending upon, among other items, genre, platform, seasonality, and sales strategy. Significant management judgments and estimates must be made and used in connection with establishing the allowance for returns and price protection in any accounting period. Based upon historical experience we believe our estimates are reasonable. However, actual returns and price protection could vary materially from our allowance estimates due to a number of reasons including, among others, a lack of consumer acceptance of a title, the release in the same period of a similarly themed title by a competitor, or technological obsolescence due to the emergence of new hardware platforms. Material differences may result in the amount and timing of our revenue for any period if factors or market conditions change or if management makes different judgments or utilizes different estimates in determining the allowances for returns and price protection.

Similarly, management must make estimates of the uncollectibility of our accounts receivable. In estimating the allowance for doubtful accounts, we analyze the age of current outstanding account balances, historical bad debts, customer concentrations, customer creditworthiness, current economic trends, and changes in our customers’ payment terms and their economic condition, as well as whether we can obtain sufficient credit insurance. Any significant changes in any of these criteria would affect management’s estimates in establishing our allowance for doubtful accounts.

We value inventory at the lower of cost or market. We regularly review inventory quantities on hand and in the retail channel and record a provision for excess or obsolete inventory based on the future expected demand for our products. Significant changes in demand for our products would impact management’s estimates in establishing our inventory provision.

Stock-Based Compensation and Pro Forma Information

Under SFAS No. 123 “Accounting for Stock-Based Compensation,” compensation expense is recorded for the issuance of stock options and other stock-based compensation based on the fair value of the stock options and other stock-based compensation on the date of grant or measurement date. Alternatively, SFAS No. 123 allows companies to continue to account for the issuance of stock options and other stock-based compensation in accordance with Accounting Principles Board (“APB”) Opinion No. 25, “Accounting for Stock Issued to Employees.” Under APB No. 25, compensation expense is recorded for the issuance of stock options and other stock-based compensation based on the intrinsic value of the stock options and other stock-based compensation on the date of grant or measurement date. Under the intrinsic value method, compensation expense is recorded on the date of grant or measurement date only if the current market price of the underlying stock exceeds the stock option or other stock-based compensation exercise price. At December 31, 2005, we had several stock-based employee compensation plans, which are described more fully in Note 14 to the Notes to Consolidated Financial Statements included in Item 8 of our Annual Report on Form 10-K for the year ended March 31, 2005 filed with the SEC. We account for those plans under the recognition and measurement principles of APB Opinion No. 25 and related interpretations. The following table illustrates the effect on net income and earnings per share if we had applied the fair value recognition provisions of SFAS No. 123 to stock-based employee compensation (amounts in thousands, except per share data):

	Three months ended December 31,		Nine months ended December 31,	
	2005	2004	2005	2004
Net income, as reported	\$ 67,945	\$ 97,262	\$ 51,118	\$ 134,762
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	(4,841)	(3,242)	(11,517)	(11,667)
Pro forma net income	\$ 63,104	\$ 94,020	\$ 39,601	\$ 123,095
Earnings per share:				
Basic – as reported	\$ 0.25	\$ 0.39	\$ 0.19	\$ 0.55
Basic – pro forma	\$ 0.23	\$ 0.38	\$ 0.15	\$ 0.50
Diluted – as reported	\$ 0.23	\$ 0.35	\$ 0.17	\$ 0.49
Diluted – pro forma	\$ 0.21	\$ 0.34	\$ 0.13	\$ 0.45

Prior to April 1, 2005, the fair value of options granted was estimated at the date of grant using the Black-Scholes option pricing model. As of April 1, 2005, we switched to a binomial-lattice model to estimate the fair value of options granted after that date. Both models require the input of highly subjective assumptions, including the expected stock price volatility. To estimate volatility for the binomial-lattice model, we use the implied volatility method based upon the volatilities for exchange-traded options on our stock to estimate short-term volatility, the historical method (annualized standard deviation of the instantaneous returns on Activision's stock) to estimate long-term volatility and a statistical model to estimate the transition or "mean reversion" from short-term volatility to long-term volatility. Based on these methods, for options granted during the three months ended December 31, 2005, the expected stock price volatility ranged from 37% to 64%, with a weighted average volatility of 49%. For the Black-Scholes option pricing model, we used the historical stock price volatility of our common stock over the most recent period that is generally commensurate with the expected option life as the basis for estimating expected stock price volatility. For options granted during the three months ended December 31, 2004, the historical stock price volatility used was based on a weekly stock price observation, using an average of the

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high and low stock prices of our common stock, which resulted in an expected stock price volatility of 46%. For purposes of the above pro forma disclosure, the fair value of options granted is amortized to stock-based employee compensation cost over the period(s) in which the related employee services are rendered. Accordingly, the pro forma stock-based compensation cost for any period will typically relate to options granted in both the current period and prior periods.

Restricted Stock

In June 2005, we issued the rights to 155,763 shares of restricted stock to an employee. Additionally, in October 2005 we issued the rights to 96,712 shares of restricted stock to an employee. These shares vest over a five-year period and remain subject to forfeiture if vesting conditions are not met. In accordance with APB No. 25, we recognize unearned compensation in connection with the grant of restricted shares equal to the fair value of our common stock on the date of grant. The fair value of these shares when issued was approximately \$12.84 and \$15.51 per share, respectively, and resulted in a total increase in "Additional paid-in capital" and "Unearned compensation" on the accompanying balance sheet of \$3.5 million. Over the vesting period, we reduce unearned compensation and recognize compensation expense. For the third quarter of fiscal 2006, we recorded expense related to these shares of approximately \$175,000 in "General and administrative" on the accompanying statements of operations. Since the issuance dates, we have recognized \$292,000 of the \$3.5 million of unearned compensation.

Reclassifications

Certain amounts in the consolidated financial statements have been reclassified to conform with the current year's presentation.

We have reclassified certain auction rate securities from cash and cash equivalents to short-term investments. Auction rate securities are variable rate bonds tied to short-term interest rates with maturities on the face of the underlying security in excess of 90 days. Auction rate securities have interest rate resets through a modified Dutch auction at predetermined short-term intervals, typically every 7, 28, or 35 days. Interest paid during a given period is based upon the interest rate determined during the prior auction.

Although these securities are issued and rated as long-term bonds, they are priced and traded as short-term instruments because of the liquidity provided through the interest rate reset. We had historically classified these instruments as cash and cash equivalents if the reset period between interest rate resets was 90 days or less, which was based on our ability to liquidate our holdings or roll our investment over to the next reset period. Our re-evaluation of the maturity dates and other provisions associated with the underlying bonds resulted in a reclassification from cash and cash equivalents to short-term investments of approximately \$110.2 million on the December 31, 2004 balance sheet. As a result of this balance sheet reclassification, certain amounts were reclassified in the accompanying consolidated statement of cash flows for the nine months ended December 31, 2004 to reflect the gross purchases and sales of these securities as investing activities rather than as a component of cash and cash equivalents. This change in classification does not affect previously reported cash flows from operating or from financing activities in the previously reported consolidated statements of cash flows or the previously reported consolidated statements of operations. For the nine months ended December 31, 2004, as a result of these revisions in classification, net cash provided by investing activities related to these current investments increased \$191.2 million.

2. Stock Split

In February 2005, the Board of Directors approved a four-for-three split of our outstanding common shares effected in the form of a 33-1/3% stock dividend. The split was paid March 22, 2005 to shareholders of record as of March 7, 2005. In September 2005, the Board of Directors approved a four-for-three split of our outstanding common shares effected in the form of a 33-1/3% stock dividend. The split was paid October 24, 2005 to shareholders of record as of October 10, 2005. The par value of our common stock was maintained at the pre-split amount of \$.000001. The Consolidated Financial

On March 7, 2005, in connection with our stock split, all shares of common stock held as treasury stock were formally cancelled and restored to the status of authorized but unissued shares of common stock.

3. Cash, Cash Equivalents, and Short-term Investments

Short-term investments generally mature between three and thirty months. Investments with maturities beyond one year may be classified as short-term based on their liquid nature and because such securities represent the investment of cash that is available for current operations. All of our short-term investments are classified as available-for-sale and are carried at fair market value with unrealized appreciation (depreciation) reported as a separate component of accumulated other comprehensive income (loss) in shareholders' equity. The specific identification method is used to determine the cost of securities disposed with realized gains and losses reflected in investment income, net.

Restricted Cash – Compensating Balances

As of December 31, 2005, we maintained a \$7.5 million irrevocable standby letter of credit. The standby letter of credit is required by one of our inventory manufacturers to qualify for payment terms on our inventory purchases. Under the terms of this arrangement, we are required to maintain on deposit with the bank a compensating balance, restricted as to use, of not less than the sum of the available amount of the letter of credit plus the aggregate amount of any drawings under the letter of credit that have been honored thereunder but not reimbursed. At December 31, 2005, the \$7.5 million deposit is included in short-term investments as restricted cash.

The following table summarizes our investments in securities as of December 31, 2005 (amounts in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Cash and cash equivalents:				
Cash and time deposits	\$ 153,986	\$ —	\$ —	\$ 153,986
Commercial paper	44,576	—	(24)	44,552
Money market instruments	68,531	—	—	68,531
	<u>267,093</u>	<u>—</u>	<u>(24)</u>	<u>267,069</u>
Short-term investments:				
Restricted cash	7,500	—	—	7,500
Corporate bonds	171,217	2	(1,660)	169,559
Certificate of deposit	4,475	—	(16)	4,459
U.S. agency issues	249,525	—	(3,110)	246,415
Asset-backed securities	7,803	—	(35)	7,768
Commercial paper	2,212	—	(5)	2,207
Mortgage-backed securities	60,173	—	(544)	59,629
	<u>502,905</u>	<u>2</u>	<u>(5,370)</u>	<u>497,537</u>
Cash, cash equivalents and short-term investments	<u>\$ 769,998</u>	<u>\$ 2</u>	<u>\$ (5,394)</u>	<u>\$ 764,606</u>

The following table summarizes the contractual maturities of our investments in debt securities as of December 31, 2005 (amounts in thousands):

	Amortized Cost	Fair Value
Due in one year or less	\$ 207,770	\$ 206,393
Due after one year through two years	240,103	237,346
Due after two years through three years	4,064	4,036
Due in three years or more	20,068	19,417
	<u>472,005</u>	<u>467,192</u>
Asset-backed securities	67,976	67,397
Total	<u>\$ 539,981</u>	<u>\$ 534,589</u>

For the three months ended December 31, 2005, there were no gross realized gains and \$2,000 of gross realized losses on the sale or maturity of short-term investments. For the nine months ended December 31, 2005, there were \$1.3 million of gross realized gains and \$2,000 of gross realized losses on the sale or maturity of short-term investments. For the three months ended December 31, 2004 there were no gross realized gains or losses on short-term investments on the sale or maturity of short-term investments. For the nine months ended December 31, 2004, gross realized gains on short-term investments consisted of \$471,000 of gross realized gains and no gross realized losses on the sale or maturity of short-term investments.

In accordance with EITF 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments," the fair value of investments in an unrealized loss position for which an other-than-temporary impairment has not been recognized was \$530.2 million at December 31, 2005 with related gross unrealized losses of \$5.4 million. At December 31, 2005, the gross unrealized losses were comprised mostly of unrealized losses

on corporate bonds, U.S. agency issues, and mortgage-backed securities with \$1.5 million of unrealized loss being in a continuous unrealized loss position for twelve months or greater.

Our investment portfolio consists of government and corporate securities with effective maturities 30 months or less. The longer the term of the securities, the more susceptible they are to changes in market rates of interest and yields on bonds. Investments are reviewed periodically to identify possible impairment. When evaluating the investments, we review factors such as the length of time and extent to which fair value has been below cost basis, the financial condition of the issuer, and our ability and intent to hold the investment for a period of time which may be sufficient for anticipated recovery in market value. We have the intent and ability to hold these securities for a reasonable period of time sufficient for a forecasted recovery of fair value up to (or beyond) the initial cost of the investment. We expect to realize the full value of all of these investments upon maturity or sale.

4. Inventories

Inventories are valued at the lower of cost (first-in, first-out) or market. Our inventories consist of the following (amounts in thousands):

	December 31, 2005	March 31, 2005
Finished goods	\$ 76,384	\$ 45,926
Purchased parts and components	8,444	2,092
	<u>\$ 84,828</u>	<u>\$ 48,018</u>

For the three and nine months ended December 31, 2005 we had write-downs of inventory costs for certain titles in the amount of \$11.1 million and \$15.2 million, respectively.

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5. Goodwill and Other Intangible Assets

The changes in the carrying amount of goodwill for the nine months ended December 31, 2005 are as follows (amounts in thousands):

	Publishing	Distribution	Total
Balance as of March 31, 2005	\$ 85,899	\$ 5,762	\$ 91,661
Goodwill acquired during the period	6,260	—	6,260
Issuance of contingent consideration	2,793	—	2,793
Adjustment to prior period purchase allocation	35	—	35
Effect of foreign currency exchange rates	192	(479)	(287)
Balance as of December 31, 2005	<u>\$ 95,179</u>	<u>\$ 5,283</u>	<u>\$ 100,462</u>

6. Income Taxes

The income tax provision of \$25.3 million for the three months ended December 31, 2005 reflects our effective income tax rate for the quarter of 27.1%. The significant items that generated the variance between our effective rate and our statutory rate of 35% were research and development tax credits and the impact of foreign tax rate differentials, partially offset by state taxes. The income tax provision of \$15.8 million for the nine months ended December 31, 2005 reflects our effective income tax rate of approximately 23.6%. The significant items that generated variances between our effective rate and our statutory rate of 35% were a one-time international tax benefit for the release of certain reserves due to the expiration of a tax statute of limitations, research, and development tax credits and the impact of foreign tax rate differentials, partially offset by state taxes.

7. Software Development Costs and Intellectual Property Licenses

As of December 31, 2005, capitalized software development costs included \$26.2 million of internally developed software costs and \$10.1 million of payments made to third-party software developers. As of March 31, 2005, capitalized software development costs included \$61.3 million of internally developed software costs and \$30.3 million of payments made to third-party software developers. Capitalized intellectual property licenses were \$85.5 million and \$35.7 million as of December 31, 2005 and March 31, 2005, respectively. Amortization and write-offs of capitalized software development costs and intellectual property licenses were \$168.4 million and \$125.7 million for the nine months ended December 31, 2005 and 2004, respectively. Amortization and write-offs of capitalized software development costs and intellectual property licenses for the nine months ended December 31, 2005 included product cancellation charges of \$10.3 million, impairment charges of \$8.8 million, and recoverability write-offs of \$3.8 million.

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8. Comprehensive Income (Loss) and Accumulated Other Comprehensive Income (Loss)

Comprehensive Income (Loss)

The components of comprehensive income (loss) for the three and nine months ended December 31, 2005 and 2004 were as follows (amounts in thousands):

	Three months ended December 31,		Nine months ended December 31,	
	2005	2004	2005	2004
Net income	\$ 67,945	\$ 97,262	\$ 51,118	\$ 134,762

Other comprehensive income (loss):				
Foreign currency translation adjustment	(937)	10,488	(6,925)	9,036
Unrealized depreciation on short-term investments	(1,432)	(1,509)	(2,172)	(1,179)
Other comprehensive income (loss)	(2,369)	8,979	(9,097)	7,857
Comprehensive income	\$ 65,576	\$ 106,241	\$ 42,021	\$ 142,619

Accumulated Other Comprehensive Income (Loss)

The components of accumulated other comprehensive income (loss) for the nine months ended December 31, 2005 and 2004 were as follows (amounts in thousands):

	Foreign Currency Translation Adjustment	Unrealized Depreciation On Investments	Accumulated Other Comprehensive Income (Loss)
Balance, March 31, 2005	\$ 14,838	\$ (3,220)	\$ 11,618
Other comprehensive loss	(6,925)	(2,172)	(9,097)
Balance, December 31, 2005	\$ 7,913	\$ (5,392)	\$ 2,521

The income taxes related comprehensive income were not significant as income taxes were not provided for foreign currency translation items as these are considered indefinite investments in non-U.S. subsidiaries.

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9. Investment Income, Net

Investment income, net is comprised of the following (amounts in thousands):

	Three months ended December 31,		Nine months ended December 31,	
	2005	2004	2005	2004
Interest expense	\$ (85)	\$ (61)	\$ (198)	\$ (207)
Interest income	6,299	3,258	18,743	7,690
Net realized gain on investments	2,948	—	4,295	471
Investment income, net	\$ 9,162	\$ 3,197	\$ 22,840	\$ 7,954

10. Supplemental Cash Flow Information

Non-cash investing and financing activities and supplemental cash flow information is as follows (amounts in thousands):

	Nine months ended December 31,	
	2005	2004
Non-cash investing and financing activities:		
Subsidiaries acquired with common stock	\$ 2,793	\$ 1,191
Change in unrealized depreciation on short-term investments	2,172	1,179
Supplemental cash flow information:		
Cash paid for income taxes	\$ 4,469	\$ 8,678
Cash received for interest, net	16,956	6,489

11. Operations by Reportable Segments and Geographic Area

Based upon our organizational structure, we operate two business segments: (i) publishing of interactive entertainment software and (ii) distribution of interactive entertainment software and hardware products.

Publishing refers to the development, marketing and sale of products, either directly, by license or through our affiliate label program with certain third-party publishers. In the United States and Canada, we primarily sell our products on a direct basis to mass-market retailers, consumer electronics stores, discount warehouses, and game specialty stores. We conduct our international publishing activities through offices in the United Kingdom ("UK"), Germany, France, Italy, Spain, Australia, Sweden, Canada, and Japan. Our products are sold internationally on a direct-to-retail basis and through third-party distribution and licensing arrangements and through our wholly-owned distribution subsidiaries.

Distribution refers to our operations in the UK, the Netherlands, and Germany that provide logistical and sales services to third-party publishers of interactive entertainment software, our own publishing operations and manufacturers of interactive entertainment hardware.

Resources are allocated to each of these segments using information on their respective net revenues and operating profits before interest and taxes.

The accounting policies of these segments are the same as those described in the Summary of Significant Accounting Policies in our Annual Report on Form 10-K for the year ended March 31, 2005. Revenue derived from sales between segments is eliminated in consolidation.

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Information on the reportable segments for the three and nine months ended December 31, 2005 and 2004 is as follows (amounts in thousands):

	Three months ended December 31, 2005		
	Publishing	Distribution	Total
Total segment revenues	\$ 667,500	\$ 148,742	\$ 816,242
Revenues from sales between segments	(87,652)	87,652	—
Revenues from external customers	\$ 579,848	\$ 236,394	\$ 816,242
Operating income	\$ 65,708	\$ 18,359	\$ 84,067
Total assets	\$ 1,398,362	\$ 197,592	\$ 1,595,954
	Three months ended December 31, 2004		
	Publishing	Distribution	Total
Total segment revenues	\$ 514,053	\$ 166,041	\$ 680,094
Revenues from sales between segments	(51,408)	51,408	—
Revenues from external customers	\$ 462,645	\$ 217,449	\$ 680,094
Operating income	\$ 120,608	\$ 16,471	\$ 137,079
Total assets	\$ 1,149,736	\$ 194,893	\$ 1,344,629
	Nine months ended December 31, 2005		
	Publishing	Distribution	Total
Total segment revenues	\$ 1,028,458	\$ 251,417	\$ 1,279,875
Revenues from sales between segments	(124,530)	124,530	—
Revenues from external customers	\$ 903,928	\$ 375,947	\$ 1,279,875
Operating income	\$ 24,219	\$ 19,853	\$ 44,072
Total assets	\$ 1,398,362	\$ 197,592	\$ 1,595,954
	Nine months ended December 31, 2004		
	Publishing	Distribution	Total
Total segment revenues	\$ 942,100	\$ 259,896	\$ 1,201,996
Revenues from sales between segments	(92,186)	92,186	—
Revenues from external customers	\$ 849,914	\$ 352,082	\$ 1,201,996
Operating income	\$ 168,111	\$ 19,359	\$ 187,470
Total assets	\$ 1,149,736	\$ 194,893	\$ 1,344,629

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Geographic information for the three and nine months ended December 31, 2005 and 2004 is based on the location of the selling entity. Revenues from external customers by geographic region were as follows (amounts in thousands):

	Three months ended December 31,		Nine months ended December 31,	
	2005	2004	2005	2004
North America	\$ 402,314	\$ 344,342	\$ 626,538	\$ 627,238
Europe	397,356	324,360	622,035	543,480
Other	16,572	11,392	31,302	31,278
Total	\$ 816,242	\$ 680,094	\$ 1,279,875	\$ 1,201,996

Revenues by platform were as follows (amounts in thousands):

	Three months ended December 31,		Nine months ended December 31,	
	2005	2004	2005	2004
Console	\$ 575,094	\$ 516,903	\$ 893,417	\$ 850,695
Hand-held	111,186	71,166	203,879	120,476
PC	129,962	92,025	182,579	230,825

Total	\$ 816,242	\$ 680,094	\$ 1,279,875	\$ 1,201,996
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We had two customers that accounted for 21% and 12% of consolidated net revenues for the three month period ended December 31, 2005, 22% and 11% of consolidated net revenues for the nine month period ended December 31, 2005, and 30% and 14% of consolidated accounts receivable, net at December 31, 2005. These customers were customers of both our publishing and distribution businesses. As of and for the three and nine months ended December 31, 2004, one of those same customers accounted for 22% of consolidated net revenues in both periods and 32% of consolidated accounts receivable, net.

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12. Computation of Earnings Per Share

The following table sets forth the computations of basic and diluted earnings per share (amounts in thousands, except per share data):

	Three months ended December 31,		Nine months ended December 31,	
	2005	2004	2005	2004
Numerator:				
Numerator for basic and diluted earnings per share – income available to common shareholders	\$ 67,945	\$ 97,262	\$ 51,118	\$ 134,762
Denominator:				
Denominator for basic earnings per share- weighted average common shares outstanding	274,965	248,569	272,089	246,577
Effect of dilutive securities:				
Employee stock options and stock purchase plan	23,172	26,766	23,279	26,731
Warrants to purchase common stock	615	1,273	595	1,213
Potential dilutive common shares	23,787	28,039	23,874	27,944
Denominator for diluted earnings per share - weighted average common shares outstanding plus assumed conversions	298,752	276,608	295,963	274,521
Basic earnings per share	\$ 0.25	\$ 0.39	\$ 0.19	\$ 0.55
Diluted earnings per share	\$ 0.23	\$ 0.35	\$ 0.17	\$ 0.49

Options to purchase 1,466,319 shares of common stock at exercise prices ranging from \$14.70 to \$17.21 and options to purchase 632,102 shares of common stock at exercise prices ranging from \$13.72 to \$17.21 were outstanding for the three and nine months ended December 31, 2005, respectively, but were not included in the calculation of diluted earnings per share because their effect would be antidilutive.

Options to purchase 205,616 shares of common stock at exercise prices ranging from \$8.75 to \$10.90 and options to purchase 2,662,404 shares of common stock at exercise prices ranging from \$8.39 to \$10.90 were outstanding for the three and nine months ended December 31, 2004, respectively, but were not included in the calculation of diluted earnings per share because their effect would be antidilutive.

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13. Commitments and Contingencies

Credit Facilities

We have revolving credit facilities with our Centresoft distribution subsidiary located in the UK (the "UK Facility") and our NBG distribution subsidiary located in Germany (the "German Facility"). The UK Facility provided Centresoft with the ability to borrow up to Great British Pounds ("GBP") 8.0 million (\$13.8 million), including issuing letters of credit, on a revolving basis as of December 31, 2005. Furthermore, under the UK Facility, Centresoft provided a GBP 0.6 million (\$1.0 million) guarantee for the benefit of our CD Contact distribution subsidiary as of December 31, 2005. The UK Facility bore interest at LIBOR plus 2.0% as of December 31, 2005, is collateralized by substantially all of the assets of the subsidiary and expires in May 2006. The UK Facility also contains various covenants that require the subsidiary to maintain specified financial ratios related to, among others, fixed charges. As of December 31, 2005, we were in compliance with these covenants. No borrowings were outstanding against the UK Facility as of December 31, 2005. The German Facility provided for revolving loans up to Euro ("EUR") 0.5 million (\$0.6 million) as of December 31, 2005, bore interest at a Eurocurrency rate plus 2.5%, is collateralized by certain of the subsidiary's property and equipment and has no expiration date. No borrowings were outstanding against the German Facility as of December 31, 2005.

As of December 31, 2005, we maintained a \$7.5 million irrevocable standby letter of credit. The standby letter of credit is required by one of our inventory manufacturers to qualify for payment terms on our inventory purchases. Under the terms of this arrangement, we are required to maintain on deposit with the bank a compensating balance, restricted as to use, of not less than the sum of the available amount of the letter of credit plus the aggregate amount of any drawings under the letter of credit that have been honored thereunder but not reimbursed. At December 31, 2005, the \$7.5 million deposit is included in short-term investments as restricted cash.

As of December 31, 2005, our publishing subsidiary located in the UK maintained a EUR 10.0 million (\$11.8 million) irrevocable standby letter of credit. The standby letter of credit is required by one of our inventory manufacturers to qualify for payment terms on our inventory purchases. The

standby letter of credit does not require a compensating balance and is collateralized by substantially all of the assets of the subsidiary and expires on April 15, 2006. As of December 31, 2005, we had EUR 0.7 million (\$0.8 million) of outstanding amounts against this letter of credit.

Commitments

In the normal course of business, we enter into contractual arrangements with third parties for non-cancelable operating lease agreements for our offices, for the development of products, as well as for the rights to intellectual property. Under these agreements, we commit to provide specified payments to a lessor, developer or intellectual property holder, based upon contractual arrangements. Typically, the payments to third-party developers are conditioned upon the achievement by the developers of contractually specified development milestones. These payments to third-party developers and intellectual property holders typically are deemed to be advances and are recoupable against future royalties earned by the developer or intellectual property holder based on the sale of the related game. Additionally, in connection with certain intellectual property right acquisitions and development agreements, we will commit to spend specified amounts for marketing support for the related game(s) which is to be developed or in which the intellectual property will be utilized. Additionally, we lease certain of our facilities under non-cancelable operating lease agreements. Assuming all contractual provisions are met, the total future minimum commitments for these and other contractual arrangements in place as of December 31, 2005, are scheduled to be paid as follows (amounts in thousands):

Fiscal year ending March 31,	Contractual Obligations			
	Facility Leases	Developer and IP	Marketing	Total
2006	\$ 3,122	\$ 12,183	\$ 1,642	\$ 16,947
2007	12,175	20,811	15,910	48,896
2008	8,721	10,593	24,260	43,574
2009	7,415	16,300	12,100	35,815
2010	6,517	23,300	100	29,917
Thereafter	27,046	54,900	100	82,046
Total	\$ 64,996	\$ 138,087	\$ 54,112	\$ 257,195

Compensation Guarantee

In June 2005, we entered into an employment agreement with the President and Chief Executive Officer of Activision Publishing containing a guarantee related to total compensation. The agreement guarantees that in the event that on May 15, 2010 total compensation has not exceeded \$20.0 million, we will make a payment for the amount of the shortfall. The \$20.0 million guarantee will be recognized as compensation expense evenly over the term of the employment agreement comprising of salary payments, bonus payments, restricted stock expense, stock option expense, and an accrual for any anticipated remaining portion of the guarantee. The remaining portion of the guarantee is accrued over the term of the agreement in "Other liabilities" and will remain accrued until the end of the employment agreement at which point it will be used to make a payment for any shortfall or reclassified into shareholders' equity.

Legal and Regulatory Proceedings

On March 5, 2004, a class action lawsuit was filed against us and certain of our current and former officers and directors. The complaint, which asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 based on allegations that our revenues and assets were overstated during the period between February 1, 2001 and December 17, 2002, was filed in the United States District Court, Central District of California by the Construction Industry, and Carpenters Joint Pension Trust for Southern Nevada purporting to represent a class of purchasers of Activision stock. Five additional purported class actions were subsequently filed by Gianni Angeloni, Christopher Hinton, Stephen Anish, the Alaska Electrical Pension Fund, and Joseph A. Romans asserting the same claims. Consistent with the Private Securities Litigation Reform Act ("PSLRA"), the court appointed lead plaintiffs consolidating the six putative securities class actions into a single case. In an Order dated May 16, 2005, the court dismissed the

consolidated complaint because the plaintiffs failed to satisfy the heightened pleading standards of the PSLRA. The court did, however, give the lead plaintiffs leave to file an amended consolidated complaint within 30 days of the order. Rather than file a new complaint, the Plaintiff agreed to dismiss the entire case with prejudice. The Order dismissing the action with prejudice was entered on June 17, 2005.

In addition, on March 12, 2004, a shareholder derivative lawsuit captioned *Frank Capovilla, Derivatively on Behalf of Activision, Inc. v. Robert Kotick, et al.* was filed, purportedly on behalf of Activision, which in large measure asserts the identical claims set forth in the federal class action lawsuit. That complaint was filed in California Superior Court for the County of Los Angeles. On August 11, 2005, in light of the ruling dismissing with prejudice the complaint in the earlier-filed federal securities class action, plaintiffs in the shareholder derivative action filed an amended complaint, dropping most of the causes of action, and focusing only on the allegations of insider trading and breaches of fiduciary duty that were based on the same claimed misrepresentations set forth in the dismissed federal securities class action. On September 15, 2005, Activision and the individual defendants filed separate demurrers to the Derivative Action and a motion to strike plaintiff's jury demand. Prior to the hearing on the demurrers, the parties came to a resolution of the action and agreed to a stipulation of settlement to be submitted to the court for preliminary approval currently scheduled for hearing on February 8, 2006. Subject to court approval, the settlement will require the dismissal and release of the alleged claims. No cash recovery is to be paid to the plaintiff pursuant to the stipulation of settlement, which also states that the Company vigorously denies any assertion of wrongdoing or liability. In furtherance of the settlement, the Company has agreed to pay \$200,000 in plaintiffs' fees, to be funded by the Company's D&O insurance carrier. The settlement acknowledges that, after the time the derivative action was filed, the Company has implemented certain enhancements to its corporate governance policies.

In addition, we are party to other routine claims and suits brought by us and against us in the ordinary course of business, including disputes arising over the ownership of intellectual property rights, contractual claims and collection matters. In the opinion of management, after consultation with legal counsel, the outcome of such routine claims will not have a material adverse effect on our business, financial condition, results of operations or liquidity.

14. Recently Issued Accounting Standards and Laws

On December 16, 2004, the Financial Accounting Standards Board (“FASB”) issued FASB Statement No. 123 (revised 2004), *Share-Based Payment* (“SFAS No. 123R”), which is a revision of FASB Statement No. 123, *Accounting for Stock-Based Compensation* (“SFAS 123”). SFAS No. 123R supersedes APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and amends FASB Statement No. 95, *Statement of Cash Flows*. Generally, the approach in SFAS No. 123R is similar to the approach described in SFAS 123. However, SFAS No. 123R requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. Pro forma disclosure is no longer an alternative.

SFAS No. 123R must be adopted by us no later than April 1, 2006. Early adoption will be permitted in periods in which financial statements have not yet been issued. We expect to adopt SFAS No. 123R on April 1, 2006.

SFAS No. 123R permits public companies to adopt its requirements using one of two methods:

- A “modified prospective” method in which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS No. 123R for all share-based payments granted after the effective date and (b) based on the requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS No. 123R that remain unvested on the effective date.
- A “modified retrospective” method which includes the requirements of the modified prospective method described above, but also permits entities to restate based on the amounts previously recognized under SFAS 123 for purposes of pro forma disclosures either (a) all prior periods presented or (b) prior interim periods of the year of adoption.

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As permitted by SFAS 123, we currently account for share-based payments to employees using APB No. 25’s intrinsic value method and, as such, generally recognize no compensation cost for employee stock options. Accordingly, the adoption of SFAS No. 123R’s fair value method will have a significant impact on our results of operations, although it will have no impact on our overall financial position. While management continues to evaluate the impact of SFAS No. 123R, we currently believe that the expensing of stock-based compensation will have an impact on our Consolidated Statement of Operations similar to our pro-forma disclosure under SFAS 123.

On November 24, 2004, the FASB issued Statement No. 151, *Inventory Costs, an Amendment of ARB No. 43, Chapter 4* (“SFAS No. 151”). The standard requires that abnormal amounts of idle capacity and spoilage costs within inventory should be excluded from the cost of inventory and expensed when incurred. The provisions of SFAS No. 151 are applicable to inventory costs incurred during fiscal years beginning after June 15, 2005. We expect the adoption of SFAS No. 151 will not have a material impact on our financial position or results of operations.

On December 15, 2004 the FASB issued Statement No. 153 (“SFAS No. 153”), *Exchanges of Nonmonetary Assets — an Amendment of Accounting Principles Board Opinion No. 29*. This standard requires exchanges of productive assets to be accounted for at fair value, rather than at carryover basis, unless (1) neither the asset received nor the asset surrendered has a fair value that is determinable within reasonable limits or (2) the transactions lack commercial substance. The new standard was effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005. The adoption of SFAS No. 153 did not have a material impact on our financial position or results of operations.

In May 2005, the FASB issued Statement No. 154 (“SFAS No. 154”), *Accounting Changes and Error Corrections – A Replacement of APB Opinion No. 20 and FASB Statement No. 3*. SFAS No. 154 changes the requirements for the accounting and reporting of a change in accounting principle and correction of errors. Under previous guidance, changes in accounting principle were recognized as a cumulative effect in the net income of the period of the change. The new statement requires retrospective application of changes in accounting principle and correction of errors, limited to the direct effects of the change, to prior periods’ financial statements, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. SFAS No. 154 is effective for accounting changes and correction of errors made in fiscal years beginning after December 15, 2005. In the event that we have an accounting change or an error correction, SFAS No. 154 could have a material impact on our consolidated financial statements.

On October 22, 2004, the President of the United States signed the American Jobs Creation Act of 2004 (the “Act”). The Act raises a number of issues with respect to accounting for income taxes. For companies that pay U.S. income taxes on manufacturing activities in the U.S., the Act provides a deduction from taxable income equal to a stipulated percentage of qualified income from domestic production activities. The manufacturing deduction provided by the Act replaces the extraterritorial income (“ETI”) deduction currently in place. We currently derive benefits from the ETI exclusion which was repealed by the Act. Our exclusion for fiscal 2006 and 2007 will be limited to 75% and 45% of the otherwise allowable exclusion and no exclusion will be available in fiscal 2008 and thereafter. The Act also creates a temporary incentive for U.S. multinationals to repatriate accumulated income earned abroad by providing an 85 percent dividends received deduction for certain dividends from controlled foreign corporations (“Homeland Investment Act”). The deduction is subject to a number of limitations. The Act also provides for other changes in tax law that will affect a variety of taxpayers. On December 21, 2004, the Financial Accounting Standards Board (“FASB”) issued two FASB Staff Positions (“FSP”) regarding the accounting implications of the Act related to (1) the deduction for qualified domestic production activities and (2) the one-time tax benefit for the repatriation of foreign earnings. The FASB determined that the deduction for qualified domestic production activities should be accounted for as a special deduction under FASB Statement No. 109, *Accounting for Income Taxes*. The FASB also confirmed, that upon deciding that some amount of earnings will be repatriated, a company must record in that period the associated tax liability. The guidance in the FSPs applies to financial statements for periods ending after the date the Act was enacted. We have evaluated the Act and have concluded that we will not repatriate foreign earnings under the Homeland Investment Act Provisions.

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

Our Business

We are a leading international publisher of interactive entertainment software products. We have built a company with a diverse portfolio of products that spans a wide range of categories and target markets and that is used on a variety of game hardware platforms and operating systems. We have created, licensed, and acquired a group of highly recognizable brands, which we market to a variety of consumer demographics. Our product portfolio includes such best-selling franchises as Spider-Man, Tony Hawk, Call of Duty, True Crime, X-Men, and Shrek.

Our products cover diverse game categories including action/adventure, action sports, racing, role-playing, simulation, first-person action, and strategy. Our target customer base ranges from casual players to game enthusiasts, children to adults, and mass-market consumers to "value" buyers. We currently offer our products primarily in versions that operate on the Sony PlayStation 2 ("PS2"), Nintendo GameCube ("GameCube"), and Microsoft Xbox ("Xbox") console systems, Nintendo Game Boy Advance ("GBA"), Nintendo Dual Screen ("NDS"), and Sony PlayStation Portable ("PSP") hand-held devices, and the personal computer ("PC"). In addition, we had a significant presence at the November, 2005 launch of Microsoft's next-generation console, the Xbox 360 ("Xbox360"), with the concurrent release of four titles, *Tony Hawk's American Wasteland* ("THAW"), *Call of Duty 2*, *Quake 4*, and *GUN*. The installed base for the current generation of hardware platforms is significant and the recent releases of the NDS and PSP handheld devices and the next-generation Xbox360 will continue to expand the software market.

We also intend to develop titles for the next-generation console systems that are being developed by Sony and Nintendo. We expect that Sony and Nintendo will release their next-generation consoles, the PlayStation 3 ("PS3") and Revolution, in calendar 2006. Our plan is to have a significant presence at the launch of each new platform while marketing to current generation platforms as long as economically attractive given their large installed base.

Our publishing business involves the development, marketing, and sale of products directly, by license or through our affiliate label program with certain third-party publishers. In the United States and Canada, we primarily sell our products on a direct basis to mass-market retailers, consumer electronics stores, discount warehouses, and game specialty stores. We conduct our international publishing activities through offices in the United Kingdom ("UK"), Germany, France, Italy, Spain, the Netherlands, Australia, Sweden, Canada, and Japan. Our products are sold internationally on a direct-to-retail basis, through third-party distribution and licensing arrangements, and through our wholly-owned European distribution subsidiaries. Our distribution business consists of operations located in the UK, the Netherlands, and Germany that provide logistical and sales services to third-party publishers of interactive entertainment software, our own publishing operations, and manufacturers of interactive entertainment hardware.

Our profitability is directly affected by the mix of revenues from our publishing and distribution businesses. Operating margins in our publishing business are affected by our ability to release highly successful or "hit" titles. Though many of these titles have substantial production or acquisition costs and marketing budgets, once a title recoups these costs, incremental net revenues directly and positively impact our operating margin. Operating margins in our distribution business are affected by the mix of hardware and software sales, with software producing higher margins than hardware.

Our Focus

With respect to future game development, we will continue to focus on our "big propositions," products that are backed by strong brands and high quality development, for which we will provide significant marketing support.

Our fiscal 2006 "big propositions" have included well-established brands, which were backed by high-profile intellectual property and/or highly anticipated motion picture releases. We have a long-term relationship with Marvel Enterprises through an exclusive licensing agreement. During the third quarter of fiscal 2006, we further extended our exclusive licensing agreement with Marvel Enterprises by signing a multi-year extension to our current video game licensing agreement for the Spider-Man and X-Men franchises through 2017. This agreement grants us the exclusive rights to develop and publish video games based on Marvel's comic book

franchises Spider-Man and X-Men. Our fiscal 2006 release schedule included titles based on Marvel's Spider-Man, X-Men, and Fantastic 4, which was part of our previous licensing agreement. In the first quarter of fiscal 2006 we released the video game, *Fantastic 4*, just prior to the theatrical release of "Fantastic 4." We also released *Ultimate Spider-Man* and *X-Men Legends II: Rise of the Apocalypse* ("*X-Men Legends II*") in the second quarter of fiscal 2006 in North America and in the third quarter of fiscal 2006 internationally. In addition, through our licensing agreement with Spider-Man Merchandising, LP, we will be developing and publishing video games based on Columbia Pictures/Marvel Enterprises, Inc.'s upcoming feature film "Spider-Man 3," which is expected to be released in May 2007. In addition, during the third quarter of fiscal 2006, we signed an agreement with Spider-Man Merchandising, LP to extend our exclusive worldwide publishing rights to publish entertainment software products based on subsequent Spider-Man movie sequels or new television series through 2017. We also have an exclusive licensing agreement with professional skateboarder Tony Hawk. The agreement grants us exclusive rights to develop and publish video games through 2015 using Tony Hawk's name and likeness. Through the third quarter of fiscal 2006, we have released seven successful titles in the Tony Hawk franchise with cumulative net revenues of \$1.1 billion, including the most recent, *THAW*, which was released in the third quarter of fiscal 2006.

We continue to develop a number of original intellectual properties which are developed and owned by Activision. For example, in the third quarter of fiscal 2006 we released *Call of Duty 2* on the PC and Xbox360 and *Call of Duty 2: Big Red One*, on the GameCube, PS2, and Xbox. According to NPD Funworld, *Call of Duty 2* was the top selling Xbox360 title of the holiday season. These titles were the fourth and fifth releases based upon this original intellectual property following two other PC titles, *Call of Duty* and *Call of Duty: United Offensive*, and one other console title, *Call of Duty: Finest Hour*. In the third quarter of fiscal 2006, we also released *True Crime: New York City*, which was based upon our fiscal 2004 original intellectual property *True Crime: Streets of LA*, and *GUN*, a new original intellectual property. According to NPD Funworld, we have developed the number one new original intellectual property title in each of the past three years which included *True Crime: Streets of LA* in calendar 2003, *Call of Duty: Finest Hour* in calendar 2004, and *GUN* in calendar 2005. We expect to develop a variety of games on multiple platforms based on these original properties as well as continue to invest in developing other original intellectual properties.

We will also continue to evaluate and exploit emerging brands that we believe have potential to become successful game franchises. For example, we have a multi-year, multi-property, publishing agreement with DreamWorks LLC that grants us the exclusive rights to publish video games based on

DreamWorks Animation SKG's theatrical release "Shrek 2," which was released in the first quarter of fiscal 2005, "Shark Tale," which was released in the second quarter of fiscal 2005, "Madagascar," which was released in the first quarter of fiscal 2006, as well as upcoming computer-animated films "Over the Hedge," and all of their respective sequels, including "Shrek 3" and "Madagascar 2." In addition, during the third quarter of fiscal 2006, we further enhanced our agreement with DreamWorks Animation SKG by signing a multi-year agreement which grants us the exclusive video game rights to potential future films in the "Shrek" franchise beyond "Shrek 3," upcoming movies, including "Bee Movie" and "Kung Fu Panda," as well as films currently in development, including "Rex Havoc" and "How to Train Your Dragon." Additionally, we have a strategic alliance with Harrah's Entertainment, Inc. that grants us the exclusive, worldwide interactive rights to develop and publish "World Series of Poker" video games based on the widely popular World Series of Poker Tournament. We released our first title under this alliance, *World Series of Poker*, in the second quarter of fiscal 2006.

In addition to acquiring or creating high profile intellectual property, we have also continued our focus on establishing and maintaining relationships with talented and experienced software development teams. We have strengthened our internal development capabilities through the acquisition of several development companies with talented and experienced teams including, most recently, the acquisitions of Vicarious Visions Inc. in January 2005, Toys For Bob, Inc. in April 2005, and Beenox, Inc. in May 2005. We have development agreements with other top-level, third-party developers such as id Software.

We are utilizing these developer relationships, new intellectual property acquisitions, new original intellectual property creations, and our existing library of intellectual property to further focus our game development on product lines that will deliver significant, lasting, and recurring revenues and operating profits.

Critical Accounting Policies

We have identified the policies below as critical to our business operations and the understanding of our financial results. The impact and any associated risks related to these policies on our business operations is discussed throughout Management's Discussion and Analysis of Financial Condition and Results of Operations where such policies affect our reported and expected financial results. For a detailed discussion on the application of these and other accounting policies, see Note 1 to the Notes to Consolidated Financial Statements included in Item 1. The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Revenue Recognition. We recognize revenue from the sale of our products upon the transfer of title and risk of loss to our customers. Certain products are sold to customers with a street date (the date that products are made widely available for sale by retailers). For these products we recognize revenue no earlier than the street date. Revenue from product sales is recognized after deducting the estimated allowance for returns and price protection. With respect to license agreements that provide customers the right to make multiple copies in exchange for guaranteed amounts, revenue is recognized upon delivery of such copies. Per copy royalties on sales that exceed the guarantee are recognized as earned. In addition, in order to recognize revenue for both product sales and licensing transactions, persuasive evidence of an arrangement must exist and collection of the related receivable must be probable. Revenue recognition also determines the timing of certain expenses, including cost of sales — intellectual property licenses and cost of sales — software royalties and amortization.

Sales incentives or other consideration given by us to our customers is accounted for in accordance with the Financial Accounting Standards Board's Emerging Issues Task Force ("EITF") Issue 01-9, "Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)." In accordance with EITF Issue 01-9, sales incentives and other consideration that are considered adjustments of the selling price of our products, such as rebates and product placement fees, are reflected as reductions of revenue. Sales incentives and other consideration that represent costs incurred by us for assets or services received, such as the appearance of our products in a customer's national circular ad, are reflected as sales and marketing expenses.

Allowances for Returns, Price Protection, Doubtful Accounts and Inventory Obsolescence. In determining the appropriate unit shipments to our customers, we benchmark our titles using historical and industry data. We closely monitor and analyze the historical performance of our various titles, the performance of products released by other publishers and the anticipated timing of other releases in order to assess future demands of current and upcoming titles. Initial volumes shipped upon title launch and subsequent reorders are evaluated to ensure that quantities are sufficient to meet the demands from the retail markets, but at the same time, are controlled to prevent excess inventory in the channel.

We may permit product returns from, or grant price protection to, our customers under certain conditions. In general, price protection refers to the circumstances when we elect to decrease the wholesale price of a product by a certain amount and, when granted and applicable, allows customers a credit against amounts owed by such customers to us with respect to open and/or future invoices. The conditions our customers must meet to be granted the right to return products or price protection are, among other things, compliance with applicable payment terms, delivery to us of weekly inventory and sell-through reports, and consistent participation in the launches of our premium title releases. We may also consider other factors, including the facilitation of slow-moving inventory and other market factors. Management must make estimates of potential future product returns and price protection related to current period product revenue. We estimate the amount of future returns and price protection for current period product revenue utilizing historical experience and information regarding inventory levels and the demand and acceptance of our products by the end consumer. The following factors are used to estimate the amount of future returns and price protection for a particular title: historical performance of titles in similar genres, historical performance of the hardware platform, historical performance of the brand, console hardware life cycle, Activision sales force and retail customer feedback, industry pricing, weeks of on-hand retail channel inventory, absolute quantity of on-hand retail channel inventory, our warehouse on-hand inventory levels, the title's recent sell-through history (if available), marketing trade programs, and competing titles. The relative importance of these factors varies among titles depending upon, among other items, genre, platform, seasonality, and sales strategy. Significant

management judgments and estimates must be made and used in connection with establishing the allowance for returns and price protection in any accounting period. Based upon historical experience we believe our estimates are reasonable. However, actual returns and price protection could vary materially from our allowance estimates due to a number of reasons including, among others, a lack of consumer acceptance of a title, the release in the same period of a similarly themed title by a competitor, or technological obsolescence due to the emergence of new hardware platforms. Material differences may result in the amount and timing of our revenue for any period if factors or market conditions change or if management makes different judgments or utilizes different

estimates in determining the allowances for returns and price protection. For example, a 1% change in our December 31, 2005 allowance for returns and price protection would impact net revenues by \$1.7 million.

Similarly, management must make estimates of the uncollectibility of our accounts receivable. In estimating the allowance for doubtful accounts, we analyze the age of current outstanding account balances, historical bad debts, customer concentrations, customer creditworthiness, current economic trends, and changes in our customers' payment terms and their economic condition, as well as whether we can obtain sufficient credit insurance. Any significant changes in any of these criteria would affect management's estimates in establishing our allowance for doubtful accounts.

We value inventory at the lower of cost or market. We regularly review inventory quantities on hand and in the retail channel and record a provision for excess or obsolete inventory based on the future expected demand for our products. Significant changes in demand for our products would impact management's estimates in establishing our inventory provision.

Software Development Costs. Software development costs include payments made to independent software developers under development agreements, as well as direct costs incurred for internally developed products.

We account for software development costs in accordance with Statement of Financial Accounting Standard ("SFAS") No. 86, "Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed." Software development costs are capitalized once technological feasibility of a product is established and such costs are determined to be recoverable. Technological feasibility of a product encompasses both technical design documentation and game design documentation. For products where proven technology exists, this may occur early in the development cycle. Technological feasibility is evaluated on a product-by-product basis. Prior to a product's release, we expense, as part of cost of sales — software royalties and amortization, capitalized costs when we believe such amounts are not recoverable. Capitalized costs for those products that are cancelled or abandoned are charged to product development expense in the period of cancellation. Amounts related to software development which are not capitalized are charged immediately to product development expense. We evaluate the future recoverability of capitalized amounts on a quarterly basis. The recoverability of capitalized software development costs is evaluated based on the expected performance of the specific products for which the costs relate. Criteria used to evaluate expected product performance include: historical performance of comparable products using comparable technology; orders for the product prior to its release; and estimated performance of a sequel product based on the performance of the product on which the sequel is based.

Commencing upon product release, capitalized software development costs are amortized to cost of sales — software royalties and amortization based on the ratio of current revenues to total projected revenues, generally resulting in an amortization period of six months or less. For products that have been released in prior periods, we evaluate the future recoverability of capitalized amounts on a quarterly basis. The primary evaluation criterion is actual title performance.

Significant management judgments and estimates are utilized in the assessment of when technological feasibility is established, as well as in the ongoing assessment of the recoverability of capitalized costs. In evaluating the recoverability of capitalized costs, the assessment of expected product performance utilizes forecasted sales amounts and estimates of additional costs to be incurred. If revised forecasted or actual product sales are less than and/or revised forecasted or actual costs are greater than the original forecasted amounts utilized in the initial recoverability analysis, the net realizable value may be lower than originally estimated in any given quarter, which could result in an impairment charge.

Intellectual Property Licenses. Intellectual property license costs represent license fees paid to intellectual property rights holders for use of their trademarks, copyrights, software, technology, or other intellectual property or proprietary rights in the development of our products. Depending upon the agreement with the rights holder, we may obtain the rights to use acquired intellectual property in multiple products over multiple years, or alternatively, for a single product.

We evaluate the future recoverability of capitalized intellectual property licenses on a quarterly basis. The recoverability of capitalized intellectual property license costs is evaluated based on the expected performance of the specific products in which the licensed trademark or copyright is to be used. As many of our intellectual property licenses extend for multiple products over multiple years, we also assess the recoverability of capitalized intellectual property license costs based on certain qualitative factors such as the success of other products and/or entertainment vehicles utilizing the intellectual property, whether there are any future planned theatrical releases or television series based on the intellectual property, and the rights holder's continued promotion and exploitation of the intellectual property. Prior to the related product's release, we expense, as part of cost of sales — intellectual property licenses, capitalized intellectual property costs when we believe such amounts are not recoverable. Capitalized intellectual property costs for those products that are cancelled or abandoned are charged to product development expense in the period of cancellation. Criteria used to evaluate expected product performance include: historical performance of comparable products using comparable technology; orders for the product prior to its release; and estimated performance of a sequel product based on the performance of the product on which the sequel is based.

Commencing upon the related product's release, capitalized intellectual property license costs are amortized to cost of sales — intellectual property licenses based on the ratio of current revenues for the specific product to total projected revenues for all products in which the licensed property will be utilized. As intellectual property license contracts may extend for multiple years, the amortization of capitalized intellectual property license costs relating to such contracts may extend beyond one year. For intellectual property included in products that have been released and unreleased products, we evaluate the future recoverability of capitalized amounts on a quarterly basis. The primary evaluation criterion is actual title performance.

Significant management judgments and estimates are utilized in the assessment of the recoverability of capitalized costs. In evaluating the recoverability of capitalized costs, the assessment of expected product performance utilizes forecasted sales amounts and estimates of additional costs to be incurred. If revised forecasted or actual product sales are less than, and/or revised forecasted or actual costs are greater than, the original forecasted amounts utilized in the initial recoverability analysis, the net realizable value may be lower than originally estimated in any given quarter, which could result in an impairment charge. Additionally, as noted above, as many of our intellectual property licenses extend for multiple products over multiple years, we also assess the recoverability of capitalized intellectual property license costs based on certain qualitative factors such as the success of other products and/or entertainment vehicles utilizing the intellectual property, whether there are any future planned theatrical releases or television series based on the intellectual property and the rights holder's continued promotion and exploitation of the intellectual property. Material differences may result in the amount and timing of charges for any period if management makes different judgments or utilizes different estimates in evaluating these qualitative factors.

The following table sets forth certain consolidated statements of operations data for the periods indicated as a percentage of total net revenues and also breaks down net revenues by territory, business segment and platform, as well as operating income by business segment (amounts in thousands):

	Three months ended December 31,				Nine months ended December 31,			
	2005		2004		2005		2004	
Net revenues	\$ 816,242	100%	\$ 680,094	100%	\$ 1,279,875	100%	\$ 1,201,996	100%
Costs and expenses:								
Cost of sales – product costs	367,685	45	316,494	47	617,021	48	528,759	44
Cost of sales – software royalties and amortization	104,264	13	58,200	9	139,267	11	116,846	10
Cost of sales – intellectual property licenses	26,376	3	22,598	3	55,765	5	57,797	5
Product development	53,139	7	25,068	4	99,013	8	66,054	5
Sales and marketing	155,999	19	105,248	15	258,957	20	200,216	16
General and administrative	24,712	3	15,407	2	65,780	5	44,854	4
Total costs and expenses	732,175	90	543,015	80	1,235,803	97	1,014,526	84
Operating income	84,067	10	137,079	20	44,072	3	187,470	16
Investment income, net	9,162	1	3,197	—	22,840	2	7,954	—
Income before income tax provision	93,229	11	140,276	20	66,912	5	195,424	16
Income tax provision	25,284	3	43,014	6	15,794	1	60,662	5
Net income	\$ 67,945	8%	\$ 97,262	14%	\$ 51,118	4%	\$ 134,762	11%
Net Revenues by Territory:								
North America	\$ 402,314	49%	\$ 344,342	51%	\$ 626,538	49%	\$ 627,238	52%
Europe	397,356	49	324,360	48	622,035	49	543,480	45
Other	16,572	2	11,392	1	31,302	2	31,278	3
Total net revenues	\$ 816,242	100%	\$ 680,094	100%	\$ 1,279,875	100%	\$ 1,201,996	100%
Net Revenues by Segment/Platform								
Mix Publishing:								
Console	\$ 479,686	59%	\$ 382,400	56%	\$ 730,073	57%	\$ 647,069	54%
Hand-held	74,032	9	63,243	9	143,650	11	105,342	9
PC	113,782	14	68,410	11	154,735	12	189,689	15
Total publishing net revenues	667,500	82	514,053	76	1,028,458	80	942,100	78
Distribution:								
Console	95,408	12	134,503	20	163,344	13	203,626	17
Hand-held	37,154	4	7,923	1	60,229	5	15,134	1
PC	16,180	2	23,615	3	27,844	2	41,136	4
Total distribution net revenues	148,742	18	166,041	24	251,417	20	259,896	22
Total net revenues	\$ 816,242	100%	\$ 680,094	100%	\$ 1,279,875	100%	\$ 1,201,996	100%
Operating Income by Segment:								
Publishing	\$ 65,708	8%	\$ 120,608	18%	\$ 24,219	2%	\$ 168,111	14%
Distribution	18,359	2	16,471	2	19,853	1	19,359	2
Total operating income	\$ 84,067	10%	\$ 137,079	20%	\$ 44,072	3%	\$ 187,470	16%

Results of Operations – Three and Nine Months Ended December 31, 2005 and 2004

Net Revenues

We primarily derive revenue from sales of packaged interactive software games designed for play on video game consoles (such as the PS2, Xbox, Xbox360, and GameCube), PCs, and hand-held game devices (such as the GBA, NDS, and PSP). We also derive revenue from our distribution business in Europe that provides logistical and sales services to third-party publishers of interactive entertainment software, our own publishing operations, and third-party manufacturers of interactive entertainment hardware.

The following table details our consolidated net revenues by business segment and our publishing net revenues by territory for the three months ended December 31, 2005 and 2004 (in thousands):

	Three Months ended December 31,		Increase/ (Decrease)	Percent Change
	2005	2004		
Publishing Net Revenues				
North America	\$ 402,314	\$ 344,342	\$ 57,972	17%
Europe	248,614	158,319	90,295	57%
Other	16,572	11,392	5,180	45%
Total International	265,186	169,711	95,475	56%
Total Publishing Net Revenues	667,500	514,053	153,447	30%
Distribution Net Revenues	148,742	166,041	(17,299)	(10)%
Consolidated Net Revenues	\$ 816,242	\$ 680,094	\$ 136,148	20%

Consolidated net revenues increased 20% from \$680.1 million for the three months ended December 31, 2004 to \$816.2 million for the three months ended December 31, 2005. This increase was driven by our publishing business and was due to the following:

- An increase in the number of titles released in the third quarter of fiscal 2006 over the third quarter of fiscal 2005. Our fiscal 2006 launch schedule was more heavily weighted toward the third quarter than the previous fiscal year and included the largest slate of new releases in our history. In the third quarter of fiscal 2006, we released the following major releases: *THAW*, *Call of Duty 2*, *Call of Duty 2: Big Red One*, *GUN*, *True Crime: New York City*, *Quake 4*, *Shrek SuperSlam*, *The Movies*, *Cabela's Dangerous Hunts 2*, the PSP release of *X-Men Legends II*, and, in our international territories, *Ultimate Spider-Man*, and *X-Men Legends II*. In addition, we released four titles concurrently with the release of the Xbox360 platform, *Call of Duty 2*, *THAW*, *Quake 4*, and *GUN*, all at a premium retail pricing of \$59.99. We also published an affiliate title in our European territories, LucasArts' *Star Wars Battlefront II*. This compares to the releases for third quarter of fiscal 2005 where we released *Call of Duty: Finest Hour*, *Tony Hawk's Underground 2 ("THUG 2")*, *Lemony Snicket's A Series of Unfortunate Events ("Lemony Snicket's")*, *Cabela's Big Game Hunter 2005*, and *Spider-Man 2* for the NDS.

Partially offset by:

- A decrease in net revenues from our distribution business due mostly to the effect of year over year weakening of the Euro ("EUR") and Great Britain Pound ("GBP") in relation to the United States Dollar ("USD"). Foreign exchange rates decreased reported distribution net revenues by approximately \$10.6 million for the three months ended December 31, 2005. Excluding the impact of changing foreign currency rates, our distribution net revenues decreased 4% year over year resulting from the termination of relationships with unprofitable publishers and stronger third party releases in the third quarter of fiscal 2005.
- Increased provision for returns and price protection in the third quarter of fiscal 2006 of 17% of net revenues compared to 8% of net revenues in the third quarter of fiscal 2005, due to weaker market conditions and the ongoing console transition.

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The following table details our consolidated net revenues by business segment and our publishing net revenues by territory for the nine months ended December 31, 2005 and 2004 (in thousands):

	Nine Months ended December 31,		Increase/ (Decrease)	Percent Change
	2005	2004		
Publishing Net Revenues				
North America	\$ 626,538	\$ 627,238	\$ (700)	—%
Europe	370,618	283,584	87,034	31%
Other	31,302	31,278	24	—%
Total International	401,920	314,862	87,058	28%
Total Publishing Net Revenues	1,028,458	942,100	86,358	9%
Distribution Net Revenues	251,417	259,896	(8,479)	(3)%
Consolidated Net Revenues	\$ 1,279,875	\$ 1,201,996	\$ 77,879	6%

Consolidated net revenues increased 6% from \$1,202.0 million for the nine months ended December 31, 2004 to \$1,279.9 million for the nine months ended December 31, 2005. The increase was due entirely to the performance of our European publishing business and was due to the following:

- For the nine months ended December 31, 2005, our European publishing operations benefited from more direct selling operations as a result of continued European expansion and the release of four strong performing affiliate label titles, highlighted by LucasArts' *Star Wars: Episode III Revenge of the Sith* and *Star Wars Battlefront II*. This compares to the release of one affiliate title in Europe in the first nine months of fiscal 2005, LucasArts' *Star Wars Battlefront*.

Offset by:

- International publishing and distribution net revenues were impacted by a year over year weakening of the EUR, GBP, and AUD in relation to the USD. Foreign exchange rates decreased reported net revenues by approximately \$20.9 million for the nine months ended December 31, 2005. Excluding the impact of changing foreign currency rates, our international net revenues increased 17% year over year.

North America Publishing Net Revenues (in thousands)

	Three Months Ended December 31, 2005	% of Consolidated Net Revenues	Three Months Ended December 31, 2004	% of Consolidated Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 402,314	49%	\$ 344,342	51%	\$ 57,972	17%
Nine Months Ended	626,538	49%	627,238	52%	(700)	—%

North America publishing net revenues increased 17% from \$344.3 million for the three months ended December 31, 2004 to \$402.3 million for the three months ended December 31, 2005. The increase primarily reflects the release of the largest slate of titles in our history in the third quarter of fiscal 2006. This compares to fiscal 2005 where our new title release schedule was less concentrated in the third quarter. In the third quarter of fiscal 2006, we released *THAW*, *Call of Duty 2*, *Call of Duty 2: Big Red One*, *GUN*, *True Crime: New York City*, *Quake 4*, *Shrek SuperSlam*, *The Movies*, *Cabela's Dangerous Hunts 2*, and the PSP release of *X-Men Legends II*. This compares to the releases for third quarter of fiscal 2005 where we released *Call of Duty: Finest Hour*, *THUG 2*, *Lemony Snicket's*, *Cabela's Big Game Hunter 2005*, and *Spider-Man 2* for the NDS. The increase in net revenues was partially offset by a higher

provision for returns and price protection due to a weaker video game software market than the prior year and the ongoing console transition. North America publishing net revenues decreased as a percentage of consolidated net revenues from 51% for the three months

ended December 31, 2004 to 49% for the three months ended December 31, 2005. The decrease is primarily due to a larger increase in our international publishing net revenues due to the strong performance of our affiliate titles in Europe.

For the nine months ended December 31, 2005, North American publishing net revenues remained relatively flat in comparison to the nine months ended December 31, 2004 decreasing \$0.7 million to \$626.5 million. The fiscal 2006 year to date results as of December 31, 2005 reflected an increase in the overall number of major title releases year over year from sixteen in the first nine months of fiscal 2005 to nineteen in the first nine months of fiscal 2006. However, weaker market conditions resulted in higher provisions for returns and price protection and, in addition, our second quarter fiscal 2005 titles performed particularly well in comparison to current year releases. North America publishing net revenues decreased as a percentage of consolidated net revenues from 52% for the nine months ended December 31, 2004 to 49% for the nine months ended December 31, 2005. The decrease is primarily due to a larger increase in our international publishing net revenues due to the strong performance of our affiliate titles in Europe.

International Publishing Net Revenues (in thousands)

	December 31, 2005	% of Consolidated Net Revenues	December 31, 2004	% of Consolidated Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 265,186	33%	\$ 169,711	25%	\$ 95,475	56%
Nine Months Ended	401,920	31%	314,862	26%	87,058	28%

International publishing net revenues increased by 56% from \$169.7 million for the three months ended December 31, 2004, to \$265.2 million for the three months ended December 31, 2005. The increase reflects the significant increase in the number of titles released in the third quarter of fiscal 2006 compared to the third quarter of fiscal 2005. In the third quarter of fiscal 2006, we released thirteen titles in our international territories and one affiliate title, LucasArts' *Star Wars Battlefront II*. This compares to our third quarter of fiscal 2005 where we released five major title releases and one affiliate title. The increase was partially offset by the quarter over quarter weakening of the EUR, GBP, and AUD in relation to the USD of approximately \$13.8 million for the three months ended December 31, 2005 compared to the three months ended December 31, 2004. Excluding the impact of changing foreign currency rates, our international publishing net revenues increased 64% year over year.

International publishing net revenues increased by 28% from \$314.9 million for the nine months ended December 31, 2004, to \$401.9 million for the nine months ended December 31, 2005. In the first nine months of fiscal 2005, international publishing saw particularly strong results from the European releases of four affiliate label products highlighted by the highly successful LucasArts' titles, *Star Wars: Episode III Revenge of the Sith* and *Star Wars Battlefront II*, compared to one affiliate title in the first nine months of the prior fiscal year. In addition, international publishing benefited from an increase in the number of titles released year over year from sixteen in the first nine months of fiscal 2005 to nineteen in the first nine months of fiscal 2006. The increase for the first nine months of fiscal 2006 over the first nine months of fiscal 2005 was partially offset by a year over year weakening of the EUR, GBP, and AUD in relation to the USD of approximately \$11.1 million for the nine months ended December 31, 2005 compared to the nine months ended December 31, 2004. Excluding the impact of changing foreign currency rates, our international publishing net revenues increased 31% year over year.

Publishing Net Revenues by Platform (in thousands)

The following table details our publishing net revenues by platform and as a percentage of total publishing net revenues for the three months ended December 31, 2005 and 2004 (in thousands):

	Three Months Ended December 31, 2005	% of Publishing Net Revs.	Three Months Ended December 31, 2004	% of Publishing Net Revs.	Increase/ (Decrease)	Percent Change
Publishing Net Revenues						
PC	\$ 113,782	17%	\$ 68,410	13%	\$ 45,372	66%
Console						
Sony PlayStation 2	258,233	39%	227,759	44%	30,474	13%
Microsoft Xbox	103,422	15%	105,716	21%	(2,294)	(2)%
Microsoft Xbox 360	71,456	11%	—	—%	71,456	n/a
Nintendo GameCube	46,430	7%	48,002	10%	(1,572)	(3)%
Other	145	—%	923	—%	(778)	(84)%
Total Console	479,686	72%	382,400	75%	97,286	25%
Hand-held	74,032	11%	63,243	12%	10,789	17%
Total Publishing Net Revenues	\$ 667,500	100%	\$ 514,053	100%	\$ 153,447	30%

The following table details our publishing net revenues by platform and as a percentage of total publishing net revenues for the nine months ended December 31, 2005 and 2004 (in thousands):

	Nine Months Ended December 31, 2005	% of Publishing Net Revs.	Nine Months Ended December 31, 2004	% of Publishing Net Revs.	Increase/ (Decrease)	Percent Change
Publishing Net Revenues						
PC	\$ 154,735	15%	\$ 189,689	20%	\$ (34,954)	(18)%
Console						
Sony PlayStation 2	388,375	38%	384,225	41%	4,150	1%
Microsoft Xbox	195,382	19%	168,315	18%	27,067	16%
Microsoft Xbox 360	71,456	7%	—	—%	71,456	n/a
Nintendo GameCube	74,475	7%	92,471	10%	(17,996)	(19)%
Other	385	—%	2,058	—%	(1,673)	(81)%
Total Console	730,073	71%	647,069	69%	83,004	13%
Hand-held	143,650	14%	105,342	11%	38,308	36%
Total Publishing Net Revenues	\$ 1,028,458	100%	\$ 942,100	100%	\$ 86,358	9%

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Personal Computer Net Revenues (in thousands)

	December 31, 2005	% of Publishing Net Revenues	December 31, 2004	% of Publishing Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 113,782	17%	\$ 68,410	13%	\$ 45,372	66%
Nine Months Ended	154,735	15%	189,689	20%	(34,954)	(18)%

Net revenues from sales of titles for the PC increased 66% from \$68.4 million for the three months ended December 31, 2004 to \$113.8 million for the three months ended December 31, 2005. The increase was due to the release of the highly successful PC title, *Call of Duty 2*, which was ranked by NPD Funworld as the number two best selling PC title in the United States for the quarter, as well as the releases of *Quake 4* and *The Movies*. This compares to the third quarter of fiscal 2005 where there was only one PC specific release, *Vampires – The Masquerade: Bloodlines*.

Net revenues from sales of titles for the PC decreased 18% from \$189.7 million for the nine months ended December 31, 2004 to \$154.7 million for the nine months ended December 31, 2005. Although we had strong sales from our fiscal 2006 PC titles, *Call of Duty 2*, *The Movies*, and *Quake 4*, in the first nine months of fiscal 2005, we had three particularly strong PC titles, *Doom 3*, *Rome: Total War*, and *Call of Duty*, all three of which were in the top-ten selling PC titles for calendar 2004 according to NPD Funworld.

We expect fiscal 2006 PC publishing net revenues as a percentage of total publishing revenues to decrease from the prior fiscal year as there were three very strong performing PC exclusive titles in the prior fiscal year, *Call of Duty*, *Doom 3*, and *Rome: Total War* compared to fiscal 2006 PC exclusive releases.

Sony PlayStation 2 Net Revenues (in thousands)

	December 31, 2005	% of Publishing Net Revenues	December 31, 2004	% of Publishing Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 258,233	39%	\$ 227,759	44%	\$ 30,474	13%
Nine Months Ended	388,375	38%	384,225	41%	4,150	1%

Net revenues from sales of titles for the PS2 increased 13% from \$227.8 million for the three months ended December 31, 2004 to \$258.2 million for the three months ended December 31, 2005. The increase was due to the heavy concentration of our fiscal 2006 slate in the third quarter compared to our fiscal 2005 slate. In the third quarter of fiscal 2006, we released PS2 titles *THAW*, *Shrek SuperSlam*, *Call of Duty 2: Big Red One*, *GUN*, *True Crime: New York City*, and *Cabela's Dangerous Hunts 2* as well as, internationally, *Ultimate Spider-Man* and *X-Men Legends II*. This compares to our fiscal 2005 third quarter PS2 new releases of *Call of Duty: Finest Hour*, *THUG 2*, *Cabela's Big Game Hunter 2005*, and *Lemony Snicket's*, as well as, internationally, *Dreamworks' Shark Tale* and *X-Men Legends*.

Net revenues from sales of titles for the PS2 increased 1% from \$384.2 million for the nine months ended December 31, 2004 to \$388.4 million for the nine months ended December 31, 2005. The slight increase was driven mainly by an increase in the number of major titles released for the PS2 from nine titles to twelve titles in the first nine months of fiscal 2005 and the first nine months of fiscal 2006, respectively. This increase was offset by the particularly strong comparatives from *Shrek 2* and *Spider-Man 2* in the first nine months of fiscal 2005. Further offsetting the increase provided by the increased number of titles was the increase in the provision for returns and price protection on new releases in the third quarter of fiscal 2006 due to weaker market conditions and lower initial pricing on *Madagascar*.

We expect our fiscal 2006 revenues from the sales of titles for the PS2 to be relatively in line with fiscal 2005 given the slower than expected sell through experienced as a result of weaker market conditions.

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Microsoft Xbox360 Net Revenues (in thousands)

	December 31, 2005	% of Publishing Net Revenues	December 31, 2004	% of Publishing Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 71,456	11%	\$ —	—%	\$ 71,456	n/a
Nine Months Ended	71,456	7%	—	—%	71,456	n/a

The Xbox360 was released in November 2005 and began the console transition to the next generation hardware. Consistent with our goal of having a significant presence at the launch of each new platform, we released four titles concurrently with the release of the Xbox360 platform, *Call of Duty 2*, *THAW*, *Quake 4*, and *GUN*, all at a premium retail pricing of \$59.99. Although limited by hardware availability, we experienced strong sales of these four titles, and, according to NPD Funworld, *Call of Duty 2* was the best selling Xbox360 title in the U.S. and had the highest attach rate of any console launch in video game history.

We expect sales of titles for the Xbox360 to remain flat as a percentage of total net revenues dependent upon and consistent with the availability of the Xbox360 hardware. We also expect the Xbox360 platform to provide significant opportunity for us in the upcoming fiscal years.

Microsoft Xbox Net Revenues (in thousands)

	December 31, 2005	% of Publishing Net Revenues	December 31, 2004	% of Publishing Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 103,422	15%	\$ 105,716	21%	\$ (2,294)	(2)%
Nine Months Ended	195,382	19%	168,315	18%	27,067	16%

Net revenues from sales of titles for the Xbox decreased 2% from \$105.7 million for the three months ended December 31, 2004 to \$103.4 million for the three months ended December 31, 2005. Despite an increase in the number of titles released in the third quarter of fiscal 2006 versus the third quarter of fiscal 2005, the small decrease is due to an anticipated gradual slowdown in sales for the Xbox due to the release of the next-generation platform from Microsoft, the Xbox360. As customers upgrade or anticipate upgrading to the next-generation platform, sales of titles for the Xbox will decrease. In addition, provision for returns and price protection increased in anticipation of quicker required pricing actions as a result of the introduction of the Xbox360. In the third quarter of fiscal 2006, we released Xbox titles *THAW*, *Shrek SuperSlam*, *Call of Duty 2: Big Red One*, *GUN*, *True Crime: New York City*, and *Cabela's Dangerous Hunts 2* as well as, internationally, *Ultimate Spider-Man* and *X-Men Legends II*. This compares with fewer fiscal 2005 third quarter Xbox new releases which included *Call of Duty: Finest Hour*, *THUG 2*, *Cabela's Big Game Hunter 2005*, and *Lemony Snicket's*, as well as, internationally, *Dreamworks' Shark Tale* and *X-Men Legends*.

Net revenues from sales of titles for the Xbox increased 16% from \$168.3 million for the nine months ended December 31, 2004 to \$195.4 million for the nine months ended December 31, 2005. The increase was driven mainly by the strong first quarter performance of our Xbox exclusive release of *Doom 3* with an additional increase coming from our second quarter releases of *Fantastic 4*, LucasArts' *Star Wars: Episode III Revenge of the Sith*, *Madagascar*, *X-Men Legends II*, and *Ultimate Spider-Man*. As described above, our fiscal third quarter releases remained relatively flat with the prior year period. Although we saw strong results from our fiscal 2005 releases of *Spider-Man 2* and *Shrek 2* in both the North American and international markets, fiscal 2006 results were favorably impacted by the performance of *Doom 3* for the Xbox which was more focused toward the demographic of the Xbox.

We expect our fiscal 2006 revenues from the sales of titles for the Xbox to increase over the previous fiscal year driven by the performance in the first nine months of this fiscal year. We expect that sales of titles for the Xbox will decline for the remainder of the fiscal year and in the upcoming year as the Xbox360 hardware becomes more readily available and its installed base grows.

Nintendo GameCube Net Revenues (in thousands)

	December 31, 2005	% of Publishing Net Revenues	December 31, 2004	% of Publishing Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 46,430	7%	\$ 48,002	10%	\$ (1,572)	(3)%
Nine Months Ended	74,475	7%	92,471	10%	(17,996)	(19)%

Net revenues from sales of titles for the Nintendo GameCube decreased 3% from \$48.0 million for the three months ended December 31, 2004 to \$46.4 million for the three months ended December 31, 2005. Despite an increase in the number of titles released for the GameCube from three major titles in the third quarter of fiscal 2005 to six worldwide major releases and two additional international releases in the third quarter of fiscal 2006, the releases in the third quarter of fiscal 2006, which included *GUN*, *Call of Duty 2: Big Red One*, *THAW*, and *True Crime: New York City*, were less geared to the demographics of the GameCube audience as compared to prior period new releases and, in particular, the prior year catalog titles. The third quarter of fiscal 2005 experienced exceptionally strong catalog sales on the GameCube as our catalog titles included *Spider-Man 2*, *Shrek 2*, and *Dreamworks' Shark Tale*, all of which are consistent with the GameCube demographic.

Net revenues from sales of titles for the Nintendo GameCube decreased 19% from \$92.5 million for the nine months ended December 31, 2004 to \$74.5 million for the nine months ended December 31, 2005. The overall decrease is due to lower initial pricing of our childrens' title releases of *Madagascar* in the first quarter of fiscal 2006 as compared to *Shrek 2* and *Spider-Man 2* in the first quarter of fiscal 2005 combined with lower unit sales as compared to *Shrek 2* and *Spider-Man 2*, which were two of our best selling titles. *Madagascar* was our top selling title on the GameCube for the first nine months of fiscal 2006 and although it performed strongly, it compares to the first nine months of fiscal 2005 where our top two selling titles on the GameCube were *Spider-Man 2* and *Shrek 2*, each of which outperformed *Madagascar*.

We expect fiscal 2006 net revenues from the sales of titles for the GameCube to decrease relative to the previous fiscal year due to the Xbox360 gaining market share over other platforms and as our slate of third quarter fiscal 2006 releases was less focused toward the demographic of the GameCube audience as compared to other platforms and the prior fiscal year releases.

Hand-Held (in thousands)

	December 31, 2005	% of Publishing Net Revenues	December 31, 2004	% of Publishing Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 74,032	11%	\$ 63,243	12%	\$ 10,789	17%
Nine Months Ended	143,650	14%	105,342	11%	38,308	36%

Net revenues from sales of titles for hand-held platforms for the three months ended December 31, 2005 increased 17% from the prior fiscal year, from \$63.2 million to \$74.0 million. The increase is primarily due to selling titles across an additional platform, the PSP, which was not released until the fourth quarter of fiscal 2005. In addition, compared to the other handheld platforms, titles for the PSP have a higher retail pricing point of \$49.99. Hand-held net revenues was driven by *X-Men Legends II*, and, in Europe, LucasArts' *Star Wars Battlefront II* on the PSP; *Madagascar: Operation Penguin*, *Tony Hawk's American Sk8land*, *Shrek SuperSlam*, *Ultimate Spider-Man*, and *Madagascar* on the GBA; and *Tony Hawk's American Sk8land*, *Madagascar*, and *Ultimate Spider-Man* on the NDS. The increase quarter over quarter was partially offset by strong sales in the third quarter of fiscal 2005 of *Spider-Man 2* for the NDS concurrent with that platform's hardware launch.

Net revenues from sales of titles for hand-held platforms for the nine months ended December 31, 2005 increased 36% from the prior fiscal year, from \$105.3 million to \$143.7 million. The increase is mainly

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due to the worldwide introductions of the NDS and PSP hand-held platforms leading to titles being published across more platforms resulting in an increase in our total handheld titles from eight in the first nine months of fiscal 2005 to fifteen in the first nine months of fiscal 2006. The major titles driving handheld net revenues in the first nine months of fiscal 2006 were *Madagascar*, *Fantastic Four*, *Madagascar: Operation Penguin*, *Ultimate Spider-Man*, and *Shrek SuperSlam* for the GBA; *Madagascar*, *Tony Hawk's American Sk8land*, and *Ultimate Spider-Man* for the NDS; and *THUG 2*, *X-Men Legends II*, *Spider-Man 2*, and LucasArts' *Star Wars Battlefront II* for the PSP. This compares to the first nine months of fiscal 2005 where the main titles driving handheld net revenues were *Shrek 2*, *Spider-Man 2*, and *Dreamworks' Shark Tale* for the GBA and *Spider-Man 2* for the NDS.

With the worldwide introduction of the NDS and PSP hand-held platforms, we expect that revenues from hand-helds will continue to increase versus fiscal 2005.

Overall

The platform mix of our future publishing net revenues will likely be impacted by a number of factors, including the ability of hardware manufacturers to continue to increase their installed hardware base and the introduction of new hardware platforms, as well as the performance of key product releases from our product release schedule. We expect that net revenues from console titles will continue to represent the largest component of our publishing net revenues with PS2 having the largest percentage of that business due to its larger installed hardware base. With the recent release of the NDS and PSP platforms, we expect to see a continued increase in our hand-held business in line with the growth in the installed base in comparison to prior periods. Our net revenues from PC titles will be primarily driven by our product release schedule.

A significant portion of our revenues and profits are derived from a relatively small number of popular titles and brands each year as revenues and profits are significantly affected by our ability to release highly successful titles. For example, for the three months ended December 31, 2005, 32% of our consolidated net revenues and 39% of worldwide publishing net revenues were derived from net revenues from our *THAW*, *Call of Duty 2: Big Red One*, and *Call of Duty 2* titles. For the nine months ended December 31, 2005, 20% of our consolidated net revenues and 25% of worldwide publishing net revenues were derived from net revenues from our *THAW*, *Call of Duty 2: Big Red One*, and *Call of Duty 2* titles. Though many of these titles have substantial production or acquisition costs and marketing budgets, once a title recoups these costs, incremental net revenues directly and positively impact operating profits resulting in a disproportionate amount of operating income being derived from these select titles. We expect that a limited number of titles and brands will continue to produce a disproportionately large amount of our net revenues and profits.

Three factors that could affect future publishing and distribution net revenue performance are console hardware pricing, software pricing and transitions in console platforms. As console hardware moves through its life cycle, hardware manufacturers typically enact price reductions. Reductions in the price of console hardware typically result in an increase in the installed base of hardware owned by consumers. Historically, we have also seen that lower console hardware prices put downward pressure on software pricing. While we expect console software launch pricing for the Xbox360 to hold at \$59.99, we have started to see software pricing declines on the current-generation console systems. Additionally, when new console platforms are announced or introduced into the market, such as the upcoming 2006 calendar year releases of the PS3 and Revolution and the November 2005 release of the Xbox360, consumers typically reduce their purchases of game console entertainment software products for current console platforms in anticipation of new platforms becoming available. During these periods, sales of our game console entertainment software products may be expected to slow or even decline until new platforms are introduced and achieve wide consumer acceptance.

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Distribution Net Revenues (in thousands)

	December 31, 2005	% of Consolidated Net Revenues	December 31, 2004	% of Consolidated Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 148,742	18%	\$ 166,041	24%	\$ (17,299)	(10)%
Nine Months Ended	251,417	20%	259,896	22%	(8,479)	(3)%

Distribution net revenues for the three months ended December 31, 2005 decreased 10% from the prior fiscal year, from \$166.0 million to \$148.7 million. The decrease was primarily due to a year over year weakening of the EUR and GBP in relation to the USD. Foreign exchange rates decreased reported distribution net revenues by approximately \$10.6 million for the three months ended December 31, 2005. Excluding the impact of changing foreign currency rates, distribution net revenues decreased 4% year over year resulting from the termination of relationships with unprofitable publishers and stronger third party releases in the third quarter of fiscal 2005.

Distribution net revenues for the nine months ended December 31, 2005 decreased 3% from the prior fiscal year, from \$259.9 million to \$251.4 million. Consistent with above, the decrease was primarily due to a year over year weakening of the EUR and GBP in relation to the USD. Foreign exchange rates decreased reported distribution net revenues by approximately \$9.8 million for the nine months ended December 31, 2005. Excluding the impact of changing foreign currency rates, distribution net revenues increased slightly year over year.

The mix of future distribution net revenues will be driven by a number of factors including the occurrence of further hardware price reductions instituted by hardware manufacturers, the introduction of new hardware platforms, our ability to establish and maintain distribution agreements with hardware manufacturers and third-party software publishers and the success of our own as well as third-party published titles. We are expecting our fiscal 2006 distribution revenues to decrease slightly when compared with fiscal 2005 due mainly to the impact of changing foreign currency rates.

Costs and Expenses

Cost of Sales – Product Costs (in thousands)

	December 31, 2005	% of Consolidated Net Revenues	December 31, 2004	% of Consolidated Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 367,685	45%	\$ 316,494	47%	\$ 51,191	16%
Nine Months Ended	617,021	48%	528,759	44%	88,262	17%

Cost of sales – product costs represented 45% and 47% of consolidated net revenues for the three months ended December 31, 2005 and 2004, respectively. In absolute dollars, cost of sales – product costs increased 16% from \$316.5 million at December 31, 2004 to \$367.7 million at December 31, 2005. The primary factors contributing to the increase in the cost of sales – product costs are:

- A 20% increase in consolidated net revenues for the quarter ending December 31, 2005 versus the quarter ending December 31, 2004.
- Write-downs of inventory costs for certain titles in the third quarter of fiscal 2006 in the amount of \$11.1 million due to the high level of inventory remaining on hand for those titles. We reviewed the current levels of inventory on hand and determined that due to lower than expected re-orders given weaker market conditions and the ongoing console transition, we anticipate that certain titles in our current inventory will likely need to be sold below its original cost.

The primary factors affecting the decrease in cost of sales – product costs as a percentage of consolidated net revenues are:

- A shift in the mix of business between our publishing and distribution segments. Publishing net revenues as a percentage of consolidated net revenues increased from 76% in the third quarter of fiscal 2005 to 82% in the third quarter of fiscal 2006. Our publishing business typically has lower cost of sales- product costs than our distribution business.
- A shift in the product mix versus the third quarter of fiscal 2005. PC net revenues represented 13% of publishing revenues in the third quarter of fiscal 2005 compared to 17% in third quarter of fiscal 2006. PC titles typically have significantly lower product costs associated with them.

Cost of sales – product costs represented 48% and 44% of consolidated net revenues for the nine months ended December 31, 2005 and 2004, respectively. In absolute dollars, cost of sales – product costs increased 17% as compared to the first nine months of fiscal 2005. The primary factors affecting the increases in the cost of sales – product costs in both absolute dollars and as a percentage of consolidated net revenues are:

- Heavy sales volume in our European territories of LucasArts' *Star Wars: Episode III Revenge of the Sith* and *Star Wars Battlefront II*. LucasArts' titles are part of our affiliate label program and carry a significantly higher product cost than Activision developed titles.
- Write-downs of inventory costs for certain titles in the third quarter of fiscal 2006 in the amount of \$11.1 million due to the high level of inventory remaining on hand for those titles. We reviewed the current levels of inventory on hand and determined that due to lower than expected re-orders given weaker market conditions and the ongoing console transition, we anticipate that certain titles in our current inventory will likely need to be sold below its original cost.
- Reduced pricing on a number of catalog titles as well as an \$8 wholesale pricing difference on *Madagascar* compared to *Shrek 2*.
- A shift in the product mix versus the first nine months of fiscal 2005. PC revenues represented 20% of publishing revenues in the first nine months of fiscal 2005 compared to 15% in the first nine months of fiscal 2006. PC titles typically have significantly lower product costs associated with them.

Partially offset by:

- An increase in the percentage of consolidated net revenues provided by our publishing business from 78% in the first nine months of fiscal 2005 to 80% in the first nine months of fiscal 2006. Our publishing business typically has lower cost of sales - product costs than our distribution business.

We expect cost of sales – product costs as a percentage of net revenues to increase for the remainder of the year as a larger percentage of revenues will be generated from our distribution business for the rest of fiscal 2006. However, we also expect to benefit from sustained higher retail pricing on

Cost of Sales – Software Royalties and Amortization (in thousands)

	December 31, 2005	% of Publishing Net Revenues	December 31, 2004	% of Publishing Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 104,264	16%	\$ 58,200	11%	\$ 46,064	79%
Nine Months Ended	139,267	14%	116,846	12%	22,421	19%

Cost of sales – software royalties and amortization as a percentage of publishing net revenues increased from 11% for the three months ended December 31, 2004 to 16% for the three months ended December 31, 2005 and from 12% for the nine months ended December 31, 2004 to 14% for the nine months ended December 31, 2005. In absolute dollars, cost of sales – software royalties and amortization increased from the prior fiscal year, from \$58.2 million to \$104.3 million or 79% for the three months ended December 31, 2005 compared to the three months ended December 31, 2004. For the nine months ended December 31, 2005, costs of sales – software royalties and amortization also increased from \$116.8 million to \$139.3 million or 19% compared to the same period in the prior year. The increases for the three and nine month periods ended December 31, 2005 in both the percentage of publishing net revenues and in absolute dollars are mainly due to:

- Increases of 20% and 6% in consolidated net revenues for the quarter and nine months ending December 31, 2005, respectively, compared to the quarter ending December 31, 2004.
- Impairment charges and recoverability write-offs of \$11.7 million in the third quarter of fiscal 2006. We performed a detailed review of capitalized costs for released titles and determined that expected future revenues, given the change in market conditions, on three titles would not support the remaining capitalized software balance on these titles. As a result, we incurred a \$2.9 million recoverability charge on these titles in the third quarter. In addition, we reviewed future recoverability of capitalized amounts on titles in development and determined that one of our titles, to be released in fiscal 2007, was unlikely to fully recover capitalized costs given the change in expectations as a result of weaker market conditions and uncertainty involved in the console transition, and, as a result, took an impairment charge of \$8.8 million on this title.
- Overall continued increases in costs to develop titles for additional platforms, particularly those titles released for the more technologically advanced next-generation console platforms.

We expect cost of sales – software royalties and amortization to increase for the full fiscal year 2006 versus fiscal 2005 due mainly to increased game development costs across more platforms.

Cost of Sales – Intellectual Property Licenses (in thousands)

	December 31, 2005	% of Publishing Net Revenues	December 31, 2004	% of Publishing Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 26,376	4%	\$ 22,598	4%	\$ 3,778	17%
Nine Months Ended	55,765	5%	57,797	6%	(2,032)	(4)%

Cost of sales – intellectual property licenses for the three months ended December 31, 2005 increased in absolute dollars by 17% from \$22.6 million for the three months ended December 31, 2004 to \$26.4 million for the three months ended December 31, 2005 while the percentage of cost of sales – intellectual property licenses to publishing net revenues remained flat at 4%. The increase in the amount is mainly due to the overall 20% increase in sales volume quarter over quarter driving additional amounts for costs of sales – intellectual property, in particular the *Ultimate Spider-Man*, *X-Men Legends II*, *Shrek SuperSlam*, *Madagascar*, *THAW*, and *Quake 4* titles, which have associated purchased intellectual property.

Cost of sales – intellectual property licenses for the nine months ended December 31, 2005 decreased in absolute dollars and as a percentage of publishing net revenues from \$57.8 million and 6% of publishing net revenues to \$55.8 million and 5% of publishing net revenues for the nine months ended December 31, 2004 and 2005, respectively. The decreases are due mainly to a one-time benefit due to the settlement of an intellectual property claim in the second quarter of fiscal 2006.

We expect cost of sales – intellectual property licenses as a percentage of publishing net revenues to decrease slightly over fiscal 2005 due to the one-time benefit on the settlement of an intellectual property claim in the second quarter of fiscal 2006.

Product Development (in thousands)

	December 31, 2005	% of Publishing Net Revenues	December 31, 2004	% of Publishing Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 53,139	8%	\$ 25,068	5%	\$ 28,071	112%
Nine Months Ended	99,013	10%	66,054	7%	32,959	50%

Product development expenses for the three months ended December 31, 2005 increased as a percentage of publishing net revenues as compared to the three months ended December 31, 2004, from 5% to 8%. In absolute dollars, product development expenses for the three months ended December 31, 2005 increased approximately \$28.1 million compared to the three months ended December 31, 2004, from \$25.1 million to \$53.1 million.

Product development expenses for the nine months ended December 31, 2005 increased as a percentage of publishing net revenues as compared to the nine months ended December 31, 2004, from 7% to 10%. In absolute dollars, product development expenses for the nine months ended December 31, 2005 increased approximately \$33.0 million compared to the nine months ended December 31, 2004, from \$66.1 million to \$99.0 million.

The increases for both the three and nine month periods ending December 31, 2005 compared to the three and nine month periods ending December 31, 2004 are due to:

- Product cancellation charges of \$11.1 million, including terminations fees, incurred during the third quarter of fiscal 2006. Given the current market conditions, the lower than expected performance of some of our third quarter fiscal 2006 releases, and risks associated with console transition, we performed a thorough review of our upcoming product slate. To better align opportunities associated with the next generation console platforms with income potential and risks associated with certain titles in development, we made a business decision to cancel development of certain titles and permanently remove them from our future title slate.
- Increased development, quality assurance, and outside developer costs as a result of the development of more technologically advanced titles across more platforms.

We expect product development costs to continue to increase as a result of developing more technologically advanced titles across more platforms.

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Sales and Marketing (in thousands)

	December 31, 2005	% of Consolidated Net Revenues	December 31, 2004	% of Consolidated Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 155,999	19%	\$ 105,248	15%	\$ 50,751	48%
Nine Months Ended	258,957	20%	200,216	16%	58,741	29%

Sales and marketing expenses of \$156.0 million and \$105.2 million represented 19% and 15% of consolidated net revenues for the three months ended December 31, 2005 and 2004, respectively. The increase in absolute dollars was primarily generated by our publishing business as a result of increases in sales and marketing headcount to support European expansion and customer growth strategies combined with increased promotional and media advertising expenses related to our third quarter fiscal 2006 product slate. The increase in sales and marketing expenses as a percentage of net revenues was primarily a result of the additional sales and marketing investment on our third quarter fiscal 2006 titles which did not provide the revenue increase that was anticipated at the time of the marketing spend.

Sales and marketing expenses increased 29% from \$200.2 million and 16% of consolidated net revenues for the nine months ended December 31, 2004 to \$259 million and 20% of consolidated net revenues for the nine months ended December 31, 2005. The increases both in absolute dollars and as a percentage of net revenues were primarily generated by our publishing business as a result of continuing significant investment in marketing programs and media advertising provided in support of the biggest title release slate in our history which included fiscal 2006 title releases: *GUN*, *True Crime: New York City*, *Call of Duty 2*, *Call of Duty 2: Big Red One*, *Quake 4*, *Shrek SuperSlam*, *THAW*, *Doom 3*, *Ultimate Spider-Man*, *X-Men Legends II*, *Madagascar*, and *Fantastic 4*. In addition, we experienced increases in sales and marketing headcount to support European expansion and customer growth strategies combined with increased promotional expenses related to our fiscal 2006 product slate.

We expect fiscal 2006 sales and marketing costs to be higher than fiscal 2005 spending levels.

General and Administrative (in thousands)

	December 31, 2005	% of Consolidated Net Revenues	December 31, 2004	% of Consolidated Net Revenues	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 24,712	3%	\$ 15,407	2%	\$ 9,305	60%
Nine Months Ended	65,780	5%	44,854	4%	20,926	47%

General and administrative expenses for the three months ended December 31, 2005 increased \$9.3 million over the same period last year, from \$15.4 million to \$24.7 million. As a percentage of consolidated net revenues, general and administrative expenses increased from 2% to 3% for the three months ended December 31, 2004 and 2005, respectively. For the nine months ended December 31, 2005, general and administrative expenses increased \$20.9 million or 47% over the same period last year, from \$44.9 million to \$65.8 million. As a percentage of consolidated net revenues, general and administrative expenses increased from 4% to 5%. The increases were primarily due to an increase in personnel costs including costs related to European territory expansion, an increase in bad debt reserves, and foreign currency transaction losses incurred by our European publishing business due to the strengthening of the USD and EUR against the GBP.

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Operating Income (in thousands)

	December 31, 2005	% of Segment Net Revs.	December 31, 2004	% of Segment Net Revs.	Increase/ (Decrease)	Percent Change
Three Months Ended						
Publishing	\$ 65,708	10%	\$ 120,608	23%	\$ (54,900)	(46)%

Distribution	<u>18,359</u>	12%	<u>16,471</u>	10%	<u>1,888</u>	11%
Consolidated	<u>\$ 84,067</u>	10%	<u>\$ 137,079</u>	20%	<u>\$ (53,012)</u>	(39)%

Publishing operating income for the three months ended December 31, 2005 decreased \$54.9 million or 46% from the same period last year, from \$120.6 million to \$65.7 million, while the percentage of operating income to segment revenues decreased from 23% to 10%. The impact of changes in foreign currency rates did not have a material impact on international publishing operating income for the three months ended December 31, 2005. This decrease is primarily due to:

- Cancellation, impairment, and earn-out recoverability charges totaling \$22.8 million taken during the third quarter of fiscal 2006. See additional description of charges incurred in the cost of sales – software royalties and amortization and the product development discussions.
- Write-downs of inventory costs of \$11.1 million. See additional description in the cost of sales – product costs discussion.
- Increased sales and marketing investments to support our fiscal 2006 third quarter “big propositions” which in current market conditions have not provided the corresponding level of revenue return we had anticipated.
- Increased provision for returns and price protection in the third quarter of fiscal 2006 of 17% of net revenues compared to 8% of net revenues in the third quarter of fiscal 2005, due to weaker market conditions and the ongoing console transition.
- Continuing increases in product development costs to support more technologically advanced titles across more platforms.
- Increased operating expenditures to support title releases across more platforms and costs of European territory expansion.

Distribution operating income for the three months ended December 31, 2005 increased compared to the same period last year, from \$16.5 million to \$18.4 million. Excluding the impact of changes in foreign currency rates, distribution operating income increased by \$3.2 million or 19% for the three months ended December 31, 2005. This increase is primarily due to improved profitability resulting from the discontinuation of certain unprofitable third party business and an increase in business with large, mass-market customers that generate a higher percentage of sales from software.

	<u>December 31, 2005</u>	<u>% of Segment Net Revs.</u>	<u>December 31, 2004</u>	<u>% of Segment Net Revs.</u>	<u>Increase/ (Decrease)</u>	<u>Percent Change</u>
Nine Months Ended						
Publishing	\$ 24,219	2%	\$ 168,111	18%	\$ (143,892)	(86)%
Distribution	<u>19,853</u>	8%	<u>19,359</u>	7%	<u>494</u>	3%
Consolidated	<u>\$ 44,072</u>	3%	<u>\$ 187,470</u>	16%	<u>\$ (143,398)</u>	(76)%

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Publishing operating income for the nine months ended December 31, 2005 decreased \$143.9 million from the same period last year, from \$168.1 million to \$24.2 million. Changes in foreign currency rates related to the year over year weakening of the EUR, GBP, and AUD in relation to the U.S. dollar did not have a material impact on publishing operating income. This decrease is primarily due to:

- Cancellation, impairment, and earn-out recoverability charges totaling \$23.7 million taken during the first nine months of fiscal 2006. See additional description of charges incurred in the cost of sales – software royalties and amortization and the product development discussions.
- Write-downs of inventory costs of \$11.1 million in the third quarter of fiscal 2006. See additional description in the cost of sales – product costs discussion.
- Increased sales and marketing investments to support our fiscal 2006 third quarter “big propositions” which did not provide the corresponding level of revenue return we had anticipated.
- A larger percentage of revenues derived from LucasArts’ titles. Affiliate titles typically carry a much lower operating margin compared to our own titles.
- Increased provision for returns and price protection in the first nine months of fiscal 2006 of 19% of net revenues compared to 11% of net revenues in the first nine months of fiscal 2005, due to weaker market conditions and the ongoing console transition.
- Lower initial pricing of our top selling children’s title for the first nine months of fiscal 2006, *Madagascar*, resulting in lower associated margins.

Distribution operating income for the nine months ended December 31, 2005 increased \$0.5 million over the same period last year, from \$19.4 million to \$19.9 million. Excluding the impact of changes in foreign currency rates, distribution operating income increased by \$1.7 million or 9% for the three months ended December 31, 2005. Consistent with above, the increase is primarily due to improved profitability resulting from pulling out of certain unprofitable third party business, and an increase in business with large, mass-market customers that generate a higher percentage of sales from software.

Investment Income, Net (in thousands)

<u>December 31,</u>	<u>% of Consolidated</u>	<u>December 31,</u>	<u>% of Consolidated</u>	<u>Increase/ Percent</u>
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	2005	Net Revenues	2004	Net Revenues	(Decrease)	Change
Three Months Ended	\$ 9,162	1%	\$ 3,197	—%	\$ 5,965	187%
Nine Months Ended	22,840	2%	7,954	—%	14,886	187%

Investment income, net for the three months ended December 31, 2005 was \$9.2 million as compared to \$3.2 million for the three months ended December 31, 2004. Investment income, net for the nine months ended December 31, 2005 increased \$14.9 million from \$8.0 million for the nine months ended December 31, 2004 as compared to \$22.8 million for the nine months ended December 31, 2005. The increases in both the three and nine months ended December 31, 2005 as compared to the three and nine months ended December 31, 2004 were primarily due to higher invested balances combined with rising yields, a realized gain in the first quarter of fiscal 2006 of \$1.3 million on the sale of an investment in common stock, and a realized gain of \$2.9 million on the sale of a cost basis investment.

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Provision for Income Taxes (in thousands)

	December 31, 2005	% of Pretax Income	December 31, 2004	% of Pretax Income	Increase/ (Decrease)	Percent Change
Three Months Ended	\$ 25,284	27%	\$ 43,014	31%	\$ (17,730)	(41)%
Nine Months Ended	15,794	24%	60,662	31%	(44,868)	(74)%

The income tax provision of \$25.3 million and \$15.8 million for the three months and nine months ended December 31, 2005 reflects our effective income tax rate of 27% and 24%, respectively. The significant items that generated the variance between our effective rate and our statutory rate of 35% were research and development tax credits and the impact of foreign tax rate differentials, offset by an increase in state taxes. The realization of deferred tax assets depends primarily on the generation of future taxable income. We believe that it is more likely than not that we will generate taxable income sufficient to realize the benefit of net deferred tax assets recognized.

Net Income

Net income for the three months ended December 31, 2005 was \$67.9 million or \$0.23 per diluted share, as compared to net income of \$97.3 million or \$0.35 per diluted share for the three months ended December 31, 2004.

Net income for the nine months ended December 31, 2005 was \$51.1 million or \$0.17 per diluted share, as compared to net income of \$134.8 million or \$0.49 per diluted share for the nine months ended December 31, 2004.

Liquidity and Capital Resources

Sources of Liquidity

(in thousands)

	December 31, 2005	March 31, 2005	Increase/ (Decrease)
Cash and cash equivalents	\$ 267,069	\$ 313,608	\$ (46,539)
Short-term investments	497,537	527,256	(29,719)
	\$ 764,606	\$ 840,864	\$ (76,258)

Percentage of total assets 48% 64%

	For the Nine Months ended December 31, 2005	For the Nine Months ended December 31, 2004	Increase/ (Decrease)
Cash flows provided by (used in) operating activities	\$ (83,932)	\$ 96,378	\$ (180,310)
Cash flows provided by (used in) investing activities	4,587	(7,098)	11,685
Cash flows provided by financing activities	37,850	30,134	7,716

As of December 31, 2005, our primary source of liquidity is comprised of \$267.1 million of cash and cash equivalents and \$497.5 million of short-term investments. Over the last two years, our primary sources of liquidity have included cash on hand at the beginning of the year and cash flows generated from continuing operations. We have also generated significant cash flows from the issuance of our common stock to

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employees through the exercise of options which is described in more detail below in "Cash Flows from Financing Activities." We have not utilized debt financing as a significant source of cash flows. However, we do have available at certain of our international locations, credit facilities, which are described below in "Credit Facilities," that can be utilized if needed.

In August 2003, we filed with the Securities and Exchange Commission two amended shelf registration statements, including the base prospectuses therein. The first shelf registration statement, on Form S-3, allows us, at any time, to offer any combination of securities described in the base prospectus in one or more offerings with an aggregate initial offering price of up to \$500,000,000. Unless we state otherwise in the applicable prospectus supplement, we expect to use the net proceeds from the sale of the securities for general corporate purposes, including capital expenditures, working capital, repayment or

reduction of long-term and short-term debt, and the financing of acquisitions and other business combinations. We may invest funds that we do not immediately require in marketable securities.

The second shelf registration statement, on Form S-4, allows us, at any time, to offer any combination of securities described in the base prospectus in one or more offerings with an aggregate initial offering price of up to \$250,000,000 in connection with our acquisition of the assets, business or securities of other companies whether by purchase, merger or any other form of business combination.

We believe that we have sufficient working capital (\$941.2 million at December 31, 2005), as well as proceeds available from our international credit facilities, to finance our operational requirements for at least the next twelve months, including purchases of inventory and equipment, the funding of the development, production, marketing and sale of new products and the acquisition of intellectual property rights for future products from third-parties.

Cash Flows from Operating Activities

The primary drivers of cash flows from operating activities typically have included the collection of customer receivables generated by the sale of our products, offset by payments to vendors for the manufacture, distribution and marketing of our products, third-party developers and intellectual property holders and our own employees. A significant operating use of our cash relates to our continued investment in software development and intellectual property licenses. We spent approximately \$162.8 million and \$96.9 million in the nine months ended December 31, 2005 and 2004, respectively, in connection with the acquisition of publishing or distribution rights for products being developed by third-parties, the execution of new license agreements granting us long-term rights to intellectual property of third-parties, as well as product development costs relating to internally developed products. The increase period over period is primarily due to new agreements with Dreamworks Animation SKG and Marvel Enterprises, both signed in the third quarter of fiscal 2006. We expect that we will continue to make significant expenditures relating to our investment in software development and intellectual property licenses. Our future cash commitments relating to these investments are detailed below in "Commitments." Cash flows from operations are affected by our ability to release highly successful or "hit" titles. Though many of these titles have substantial production or acquisition costs and marketing budgets, once a title recoups these costs, incremental net revenues typically will directly and positively impact cash flows.

For the nine months ended December 31, 2005 and 2004, cash flows (used in) provided by operating activities were \$(83.9) million and \$96.4 million, respectively. The principal components comprising cash flows used in operating activities for the nine months ended December 31, 2005 included investment in software development and intellectual property licenses and increases in accounts receivable, partially offset by operating results, amortization of capitalized software development costs and intellectual property licenses, and higher accounts payable and accrued liabilities. An analysis of the change in key balance sheet accounts is below in "Key Balance Sheet Accounts." We expect that a primary source of future liquidity, both short-term and long-term, will be the result of cash flows from continuing operations.

Cash Flows from Investing Activities

The primary drivers of cash used in investing activities typically have included capital expenditures, acquisitions of privately held interactive software development companies and the net effect of purchases and sales/maturities of short-term investment vehicles. The goal of our short-term investments is to maximize return while minimizing risk, maintaining liquidity, coordinating with anticipated working capital needs and providing for prudent investment diversification.

For the nine months ended December 31, 2005 and 2004, cash flows provided by (used in) investing activities were \$4.6 million and \$(7.1) million, respectively. For the nine months ended December 31, 2005, cash flows provided by investing activities were primarily the result of net proceeds from the sales and maturities of short term investments, offset by capital expenditures, increase in restricted cash, which is included in short-term investments, and cash paid for acquisitions. We have historically financed our acquisitions through the issuance of shares of common stock or a combination of common stock and cash. We will continue to evaluate potential acquisition candidates as to the benefit they bring to us.

Cash Flows from Financing Activities

The primary drivers of cash provided by financing activities have historically related to transactions involving our common stock, including the issuance of shares of common stock to employees and the public and the purchase of treasury shares. We have not utilized debt financing as a significant source of cash flows. However, we do have available at certain of our international locations, credit facilities, which are described below in "Credit Facilities," that can be utilized if needed.

For the nine months ended December 31, 2005 and 2004, cash flows from financing activities were \$37.9 million and \$30.1 million, respectively. The cash provided by financing activities for the nine months ended December 31, 2005 primarily is the result of the issuance of common stock related to employee stock option and stock purchase plans. During fiscal 2003, our Board of Directors authorized a buyback program under which we can repurchase up to \$350.0 million of our common stock. Under the program, shares may be purchased as determined by management and within certain guidelines, from time to time, in the open market or in privately negotiated transactions, including privately negotiated structured stock repurchase transactions and through transactions in the options markets. Depending on market conditions and other factors, these purchases may be commenced or suspended at any time or from time to time without prior notice. As of December 31, 2005, we had approximately \$226.2 million available for utilization under the buyback program. We actively manage our capital structure as a component of our overall business strategy. Accordingly, in the future, when we determine that market conditions are appropriate, we may seek to achieve long term value for the shareholders through, among other things, new debt or equity financings or refinancings, share repurchases and other transactions involving our equity or debt securities.

Key Balance Sheet Accounts

Accounts Receivable

<u>(amounts in thousands)</u>	<u>December 31, 2005</u>	<u>March 31, 2005</u>	<u>Increase/ (Decrease)</u>
Gross accounts receivable	\$ 589,772	\$ 178,335	\$ 411,437
Net accounts receivable	414,492	109,144	305,348

The increase in gross accounts receivable was primarily the result of increased sales volume related to more titles being released and higher sales volume due to seasonality of the holiday selling season. Significant shipments were made to customers in November and December and the related receivables were not due prior to quarter end.

Reserves for returns, price protection, and doubtful accounts increased from \$69.2 million at March 31, 2005 to \$175.3 million at December 31, 2005 largely reflecting increased reserves for returns and price protections related to weak market conditions and the uncertainty involved in the ongoing console transition. Reserves for returns and price protection are a function of the number of units and pricing of titles in retail inventory (see description of Allowances for Returns, Price Protection, Doubtful Accounts and Inventory Obsolescence in Item 2: Critical Accounting Policies).

Inventories

(amounts in thousands)	December 31, 2005	March 31, 2005	Increase/ (Decrease)
Inventories	\$ 84,828	\$ 48,018	\$ 36,810

Inventories have increased as a result of lower than expected performance on certain fiscal 2006 third quarter title releases. Uncertainties in the marketplace due to the current console transition cycle as well as changes in retailer buying patterns have led to a buildup in inventories primarily in our Publishing business segment. As a result of the buildup in inventory levels, for the three and nine months ended December 31, 2005 we had write-downs of inventory costs for certain titles in the amount of \$11.1 million and \$15.2 million, respectively, as we anticipate that certain titles in our current inventory will be sold below its original cost.

Software Development

(amounts in thousands)	December 31, 2005	March 31, 2005	Increase/ (Decrease)
Software development	\$ 36,327	\$ 91,614	\$ (55,287)

Capitalized software development was lower at the end of the third quarter of fiscal 2006 as a result of:

- Amortization of \$115.4 million of capitalized software development costs related to titles released in the first nine months of fiscal 2006.
- Write-offs of development costs totaling \$22.9 million, primarily taken in third quarter of fiscal 2006 for title cancellations and write-downs of capitalized costs on which future benefit was not expected to be realized due to changes in market conditions.

Partially offset by:

- Continued investment in software development totaling \$83.0 million on titles currently being developed by internal studios as well as amounts paid to third parties for product development.

Intellectual Property Licenses

(amounts in thousands)	December 31, 2005	March 31, 2005	Increase/ (Decrease)
Intellectual property licenses	\$ 85,455	\$ 35,726	\$ 49,729

Intellectual property licenses increased at the end of the third quarter of fiscal 2006 as a result of:

- Continued investment in intellectual property licenses totaling \$79.8 million year-to-date. In the third quarter of fiscal 2006, we further extended our exclusive licensing agreement with Marvel Enterprises by signing a multi-year extension to our current video game licensing agreement for the Spider-Man and X-Men franchises. This agreement grants us the exclusive rights to develop and publish video games based on Marvel's comic book franchises Spider-Man and X-Men. We also signed an agreement with Spider-Man Merchandising LP in the third quarter of fiscal 2006, to extend our

exclusive worldwide rights to publish entertainment software products based on movie sequels subsequent to Spider-Man 3 or new television series to be produced based upon Marvel characters through 2017. Additionally, in our third quarter of fiscal 2006 we signed a multi-year agreement with Dreamworks Animation SKG which grants us exclusive video game rights to future films in the "Shrek" franchise beyond "Shrek 3," as well as titles based on films currently planned or in development.

Partially offset by:

- \$30.1 million in amortization of intellectual property licenses related to new title releases in the first three quarters of fiscal 2006, including *Ultimate Spider-Man*, *X-Men Legends II*, *Fantastic 4*, *Madagascar*, *Quake 4*, and *THAW*.

Accounts Payable

Increase/

(amounts in thousands)	December 31, 2005	March 31, 2005	(Decrease)
Accounts payable	\$ 213,874	\$ 108,984	\$ 104,890

The increase in accounts payable was primarily the result of increased inventory purchases to support increased holiday sales volume in both our publishing and distribution segments.

Accrued Expenses

(amounts in thousands)	December 31, 2005	March 31, 2005	Increase/ (Decrease)
Accrued expenses	\$ 171,384	\$ 98,067	\$ 73,317

The increase in accrued expenses was primarily driven by:

- Increased marketing costs due to the large number of titles released in the third quarter and significant promotional costs on key titles.
- Higher accrued royalties due to higher sales volume in the third quarter of fiscal 2006 and more titles released on which royalties were due.

Partially offset by:

- Reduced liability due to third party affiliates on titles distributed during the quarter compared to the fourth quarter of fiscal 2005.

Credit Facilities

We have revolving credit facilities with our Centresoft distribution subsidiary located in the UK (the "UK Facility") and our NBG distribution subsidiary located in Germany (the "German Facility"). The UK Facility provided Centresoft with the ability to borrow up to GBP 8.0 million (\$13.8 million), including issuing letters of credit, on a revolving basis as of December 31, 2005. Furthermore, under the UK Facility, Centresoft provided a GBP 0.6 million (\$1.0 million) guarantee for the benefit of our CD Contact distribution subsidiary as of December 31, 2005. The UK Facility bore interest at LIBOR plus 2.0% as of December 31, 2005, is collateralized by substantially all of the assets of the subsidiary and expires in May 2006. The UK Facility also contains various covenants that require the subsidiary to maintain specified financial ratios related to, among others, fixed charges. As of December 31, 2005, we were in compliance with these covenants. No borrowings were outstanding against the UK Facility as of December 31, 2005. The German Facility provided for

revolving loans up to EUR 0.5 million (\$0.6 million) as of December 31, 2005, bore interest at a Eurocurrency rate plus 2.5%, is collateralized by certain of the subsidiary's property and equipment and has no expiration date. No borrowings were outstanding against the German Facility as of December 31, 2005.

As of December 31, 2005, we maintained a \$7.5 million irrevocable standby letter of credit. The standby letter of credit is required by one of our inventory manufacturers to qualify for payment terms on our inventory purchases. Under the terms of this arrangement, we are required to maintain on deposit with the bank a compensating balance, restricted as to use, of not less than the sum of the available amount of the letter of credit plus the aggregate amount of any drawings under the letter of credit that have been honored thereunder but not reimbursed. At December 31, 2005, the \$7.5 million deposit is included in short-term investments as restricted cash.

As of December 31, 2005, our publishing subsidiary located in the UK maintained a EUR 10.0 million (\$11.8 million) irrevocable standby letter of credit. The standby letter of credit is required by one of our inventory manufacturers to qualify for payment terms on our inventory purchases. The standby letter of credit does not require a compensating balance and is collateralized by substantially all of the assets of the subsidiary and expires on April 15, 2006. As of December 31, 2005, we had EUR 0.7 million (\$0.8 million) outstanding amounts against this letter of credit.

Commitments

In the normal course of business, we enter into contractual arrangements with third-parties for non-cancelable operating lease agreements for our offices, for the development of products, as well as for the rights to intellectual property. Under these agreements, we commit to provide specified payments to a lessor, developer or intellectual property holder, based upon contractual arrangements. Typically, the payments to third-party developers are conditioned upon the achievement by the developers of contractually specified development milestones. These payments to third-party developers and intellectual property holders typically are deemed to be advances and are recoupable against future royalties earned by the developer or intellectual property holder based on the sale of the related game. Additionally, in connection with certain intellectual property right acquisitions and development agreements, we will commit to spend specified amounts for marketing support for the related game(s) which is to be developed or in which the intellectual property will be utilized. Assuming all contractual provisions are met, the total future minimum commitments for these and other contractual arrangements in place as of December 31, 2005, are scheduled to be paid as follows (amounts in thousands):

	Contractual Obligations			
	Facility Leases	Developer and IP	Marketing	Total
Fiscal year ending March 31,				
2006	\$ 3,122	\$ 12,183	\$ 1,642	\$ 16,947
2007	12,175	20,811	15,910	48,896
2008	8,721	10,593	24,260	43,574
2009	7,415	16,300	12,100	35,815
2010	6,517	23,300	100	29,917
Thereafter	27,046	54,900	100	82,046

Financial Disclosure

We maintain internal controls over financial reporting, which generally include those controls relating to the preparation of our financial statements in conformity with accounting principles generally accepted in the United States of America. We also are focused on our “disclosure controls and procedures,” which as defined by the Securities and Exchange Commission are generally those controls and procedures designed to ensure that

financial and non-financial information required to be disclosed in our reports filed with the Securities and Exchange Commission is reported within the time periods specified in the Securities and Exchange Commission’s rules and forms, and that such information is communicated to management, including our Chief Executive Officers and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Our Disclosure Committee, which operates under the board approved Disclosure Committee Charter and Disclosure Controls & Procedures Policy, includes senior management representatives and assists executive management in its oversight of the accuracy and timeliness of our disclosures, as well as in implementing and evaluating our overall disclosure process. As part of our disclosure process, senior finance and operational representatives from all of our corporate divisions and business units prepare quarterly reports regarding their current quarter operational performance, future trends, subsequent events, internal controls, changes in internal controls, and other accounting and disclosure-relevant information. These quarterly reports are reviewed by certain key corporate finance representatives. These corporate finance representatives also conduct quarterly interviews on a rotating basis with the preparers of selected quarterly reports. The results of the quarterly reports and related interviews are reviewed by the Disclosure Committee. Finance representatives also conduct reviews with our senior management team, our internal and external counsel and other appropriate personnel involved in the disclosure process, as appropriate. Additionally, senior finance and operational representatives provide internal certifications regarding the accuracy of information they provide that is utilized in the preparation of our periodic public reports filed with the Securities and Exchange Commission. Financial results and other financial information also are reviewed with the Audit Committee of the Board of Directors on a quarterly basis. As required by applicable regulatory requirements, the Chief Executive Officer, President and the Chief Financial Officer review and make various certifications regarding the accuracy of our periodic public reports filed with the Securities and Exchange Commission, our disclosure controls and procedures, and our internal control over financial reporting. With the assistance of the Disclosure Committee, we will continue to assess and monitor our disclosure controls and procedures, and our internal controls over financial reporting, and will make refinements as necessary.

Recently Issued Accounting Standards and Laws

On December 16, 2004, the Financial Accounting Standards Board (“FASB”) issued FASB Statement No. 123 (revised 2004), *Share-Based Payment* (“SFAS No. 123R”), which is a revision of FASB Statement No. 123, *Accounting for Stock-Based Compensation* (“SFAS 123”). SFAS No. 123R supersedes APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and amends FASB Statement No. 95, *Statement of Cash Flows*. Generally, the approach in SFAS No. 123R is similar to the approach described in SFAS 123. However, SFAS No. 123R requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. Pro forma disclosure is no longer an alternative.

SFAS No. 123R must be adopted by us no later than April 1, 2006. Early adoption will be permitted in periods in which financial statements have not yet been issued. We expect to adopt SFAS No. 123R on April 1, 2006.

SFAS No. 123R permits public companies to adopt its requirements using one of two methods:

- A “modified prospective” method in which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS No. 123R for all share-based payments granted after the effective date and (b) based on the requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS No. 123R that remain unvested on the effective date.
- A “modified retrospective” method which includes the requirements of the modified prospective method described above, but also permits entities to restate based on the amounts previously recognized under SFAS 123 for purposes of pro forma disclosures either (a) all prior periods presented or (b) prior interim periods of the year of adoption.

As permitted by SFAS 123, we currently account for share-based payments to employees using APB No. 25’s intrinsic value method and, as such, generally recognize no compensation cost for employee stock options. Accordingly, the adoption of SFAS No. 123R’s fair value method will have a significant impact on our results of operations, although it will have no impact on our overall financial position. While management continues to evaluate the impact of SFAS No. 123R, we currently believe that the expensing of stock-based

compensation will have an impact on our Consolidated Statement of Operations similar to our pro-forma disclosure under SFAS 123.

On November 24, 2004, the FASB issued Statement No. 151, *Inventory Costs, an Amendment of ARB No. 43, Chapter 4* (“SFAS No. 151”). The standard requires that abnormal amounts of idle capacity and spoilage costs within inventory should be excluded from the cost of inventory and expensed when incurred. The provisions of SFAS No. 151 are applicable to inventory costs incurred during fiscal years beginning after June 15, 2005. We expect the adoption of SFAS No. 151 will not have a material impact on our financial position or results of operations.

On December 15, 2004 the FASB issued Statement No. 153 (“SFAS No. 153”), *Exchanges of Nonmonetary Assets — an Amendment of Accounting Principles Board Opinion No. 29*. This standard requires exchanges of productive assets to be accounted for at fair value, rather than at carryover basis, unless (1) neither the asset received nor the asset surrendered has a fair value that is determinable within reasonable limits or (2) the transactions lack commercial substance. The new standard is effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005. The adoption of SFAS No. 153 did not have a material impact on our financial position or results of operations.

In May 2005, the FASB issued Statement No. 154 (“SFAS No. 154”), *Accounting Changes and Error Corrections – A Replacement of APB Opinion No. 20 and FASB Statement No. 3*. SFAS No. 154 changes the requirements for the accounting and reporting of a change in accounting principle and correction of errors. Under previous guidance, changes in accounting principle were recognized as a cumulative effect in the net income of the period of the change. The new statement requires retrospective application of changes in accounting principle and correction of errors, limited to the direct effects of the change, to prior periods’ financial statements, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. SFAS No. 154 is effective for accounting changes and correction of errors made in fiscal years beginning after December 15, 2005. In the event that we have an accounting change or an error correction, SFAS No. 154 could have a material impact on our consolidated financial statements.

On October 22, 2004, the President of the United States signed the American Jobs Creation Act of 2004 (the “Act”). The Act raises a number of issues with respect to accounting for income taxes. For companies that pay U.S. income taxes on manufacturing activities in the U.S., the Act provides a deduction from taxable income equal to a stipulated percentage of qualified income from domestic production activities. The manufacturing deduction provided by the Act replaces the extraterritorial income (“ETI”) deduction currently in place. We currently derive benefits from the ETI exclusion which was repealed by the Act. Our exclusion for fiscal 2006 and 2007 will be limited to 75% and 45% of the otherwise allowable exclusion and no exclusion will be available in fiscal 2008 and thereafter. The Act also creates a temporary incentive for U.S. multinationals to repatriate accumulated income earned abroad by providing an 85 percent dividends received deduction for certain dividends from controlled foreign corporations (“Homeland Investment Act”). The deduction is subject to a number of limitations. The Act also provides for other changes in tax law that will affect a variety of taxpayers. On December 21, 2004, the Financial Accounting Standards Board (“FASB”) issued two FASB Staff Positions (“FSP”) regarding the accounting implications of the Act related to (1) the deduction for qualified domestic production activities and (2) the one-time tax benefit for the repatriation of foreign earnings. The FASB determined that the deduction for qualified domestic production activities should be accounted for as a special deduction under FASB Statement No. 109, *Accounting for Income Taxes*. The FASB also confirmed, that upon deciding that some amount of earnings will be repatriated, a company must record in that period the associated tax liability. The guidance in the FSPs applies to financial statements for periods ending after the date the Act was enacted. We have evaluated the Act and have concluded that we will not repatriate foreign earnings under the Homeland Investment Act Provisions.

Inflation

Our management currently believes that inflation has not had a material impact on continuing operations.

Factors Affecting Future Performance

In connection with the Private Securities Litigation Reform Act of 1995 (the “Litigation Reform Act”), we have disclosed certain cautionary information to be used in connection with written materials (including this

Quarterly Report on Form 10-Q) and oral statements made by or on behalf of our employees and representatives that may contain “forward-looking statements” within the meaning of the Litigation Reform Act. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as “may,” “expect,” “anticipate,” “estimate” or “continue” or the negative thereof or other variations thereon or comparable terminology. The reader is cautioned that all forward-looking statements are necessarily speculative and there are numerous risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. For a discussion that highlights some of the more important risks identified by management, but which should not be assumed to be the only factors that could affect future performance, see our Annual Report on Form 10-K for the fiscal year ended March 31, 2005 which is incorporated herein by reference. The reader is cautioned that we do not have a policy of updating or revising forward-looking statements and thus he or she should not assume that silence by management over time means that actual events are bearing out as estimated in such forward-looking statements.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Market risk is the potential loss arising from fluctuations in market rates and prices. Our market risk exposures primarily include fluctuations in interest rates, foreign currency exchange rates and market prices. Our market risk sensitive instruments are classified as instruments entered into for purposes “other than trading.” Our views on market risk are not necessarily indicative of actual results that may occur and do not represent the maximum possible gains and losses that may occur, since actual gains and losses will differ from those estimated, based upon actual fluctuations in interest rates, foreign currency exchange rates and market prices and the timing of transactions.

Interest Rate Risk

Our exposure to market rate risk for changes in interest rates relates primarily to our investment portfolio. We do not use derivative financial instruments in our investment portfolio. We manage our interest rate risk by maintaining an investment portfolio consisting primarily of debt instruments with high credit quality and relatively short average maturities. We also manage our interest rate risk by maintaining sufficient cash and cash equivalent balances such that we are typically able to hold our investments to maturity. As of December 31, 2005, our cash equivalents and short-term investments included debt securities of \$534.6 million.

The following table presents the amounts and related weighted average interest rates of our investment portfolio as of December 31, 2005 (amounts in thousands):

	Average Interest Rate	Amortized Cost	Fair Value
Cash equivalents:			
Fixed rate	4.40%	\$ 68,531	\$ 68,531
Variable rate	4.21%	44,576	44,552
Short-term investments:			
Fixed rate	3.70%	\$ 502,905	\$ 497,537

Our short-term investments generally mature between three months and thirty months.

Foreign Currency Exchange Rate Risk

We transact business in many different foreign currencies and may be exposed to financial market risk resulting from fluctuations in foreign currency exchange rates, particularly EUR, GBP and AUD. The volatility of EUR, GBP and AUD (and all other applicable currencies) will be monitored frequently throughout the coming year. When appropriate, we enter into hedging transactions in order to mitigate our risk from foreign currency fluctuations. We will continue to use hedging programs in the future and may use currency forward contracts, currency options and/or other derivative financial instruments commonly utilized to reduce financial market risks if it is determined that such hedging activities are appropriate to reduce risk. We do not hold or purchase any foreign currency contracts for trading purposes. As of December 31, 2005, we had no outstanding hedging contracts.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

The Company's disclosure controls and procedures are designed to reasonably assure that (i) information required to be disclosed in the company's reports filed under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) information is accumulated and communicated to management, including the Chief Executive Officers and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that it will detect or uncover failures within the Company to disclose material information otherwise required to be set forth in our periodic reports. Inherent limitations to any system of disclosure controls and procedures include, but are not limited to, the possibility of human error and the circumvention or overriding of such controls by one or more persons. In addition, we have designed our system of controls based on certain assumptions, which we believe are reasonable, about the likelihood of future events, and our system of controls may therefore not achieve its desired purposes under all possible future events.

The Company's management, with the participation of the Chief Executive Officers and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on this controls evaluation, and subject to the limitations described above, the Chief Executive Officers and Chief Financial Officer concluded that, as of the end of the period covered by this report, our disclosure controls and procedures are effective to provide reasonable, but not absolute, assurance that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized, and reported on a timely basis.

Changes in Internal Control Over Financial Reporting

There was no change in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during our most recently completed fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

On March 5, 2004, a class action lawsuit was filed against us and certain of our current and former officers and directors. The complaint, which asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 based on allegations that our revenues and assets were overstated during the period between February 1, 2001 and December 17, 2002, was filed in the United States District Court, Central District of California by the Construction Industry, and Carpenters Joint Pension Trust for Southern Nevada purporting to represent a class of purchasers of Activision stock. Five additional purported class actions were subsequently filed by Gianni Angeloni, Christopher Hinton, Stephen Anish, the Alaska Electrical Pension Fund, and Joseph A. Romans asserting the same claims. Consistent with the Private Securities Litigation Reform Act ("PSLRA"), the court appointed lead plaintiffs consolidating the six putative securities class actions into a single case. In an Order dated May 16, 2005, the court dismissed the consolidated complaint because the plaintiffs failed to satisfy the heightened pleading standards of the PSLRA. The court did, however, give the lead plaintiffs leave to file an amended consolidated complaint within 30 days of the order. Rather than file a new complaint, the Plaintiff agreed to dismiss the entire case with prejudice. The Order dismissing the action with prejudice was entered on June 17, 2005.

In addition, on March 12, 2004, a shareholder derivative lawsuit captioned *Frank Capovilla, Derivatively on Behalf of Activision, Inc. v. Robert Kotick, et al.* was filed, purportedly on behalf of Activision, which in large measure asserts the identical claims set forth in the federal class action lawsuit. That complaint was filed in

California Superior Court for the County of Los Angeles. On August 11, 2005, in light of the ruling dismissing with prejudice the complaint in the earlier-filed federal securities class action, plaintiffs in the shareholder derivative action filed an amended complaint, dropping most of the causes of action and focusing only on the allegations of insider trading and breaches of fiduciary duty that were based on the same claimed misrepresentations set forth in the dismissed federal securities class action. On September 15, 2005, Activision and the individual defendants filed separate demurrers to the Derivative Action and a motion to strike plaintiff's jury demand. Prior to the hearing on the demurrers, the parties came to a resolution of the action and agreed to a stipulation of settlement to be submitted to the court for preliminary approval currently scheduled for hearing on February 8, 2006. Subject to court approval, the settlement will require the dismissal and release of the alleged claims. No cash recovery is to be paid to the plaintiff pursuant to the stipulation of settlement, which also states that the Company vigorously denies any assertion of wrongdoing or liability. In furtherance of the settlement, the Company has agreed to pay \$200,000 in plaintiffs' fees, to be funded by the Company's D&O insurance carrier. The settlement acknowledges that, after the time the derivative action was filed, the Company has implemented certain enhancements to its corporate governance policies.

In addition, we are party to other routine claims and suits brought by us and against us in the ordinary course of business, including disputes arising over the ownership of intellectual property rights, contractual claims and collection matters. In the opinion of management, after consultation with legal counsel, the outcome of such routine claims will not have a material adverse effect on our business, financial condition, results of operations or liquidity.

Item 6. Exhibits

(a) Exhibits

- 3.1 Amended and Restated Certificate of Incorporation of Activision Holdings, dated June 1, 2000 (incorporated by reference to Exhibit 2.5 of our Current Report on Form 8-K, filed on June 16, 2000).
- 3.2 Amended and Restated Bylaws dated August 1, 2000 (incorporated by reference to Exhibit 3.2 of our Current Report on Form 8-K, filed July 11, 2001).
- 3.3 Certificate of Amendment of Amended and Restated Certificate of Incorporation of Activision Holdings, dated June 9, 2000 (incorporated by reference to Exhibit 2.7 of our Current Report on Form 8-K, filed on June 16, 2000).
- 3.4 Certificate of Designation of Series A Junior Preferred Stock of Activision, Inc., dated December 27, 2001 (incorporated by reference to Exhibit 3.4 of our Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2001).
- 3.5 Certificate of Amendment of Amended and Restated Certificate of Incorporation, as amended, of Activision, Inc., dated as of April 4, 2005 (incorporated by reference to Exhibit 3.1 of Activision's Form 8-K, filed April 5, 2005).
- 4.1 Rights Agreement dated as of April 18, 2000, between us and Continental Stock Transfer & Trust Company, which includes as exhibits the form of Right Certificates as Exhibit A, the Summary of Rights to Purchase Series A Junior Preferred Stock as Exhibit B and the form of Certificate of Designation of Series A Junior Preferred Stock of Activision as Exhibit C (incorporated by reference to our Registration Statement on Form 8-A, Registration No. 001-15839, filed April 19, 2000).

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- 10.1 Employment Agreement dated May 10, 2005 between Charles J. Huebner and Activision Publishing, Inc.
- 10.2 Employment Agreement dated March 2, 2005 between Robin Kaminsky and Activision Publishing, Inc.
- 10.3 Employment Agreement dated December 6, 2005 between Stephen G. Werek and Activision Publishing, Inc.
- 10.4 Microsoft Corporation Xbox 360 Publisher License Agreement, dated as of February 2, 2004, between Microsoft Licensing, GP and Activision Publishing, Inc. ***
- 10.5 Amendment to Microsoft Corporation Xbox 360 Publisher License Agreement, dated as of December 15, 2005, between Microsoft Licensing, GP and Activision Publishing, Inc. ***
- 10.6 Chart of Compensation to Non-Employee Directors
- 31.1 Certification of Robert A. Kotick pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Michael Griffith pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.3 Certification of Thomas Tippl pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Robert A. Kotick pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Michael Griffith pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.3 Certification of Thomas Tippl pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

*** Portions omitted pursuant to a request for confidential treatment.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: February 8, 2006

ACTIVISION, INC.

/s/ Thomas Tipl

Thomas Tipl
Chief Financial Officer, Activision Publishing, Inc.
(Principal Financial and Accounting Officer)



May 10, 2005

Charles J. Huebner
93 Nayatt Road
Barrington, RI 02806

Dear Chuck:

This letter confirms the terms of your employment by Activision Publishing, Inc. ("Employer"), on the terms and conditions set forth below.

1. Term

(a) The initial term of your employment under this agreement shall commence on May 16, 2005 and expire on May 31, 2007 unless earlier terminated as provided below (the "initial term").

(b) Employer shall have the option to extend the initial term of this agreement for an additional successive one-year period. The initial term and the option period, if exercised, shall be referred to as the "term."

(c) Employer may exercise the option granted to it under this agreement by giving written notice to Employee at least one hundred eighty (180) days prior to the expiration of the initial term.

2. Compensation

(a) In full consideration for all rights and services provided by you under this agreement, you shall receive an annual base salary of \$425,000.

(b) Base salary payments shall be made in accordance with Employer's then prevailing payroll policy. The base salary referred to in Paragraph 2(a) shall constitute your minimum base salary during the applicable period. On an annual basis, your base salary shall be reviewed to determine if an increase above the minimum is appropriate. Your base salary may be increased above the minimum at any time if Employer's Board of Directors (or the Compensation Committee of such Board of Directors), in its sole and absolute discretion, elects to do so. In the event of an increase in your base salary beyond the applicable minimum base salary for a particular period, such increased base salary shall then constitute your minimum base salary for each subsequent year under this agreement.

(c) Employer shall not be required to actually use your services during the term of this agreement. You will not be permitted or authorized to act on behalf of Employer if Employer is not utilizing your services unless specifically authorized in writing to the contrary by Employer. If Employer chooses not to use your services, Employer will continue to pay your base salary, health benefits, 401(k) contributions and relocation support set forth in paragraph 6 and you will continue to remain eligible to receive a discretionary bonus consistent with the provisions of the

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plan as outlined in paragraph 2(d) below. Continued payment of your compensation related provisions as outlined in this section 2 and relocation support in paragraph 6 during the term of your employment under this agreement will discharge Employer's obligations to you hereunder. Your obligations to Employer under this agreement generally, and specifically with regard to Paragraph 9, shall continue throughout the term of this agreement. Moreover, you have an obligation to abide by the terms of the Employee Proprietary Information Act executed by you.

(d) In addition to your base salary, you may be eligible to receive an annual discretionary bonus targeted at sixty percent (60%) of your annual base salary (pro-rated for the amount of time that you actually perform services for Employer during a particular fiscal year). The amount of this bonus, if any, is within the sole and absolute discretion of the Employer's Board of Directors (or the Compensation Committee of the Board of Directors). Certain of the criteria that will be considered to evaluate your eligibility for a bonus are your achievement of specific objectives and/or your contribution to the success of the corporate goals and objectives. Employer's overall financial performance will also be considered in determining whether any bonus is awarded and, if so, the amount. Discretionary bonuses, if granted, are generally paid to employees in May. You must remain continuously employed by Employer through the date on which the discretionary bonus is paid to be eligible to receive a bonus. Employer retains the right to modify, at any time, any and all of the criteria used to determine whether Employee is eligible for a bonus and, if so, the amount of any such bonus.

(e) As an additional incentive to the commencement of your employment with Employer under this agreement, you will receive a sign-on bonus equal to \$100,000. This bonus shall be paid within 15 days of the commencement of your employment. If, within the first year of employment, you are terminated "for cause" (as defined in Paragraph 10(a)) or if you voluntarily terminate your employment for a reason other than those defined in Paragraph 10 (b) then you will be required to repay this sign-on bonus.

(f) You also are being granted, under the Activision Inc. ("company") existing or modified Board-approved stock option plan, a non-qualified stock option ("NQSO") to purchase 250,000 shares of the company's common stock. The option to purchase 250,000 shares referred to above will vest ratably over five years, with one fifth of the amount granted vesting at the end of each year. The option will have an exercise price that will be the market low of such common stock on the date that it is issued, and will be governed in all other respects by the company's stock option plan in effect at the time of the grant.

(g) You shall be eligible for such additional stock option grants commensurate with your position with Employer as the Board of Directors (or Compensation Committee of the Board of Directors), in its sole discretion, may award to you from time to time in connection with any extensions of this agreement's contract term.

3. **Title**

You are being employed under this agreement in the position of Head of Worldwide Studios.

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4. **Duties**

You shall personally and diligently perform, on a full-time and exclusive basis, such services as Employer or any of its related or affiliated entities or divisions may reasonably require. You are also required to read, review and observe all of Employer's existing policies, procedures, rules and regulations as well as those adopted by Employer during the term of your employment. You will at all times perform all of the duties and obligations required by you under this agreement in a loyal and conscientious manner and to the best of your ability and experience.

5. **Expenses**

To the extent you incur necessary and reasonable business expenses in the course of your employment, you shall be reimbursed for such expenses, subject to Employer's then current policies regarding reimbursement of such business expenses.

6. **Relocation Support**

(a) Employer shall reimburse you for the customary and reasonable expenses actually incurred by you in connection with your relocation from Rhode Island to Los Angeles to include but not limited to (i) the moving of your personal and household goods to the Los Angeles area and for storage of household goods if necessary for a period of up to six (6) months, (ii) the one-time, non-recurring closing costs associated with both the sale of your home in Rhode Island, and the purchase of a new home in the Los Angeles area including up to two (2) points of origination or discount fees, (iii) arranging for Buyer Value Option home sale program through appropriate third party vendor, (iv) the travel and expenses associated with up to two (2) house hunting trips for you and your spouse, and (v) for temporary living accommodations for you and your family up to six (6) months pending your actual settlement in the Los Angeles area, provided that all such expenses are pre-approved by Employer and you provide Employer with documentation which adequately evidences such expenses.

(b) Employer will provide \$180,000 mortgage assistance, payable five thousand dollars (\$5,000) a month for thirty-six (36) months provided you remain an Employee of Employer for the duration of this period.

7. **Other Benefits**

You shall be entitled to those benefits, which are standard for persons in similar positions with Employer, including coverage under Employer's health, life insurance and disability plans, and eligibility to participate in Employer's 401(k) and Employee Stock Purchase Plans. Nothing paid to you under any such plans and arrangements (nor any bonus or stock options which Employer's Board of Directors (or the Compensation Committee of such Board of Directors), in its sole and absolute discretion, shall provide to you)) shall be deemed in lieu, or paid on account, of your base salary. You expressly agree and acknowledge that after the expiration or early termination of the term of your employment under this agreement, you are entitled to no additional benefits, except as specifically provided under the benefit plans referred to above and those benefit plans in which you subsequently may become a participant, and subject in each case to the terms and conditions of each such plan. Notwithstanding anything to the contrary set forth above, you shall be entitled to receive those benefits provided by COBRA upon the expiration or earlier termination of this agreement.

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8. **Vacation and Paid Holidays**

(a) You will be entitled to paid vacation days in accordance with the normal vacation policies of Employer in effect from time to time, provided that in no event shall you be entitled to less than twenty (20) paid vacation days per year.

(b) You shall be entitled to all paid holidays given by Employer to its full-time employees.

9. **Protection of Employer's Interests**

(a) **Duty of Loyalty.** During the term of your employment, you will not compete in any manner, whether directly or indirectly, as a principal, employee, agent or owner, with Employer, or any affiliate of Employer, except that the foregoing will not prevent you from holding at any time less than five percent (5%) of the outstanding capital stock of any company whose stock is publicly traded.

(b) **Property of Employer.** All rights worldwide with respect to any and all intellectual or other property of any nature produced, created or suggested by you during the term of your employment or resulting from your services which (i) relate in any manner at the time of conception or reduction to practice to the actual or demonstrably anticipated business of Employer, (ii) result from or are suggested by any task assigned to you or any work performed by you on behalf of Employer, or (iii) are based on any property owned or idea conceived by Employer, shall be deemed to be a work made for hire and shall be the sole and exclusive property of Employer. You agree to execute, acknowledge and deliver to Employer, at Employer's request, such further documents, including copyright and patent assignments, as Employer finds appropriate to evidence Employer's rights in such property.

(c) **Confidentiality.** Any confidential and/or proprietary information of Employer or any affiliate of Employer shall not be used by you or disclosed or made available by you to any person except as required in the course of your employment, and upon expiration or earlier termination of the term of your employment, you shall return to Employer all such information which exists in written or other physical form (and all copies thereof) under your control. Without limiting the generality of the foregoing, you acknowledge signing and delivering to Employer the Activision Employee Proprietary Information Agreement and you agree that all terms and conditions contained in such agreement, and all of your obligations and commitments provided for in such agreement, shall be deemed, and hereby are, incorporated into this agreement as if set forth in full herein. The provisions of this paragraph shall survive the expiration or earlier termination of this agreement.

(d) **Covenant Not to Solicit.** After the expiration of the term of this agreement or earlier termination of your employment pursuant to Paragraphs 10(a) or (b) of this agreement for any reason whatsoever, you shall not, either alone or jointly, with or on behalf of others, directly or indirectly, whether as principal, partner, agent, shareholder, director, employee, consultant or otherwise, at any time during a period of one (1) year following such expiration or termination, knowingly offer employment to, or directly or indirectly solicit the employment or engagement

of, or otherwise entice away from the employment of Employer or any affiliated entity, either for your own account or for any other person firm or company, any person who was employed by Employer or any such affiliated entity during the term of your employment, whether or not such person would commit any breach of his or her contract of employment by reason of his or her leaving the service of Employer or any affiliated entity.

10. **Termination**

(a) **Employer.** At any time during the term of this agreement, Employer may terminate your employment under this agreement for your (i) willful, reckless or gross misconduct, (ii) grossly negligent performance of job responsibilities, or (iii) conviction of a felony or crime involving dishonesty or moral turpitude.

(b) **Employee.** You may terminate your employment under this agreement (and, thereby, forfeit your right to receive any compensation or benefits under this agreement) (i) upon any relocation of the place at which you primarily are performing your services to Employer to a location which is outside Los Angeles County, or (ii) if Employer elects to not actually use your services and continues to pay your compensation pursuant to Paragraph 2 above for a period of one hundred twenty (120) consecutive days.

(c) **Death or Disability.** In the event of your death during the term of this agreement, this agreement shall terminate and Employer only shall be obligated to pay your estate or legal representative the salary provided for above to the extent earned by you prior to your death. In the event you are unable to perform the services required of you under this agreement as a result of any disability, and such disability continues for a period of 60 or more consecutive days or an aggregate of 90 or more days during any 12-month period during the term of this agreement, then Employer shall have the right, at its option, to terminate your employment under this agreement. Unless and until so terminated, during any period of disability during which you are unable to perform the services required of you under this agreement, your base salary shall be payable to the extent of, and subject to, Employer's policies and practices then in effect with regard to sick leave and disability benefits.

(d) **Termination of Obligations.** In the event of the termination of your employment under this agreement pursuant to Paragraph 10(a) or (b), all obligations of Employer to you under this agreement shall immediately terminate.

11. **Use of Employee's Name**

Employer shall have the right, but not the obligation, to use your name or likeness for any publicity or advertising purpose.

12. **Assignment**

Employer may assign this agreement or all or any part of its rights under this agreement to any entity which succeeds to all or substantially all of Employer's assets (whether by merger, acquisition, consolidation, reorganization or otherwise) or which Employer may own substantially, and this agreement shall inure to the benefit of such assignee.

13. **No Conflict with Prior Agreements**

You represent to Employer that neither your commencement of employment under this agreement nor the performance of your duties under this agreement conflicts or will conflict with any contractual commitment on your part to any third party, nor does it or will it violate or interfere with any rights of any third party.

14. **Representations and Warranties**

Employee represents and warrants that he has provided Employer with complete and accurate information regarding his skills and experience. Employee further represents and warrants that he has the skills and abilities to perform the job responsibilities for which he is being hired (see paragraphs 3 and 4, above) based on his skills and experience. Based on Employee's representations regarding his skills and abilities, Employer has agreed to hire and compensate Employee pursuant to the terms of this agreement.

15. **General Provisions**

(a) **Entire Agreement.** This agreement supersedes all prior or contemporaneous agreements and statements, whether written or oral, concerning the terms of your employment with Employer, and no amendment or modification of this agreement shall be binding unless it is set forth in a writing signed by both Employer and Employee. To the extent that this agreement conflicts with any of Employer's policies, procedures, rules or regulations, this agreement shall supersede the other policies, procedures, rules or regulations.

(b) **No Broker.** You have given no indication, representation or commitment of any nature to any broker, finder, agent or other third party to the effect that any fees or commissions of any nature are, or under any circumstances might be, payable by Employer or any affiliate of Employer in connection with your employment under this agreement.

(c) **Waiver.** No waiver by either party of any breach by the other party of any provision or condition of this agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

(d) **Prevailing Law.** Nothing contained in this agreement shall be construed so as to require the commission of any act contrary to law and wherever there is any conflict between any provision of this agreement and any present or future statute, law, ordinance or regulation, the latter shall prevail, but in such event the provision of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

(e) **Expiration.** This agreement does not constitute a commitment of Employer with regard to your employment, express or implied, other than to the extent expressly provided for herein. Upon expiration of the term of this agreement, it is the contemplation of both parties that your employment with Employer shall cease, and that neither Employer nor you shall have any obligation to the other with respect to your continued employment. In the event that your employment continues for a period of time following the term unless and until agreed to in a new

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subscribed written document, such continuation of your employment shall be "at will," and may be terminated without obligation at any time by either party giving notice to the other.

(f) **Choice of Law.** This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of law principles.

(g) **Immigration.** In accordance with the Immigration Reform and Control Act of 1986, employment under this agreement is conditioned upon satisfactory proof of your identity and legal ability to work in the United States.

(h) **Venue and Jurisdiction.** The parties agree that all actions or proceedings initiated by either party hereto arising directly or indirectly out of this agreement shall be litigated in federal or state court in Los Angeles, California. The parties hereto expressly submit and consent in advance to such jurisdiction and agree that service of summons and complaint or other process or papers may be made by registered or certified mail addressed to the relevant party at the address set forth below. The parties hereto waive any claim that a federal or state court in Los Angeles, California, is an inconvenient or an improper forum.

(i) **Severability.** If any provision of this agreement is held to be illegal, invalid or unenforceable under existing or future laws effective during the term of this agreement, such provisions shall be fully severable, the agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this agreement, and the remaining provisions of this agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal and enforceable.

(j) **Legal Counsel.** Employee acknowledges that he has been given the opportunity to consult with legal counsel of his own choosing regarding this agreement. Employee understands and agrees that Activision's General Counsel, or any other attorney or member of management who has discussed any term or condition of this agreement with him, is only acting on behalf of the company and not on behalf of Employee.

(k) **Right to Negotiate.** Employee hereby acknowledges that he has been given the opportunity to participate in the negotiation of the terms of this agreement.

(l) **Services Unique.** You recognize that the services being performed by you under this agreement are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in the event of a breach of this agreement by you (particularly, but without limitation, with respect to the provisions hereof relating to the exclusivity of your services and the provisions of paragraph 9 of this agreement).

(m) **Injunctive Relief.** In the event of a breach or threatened breach of this agreement, you hereby agree that any remedy at law for any breach or threatened breach of this agreement will be inadequate and, accordingly, each party hereby stipulates that the other is entitled to obtain injunctive relief for any such breaches or threatened breaches. The injunctive relief

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provided for in this paragraph is in addition to, and is not in limitation of, any and all other remedies at law or in equity otherwise available to the applicable party. The parties agree to waive the requirement of posting a bond in connection with a court's issuance of an injunction.

(n) **Remedies Cumulative.** The remedies in this paragraph are not exclusive, and the parties shall have the right to pursue any other legal or equitable remedies to enforce the terms of this agreement.

(o) **Attorneys' Fees And Costs.** If either party brings an action to enforce, interpret or apply the terms of this agreement or declare its rights under this agreement, the prevailing party in such action, including all appeals, shall receive all of its or his reasonable attorneys' fees, experts' fees, and all of its or his costs, in addition to such other relief as may be granted.

16. Notices

All notices which either party is required or may desire to give the other shall be in writing and given either personally or by depositing the same in the United States mail addressed to the party to be given notice as follows:

To Employer:

3100 Ocean Park Boulevard
Santa Monica, California 90405
Attention: General Counsel

To Employee:

Charles J. Huebner

Either party may by written notice designate a different address for giving of notices. The date of mailing of any such notices shall be deemed to be the date on which such notice is given.

17. Headings

The headings set forth herein are included solely for the purpose of identification and shall not be used for the purpose of construing the meaning of the provisions of this agreement.

If the foregoing accurately reflects our mutual agreement, please sign where indicated.

ACCEPTED AND AGREED TO:

Employer

Employee

By: _____

By: _____

George Rose
Senior Vice President, Business
Affairs and General Counsel

Charles J. Huebner

Date: _____

Date: _____



March 2, 2005

Robin Kaminsky
15 Lewis Avenue
Dobbs Ferry, NY 10522

Dear Robin:

This letter confirms the terms of your employment by Activision Publishing, Inc. ("Employer"), on the terms and conditions set forth below.

1. Term

(a) The initial term of your employment under this agreement shall commence on May 1, 2005 and expire on May 31, 2007 unless earlier terminated as provided below (the "initial term").

(b) In the event that Employer decides not to extend your term of employment beyond the expiration of this agreement, Employer will provide you written notice at least one hundred and twenty (120) days prior to the expiration of the initial term.

2. Salary

(a) In full consideration for all rights and services provided by you under this agreement, you shall receive an annual base salary of \$350,000.

(b) Base salary payments shall be made in accordance with Employer's then prevailing payroll policy. The base salary referred to in Paragraph 2(a) shall constitute your minimum base salary during the applicable period. On an annual basis, your base salary shall be reviewed to determine if an increase above the minimum is appropriate. Your base salary may be increased above the minimum at any time if Employer's Board of Directors (or the Compensation Committee of such Board of Directors), in its sole and absolute discretion, elects to do so. In the event of an increase in your base salary beyond the applicable minimum base salary for a particular period, such increased base salary shall then constitute your minimum base salary for each subsequent year under this agreement.

(c) Employer shall not be required to actually use your services during the term of this agreement. You will not be permitted or authorized to act on behalf of Employer if Employer is not utilizing your services unless specifically authorized in writing to the contrary by Employer. If Employer chooses not to use your services, Employer will continue to pay your base salary, health benefits, 401(k) contributions, and relocation support set forth in provision 6. of this agreement. If Employer chooses not to use your services, payment of your base salary and relocation support (as referenced in Paragraph 6), as well as your health benefits, and 401(k) contributions, during the term of your employment under this agreement will discharge Employer's obligations to you hereunder. Furthermore, if Employer chooses not to use your services your rights under provision 2(f) of this Agreement shall remain intact. Your obligations

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to Employer under this agreement generally, and specifically with regard to Paragraph 9, shall continue throughout the term of this agreement. Moreover, you have an obligation to abide by the terms of the Employee Proprietary Information Agreement executed by you.

(d) In addition to your base salary, you may be eligible to receive an annual discretionary bonus targeted at sixty percent (60%) of your annual base salary (pro-rated for the amount of time that you actually perform services for Employer during a particular fiscal year). The amount of this bonus, if any, is within the sole and absolute discretion of the Employer's Board of Directors (or the Compensation Committee of the Board of Directors). Certain of the criteria that will be considered to evaluate your eligibility for a bonus is your achievement of specific objectives and/or your contribution to the success of the corporate goals and objectives. Employer's overall financial performance will also be considered in determining whether any bonus is awarded and, if so, the amount. Discretionary bonuses, if granted, are generally paid to employees in May. You must remain continuously employed by Employer through the date on which the discretionary bonus is paid to be eligible to receive a bonus. Employer retains the right to modify, at any time, any and all of the criteria used to determine whether Employee is eligible for a bonus and, if so, the amount of any such bonus.

(e) As an additional incentive to the commencement of your employment with Employer under this agreement, you will receive a sign-on bonus equal to \$250,000 payable by wire transfer within thirty (30) business days of your execution of this Agreement. If, within the first year of employment, you are terminated "for cause" (as defined in Paragraph 10(a)) or if you voluntarily terminate your employment for a reason other than those defined in Paragraph 10 (b) then you will be required to repay this sign-on bonus.

(f) You also are being granted, under the Activision Inc. ("company") existing or modified Board-approved stock option plan, a non-qualified stock option ("NQSO") to purchase 200,000 shares of the company's common stock. The option to purchase 200,000 shares referred to above will vest ratably over five years, with one fifth of the amount granted vesting at the end of each year, and with the first year commencing May 1, 2005. In addition, the portions of this option grant scheduled to vest ratably on the fourth and fifth annual anniversary will be subject to certain performance based acceleration criteria set forth in more detail in the related stock option certificate. The option will have an exercise price that will be the market low of such common stock on the date that it is issued, and will be governed in all other respects by the company's stock option plan in effect at the time of the grant.

(g) You shall be eligible for such additional stock option grants commensurate with your position with Employer as the Board of Directors (or Compensation Committee of the Board of Directors), in its sole discretion, may award to you from time to time in connection with any extensions of this agreement's contract term.

3. Title

4. Duties

You shall personally and diligently perform, on a full-time and exclusive basis, such services as Employer or any of its related or affiliated entities or divisions may reasonably require. You are also required to read, review and observe all of Employer's existing policies, procedures, rules and regulations as well as those adopted by Employer during the term of your employment. You will at all times perform all of the duties and obligations required by you under this agreement in a loyal and conscientious manner and to the best of your ability and experience.

5. Expenses

To the extent you incur necessary and reasonable business expenses in the course of your employment, you shall be reimbursed for such expenses, subject to Employer's then current policies regarding reimbursement of such business expenses.

6. Relocation Support

(a) Employer shall reimburse you for the customary and reasonable expenses actually incurred by you in connection with your relocation from New York to Los Angeles to include but not limited to (i) the moving of your personal and household goods to the Los Angeles area and for storage of household goods if necessary for a period of up to six (6) months, (ii) the one-time, non-recurring closing costs associated with both the sale of your home in New York, and the purchase of a new home in the Los Angeles area including up to two (2) points of origination or discount fees, (iii) the travel and expenses associated with up to two (2) house hunting trips for you and your spouse, and (iv) for customary reasonable corporate temporary living expenses (e.g. accommodations of at least three bedrooms, and other customary reasonable displacement expenses, for you and your family for up to six (6) months pending your actual settlement in the Los Angeles area) provided that you provide Employer with documentation which adequately evidences such expenses. Employer will provide tax assistance (gross-up) for those relocation related benefits that are treated as taxable.

(b) Employer will provide \$108,000 mortgage assistance (grossed-up), payable three thousand dollars (\$3,000) a month for thirty-six (36) months provided you remain an Employee of Employer for the duration of this period. This provision and its obligations shall survive the expiration of the Term of this Agreement during the period that you remain an employee.

7. Other Benefits

(a) You shall be entitled to those benefits, which are standard for persons in similar positions with Employer, including coverage under Employer's health, life insurance and disability plans, and eligibility to participate in Employer's 401(k) and Employee Stock Purchase Plans. Nothing paid to you under any such plans and arrangements (nor any bonus or stock options which Employer's Board of Directors (or the Compensation Committee of such Board of Directors), in its sole and absolute discretion, shall provide to you)) shall be deemed in lieu, or paid on account, of your base salary. You expressly agree and acknowledge that after the expiration or early termination of the term of your employment under this agreement, you are

entitled to no additional benefits, except as specifically provided under the benefit plans referred to above and those benefit plans in which you subsequently may become a participant, and subject in each case to the terms and conditions of each such plan. Notwithstanding anything to the contrary set forth above, you shall be entitled to receive those benefits provided by COBRA upon the expiration or earlier termination of this agreement.

(b) Employer will reimburse you for the cost of electing COBRA benefits for the period that they are required to provide benefits coverage for you and your family prior to the commencement of Activision benefits.

8. Vacation and Paid Holidays

(a) You will be entitled to paid vacation days (days other than paid holidays) in accordance with the normal vacation policies of Employer in effect from time to time, provided that in no event shall you be entitled to less than twenty (20) paid vacation per year.

(b) You shall be entitled to all paid holidays given by Employer to its full-time employees.

9. Protection of Employer's Interests

(a) **Duty of Loyalty.** During the term of your employment, you will not compete in any manner, whether directly or indirectly, as a principal, employee, agent or owner, with Employer, or any affiliate of Employer, except that the foregoing will not prevent you from holding at any time less than five percent (5%) of the outstanding capital stock of any company whose stock is publicly traded.

(b) **Property of Employer.** All rights worldwide with respect to any and all intellectual or other property of any nature produced, created or suggested by you during the term of your employment or resulting from your services which (i) relate in any manner at the time of conception or reduction to practice to the actual or demonstrably anticipated business of Employer, (ii) result from or are suggested by any task assigned to you or any work performed by you on behalf of Employer, or (iii) are based on any property owned or idea conceived by Employer, shall be deemed to be a work made for hire and shall be the sole and exclusive property of Employer. You agree to execute, acknowledge and deliver to Employer, at Employer's request, such further documents, including copyright and patent assignments, as Employer finds appropriate to evidence Employer's rights in such property.

(c) **Confidentiality.** Any confidential and/or proprietary information of Employer or any affiliate of Employer shall not be used by you or disclosed or made available by you to any person except as required in the course of your employment, and upon expiration or earlier termination of the term of your employment, you shall return to Employer all such information which exists in written or other physical form (and all copies thereof) under your

control. Without limiting the generality of the foregoing, you acknowledge signing and delivering to Employer the Activision Employee Proprietary Information Agreement and you agree that all terms and conditions contained in such agreement, and all of your obligations and commitments provided for in such agreement, shall be deemed, and hereby are, incorporated into this agreement

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as if set forth in full herein. The provisions of this paragraph shall survive the expiration or earlier termination of this agreement.

(d) **Covenant Not to Solicit.** After the expiration of the term of this agreement or earlier termination of your employment pursuant to Paragraphs 10(a) or (b) of this agreement for any reason whatsoever, you shall not, either alone or jointly, with or on behalf of others, directly or indirectly, whether as principal, partner, agent, shareholder, director, employee, consultant or otherwise, at any time during a period of one (1) year following such expiration or termination, offer employment to, or directly or indirectly solicit the employment or engagement of, or otherwise entice away from the employment of Employer or any affiliated entity, either for your own account or for any other person firm or company, any person who was employed by Employer or any such affiliated entity during the term of your employment, whether or not such person would commit any breach of his or her contract of employment by reason of his or her leaving the service of Employer or any affiliated entity.

10. **Termination**

(a) **Employer.** At any time during the term of this agreement, Employer may terminate your employment under this agreement for your (i) gross misconduct, (ii) gross negligence in performance of job responsibilities, or (iii) conviction of a felony.. Furthermore, prior to any such termination Employer will notify you of the basis for such and give you a reasonable opportunity to present facts which contradict the findings of Employer.

(b) **Employee.** You may terminate your employment under this agreement (and, thereby, forfeit your right to receive any compensation or benefits under this agreement) (i) upon any relocation of the place at which you primarily are performing your services to Employer to a location which is outside Los Angeles County, or (ii) if Employer elects to not actually use your services and continues to pay your base salary pursuant to Paragraph 2(c) above for a period of one hundred twenty (120) consecutive days. Employer agrees not to relocate your services outside of Los Angeles County without your prior written consent unless the majority of employees at the Santa Monica, California, location are concurrently relocated to the same new location. In the event of such relocation you will receive relocation support on a basis no less favorable than provided to you in this agreement.

(c) **Death or Disability.** In the event of your death during the term of this agreement, this agreement shall terminate and Employer only shall be obligated to pay your estate or legal representative the salary provided for above to the extent earned by your prior to your death. In the event you are unable to perform the services required of you under this agreement as a result of any disability, and such disability continues for a period of 120 or more consecutive days or an aggregate of 120 or more days during any 12-month period during the term of this agreement, then Employer shall have the right, at its option, to terminate your employment under this agreement. Unless and until so terminated, during any period of disability during which you are unable to perform the services required of you under this agreement, your base salary shall be payable to the extent of, and subject to, Employer's policies and practices then in effect with regard to sick leave and disability benefits.

(d) **Termination of Obligations.** In the event of the termination of your employment under this agreement pursuant to Paragraph 10(a) or (b), all obligations of Employer to you under

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this agreement shall immediately terminate (other than vested obligations e.g. stock options; and obligations required by law e.g. COBRA).

11. **Use of Employee's Name**

Employer shall have the right, but not the obligation, to use your name or likeness for any Employer related publicity or advertising purpose.

12. **Assignment**

Employer may assign this agreement or all or any part of its rights under this agreement to any entity which succeeds to all or substantially all of Employer's assets (whether by merger, acquisition, consolidation, reorganization or otherwise) or which Employer may own substantially, and this agreement shall inure to the benefit of such assignee.

13. **No Conflict with Prior Agreements**

You represent to Employer that neither your commencement of employment under this agreement nor the performance of your duties under this agreement conflicts or will conflict with any contractual commitment on your part to any third party, nor does it or will it violate or interfere with any rights of any third party.

14. **Representations and Warranties**

Employee represents and warrants that she has provided Employer with complete and accurate information regarding her skills and experience. Employee further represents and warrants that she has the skills and abilities to perform the job responsibilities for which she is being hired (see paragraphs 3 and 4, above) based on her skills and experience. Based on Employee's representations regarding her skills and abilities, Employer has agreed to hire and compensate Employee pursuant to the terms of this agreement.

15. **General Provisions**

(a) **Entire Agreement.** This agreement supersedes all prior or contemporaneous agreements and statements, whether written or oral, concerning the terms of your employment with Employer, and no amendment or modification of this agreement shall be binding unless it is set forth in a

writing signed by both Employer and Employee. To the extent that this agreement conflicts with any of Employer's policies, procedures, rules or regulations, this agreement shall supersede the other policies, procedures, rules or regulations.

(b) **No Broker.** You have given no indication, representation or commitment of any nature to any broker, finder, agent or other third party to the effect that any fees or commissions of any nature are, or under any circumstances might be, payable by Employer or any affiliate of Employer in connection with your employment under this agreement. For purposes of clarification, the foregoing shall not apply to any party broker, finder, agent or recruiter engaged directly by Employer

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(c) **Waiver.** No waiver by either party of any breach by the other party of any provision or condition of this agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

(d) **Prevailing Law.** Nothing contained in this agreement shall be construed so as to require the commission of any act contrary to law and wherever there is any conflict between any provision of this agreement and any present or future statute, law, ordinance or regulation, the latter shall prevail, but in such event the provision of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

(e) **Expiration.** This agreement does not constitute a commitment of Employer with regard to your employment, express or implied, other than to the extent expressly provided for herein. Upon expiration of the term of this agreement, it is the contemplation of both parties that your employment with Employer shall cease, and that neither Employer nor you shall have any obligation to the other with respect to your continued employment. In the event that your employment continues for a period of time following the term unless and until agreed to in a new subscribed written document, such continuation of your employment shall be "at will," and may be terminated without obligation at any time by either party giving no less than thirty (30) days prior written notice to the other. In the event your employment continues "at will" you shall continue to receive your annual base salary in accordance with Employer's then prevailing payroll policy as well as all other benefits given by Employer to employees of your status.

(f) **Choice of Law.** This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of law principles.

(g) **Immigration.** In accordance with the Immigration Reform and Control Act of 1986, employment under this agreement is conditioned upon satisfactory proof of your identity and legal ability to work in the United States.

(h) **Venue and Jurisdiction.** The parties agree that all actions or proceedings initiated by either party hereto arising directly or indirectly out of this agreement shall be litigated in federal or state court in Los Angeles, California. The parties hereto expressly submit and consent in advance to such jurisdiction and agree that service of summons and complaint or other process or papers may be made by registered or certified mail addressed to the relevant party at the address set forth below. The parties hereto waive any claim that a federal or state court in Los Angeles, California, is an inconvenient or an improper forum.

(i) **Severability.** If any provision of this agreement is held to be illegal, invalid or unenforceable under existing or future laws effective during the term of this agreement, such provisions shall be fully severable, the agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this agreement, and the remaining provisions of this agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal and enforceable.

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(j) **Legal Counsel.** Employee acknowledges that she has been given the opportunity to consult with legal counsel of her own choosing regarding this agreement. Employee understands and agrees that Activision's General Counsel, or any other attorney or member of management who has discussed any term or condition of this agreement with her, is only acting on behalf of the company and not on behalf of Employee.

(k) **Right to Negotiate.** Employee hereby acknowledges that she has been given the opportunity to participate in the negotiation of the terms of this agreement.

(l) **Services Unique.** You recognize that the services being performed by you under this agreement are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in the event of a breach of this agreement by you (particularly, but without limitation, with respect to the provisions hereof relating to the exclusivity of your services and the provisions of paragraph 9 of this agreement).

(m) **Injunctive Relief.** In the event of a breach or threatened breach of this agreement, you hereby agree that any remedy at law for any breach or threatened breach of this agreement will be inadequate and, accordingly, each party hereby stipulates that the other is entitled to obtain injunctive relief for any such breaches or threatened breaches. The injunctive relief provided for in this paragraph is in addition to, and is not in limitation of, any and all other remedies at law or in equity otherwise available to the applicable party. The parties agree to waive the requirement of posting a bond in connection with a court's issuance of an injunction.

(n) **Remedies Cumulative.** The remedies in this paragraph are not exclusive, and the parties shall have the right to pursue any other legal or equitable remedies to enforce the terms of this agreement.

(o) **Attorneys' Fees And Costs.** If either party brings an action to enforce, interpret or apply the terms of this agreement or declare its rights under this agreement, the prevailing party in such action, including all appeals, shall receive all of its or her attorneys' fees (other than in-house attorney fees), experts' fees, and all of its or her costs, in addition to such other relief as may be granted.

16. Notices

All notices which either party is required or may desire to give the other shall be in writing and given either personally or by depositing the same in the United States mail addressed to the party to be given notice as follows:

To Employer:

3100 Ocean Park Boulevard
Santa Monica, California 90405
Attention: General Counsel

To Employee:

15 Lewis Avenue
Dobbs Ferry, NY 10522

Either party may by written notice designate a different address for giving of notices. The date of mailing of any such notices shall be deemed to be the date on which such notice is given. Furthermore, notice of your address shall automatically be deemed given by you to Employer each time that you give Employer's Human Resources department your updated address in written form.

17. Headings

The headings set forth herein are included solely for the purpose of identification and shall not be used for the purpose of construing the meaning of the provisions of this agreement.

If the foregoing accurately reflects our mutual agreement, please sign where indicated.

ACCEPTED AND AGREED TO:

Employer

Employee

By: _____

By: _____

George Rose
Senior Vice President, Business
Affairs and General Counsel

Robin S. Kaminsky

Date: _____

Date: _____



December 6, 2005

Stephen G. Wereb
578 Joost Avenue
San Francisco, California 94127

Dear Steve:

This letter confirms the terms of your employment by Activision Publishing, Inc. ("Employer"), on the terms and conditions set forth below.

1. Term

(a) The initial term of your employment under this agreement shall commence on January 1, 2005 and expire on December 31, 2007 unless earlier terminated as provided below (the "initial term").

(b) Employer shall have the irrevocable option to extend the initial term of this agreement beyond the initial period for an additional successive one-year period. The initial term and the option period, if exercised, shall be referred to as the "term."

(c) Employer may exercise the option granted to it under this agreement by giving written notice to Employee at least sixty (60) days prior to the expiration of the initial term.

2. Salary

(a) In full consideration for all rights and services provided by you under this agreement, you shall receive an annual base salary of \$230,000.

(b) Base salary payments shall be made in accordance with Employer's then prevailing payroll policy. The base salary referred to in Paragraph 2(a) shall constitute your minimum base salary during the applicable period. On an annual basis, your base salary shall be reviewed to determine if an increase above the minimum is appropriate. Any decision regarding whether to change your base salary shall be made in the sole discretion of management.

(c) Employer shall not be required to actually use your services during the term of this agreement. You will not be permitted or authorized to act on behalf of Employer if Employer is not utilizing your services unless specifically authorized in writing to the contrary by Employer. If Employer chooses not to use your services, Employer will continue to pay your base salary, health benefits and 401(k) contributions. Payment of your base salary during the term of your employment under this agreement will discharge Employer's obligations to you hereunder. Your obligations to Employer under this agreement generally, and specifically with regard to Paragraph 9, shall continue throughout the term of this agreement. Moreover, you have an obligation to abide by the terms of the Employee Proprietary Information Agreement executed by you.

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(d) In addition to your base salary, you may be eligible to receive an annual discretionary bonus targeted at fifty percent (50%) of your annual base salary (pro-rated for the amount of time that you actually perform services for Employer during a particular fiscal year). The amount of this bonus, if any, is within the sole and absolute discretion of the Employer's Board of Directors (or the Compensation Committee of the Board of Directors). Certain of the criteria that will be considered to evaluate your eligibility for a bonus are your achievement of specific objectives and/or your contribution to the success of the corporate goals and objectives. Employer's overall financial performance will also be considered in determining whether any bonus is awarded and, if so, the amount. Discretionary bonuses, if granted, are generally paid to employees in May. You must remain continuously employed by Employer through the date on which the discretionary bonus is paid to be eligible to receive a bonus. Employer retains the right to modify, at any time, any and all of the criteria used to determine whether Employee is eligible for a bonus and, if so, the amount of any such bonus.

(e) You also are being granted, under the Activision Inc. ("company") existing or modified Board-approved stock option plan, a non-qualified stock option ("NQSO") to purchase 40,000 shares of the company's common stock. The option to purchase 40,000 shares referred to above will vest ratably over five years, with one fifth of the amount granted vesting at the end of each year. The option will have an exercise price that will be the market low of such common stock on the date that it is issued, and will be governed in all other respects by the company's stock option plan in effect at the time of the grant. You may be eligible for such additional stock option grants commensurate with your position with Employer as the Board of Directors (or Compensation Committee of the Board of Directors), in its sole discretion, may award to you from time to time.

3. Relocation Benefits

Employer shall reimburse you for the customary and reasonable expenses actually incurred by you in connection with your relocation to Los Angeles to include but not limited to (i) the moving of your personal and household goods to the Los Angeles area and for storage of household goods if necessary for a period of up to six (6) months, (ii) the one-time, non-recurring closing costs associated with both the sale of your current home (excluding realtor fee), and the purchase of a new home in the Los Angeles area, (iii) the travel and expenses associated with up to two (2) house hunting trips, and (iv) for customary and reasonable corporate temporary living expenses for up to six (6) months pending your actual settlement in the Los Angeles area provided that you provide Employer with documentation which adequately evidences such expenses. Employer will provide tax assistance (gross-up) for those relocation related benefits that are treated as taxable. Additional, detailed relocation benefits will be communicated to you separately and will be governed by the applicable policy covering such items.

4. Title

You are being employed under this agreement in the position of Vice President, Finance and Corporate Controller.

5. **Duties**

You shall personally and diligently perform, on a full-time and exclusive basis, such services as Employer or any of its related or affiliated entities or divisions may reasonably require. You are

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also required to read, review and observe all of Employer's existing policies, procedures, rules and regulations as well as those adopted by Employer during the term of your employment. You will at all times perform all of the duties and obligations required by you under this agreement in a loyal and conscientious manner and to the best of your ability and experience.

6. **Expenses**

To the extent you incur necessary and reasonable business expenses in the course of your employment, you shall be reimbursed for such expenses, subject to Employer's then current policies regarding reimbursement of such business expenses.

7. **Other Benefits**

You shall be entitled to those benefits which are standard for persons in similar positions with Employer, including coverage under Employer's health, life insurance and disability plans, and eligibility to participate in Employer's 401(k) plan. Nothing paid to you under any such plans and arrangements (nor any bonus or stock options which Employer's Board of Directors (or the Compensation Committee of such Board of Directors), in its sole and absolute discretion, shall provide to you)) shall be deemed in lieu, or paid on account, of your base salary. You expressly agree and acknowledge that after the expiration or early termination of the term of your employment under this agreement, you are entitled to no additional benefits, except as specifically provided under the benefit plans referred to above and those benefit plans in which you subsequently may become a participant, and subject in each case to the terms and conditions of each such plan. Notwithstanding anything to the contrary set forth above, you shall be entitled to receive those benefits provided by COBRA upon the expiration or earlier termination of this agreement.

8. **Vacation and Paid Holidays**

(a) You will be entitled to paid vacation days in accordance with the normal vacation policies of Employer in effect from time to time, provided that in no event shall you be entitled to less than fifteen (15) days of paid vacation per year.

(b) You shall be entitled to all paid holidays given by Employer to its full-time employees.

9. **Protection of Employer's Interests**

(a) **Duty of Loyalty.** During the term of your employment, you will not compete in any manner, whether directly or indirectly, as a principal, employee, agent or owner, with Employer, or any affiliate of Employer, except that the foregoing will not prevent you from holding at any time less than five percent (5%) of the outstanding capital stock of any company whose stock is publicly traded.

(b) **Property of Employer.** All rights worldwide with respect to any and all intellectual or other property of any nature produced, created or suggested by you during the term of your employment or resulting from your services which (i) relate in any manner at the time of conception or reduction to practice to the actual or demonstrably anticipated business of Employer, (ii) result from or are suggested by any task assigned to you or any work performed by you on behalf of Employer, or (iii) are based on any property owned or idea conceived by Employer, shall be deemed

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to be a work made for hire and shall be the sole and exclusive property of Employer. You agree to execute, acknowledge and deliver to Employer, at Employer's request, such further documents, including copyright and patent assignments, as Employer finds appropriate to evidence Employer's rights in such property.

(c) **Confidentiality.** Any confidential and/or proprietary information of Employer or any affiliate of Employer shall not be used by you or disclosed or made available by you to any person except as required in the course of your employment, and upon expiration or earlier termination of the term of your employment, you shall return to Employer all such information which exists in written or other physical form (and all copies thereof) under your control. Without limiting the generality of the foregoing, you acknowledge signing and delivering to Employer the Activision Employee Proprietary Information Agreement and you agree that all terms and conditions contained in such agreement, and all of your obligations and commitments provided for in such agreement, shall be deemed, and hereby are, incorporated into this agreement as if set forth in full herein. The provisions of this paragraph shall survive the expiration or earlier termination of this agreement.

(d) **Covenant Not to Solicit.** After the expiration of the term of this agreement or earlier termination of your employment pursuant to Paragraphs 10 (a) or (b) of this agreement for any reason whatsoever, you shall not, either alone or jointly, with or on behalf of others, directly or indirectly, whether as principal, partner, agent, shareholder, director, employee, consultant or otherwise, at any time during a period of one (1) year following such expiration or termination, offer employment to, or directly or indirectly solicit the employment or engagement of, or otherwise entice away from the employment of Employer or any affiliated entity, either for your own account or for any other person firm or company, any person who was employed by Employer or any such affiliated entity during the term of your employment, whether or not such person would commit any breach of his or her contract of employment by reason of his or her leaving the service of Employer or any affiliated entity.

10. **Termination**

(a) **Employer.** At any time during the term of this agreement, Employer may terminate your employment under this agreement for your (i) willful, reckless or gross misconduct, (ii) negligent performance of any work on behalf of Employer; (iii) conviction of a felony or of any crime involving

dishonesty or moral turpitude; (iv) inability or refusal to perform your job duties; (v) action or omission that causes material injury to Employer or its business interests; (vi) breach of the duty of loyalty.

(b) **Employee.** You may terminate your employment under this agreement (and, thereby, forfeit your right to receive any compensation or benefits under this agreement) (i) upon any relocation of the place at which you primarily are performing your services to Employer to a location which is outside Los Angeles County or (ii) if Employer elects to not actually use your services and continues to pay your base salary pursuant to Paragraph 2(c) above for a period of one hundred twenty (120) consecutive days.

(c) **Death or Disability.** In the event of your death during the term of this agreement, this agreement shall terminate and Employer only shall be obligated to pay your estate or legal representative the salary provided for above to the extent earned by you prior to your death. In the event that you have or develop a disability that causes you to be unable to perform the duties

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required of you under this agreement, even with Employer providing you a reasonable accommodation, then Employer shall have the right, at its option, to terminate your employment under this agreement. Employee acknowledges that should such disability continue for a period of more than 12 weeks during any 12-month period, or if Employee is occupying a key position or performing key duties with Employer at the time of such absence, any further absence would likely cause Employer an undue hardship and/or substantial and grievous injury. Unless and until employment is terminated under this provision, in any period of disability during which you are unable to perform the services required of you under this agreement, your base salary shall be payable to the extent of, and subject to, Employer's policies and practices then in effect with regard to sick leave, vacation days and disability benefits.

(d) **Termination of Obligations.** In the event of the termination of your employment under this agreement pursuant to Paragraph 10 (a) or 10 (b), all obligations of Employer to you under this agreement shall immediately terminate.

11. Use of Employee's Name

Employer shall have the right, but not the obligation, to use your name or likeness for any publicity or advertising purpose.

12. Assignment

Employer may assign this agreement or all or any part of its rights under this agreement to any entity which succeeds to all or substantially all of Employer's assets (whether by merger, acquisition, consolidation, reorganization or otherwise) or which Employer may own substantially, and this agreement shall inure to the benefit of such assignee.

13. No Conflict with Prior Agreements

You represent to Employer that neither your commencement of employment under this agreement nor the performance of your duties under this agreement conflicts or will conflict with any contractual commitment on your part to any third party, nor does it or will it violate or interfere with any rights of any third party.

14. Representations and Warranties

Employee represents and warrants that he has provided Employer with complete and accurate information regarding his skills and experience. Employee further represents and warrants that he has the skills and abilities to perform the job responsibilities for which he is being hired (see paragraphs 4 and 5, above) based on his skills and experience. Based on Employee's representations regarding his skills and abilities, Employer has agreed to hire and compensate Employee pursuant to the terms of this agreement.

15. General Provisions

(a) **Entire Agreement.** This agreement supersedes all prior or contemporaneous agreements and statements, whether written or oral, concerning the terms of your employment with Employer, and no amendment or modification of this agreement shall be

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binding unless it is set forth in a writing signed by both Employer and Employee. To the extent that this agreement conflicts with any of Employer's policies, procedures, rules or regulations, this agreement shall supersede the other policies, procedures, rules or regulations.

(b) **No Broker.** You have given no indication, representation or commitment of any nature to any broker, finder, agent or other third party to the effect that any fees or commissions of any nature are, or under any circumstances might be, payable by Employer or any affiliate of Employer in connection with your employment under this agreement.

(c) **Waiver.** No waiver by either party of any breach by the other party of any provision or condition of this agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

(d) **Prevailing Law.** Nothing contained in this agreement shall be construed so as to require the commission of any act contrary to law and wherever there is any conflict between any provision of this agreement and any present or future statute, law, ordinance or regulation, the latter shall prevail, but in such event the provision of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

(e) **Expiration.** This agreement does not constitute a commitment of Employer with regard to your employment, express or implied, other than to the extent expressly provided for herein. Upon expiration of the term of this agreement, it is the contemplation of both parties that your employment with Employer shall cease, and that neither Employer nor you shall have any obligation to the other with respect to your continued employment. In the event that

your employment continues for a period of time following the term unless and until agreed to in a new subscribed written document, such continuation of your employment shall be "at will," and may be terminated without obligation at any time by either party giving notice to the other.

(f) **Choice of Law.** This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of law principles.

(g) **Immigration.** In accordance with the Immigration Reform and Control Act of 1986, employment under this agreement is conditioned upon satisfactory proof of your identity and legal ability to work in the United States.

(h) **Venue and Jurisdiction.** The parties agree that all actions or proceedings initiated by either party hereto arising directly or indirectly out of this agreement shall be litigated in federal or state court in Los Angeles, California. The parties hereto expressly submit and consent in advance to such jurisdiction and agree that service of summons and complaint or other process or papers may be made by registered or certified mail addressed to the relevant party at the address set forth below. The parties hereto waive any claim that a federal or state court in Los Angeles, California, is an inconvenient or an improper forum.

(i) **Severability.** If any provision of this agreement is held to be illegal, invalid or unenforceable under existing or future laws effective during the term of this agreement, such provisions shall be fully severable, the agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this agreement, and the remaining

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provisions of this agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal and enforceable.

(j) **Legal Counsel.** Employee acknowledges that he has been given the opportunity to consult with legal counsel of his own choosing regarding this agreement. Employee understands and agrees that Activision's General Counsel, or any other attorney or member of management who has discussed any term or condition of this agreement with him, is only acting on behalf of the company and not on behalf of Employee.

(k) **Right to Negotiate.** Employee hereby acknowledges that he has been given the opportunity to participate in the negotiation of the terms of this agreement.

(l) **Services Unique.** You recognize that the services being performed by you under this agreement are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in the event of a breach of this agreement by you (particularly, but without limitation, with respect to the provisions hereof relating to the exclusivity of your services and the provisions of paragraph 9 of this agreement).

(m) **Injunctive Relief.** In the event of a breach or threatened breach of this agreement, you hereby agree that any remedy at law for any breach or threatened breach of this agreement will be inadequate and, accordingly, each party hereby stipulates that the other is entitled to obtain injunctive relief for any such breaches or threatened breaches. The injunctive relief provided for in this paragraph is in addition to, and is not in limitation of, any and all other remedies at law or in equity otherwise available to the applicable party. The parties agree to waive the requirement of posting a bond in connection with a court's issuance of an injunction.

(n) **Remedies Cumulative.** The remedies in this paragraph are not exclusive, and the parties shall have the right to pursue any other legal or equitable remedies to enforce the terms of this agreement.

(o) **Attorneys' Fees and Costs.** If either party brings an action to enforce, interpret or apply the terms of this agreement or declare its rights under this agreement, the prevailing party in such action, including all appeals, shall receive all of its or his attorneys' fees, experts' fees, and all of its or his costs, in addition to such other relief as may be granted.

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16. **Notices**

All notices which either party is required or may desire to give the other shall be in writing and given either personally or by depositing the same in the United States mail addressed to the party to be given notice as follows:

To Employer:	3100 Ocean Park Boulevard Santa Monica, California 90405 Attention: Senior Vice President, Business Affairs and General Counsel
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To Employee:	578 Joost Avenue San Francisco, California 94127
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Either party may by written notice designate a different address for giving of notices. The date of mailing of any such notices shall be deemed to be the date on which such notice is given.

17. **Headings**

The headings set forth herein are included solely for the purpose of identification and shall not be used for the purpose of construing the meaning of the provisions of this agreement.

If the foregoing accurately reflects our mutual agreement, please sign where indicated.

ACCEPTED AND AGREED TO:

Employer

Employee

By:

George Rose
Senior Vice President, Business
Affairs and General Counsel

By:

Steve Wereb

XBOX 360 PUBLISHER LICENSE AGREEMENT

This Xbox 360 Publisher License Agreement (“Agreement”) is entered into and effective as of the later of the two signature dates below (the “Effective Date”) by and between Microsoft Licensing, GP, a Nevada general partnership (“Microsoft”), and Activision Publishing, Inc., a Delaware corporation (“Publisher”).

RECITALS

A. Microsoft and its affiliated companies develop and license a computer game system known as the Xbox 360 game system and a proprietary online service accessible via the Xbox 360 game system known as Xbox Live.

B. Publisher wishes to develop and/or publish one or more software products running on the Xbox 360 game system, which software products may also be made available to subscribers of Xbox Live, and to license proprietary materials from Microsoft on the terms and conditions set forth herein.

Accordingly, for and in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, receipt of which each party hereby acknowledges, Microsoft and Publisher agree as follows:

1. Exhibits

The following exhibits are hereby incorporated to this Agreement (some require completion and/or execution by one or both parties):

Exhibit 1:	Payments
Exhibit 2:	Xbox 360 Royalty Tier Selection Form
Exhibit 3:	Xbox 360 Publisher Enrollment Form
Exhibit 4:	Authorized Subsidiaries
Exhibit 5:	Non-Disclosure Agreement
Exhibit 6:	Japan/Asian Royalty Incentive Program
Exhibit 7:	Xbox Live Incentive Program

2. Definitions

As further described in this Agreement and the Xbox 360 Publisher Guide (defined below), the following terms have the following respective meanings:

2.1 **“Asian Manufacturing Region”** means the region for manufacturing comprising Taiwan, Hong Kong, Singapore, Korea, Japan and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide.

2.2 **“Asian Sales Territory”** means the territory for sales distribution comprising Taiwan, Hong Kong, Singapore, Korea, and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide. The Asian Sales Territory does not include Japan.

2.3 **“Authorized Replicator”** means a software replicator certified and approved by Microsoft for replication of FPU’s (defined below) that run on the Xbox 360.

2.4 **“Branding Specifications”** means the specifications as provided by Microsoft from time to time for using the Licensed Trademarks in connection with a Software Title and/or Online Content and on Marketing Materials as set forth in the Xbox 360 Publisher Guide.

2.5 **“BTS”** means a Microsoft designed break-the-seal sticker that will be issued to the Authorized Replicator for placement on the Packaging Materials (defined below) as specified in the Xbox 360 Publisher Guide.

2.6 **“Certification”** means the final stage of the approval process by which Microsoft approves or disapproves of a Software Title or Online Content for manufacture and/or distribution. Certification is further defined in this Agreement and the Xbox 360 Publisher Guide.

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Microsoft

2.7 **“Commercial Release”** with respect to a Software Title means the first commercial distribution of an FPU that is not designated as a Demo Version. With respect to Online Content, Commercial Release means its first availability via Xbox Live to Xbox Live Users.

2.8 **“Concept”** means the detailed description of Publisher’s proposed Software Title and/or Online Content in each case including such information as may be requested by Microsoft.

2.9 **“Demo Versions”** means a small portion of an applicable Software Title that is provided to end users to advertise or promote a Software Title.

2.10 **“European Sales Territory”** means the territory for sales distribution comprising the United Kingdom, France, Germany, Spain, Italy, Netherlands, Belgium, Sweden, Denmark, Norway, Finland, Austria, Switzerland, Ireland, Portugal, Greece, Australia, New Zealand and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide.

2.11 **“European Manufacturing Region”** means the region for manufacturing comprising the United Kingdom, France, Germany, Spain, Italy, Netherlands, Belgium, Sweden, Denmark, Norway, Finland, Austria, Switzerland, Ireland, Portugal, Greece, Australia, New Zealand and any other countries

that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide.

2.12 **“FPU”** or **“Finished Product Unit”** means a copy of a Software Title in object code form that has passed Certification, has been affixed to a DVD disk and approved by Microsoft for release and manufacturing. Once the Packaging Materials have been added, and the BTS has been assigned or affixed to the FPU or its packaging, the FPU also includes its accompanying BTS and Packaging Materials.

2.13 **“Japan Sales Territory”** means the territory for sales distribution comprising the country of Japan.

2.14 **“Licensed Trademarks”** means the Microsoft trademarks identified in the Xbox 360 Publisher Guide.

2.15 **“Marketing Materials”** collectively means the Packaging Materials and all press releases, marketing, advertising or promotional materials related to the Software Title, FPU(s) and/or Online Content (including without limitation Web advertising and Publisher’s Web pages to the extent they refer to the Software Title(s), FPU(s) and/or Online Content) that will be used and distributed by Publisher in the marketing of the Software Title(s), FPU(s) and/or Online Content.

2.16 **“Manufacturing Region”** means the Asian Manufacturing Region, European Manufacturing Region; and/or North American Manufacturing Region.

2.17 **“North American Sales Territory”** means the territory for sales distribution comprising the United States, Canada, Mexico, Colombia and any other countries that may be included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide

2.18 **“North American Manufacturing Region”** means the region for manufacturing comprising the United States, Canada, Mexico, Colombia and any other countries that may be included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide

2.19 **“Online Content”** means any content, feature, or access to software or online service that is distributed by Microsoft pursuant to this Agreement. Online Content includes, but is not limited to, Online Game Features, Title Updates, Demo Versions, trailers, “themes,” “gamer pictures” or any other category of online content or service approved by Microsoft from time to time. Trailers, “themes,” “gamer pictures” and any other approved Online Content will be further described in the Xbox 360 Publisher Guide.

2.20 **“Online Game Features”** means a Software Title’s content, features and/or services that are available to Xbox Live Users via Xbox Live, whether included in the Software Title’s FPU or otherwise distributed via Xbox Live.

2.21 **“Packaging Materials”** means art and mechanical formats for a Software Title including the retail packaging, end user instruction manual with end user license agreement and warranties, end user warnings, FPU media label, and any promotional inserts and other materials that are to be included in the retail packaging.

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2.22 **“Pre-Certification”** means the first stage of the approval process wherein Microsoft tests to provide feedback and/or identify any issues that may prevent the Software Title from being approved during the Certification phase. Pre-Certification is further described in this Agreement and the Xbox 360 Publisher Guide.

2.23 **“Sales Territory”** means the Asian Sales Territory, European Sales Territory, Japan Sales Territory, and/or North American Sales Territory.

2.24 **“Software Title”** means the single software product as approved by Microsoft for use on Xbox 360, including any Title Updates thereto (if and to the extent approved by Microsoft) and all Online Game Features for such Software Title. If Microsoft approves one or more additional single software product(s) proposed by Publisher to run on Xbox 360, this Agreement, and the term “Software Title,” will be broadened automatically to cover the respective new software product(s) as additional Software Title(s) under this Agreement.

2.25 **“Subscriber”** means an Xbox Live User that establishes an account with Xbox Live.

2.26 **“Sub-Publisher”** means an entity that has a valid Xbox 360 publisher license agreement with Microsoft or a Microsoft affiliate and with whom Publisher has entered an agreement to allow such entity to publish a Software Title or Online Content in specific Sales Territories.

2.27 **“Suggested Retail Price”** means the highest per unit price that Publisher or its agent recommends the FPU be made commercially available to end-users in a particular Sales Territory. If the Suggested Retail Price of a particular Software Title varies among the countries in a single Sales Territory, then the highest Suggested Retail Price established for any of the countries will be used to determine the appropriate royalty fees for the entire Sales Territory.

2.28 **“Title Update”** means an update, upgrade, or technical fix to a Software Title that Xbox Live Users can automatically download to the Xbox Live User’s Xbox 360.

2.29 **“Wholesale Price”** means the highest per unit price that Publisher charges retailers and/or distributors in bona fide third party transactions for the right to distribute and sell the Software Title within a Sales Territory, it being agreed that (i) any transactions involving affiliates of Publisher (entities controlling, controlled by or under common control of, Publisher) are not to be considered in determining the Wholesale Price; (ii) if Publisher enters into an agreement with a third party (such as a Sub-publisher) providing the third party with the exclusive right to distribute the Software Title in a Sales Territory, the Wholesale Price is governed by the price charged by the third party rather than the terms of the exclusive distribution agreement between Publisher and such third party; and (iii) if the Wholesale Price varies among countries in a single Sales Territory, the highest Wholesale Price used in the Sales Territory will be used to determine the appropriate royalty fees for the entire Sales Territory.

2.30 **“Xbox 360”** means the second version of Microsoft’s proprietary game system, successor to the Xbox game system, including operating system software and hardware design specifications.

2.3.1 “**Xbox 360 Publisher Guide**” means a document (in physical, electronic or Web site form) created by Microsoft that supplements this Agreement and provides detailed requirements regarding the Pre-Certification and Certification approval process, Branding Specifications, replication requirements, royalty payment process, marketing guidelines, technical specifications and certification requirements, Demo Version requirements, packaging requirements and other operational aspects of the Xbox 360 and Xbox Live. Microsoft may supplement, revise or update the Xbox 360 Publisher Guide from time to time in its reasonable discretion as set forth in this Agreement.

2.3.2 “**Xbox Live**” means the proprietary online service offered by Microsoft to Xbox Live Users.

2.3.3 “**Xbox Live User**” means any individual that accesses and uses Xbox Live.

2.3.4 **Other Terms.** All other capitalized terms have the definitions set forth with the first use of such term as described in this Agreement.

3. Xbox 360 Development Kit License

Publisher shall enter into one or more development kit license(s) for the applicable territory(ies) to which Xbox 360 game development kits will be shipped for use by Publisher (each an “XDK License”) pursuant to which Microsoft or its affiliate may license to Publisher software development tools and hardware to assist Publisher in the development and testing of

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Software Titles, including redistributable code that Publisher must incorporate into Software Titles pursuant to the terms and conditions contained in the XDK License.

4. Approval Process

4.1 **Standard Approval Process.** The standard approval process for a Software Title is divided into four phases comprised of Concept approval, Pre-Certification, Certification, and Marketing Materials approval. Unless Publisher elects the EU Approval Option for a European FPU (described below), Publisher is required to submit its Software Title to Microsoft for evaluation at all four phases. Each phase is identified below and further described in the Xbox 360 Publisher Guide. Additional or alternate approval processes for Online Content may be further described in the Xbox 360 Publisher Guide

4.1.1 **Concept.** For each Software Title, Publisher shall deliver to Microsoft a completed Concept submission form (in the form provided by Microsoft to Publisher) that describes the Software Title. In the event that Publisher desires to host or have a third party host or provide to Xbox Live Users any of Publisher’s Online Game Features, Publisher shall so indicate on the Concept submission form and must execute an addendum to this Agreement, which addendum is available upon request and will be incorporated into this Agreement upon execution. Following evaluation of Publisher’s Concept submission, Microsoft will notify Publisher of whether the Concept is approved or rejected. If approved, the Concept submission form, in the form submitted and approved by Microsoft, is incorporated herein by reference and adherence to its terms is a requirement for Certification. Publisher may propose Online Content at any time after a Concept has been approved, in which case Publisher shall deliver to Microsoft a separate Concept submission for each proposed piece of Online Content.

4.1.2 **Pre-Certification.** If the Concept is approved, Publisher shall deliver to Microsoft a code-complete version of the Software Title or Online Content that includes all current features of the Software Title and such other content as may be required under the Xbox 360 Publisher Guide. Upon receipt, Microsoft shall conduct technical screen and/or other testing of the Software Title or Online Content consistent with the Xbox 360 Publisher Guide and will subsequently provide Publisher with advisory feedback regarding such testing.

4.1.3 **Certification.** Following Pre-Certification, Publisher shall deliver to Microsoft the proposed final release version of the applicable Software Title that is complete, ready for access via Xbox Live (if applicable), release, manufacture, and commercial distribution. Such version must include the final content rating certification required by Section 4.4, have identified program errors corrected, and have any and all changes previously required by Microsoft implemented. Microsoft shall conduct compliance, compatibility, functional and other testing consistent with the Xbox 360 Publisher Guide (“Certification Testing”) and shall subsequently provide Publisher with the results of such testing, including any required fixes required prior to achieving Certification. Release from Certification for a Software Title (and for Online Content as applicable) is based on (1) passing the Certification Testing; (2) conformance with the approved Concept and any required submission materials as stated in the Xbox 360 Publisher Guide; (3) Packaging Materials approval; (4) consistency with the goals and objectives of the Xbox 360 console platform and Xbox Live; and (5) continuing and ongoing compliance with all Certification requirements and other requirements as set forth in the Xbox 360 Publisher Guide and this Agreement.

4.1.4 **Marketing Materials Approval.** Publisher shall submit all Marketing Materials to Microsoft and shall not distribute such Marketing Materials unless and until Microsoft has approved them in writing. Prior to use or publication of any Marketing Materials, Publisher agrees to incorporate all changes relating to use of the Licensed Trademarks that Microsoft may reasonably request and will use its commercially reasonable efforts to incorporate other changes reasonably suggested by Microsoft (provided, however, that in any event Publisher shall at all times comply with the Branding Specifications).

4.2 **EU Approval Option.** For a Software Title that Publisher intends to distribute solely in the European Sales Territory (a “European FPU”), Publisher may choose to forego Concept approval (Section 4.1.1), Pre-Certification (Section 4.1.2) and/or Marketing Materials approval (Section 4.1.4) and submit such Software Title to Microsoft only for Certification approval. This option is referred to herein as the “EU Approval Option.” The EU Approval Option applies solely to distribution of European FPUs, and is not available for Online Content intended to be available in the European Sales Territory. If Publisher chooses the EU Approval Option, Publisher shall not use the Licensed Trademarks on the European FPU and the license grant set forth in Section 12.1 is withdrawn as to such European FPU. In addition, Publisher shall make no statements in advertising, marketing materials, packaging, Web sites or otherwise that the European FPU is approved or otherwise sanctioned by Microsoft or is an official Xbox 360 Software Title. The European FPU may not be distributed outside the European Sales Territory without complying with all terms of this Agreement concerning approvals and the release of the FPU as deemed relevant by Microsoft. Microsoft may provide additional information in the Xbox 360

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Publisher Guide regarding the European Approval Option. Notwithstanding Publisher's choice of the EU Approval Option, all other portions of this Agreement other than those specifically identified above shall remain in effect.

4.3 **Resubmissions and Additional Review.** If a Software Title or Online Content fails Certification, and if Publisher has made good faith efforts to address any issues raised by Microsoft, Microsoft will give Publisher the opportunity to resubmit such Software Title or Online Content for Certification. Microsoft may charge Publisher a reasonable fee designed to offset the costs associated with testing upon resubmission. Publisher may request the ability to submit versions of the Software Title or Online Content at stages of development other than as identified above for review and feedback by Microsoft. Such review is within the discretion of Microsoft and may require the payment of reasonable fees by Publisher to offset the costs associated with the review of such Software Titles or Online Content.

4.4 **Content Rating.** For those Sales Territories that utilize a content rating system, Microsoft will not accept submission of a Software Title for Certification approval unless and until Publisher has obtained, at Publisher's sole cost, a rating not higher than "Mature (17+)" or its equivalent from the appropriate rating bodies and/or any and all other independent content rating authority/authorities for the applicable Sales Territory(ies) reasonably designated by Microsoft (such as ESRB, ELSPA, CERO, etc.). Publisher shall include the applicable rating(s) prominently on FPU's and Marketing Materials, in accordance with the applicable rating body guidelines, and shall include the applicable rating in a header file of the Software Title and in Online Content, as described in the Xbox 360 Publisher Guide. For those Sales Territories that do not utilize a content rating system, Microsoft will not approve any Software Title or Online Content that, in its opinion, contains excessive sexual content or violence, inappropriate language or other elements deemed unsuitable for the Xbox 360 platform. If, after Commercial Release, a Software Title is determined as suitable for adults only or otherwise as indecent, obscene or otherwise prohibited by law, the Publisher shall at its own costs recall all FPU's. Publisher hereby represents and warrants that any Online Game Features and other game-related Online Content not included in the initial Software Title FPU will not be inconsistent with the content rating (or, in those countries that do not utilize a content rating system, with the overall nature of the content) of the underlying Software Title. Content rating information and requirements may be further described in the Xbox 360 Publisher Guide.

4.5 **Publisher Testing.** Publisher shall perform its own testing of the Software Title and FPU's and shall keep written or electronic records of such testing during the Term of this Agreement and for a period of [*] ("Test Records"). Upon Microsoft's request, Publisher shall provide Microsoft with copies of the Test Records, FPU's and Software Title (either in pre-Commercial Release or Commercial Release versions, as Microsoft may request).

4.6 **Mutual Approval Required.** Publisher shall not distribute the Software Title, nor manufacture any FPU intended for distribution, unless and until Microsoft has given its final approval and release from Certification version of the Software Title and both parties have approved the FPU in writing.

4.7 **Title Updates**

4.7.1 All Title Updates for Software Titles are subject to approval by Microsoft. Publisher may release one Title Update per Software Title free of charge. Any additional Title Updates proposed by Publisher may be subject to a reasonable charge.

4.7.2 Microsoft may require Publisher to develop and provide a Title Update if (a) a Software Title or Online Content adversely affects Xbox Live, (b) if a change to the Xbox 360 Publisher Guide affecting Online Content requires a Title Update, (c) if Certification is revoked for Online Content, or (d) for any other reason at Microsoft's reasonable discretion. Microsoft will not charge Publisher for the Certification, hosting, and distribution of Title Updates to Xbox Live Users for the first Title Update (if any) per Software Title or Online Content required by a specific change in the Xbox 360 Publisher Guide or for any other reason at Microsoft's reasonable discretion. Microsoft reserves the right to charge Publisher a reasonable fee to offset the costs associated with the Certification, hosting, and distribution of Title Updates to Xbox Live Users that are required because of revocation of Certification or a Software Title or Online Content adversely affecting Xbox Live.

5. **Xbox 360 Publisher Guide**

Publisher acknowledges that the Xbox 360 Publisher Guide is an evolving document and subject to change during the term of this Agreement. Publisher agrees to be bound by all provisions contained in the then-applicable version of the Xbox 360 Publisher Guide. Publisher agrees that upon Publisher's receipt of notice of availability of the applicable supplement, revision, or updated version of the Xbox 360 Publisher Guide (which may be via a publisher newsletter or other electronic notification), Publisher automatically is bound by all provisions of the Xbox 360 Publisher Guide as supplemented, revised,

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

or updated. Publisher's continued distribution of FPU's after a notice of supplement, revision or update is included in the Xbox 360 Publisher Guide or made available to Publisher constitutes Publisher's agreement to the then-current Xbox 360 Publisher Guide as supplemented, revised or updated. Microsoft will specify in each such supplement, revision or update a reasonable effective date of each change if such change is not required to be effective immediately. Only with respect to a Software Title that has passed Pre-Certification prior to the applicable revision or update, Publisher will not be obligated to comply with any changes made to the technical or content requirements for Software Titles in the Xbox 360 Publisher Guide, except in circumstances where such change is deemed by Microsoft to be vitally important to the success of the Xbox 360 platform (e.g. changes due to piracy, technical failure) or will not add significant expense to the Software Title's development. In addition, changes made in Branding Specifications or other Marketing Materials requirements will be effective as to a Software Title that has passed Certification only on a "going forward" basis (i.e., only to such Marketing Materials and/or FPU's as are manufactured after Microsoft notifies Publisher of the change). Notwithstanding the foregoing, Publisher shall comply with such changes to the Xbox 360 Publisher Guide related to Branding Specifications or other Marketing Materials requirements retroactively if Microsoft agrees to pay for Publisher's direct, out-of-pocket expenses necessarily incurred as a result of its retrospective compliance with the change.

6. **Post-Release Compliance**

6.1 **Correction of Bugs or Errors.** Notwithstanding Microsoft's Certification, all Software Titles must remain in compliance with all Certification requirements and requirements set forth in the Xbox 360 Publisher Guide on a continuing and ongoing basis. Publisher must correct any material program bugs or errors in conformance with the Xbox 360 Publisher Guide whenever discovered and Publisher agrees to correct such material bugs and errors as soon as possible after discovery. With respect to bugs or errors discovered after Commercial Release of the applicable Software Title, Publisher will,

at Microsoft's request or allowance, correct the bug or error in all FPU's manufactured after discovery and Microsoft may charge a reasonable amount to cover the costs of Certifying the Software Title again.

6.2 Online Content; Minimum Commitment

6.2.1 Publisher agrees that each Online Game Feature of a Software Title will be made available via Xbox Live for at least [*] following the respective Commercial Release of the FPU's of the Software Title in each Sales Territory in which is available (the "Minimum Commitment"). Publisher is obligated to provide all necessary support for such Online Game Feature during its availability. Following the Minimum Commitment period, Publisher may terminate Microsoft's license associated with such Online Game Feature upon [*] prior written notice to Microsoft; and/or Microsoft may discontinue the availability of any or all such Online Game Feature via Xbox Live [*] prior written notice to Publisher. Publisher is responsible for communicating the duration of Online Game Feature availability to Xbox Live Users, and for providing reasonable advance notice to Xbox Live Users of any discontinuation of such Online Game Feature.

6.2.2 Subject to Section 10.3, Publisher agrees that Microsoft has the right to make Online Content other than Online Games Features submitted by Publisher available to Xbox Live Users for the Term of this Agreement. Publisher agrees to provide all necessary support for such Online Content as long as such Online Content is made available to Xbox Live Users and for [*] thereafter.

6.2.3 **Archive Copies.** Publisher agrees to maintain, and to possess the ability to support, copies in object code, source code and symbol format, of all Online Content available to Xbox Live Users during the term of this Agreement and for no less than [*]

7. Manufacturing

7.1 **Authorized Replicators.** Publisher will use only an Authorized Replicator to produce FPU's. Prior to placing an order with a replicator for FPU's, Publisher shall confirm with Microsoft that such entity is an Authorized Replicator. Microsoft will endeavor to keep an up-to-date list of Authorized Replicators in the Xbox 360 Publisher Guide. Publisher will notify Microsoft in writing of the identity of the applicable Authorized Replicator and the agreement for such replication services shall be as negotiated by Publisher and the applicable Authorized Replicator, subject to the requirements in this Agreement. Publisher acknowledges that Microsoft may charge the Authorized Replicator fees for rights, services or products associated with the manufacture of FPU's and that the agreement with the Authorized Replicator grants Microsoft the right to instruct the Authorized Replicator to cease the manufacture of FPU and/or prohibit the release of FPU to Publisher or its agents in the event Publisher is in breach of this Agreement or any credit arrangement entered into by Microsoft and Publisher or Publisher affiliates. Microsoft does not guarantee any level of performance by the Authorized Replicators, and Microsoft will have no liability to Publisher for any Authorized Replicator's failure to perform its

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

obligations under any applicable agreement between Microsoft and such Authorized Replicator and/or between Publisher and such Authorized Replicator. Microsoft has no responsibility for ensuring that FPU's are free of all defects.

7.2 **Submissions to the Authorized Replicator.** Microsoft, and not Publisher, will provide to the applicable Authorized Replicator the final release version of the Software Title and all specifications required by Microsoft for the manufacture of the FPU's including, without limitation, the Security Technology (as defined in Section 7.9 below). Publisher is responsible for preparing and delivering to the Authorized Replicator all other items required for manufacturing FPU's including approved Packaging Materials associated with the FPU's. Subject to the approval of Publisher (which approval shall not be unreasonably withheld), Microsoft has the right to have included in the packaging of FPU's such promotional materials for Xbox, Xbox 360, Xbox Live, and/or other Xbox or Xbox 360 products or services as Microsoft may determine in its reasonable discretion. Microsoft will be responsible for delivering to the Authorized Replicator all such promotional materials as it desires to include with FPU's, and, unless otherwise agreed by the parties, any incremental replication and insertion costs relating to such marketing materials will be borne by Microsoft.

7.3 **Verification Versions.** Publisher shall cause the Authorized Replicator to create several test versions of each FPU ("Verification Version(s)") that will be provided to both Microsoft and Publisher for evaluation. Prior to full manufacture of a FPU by the Authorized Replicator, both Publisher and Microsoft must approve the applicable Verification Version. Throughout the manufacturing process and upon the request of Microsoft, Publisher shall cause the Authorized Replicator to provide additional Verification Versions of the FPU for evaluation by Microsoft. Microsoft's approval is a condition precedent to manufacture, however Publisher shall grant the final approval and shall work directly with the Authorized Replicator regarding the production run. Publisher agrees that all FPU's must be replicated in conformity with all of the quality standards and manufacturing specifications, policies and procedures that Microsoft requires of its Authorized Replicators, and that all Packaging Materials must be approved by Microsoft prior to packaging. Publisher shall cause the Authorized Replicator to include the BTS on each FPU.

7.4 **Samples.** For each Software Title sku, at Publisher's cost, Publisher shall provide Microsoft with [*] FPU's and accompanying Marketing Materials per Sales Territory in which the FPU will be released. Such units may be used in marketing (subject to Publisher's approval), as product samples, for customer support, testing and for archival purposes. Publisher will not have to pay a royalty fee for such samples nor will such samples count towards the Unit Discounts under Exhibit 1.

7.5 Minimum Order Quantities

7.5.1 Within [*] after the date on which both Microsoft and Publisher have authorized the Authorized Replicator to begin replication of FPU's for distribution to a specified Sales Territory, (receipt of both approvals is referred to as "Release to Manufacture"), Publisher must place orders to manufacture the minimum order quantities ("MOQs") as described in the Xbox 360 Publisher Guide. Microsoft may update and revise the MOQs [*] which will be effective starting the following [*]. Currently, the MOQs are as follows:

7.5.2 For the purposes of this section, a “Disc” shall mean an FPU that is signed for use on a certain defined range of Xbox 360 hardware, regardless of the number of languages or product skus contained thereon. The MOQs per Software Title are cumulative per Sales Territory. For example, if an FPU is released in both the North American Sales Territory and the European Sales Territory, the cumulative MOQ per Software Title would be [*] The MOQ per Software Title and the MOQ per Disc, however, are not cumulative. For example, a single Disc FPU released only in the North America Sales Territory will have a total minimum order quantity of [*] which would cover the [*] MOQ per Software Title and the [*] MOQ per Disc (rather than [*] which would have been the total minimum order quantity if the MOQ per Software Title and the MOQ per Disc had been cumulative).

7.5.3 If Publisher fails to place orders to meet any applicable minimum order quantity within [*] of Release to Manufacture, Publisher shall immediately pay Microsoft the applicable royalty fee for the number of FPUs represented by the difference between the applicable MOQ and the number of FPUs of the Software Title actually ordered by Publisher.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

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7.6 **Manufacturing Reports.** For purposes of assisting in the scheduling of manufacturing resources, on a [*] basis, or as otherwise requested by Microsoft in its reasonable discretion, Publisher shall provide Microsoft with forecasts showing manufacturing projections [*] out for each Software Title. Publisher will use commercially reasonable efforts to cause the Authorized Replicator to deliver to Microsoft true and accurate [*] statements of FPUs manufactured in each [*] on a Software Title-by-Software Title basis and in sufficient detail to satisfy Microsoft, within [*] Microsoft will have reasonable audit rights to examine the records of the Authorized Replicator regarding the number of FPUs manufactured.

7.7 **New Authorized Replicator.** If Publisher requests that Microsoft certify and approve a third party replicator that is not then an Authorized Replicator, Microsoft will consider such request in good faith. Publisher acknowledges and agrees that Microsoft may condition certification and approval of such third party on the execution of an agreement in a form satisfactory to Microsoft pursuant to which such third party agrees to strict quality standards, non-disclosure requirements, license fees for use of Microsoft intellectual property and trade secrets, and procedures to protect Microsoft’s intellectual property and trade secrets. Notwithstanding anything contained herein, Publisher acknowledges that Microsoft is not required to certify, maintain the certification or approve any particular third party as an Authorized Replicator, and that the certification and approval process may be time-consuming.

7.8 **Alternate Manufacturing in Europe.** Publisher may, solely with respect to FPUs manufactured for distribution in the European Sales Territory, utilize a different process or company for the combination of a FPU with Packaging Materials provided that such packaging process incorporates the BTS and otherwise complies with the Xbox 360 Publisher Guide. Publisher shall notify Microsoft regarding its use of such process or company so that the parties may properly coordinate their activities and approvals. To the extent that Microsoft is unable to accommodate such processes or company, Publisher shall modify its operations to comply with Microsoft’s requirements.

7.9 **Security.** Microsoft has the right to add to the final release version of the Software Title delivered by Publisher to Microsoft, and to all FPUs, such digital signature technology and other security technology and copyright management information (collectively, “Security Technology”) as Microsoft may determine to be necessary, and/or Microsoft may modify the signature included in any Security Technology included in the Software Title by Publisher at Microsoft’s discretion. Additionally, Microsoft may add Security Technology that prohibits the play of Software Titles on Xbox 360 units manufactured in a region or country different from the location of manufacture of the respective FPUs or that have been modified in any manner not authorized by Microsoft.

7.10 **Demo Versions.** If Publisher wishes to distribute a Demo Version in FPU format, Publisher must obtain Microsoft’s prior written approval and Microsoft may charge a reasonable fee to offset costs of the Certification. Subject to the terms of the Xbox 360 Publisher Guide, such Demo Version(s) may be placed on a single disc, either as a stand-alone or with other Demo Versions and the price of such units must be [*] or its equivalent in local currency. Unless separately addressed in the Xbox 360 Publisher Guide, all rights, obligations and approvals set forth in this Agreement as applying to Software Titles shall separately apply to any Demo Version. [*] If Publishers wishes to distribute a Demo Versions in an online downloadable format, such downloadable Demo Version shall be distributed via by Microsoft Xbox Live in accordance with Section 10.3, and such downloadable Demo Version will be subject to all other terms and policies applicable to Online Content set forth herein and in the Xbox 360 Publisher Guide.

8. Payments

The Parties shall make payments to each other under the terms of Exhibit 1.

9. Marketing, Sales and Support

9.1 **Publisher Responsible.** As between Microsoft and Publisher, Publisher is solely responsible for the marketing and sales of the Software Title. Publisher is also solely responsible for providing technical and all other support relating to the FPUs (including for Xbox Live Users of Online Content). Publisher shall provide all appropriate contact information (including without limitation Publisher’s address and telephone number, and the applicable individual/group responsible for customer support), and shall also provide all such information to Microsoft for posting on <http://www.xbox.com>, or such successor or related Web site identified by Microsoft or in Xbox Live. Customer support shall at all times conform to the Customer Service Requirements set forth in the Xbox 360 Publisher Guide and industry standards in the console game industry.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

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9.2 **Warranty.** Publisher shall provide the original end user of any FPU a minimum warranty in accordance with local laws and industry practices. For example, in the United States, Publisher shall, as of the Effective Date, provide a minimum [*] limited warranty that the FPU will perform in

accordance with its user documentation or Publisher will refund the purchase price or provide a replacement FPU at no charge. Publisher may offer additional warranty coverage consistent with the traditions and practices of video game console game publishers within the applicable Sales Territory or as otherwise required by local law.

9.3 **Recall.** Notwithstanding anything to the contrary contained in this Agreement, if there is a material defect in a Software Title and/or any FPU, which defect in the reasonable judgment of Microsoft would significantly impair the ability of an end user to play such Software Title or FPU or would adversely affect in a material way the gameplay of the Xbox 360 or Xbox Live, Microsoft may require Publisher to recall FPU and undertake prompt repair or replacement of such Software Title and/or FPU.

9.4 **No Bundling with Unapproved Peripherals, Products or Software.** Except as expressly stated in this section, Publisher shall not market or distribute a FPU bundled with any other product or service, nor shall Publisher knowingly permit or assist any third party in such bundling, without Microsoft's prior written consent. Publisher may market or distribute (i) FPU bundled with a Software Title(s) that has been previously certified and released by Microsoft for manufacturing; or (ii) FPU bundled with a peripheral product (e.g. game pads) that has been previously licensed as an "Xbox 360 Licensed Peripheral" by Microsoft, without obtaining the written permission of Microsoft. Publisher shall contact Microsoft in advance to confirm that the peripheral or Software Title to be bundled has previously been approved by Microsoft pursuant to a valid license.

9.5 **Software Title License.** Subject to the prior approval of Publisher (not to be unreasonably withheld or delayed), Publisher grants Microsoft a fully-paid, royalty-free, worldwide, non-exclusive license (i) to publicly perform the Software Titles at conventions, events, trade shows, press briefings, public interactive displays and the like; (ii) to use the title of the Software Title, and screen shots from the Software Title, in advertising and promotional material relating to Xbox 360 and related Microsoft products and services, as Microsoft may reasonably deem appropriate; (iii) distribute Demo Versions with the *Official Xbox Magazine*, as a standalone product with other demo software; and (iv) distribute Software Title trailers via xbox.com. Publisher may also select Online Content for inclusion in public interactive displays and/or compilation demo discs published by Microsoft, in which case Publisher grants Microsoft a fully-paid, royalty-free, worldwide, transferable, sublicenseable license to broadcast, transmit, distribute, host, publicly display, reproduce and manufacture such selected Online Content as part of public interactive displays and compilation demo discs, and to distribute and permit end users to download and store (and, at Publisher's discretion, to make further copies) such Online Content via public interactive displays.

10. Grant of Distribution License, Limitations

10.1 **Distribution License.** Upon Certification of the Software Title, approval of the Marketing Materials and the FPU test version of the Software Title by Microsoft, and subject to the terms and conditions contained within this Agreement. Microsoft grants Publisher a non-exclusive, non-transferable, license to distribute FPU containing Redistributable and Sample Code (as defined in the XDK License) and Security Technology (as defined above) within the Sales Territories approved in the Software Title's Concept in FPU form to third parties for distribution to end users and/or directly to end users. The license to distribute the FPU is personal to Publisher and except for transfers of FPU through normal channels of distribution (e.g. wholesalers, retailers), absent the written approval of Microsoft, Publisher may not sublicense or assign its rights under this license to other parties. For the avoidance of doubt, without the written approval of Microsoft, Publisher may not sublicense, transfer or assign its right to distribute Software Titles or FPU to another entity that will brand, co-brand or otherwise assume control over such products as a "publisher" as that concept is typically understood in the console game industry. Publisher may only grant end users the right to make personal, non-commercial use of Software Titles and may not grant end users any of the other rights reserved to a copyright holder under US Copyright Law, Japanese Copyright Law, or its international equivalent. Publisher's license rights do not include any license, right, power or authority to subject Microsoft's software or derivative works thereof or intellectual property associated therewith in whole or in part to any of the terms of an Excluded License. "Excluded License" means any license that requires as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

10.2 **No Distribution Outside the Sales Territory.** Publisher shall distribute FPU only in Sales Territories for which the Software Title has been approved by Microsoft. Publisher shall not directly or indirectly export any FPU from an authorized Sales Territory to an unauthorized territory nor shall Publisher knowingly permit or assist any third party in doing

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so, nor shall Publisher distribute FPU to any person or entity that it has reason to believe may re-distribute or sell such FPU outside authorized Sales Territories.

10.3 **Online Content.** In consideration of the royalty payments as described in Exhibit 1, Publisher grants to Microsoft (i) a worldwide, transferable, sublicenseable (only transferable and sublicenseable with respect to Microsoft affiliates) license to broadcast, transmit, distribute, host, publicly display, reproduce, and license Online Content submitted to Microsoft hereunder for use on Xbox 360s, and (ii) a worldwide, transferable license solely to distribute to end users and permit end users to download and store Online Content (and, at Publisher's discretion, to make further copies). Publisher agrees that the license grants set forth in this section applicable to Online Content are exclusive, meaning that except as expressly permitted under this Agreement, the Xbox 360 Publisher Guide and/or as agreed by the Parties, Publisher shall not directly or indirectly permit or enable access to Online Content by any means, methods, platforms or services other than through Xbox Live, or as otherwise set forth in this Agreement. Notwithstanding the foregoing, this Section 10.3 does not prevent Publisher from making other platform versions of its Software Titles or Online Content available via other platform-specific online services. This Section 10.3 shall survive expiration or termination of this Agreement solely to the extent and for the duration necessary to effectuate Section 17.3 below.

10.4 **No Reverse Engineering.** Publisher may utilize and study the design, performance and operation of Xbox 360 or Xbox Live solely for the purposes of developing the Software Title or Online Content. Notwithstanding the foregoing, Publisher shall not, directly or indirectly, reverse engineer or aid or assist in the reverse engineering of all or any part of Xbox 360 or Xbox Live except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. In the event applicable law grants Publisher the right to reverse engineer the Xbox 360 or Xbox Live notwithstanding this limitation, Publisher shall provide Microsoft with written notice prior to such reverse engineering activity, information regarding Publisher's intended method of reverse engineering, its purpose and the legal authority for such activity and shall afford Microsoft a reasonable period of time before initiating such activity in order to evaluate the activity and/or challenge the reverse engineering activity with the appropriate legal authorities.

Publisher shall refrain from such reverse engineering activity until such time as any legal challenge is resolved in Publisher's favor. Reverse engineering includes, without limitation, decompiling, disassembly, sniffing, peeling semiconductor components, or otherwise deriving source code. In addition to any other rights and remedies that Microsoft may have under the circumstances, Publisher shall be required in all cases to pay royalties to Microsoft in accordance with and [Exhibit 1](#) with respect to any games or other products that are developed, marketed or distributed by Publisher, and derived in whole or in part from the reverse engineering of Xbox 360, Xbox Live or any Microsoft data, code or other material.

10.5 **Reservation of Rights.** Microsoft reserves all rights not explicitly granted herein.

10.6 **Ownership of the Software Titles.** Except for the intellectual property supplied by Microsoft to Publisher (including without limitation the Licensed Trademarks hereunder and the licenses in certain software and hardware granted by an XDK License), ownership of which is retained by Microsoft, insofar as Microsoft is concerned, Publisher will own all rights in and to the Software Titles and Online Content.

10.7 **Sub-Publishing.** Notwithstanding Section 10.1, Publisher may enter into independent agreements with other publishers to distribute Software Titles in multiple approved Sales Territories (a "Sub-Publishing Relationship"), so long as:

10.7.1 Publisher provides written notice to Microsoft, at least [*] prior to authorizing a Sub-Publisher to manufacture any Software Title(s), of the Sub-Publishing relationship, along with (i) a summary of the scope and nature of the Sub-Publishing relationship including, without limitation, as between Publisher and Sub-Publisher, (ii) which party will be responsible for Certification of the Software Title(s) and/or any Online Content, (iii) a list of the Software Title(s) for which Sub-publisher has acquired publishing rights, (iv) the geographic territory(ies) for which such rights were granted, and (v) the term of Publisher's agreement with Sub-publisher; and

10.7.2 The Sub-publisher has signed an Xbox 360 publisher license agreement ("Xbox 360 PLA") and both Publisher and Sub-publisher are and remain at all times in good standing under each of their respective Xbox 360 PLAs. Publisher is responsible for making applicable royalty payments for the FPU's for which it places manufacturing orders, and Sub-publisher is responsible for making royalty payments for the FPU's for which it places manufacturing orders.

10.8 **Authorized Affiliates.** If Publisher and an affiliate execute the "Publisher Affiliate Agreement" provided in [Exhibit 4](#), then Publisher's authorized affiliate may exercise the rights granted to Publisher under this Agreement. The foregoing shall not apply to any Publisher affiliate which pays or intends to pay royalties from a European billing address.

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Any such European affiliate shall instead execute an Xbox 360 Publisher Enrollment with MIOL, a copy of which is attached hereto as [Exhibit 3](#).

11. Usage Data

Publisher acknowledges that the operation of the Xbox Live service requires that Microsoft collect and store Xbox Live User usage data, including, without limitation, Xbox Live User statistics, scores, ratings, and rankings (collectively, "Xbox Live User Data"), as well as personally-identifiable Xbox Live User data (e.g., name, email address) ("Personal Data"). Microsoft reserves the right, in its discretion, to use such Xbox Live User Data for any purpose, including without limitation, posting the Xbox Live User Data on Xbox.com or other Microsoft Web sites. Microsoft agrees to use commercially reasonable efforts to periodically make certain Xbox Live User Data and Personal Data available to Publisher; provided that Publisher's use of such data is in accordance with the then-current Xbox Live Privacy Statement and such other reasonable restrictions as Microsoft may require. Without limiting the foregoing, Publisher agrees that any disclosure of Personal Data to Publisher is only used by Publisher and may not be shared with any other third parties, and any permitted email communications with Xbox Live Users includes instructions for opting out of receiving any further communications from Publisher.

12. Trademark Rights and Restrictions

12.1 **Licensed Trademarks License.** In each Software Title, FPU, Online Content and on all Marketing Materials, Publisher shall incorporate the Licensed Trademarks and include credit and acknowledgement to Microsoft as set forth in the Xbox 360 Publisher Guide. Microsoft grants to Publisher a non-exclusive, non-transferable, personal license to use the Licensed Trademarks in connection with Software Titles, FPU's, Online Content and Marketing Materials according to the Xbox 360 Publisher Guide and other conditions herein, and solely in connection with marketing, sale, and distribution in the approved Sales Territories or via Xbox Live.

12.2 **Limitations.** Publisher is granted no right, and shall not purport, to permit any third party to use the Licensed Trademarks in any manner without Microsoft's prior written consent. Publisher's license to use Licensed Trademarks in connection with the Software Title, FPU's and/or Online Content does not extend to the merchandising or sale of related or promotional products.

12.3 **Branding Specifications.** Publisher's use of the Licensed Trademarks (including without limitation in FPU's, Online Content and Marketing Materials) must comply with the Branding Specifications set forth in the Xbox 360 Publisher Guide. Publisher shall not use Licensed Trademarks in association with any third party trademarks in a manner that might suggest co-branding or otherwise create potential confusion as to source or sponsorship of the Software Title, Online Content or FPU's or ownership of the Licensed Trademarks, unless Microsoft has otherwise approved such use in writing. Upon notice or other discovery of any non-conformance with the requirements or prohibitions of this section, Publisher shall promptly remedy such non-conformance and notify Microsoft of the non-conformance and remedial steps taken.

12.4 **Protection of Licensed Trademarks.** Publisher shall assist Microsoft in protecting and maintaining Microsoft's rights in the Licensed Trademarks, including preparation and execution of documents necessary to register the Licensed Trademarks or record this Agreement, and giving immediate notice to Microsoft of potential infringement of the Licensed Trademarks. Microsoft shall have the sole right to and in its sole discretion may, commence, prosecute or defend, and control any action concerning the Licensed Trademarks, either in its own name or by joining Publisher as a party thereto. Publisher shall not during the term of this Agreement contest the validity of, by act or omission jeopardize, or take any action inconsistent with, Microsoft's rights or

goodwill in the Licensed Trademarks in any country, including attempted registration of any Licensed Trademark, or use or attempted registration of any mark confusingly similar thereto.

12.5 **Ownership and Goodwill.** Publisher acknowledges Microsoft's ownership of all Licensed Trademarks and all goodwill associated with the Licensed Trademarks. Use of the Licensed Trademarks shall not create any right, title or interest therein in Publisher's favor. Publisher's use of the Licensed Trademarks shall inure solely to the benefit of Microsoft.

13. Non-Disclosure; Announcements

13.1 **Non-Disclosure Agreement.** The information, materials and software exchanged by the parties hereunder or under an XDK License, including the terms and conditions hereof and of the XDK License, are subject to the Non-Disclosure Agreement between the parties attached hereto as Exhibit 5 (the "Non-Disclosure Agreement"), which is incorporated herein by reference; provided, however, that for purposes of the foregoing, Section 2(a)(i) of the Non-Disclosure

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Agreement shall hereinafter read, "The Receiving Party shall: (i) Refrain from disclosing Confidential Information of the Disclosing Party to any third parties for as long as such remains undisclosed under 1(b) above except as expressly provided in Sections 2(b) and 2(c) of this [Non-Disclosure] Agreement." In this way, all Confidential Information provided hereunder or by way of the XDK License in whatever form (e.g. information, materials, tools and/or software exchanged by the parties hereunder or under an XDK License), including the terms and conditions hereof and of the XDK License, unless otherwise specifically stated, will be protected from disclosure for as long as it remains Confidential.

13.2 **Public Announcements.** Neither party shall issue any such press release or make any such public announcement(s) related to the subject matter of this Agreement or any XDK License without the express prior consent of the other party, which consent will not be unreasonably withheld or delayed. Nothing contained in this Section 13.2 will relieve Publisher of any other obligations it may have under this Agreement, including without limitation its obligations to seek and obtain Microsoft approval of Marketing Materials.

13.3 **Required Public Filings.** Notwithstanding Sections 13.1 and 13.2, the parties acknowledge that this Agreement, or portions thereof, may be required under applicable law to be disclosed, as part of or an exhibit to a party's required public disclosure documents. If either party is advised by its legal counsel that such disclosure is required, it will notify the other in writing and the parties will jointly seek confidential treatment of this Agreement to the maximum extent reasonably possible, in documents approved by both parties and filed with the applicable governmental or regulatory authorities, and/or Microsoft will prepare a redacted version of this Agreement for filing.

14. Protection of Proprietary Rights

14.1 **Microsoft Intellectual Property.** If Publisher learns of any infringement or imitation of the Licensed Trademarks, a Software Title, Online Content or FPU, or the proprietary rights in or related to any of them, it will promptly notify Microsoft thereof. Microsoft may take such action as it deems advisable for the protection of its rights in and to such proprietary rights, and Publisher shall, if requested by Microsoft, cooperate in all reasonable respects therein at Microsoft's expense. In no event, however, shall Microsoft be required to take any action if it deems it inadvisable to do so. Microsoft will have the right to retain all proceeds it may derive from any recovery in connection with such actions.

14.2 **Publisher Intellectual Property.** Publisher, without the express written permission of Microsoft, may bring any action or proceeding relating to infringement or potential infringement of a Software Title, Online Content or FPU, to the extent such infringement involves any proprietary rights of Publisher (provided that Publisher will not have the right to bring any such action or proceeding involving Microsoft's intellectual property). Publisher shall make reasonable efforts to inform Microsoft regarding such actions in a timely manner. Publisher will have the right to retain all proceeds it may derive from any recovery in connection with such actions. Publisher agrees to use all commercially reasonable efforts to protect and enforce its proprietary rights in the Software Title or Online Content.

14.3 **Joint Actions.** Publisher and Microsoft may agree to jointly pursue cases of infringement involving the Software Titles or Online Content (since such products will contain intellectual property owned by each of them). Unless the parties otherwise agree, or unless the recovery is expressly allocated between them by the court (in which case the terms of Sections 14.1 and 14.2 will apply), in the event Publisher and Microsoft jointly prosecute an infringement lawsuit under this provision, any recovery will be used first to reimburse Publisher and Microsoft for their respective reasonable attorneys' fees and expenses, *pro rata*, and any remaining recovery shall also be given to Publisher and Microsoft *pro rata* based upon the fees and expenses incurred in bringing such action.

15. Warranties

15.1 **Publisher.** Publisher warrants and represents that:

15.1.1 It has the full power to enter into this Agreement;

15.1.2 It has obtained and will maintain all necessary rights and permissions for its and Microsoft's use of the Software Title, FPUs, Marketing Materials, Online Content, all information, data, logos, and software or other materials provided to Microsoft and/or made available to Xbox Live Users via Xbox Live (excluding those portions that consist of the Licensed Trademarks, Security Technology and redistributable components of the so-called "XDK" in the form as delivered to Publisher by Microsoft pursuant to an XDK License) (collectively, the "Publisher Content"), and that all Publisher Content complies with all laws and regulations, and does not and will not infringe upon or misappropriate any third party trade secrets, copyrights, trademarks, patents, publicity, privacy or other proprietary rights.

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15.1.3 It shall comply with all laws, regulations, industry content rating requirements and administrative orders and requirements within any applicable Sales Territory relating to the distribution, sale and marketing of the Software Title, and shall keep in force all necessary licenses, permits,

registrations, approvals and/or exemptions throughout the term of this Agreement and for so long as it is distributing, selling or marketing the Software Title in any applicable Sales Territory.

15.1.4 The Software Title, Online Content and/or information, data, logos and software or other materials provided to Microsoft and/or made available to Xbox Live Users via Xbox Live, do not and shall not contain any messages, data, images or programs that are, by law, defamatory, obscene or pornographic, or in any way violate any applicable laws or industry content rating requirements (including without limitation laws of privacy) of the applicable Sales Territory(ies) where the Software Title is marketed and/or distributed.

15.1.5 The Online Content shall not harvest or otherwise collect information about Xbox Live Users, including e-mail addresses, without the Xbox Live Users' express consent; and the Online Content shall not link to any unsolicited communication sent to any third party.

15.2 **Microsoft.** Microsoft warrants and represents that it has the full power to enter into this Agreement and it has not previously and will not grant any rights to any third party that are inconsistent with the rights granted to Publisher herein

15.3 DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 15, MICROSOFT PROVIDES ALL MATERIALS (INCLUDING WITHOUT LIMITATION THE SECURITY TECHNOLOGY) AND SERVICES HEREUNDER ON AN "AS IS" BASIS, AND MICROSOFT DISCLAIMS ALL OTHER WARRANTIES UNDER THE APPLICABLE LAWS OF ANY COUNTRY, EXPRESS OR IMPLIED, REGARDING THE MATERIALS AND SERVICES IT PROVIDES HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF FREEDOM FROM COMPUTER VIRUSES. WITHOUT LIMITATION, MICROSOFT PROVIDES NO WARRANTY OF NON-INFRINGEMENT.

15.4 EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT, ITS AFFILIATES, LICENSORS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST GOODWILL AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.

15.5 LIMITATION OF LIABILITY. THE MAXIMUM LIABILITY OF MICROSOFT TO PUBLISHER OR TO ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT WILL BE [*] FURTHERMORE, UNDER NO CIRCUMSTANCES SHALL MICROSOFT BE LIABLE TO PUBLISHER FOR ANY DAMAGES WHATSOEVER WITH RESPECT TO ANY CLAIMS RELATING TO THE SECURITY TECHNOLOGY AND/OR ITS EFFECT ON ANY SOFTWARE TITLE OR FOR ANY STATEMENTS OR CLAIMS MADE BY PUBLISHER, WHETHER IN PUBLISHER'S MARKETING MATERIALS OR OTHERWISE, REGARDING THE AVAILABILITY OR OPERATION OF ANY ONLINE FEATURES.

16. **Indemnity; Insurance.** A claim for which indemnity may be sought hereunder is referred to as a "Claim."

16.1 **Mutual Indemnification.** Each party hereby agrees to indemnify, defend, and hold the other party harmless from any and all third party claims, demands, costs, liabilities, losses, expenses and damages (including reasonable attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with any claim that, taking the claimant's allegations to be true, would result in a breach by the indemnifying party of any of its representations, warranties or covenants set forth in Section 15.

16.2 **Additional Publisher Indemnification Obligation.** Publisher further agrees to indemnify, defend, and hold Microsoft harmless from any and all third party claims, demands, costs, liabilities, losses, expenses and damages (including reasonable attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with any claim

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

regarding any Software Title or FPU including without limitation any claim relating to quality, performance, safety thereof and excluding those portions of the Software Title or FPU that consist of the Licensed Trademarks, Security Technology and redistributable components of the so-called "XDK" in the form as delivered to Publisher by Microsoft pursuant to an XDK License), or arising out of Publisher's use of the Licensed Trademarks in breach of this Agreement.

16.3 **Notice and Assistance.** The indemnified party shall: (i) provide the indemnifying party reasonably prompt notice in writing of any Claim and permit the indemnifying party to answer and defend such Claim through counsel chosen and paid by the indemnifying party; and (ii) provide information, assistance and authority to help the indemnifying party defend such Claim. The indemnified party may participate in the defense of any Claim at its own expense. The indemnifying party will not be responsible for any settlement made by the indemnified party without the indemnifying party's written permission, which will not be unreasonably withheld or delayed. In the event the indemnifying party and the indemnified party agree to settle a Claim, the indemnified party agrees not to publicize the settlement without first obtaining the indemnifying party's written permission.

16.4 **Insurance**

16.4.1 Publisher shall maintain sufficient and appropriate insurance coverage to enable it to meet its obligations under this Agreement and by law (whether Products Liability, General Liability or some other type of insurance). For FPUs distributed in the Japan Sales Territory, Publisher's coverage will have minimum limits of the Japanese yen equivalent of [*] per occurrence, with a deductible of not more than the Japanese yen equivalent of [*] For FPUs distributed in the Asian Sales Territory, Publisher's coverage will have minimum limits of [*] per occurrence (or its equivalent value in local currency as of the date of issuance), with a deductible of not more than [*] (or its equivalent value in local currency as of the date of issuance).

16.4.2 As of the Effective Date, Publisher is not required under this Agreement to hold any errors and omissions policy through a third party and may self-insure. However, in the event that fails to meet Microsoft's annually updated criteria for self-insurance, which will be reasonable be based on Publisher's liquidity position and will be communicated to Publisher at least [*] in advance of applicability, Publisher will at its sole cost and expense shall have endorsed Microsoft as an additional insured on Publisher's media perils errors and omissions liability policy for claims arising in connection with production, development and distribution of each Software Title in an amount no less than [*] on a per occurrence or per incident basis. Coverage provided to Microsoft under the policy shall be primary to and not contributory with any insurance maintained by Microsoft. Upon request, Publisher agrees to furnish copies of the additional insured endorsement and/or a certificate of insurance evidencing compliance with this requirement.

17. Term and Termination

17.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until [*] Unless one party gives the other notice of non-renewal within [*] of the end of the then-current term, this Agreement shall automatically renew for successive [*] terms.

17.2 **Termination for Breach.** If either party materially fails to perform or comply with this Agreement or any provision thereof, and fails to remedy the default within [*] after the receipt of notice to that effect, then the other party has the right, at its sole option and upon written notice to the defaulting party, to terminate this Agreement upon written notice; provided that if Publisher is the party that has materially failed to perform or comply with this Agreement, then Microsoft has the right, but not the obligation, to suspend availability of the Online Content during such [*] period. Any notice of default hereunder must be prominently labeled "NOTICE OF DEFAULT"; provided, however, that if the default is of Sections 10, 12 or Sections 1 or 2 of Exhibit 1, the Non-Disclosure Agreement, or an XDK License, then the non-defaulting party may terminate this Agreement immediately upon written notice, without being obligated to provide a [*] cure period. The rights and remedies provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or this Agreement. If the uncured default is related to a particular Software Title or particular Online Content, then the party not in default has the right, in its discretion, to terminate this Agreement its entirety or with respect to the applicable Software Title or the particular Online Content.

17.3 **Effect of Termination; Sell-off Rights.** Upon termination or expiration of this Agreement, Publisher has no further right to exercise the rights licensed hereunder or within the XDK License and shall promptly cease all manufacturing of FPU through its Authorized Replicators and, other than as provided below, cease use of the Licensed Trademarks. Publisher shall have a period of [*] to sell-off its inventory of FPUs existing as of the date of termination or expiration,

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

after which sell-off period Publisher shall immediately return all FPUs to an Authorized Replicator for destruction. Publisher shall cause the Authorized Replicator to destroy all FPUs and issue to Microsoft written certification by an authorized representative of the Authorized Replicator confirming the destruction of FPUs required hereunder. All of Publisher's obligations under this Agreement shall continue to apply during such [*] sell-off period. If this Agreement is terminated due to Publisher's breach, at Microsoft's option, Microsoft may require Publisher to immediately destroy all FPUs not yet distributed to Publisher's distributors, dealers and/or end users and shall require all those distributing the FPU over which it has control to cease distribution. Upon termination or expiration of this Agreement, Publisher shall continue to support existing Online Game Features for FPUs that have already been sold until the end of the Minimum Commitment term.

17.4 **Cross-Default.** If Microsoft has the right to terminate this Agreement, then Microsoft may, at its sole discretion also terminate the XDK License. If Microsoft terminates the XDK License due to a breach by Publisher, then Microsoft may, at its sole discretion also terminate this Agreement.

17.5 **Survival.** The following provisions shall survive expiration or termination of this Agreement: Sections 2,6.2.2 (as to the Minimum Commitment), 6.2.3, 8 and Sections 1, 2 and 5 of Exhibit I, 9.1-9.3, 10.3, 10.4, 1 I, 13.1, 14, 15, 16, 17.3, 17.5 and 18.

18. General

18.1 **Governing Law; Venue; Attorneys Fees.** This Agreement is to be construed and controlled by the laws of the State of Washington, U.S.A., and Publisher consents to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, U.S.A., unless no federal jurisdiction exists, in which case Publisher consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington, U.S.A. Publisher waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. The English version of this Agreement is determinative over any translations thereof. If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees, costs and other expenses. This choice of jurisdiction provision does not prevent Microsoft from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

18.2 **Notices; Requests.** All notices and requests in connection with this Agreement are deemed given on the [*] after they are deposited in the applicable country's mail system [*] postage prepaid, certified or registered, return receipt requested; or [*] sent by overnight courier, charges prepaid, with a confirming fax; and addressed as follows:

Publisher:	Activision Publishing, Inc. 3100 Ocean Park Boulevard Santa Monica, CA 90405	Microsoft:	MICROSOFT LICENSING, GP 6100 Neil Road, Suite 100 Reno, NV 89511-1137
Attention:	Greg Deutsch	Attention:	Xbox Accounting Services
Fax:	310-255-2152	with a cc to:	MICROSOFT CORPORATION
Phone:	310-255-2555		One Microsoft Way
Email:	gdeutsch@activision.com		Redmond, WA 98052-6399

Attention:

Law & Corporate Affairs Department
Assoc. General Counsel, Consumer Legal
Group (H&ED)
Fax: (425) 936-7329

or to such other address as the party to receive the notice or request so designates by written notice to the other.

18.3 **No Delay or Waiver.** No delay or failure of either party at any time to exercise or enforce any right or remedy available to it under this Agreement, and no course of dealing or performance with respect thereto, will constitute a waiver of any such right or remedy with respect to any other breach or failure by the other party. The express waiver by a

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

party of any right or remedy in a particular instance will not constitute a waiver of any such right or remedy in any other instance. All rights and remedies will be cumulative and not exclusive of any other rights or remedies.

18.4 **Assignment.** Publisher may not assign this Agreement or any portion thereof, to any third party unless Microsoft expressly consents to such assignment in writing. Microsoft will have the right to assign this Agreement and/or any portion thereof as Microsoft may deem appropriate and/or authorize its affiliates or partners to perform this Agreement in whole or part on its behalf. For the purposes of this Agreement, a merger, consolidation, or other corporate reorganization, or a transfer or sale of a controlling interest in a party's stock, or of all or substantially all of its assets is to be deemed to be an assignment. This Agreement will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs, and permitted assigns.

18.5 **No Partnership.** Microsoft and Publisher are entering into a license pursuant to this Agreement and nothing in this Agreement is to be construed as creating an employer-employee relationship, a partnership, a franchise, or a joint venture between the parties.

18.6 **Severability.** If any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. The parties intend that the provisions of this Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, the parties agree that if any provisions are deemed not enforceable, they are to be deemed modified to the extent necessary to make them enforceable.

18.7 **Injunctive Relief.** The parties agree that Publisher's threatened or actual unauthorized use of the Licensed Trademarks or other Microsoft proprietary rights whether in whole or in part, may result in immediate and irreparable damage to Microsoft for which there is no adequate remedy at law. Either party's threatened or actual breach of the confidentiality provisions may cause damage to the non-breaching party, and in such event the non-breaching party is entitled to seek appropriate injunctive relief from any court of competent jurisdiction without the necessity of posting bond or other security.

18.8 **Entire Agreement; Modification; No Offer.** This Agreement (including the Concept, the Non-Disclosure Agreement, the Xbox 360 Publisher Guide, written amendments thereto, and other incorporated documents) and the XDK License constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. This Agreement shall not be modified except by a written agreement dated subsequent hereto signed on behalf of Publisher and Microsoft by their duly authorized representatives. Neither this Agreement nor any written or oral statements related hereto constitute an offer, and this Agreement is not legally binding until executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date on the dates indicated below.

MICROSOFT LICENSING, GP

ACTIVISION PUBLISHING, INC.

/s/ Roxanne V. Spring
By (sign)

/s/ George L. Rose
By (sign)

Roxanne V. Spring
Name (Print)

GEORGE L. ROSE
Name (Print)

SPM
Title

Sr. Vice President & General Counsel
Title

25-OCT-2005
Date

October 24, 2005
Date

EXHIBIT 1

PAYMENTS

1. Platform Royalty

a. For each FPU manufactured during the term of this Agreement, Publisher shall pay Microsoft nonrefundable royalties in accordance with the royalty tables set forth below (Tables 1 and 2) and the "Unit Discount" table set forth in Section 1.d of this Exhibit 1 (Table 3).

b. The royalty fee is determined by the "Threshold Price" (which is the Wholesale Price (WSP) or Suggested Retail Price (SRP) at which Publisher intends to sell the Software Title in the applicable Sales Territory). To determine the applicable royalty rate for a particular Software Title in a particular Sales Territory, the applicable Threshold Price from Table 1 below will determine the correct royalty "Tier." The royalty fee is then as set forth in Table 2 based on the Manufacturing Region in which the FPUs will be manufactured. For example, assume the Wholesale Price of a Software Title to be sold in the European Sales Territory is [*] According to Table 1, [*] royalty rates will apply to that Software Title and the royalty rate is determined in Table 2 by the Manufacturing Region. If the Software Title were manufactured in the European Manufacturing Region, the royalty fee would be [*] per FPU. If the Software Title were manufactured in Asian Manufacturing Region, the royalty fee would be [*] per FPU.

[*]

[*]

[*]

c. [*] submit to Microsoft, at least [*] for a Software Title, a completed and signed "Royalty Tier Selection Form" in the form attached to this Agreement as Exhibit 2 for each Sales Territory. The selection indicated in the Royalty Tier Selection Form will only be effective once the Royalty Tier Selection Form has been accepted by Microsoft. If Publisher does not submit a Royalty Tier Selection Form as required hereunder, the royalty fee for such Software Title will default to [*] regardless of the actual Threshold Price. The selection of a royalty tier for a Software Title in a Sales Territory is binding for the life of that Software Title even if the Threshold Price is reduced following the Software Title's Commercial Release.

d. Unit Discounts. Publisher is eligible for a discount to FPUs manufactured for a particular Sales Territory (a "Unit Discount") based on the number of FPUs that have been manufactured for sale in that Sales Territory as described in Table 3 below. Except as provided in Section 4 below, units manufactured for sale in a Sales Territory are aggregated only towards a discount on FPUs manufactured for that Sales Territory; there is no worldwide or cross-territorial aggregation of units for a particular Software Title. The discount will be rounded up to the nearest Cent, Yen or hundredth of a Euro.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

[*]

[*]

[*]

2. Payment Process

a. [*] Publisher shall not authorize its Authorized Replicators to begin production until such time as [*] Depending upon Publisher's credit worthiness, Microsoft may, but is not obligated to, offer Publisher credit terms for the payment of royalties due under this Agreement within [*] of receipt of invoice. All payments will be made by wire transfer only in accordance with the payment instructions set forth in the Xbox 360 Publisher Guide.

b. Publisher will pay royalties for FPUs manufactured in the North American Manufacturing Region in US Dollars, for FPUs manufactured in the Asian Manufacturing Region in Japanese Yen and for FPUs manufactured in the European Manufacturing Region in Euros.

3. Billing Address

a. Publisher may have only two "bill to" addresses for the payment of royalties under this Agreement, one for the North American Manufacturing Region and one for the Asian Manufacturing Region. If Publisher desires to have a "bill-to" address in a European country. Publisher (or a Publisher Affiliate) must execute an MIOL Enrollment Form in the form attached to this Agreement as Exhibit 3.

Publisher's billing address(es) is as follows:

North America Manufacturing Region:

Name: Activision Publishing, Inc.
Address: 3100 Ocean Park Boulevard
Santa Monica, CA 90405

Attention: _____
Email address: _____
Fax: _____
Phone: _____

Asian Manufacturing Region (if different):

Name: _____
Address: _____

Attention: _____
Email address: _____
Fax: _____

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

4. Asia Simship Program

The purpose of this program is to encourage Publisher to release Japanese FPU's or North American FPU's, that have been multi-region signed to run on NTSC-J boxes (hereinafter collectively referred to as "Simship Titles"), in Hong Kong, Singapore and Taiwan (referred to as "Simship Territory") at the same time as Publisher releases the Software Title in the Japan and/or North American Sales Territories. In order for a Software Title to qualify as a Simship Title, Publisher must release the Software Title in the Simship Territory on the same date as the Commercial Release date of such Software Title in the Japan and/or North American Sales Territories, wherever the Software Title was first Commercially Released (referred to as "Original Territory"). To the extent that a Software Title qualifies as a Simship Title, the applicable royalty tier (under Section 1.b of this Exhibit 1 above) and Unit Discount (under Section 1.d of this Exhibit 1 above) is determined as if all FPU's of such Software Title manufactured for distribution in both the Original Territory and the Simship Territory were manufactured for distribution in the Original Territory. For example, if a Publisher initially manufactures [*] FPU's of a Software Title for the Japan Sales Territory and simships [*] of those units to the Simship Territory, the royalty fee for all of the FPU's is determined by [*] In this example, Publisher would also receive a [*] Unit Discount on [*] units for having exceeded the Unit Discount level specified in Section 1.d of this Exhibit 1 above applicable to the Japan Sales Territory. Publisher must provide Microsoft with written notice of its intention to participate in the Asian Simship Program with respect to a particular Software Title at least [*] prior to manufacturing any FPU's it intends to qualify for the program. In its notice, Publisher shall provide all relevant information, including total number of FPU's to be manufactured, number of FPU's to be simshipped into the Simship Territory, date of simship, etc. Publisher remains responsible for complying with all relevant import, distribution and packaging requirements as well as any other applicable requirements set forth in the Xbox 360 Publisher Guide.

5. Online Content

- a. For the purpose of this Section 5, the following capitalized terms have the following meanings:

[*]

[*]

- b. Publisher may, from time to time, submit Online Content to Microsoft for Microsoft to distribute via Xbox Live. [*]

- c. [*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

- e. Within [*] after the end of [*] with respect to which Microsoft owes Publisher any Royalty Fees, Microsoft shall furnish Publisher with a statement, together with payment for any amount shown thereby to be due to Publisher. The statement will contain information sufficient to discern how the Royalty Fees were computed.

6. Xbox Live Billing and Collection

Microsoft is responsible for billing and collecting all fees associated with Xbox Live, including fees for subscriptions and/or any Online Content for which a Xbox Live User may be charged. [*].

7. Taxes

a. The amounts to be paid by either party to the other do not include any foreign, U.S. federal, state, local, municipal or other governmental taxes, duties, levies, fees, excises or tariffs, arising as a result of or in connection with the transactions contemplated under this Agreement including, without limitation, (i) any state or local sales or use taxes or any value added tax or business transfer tax now or hereafter imposed on the provision of any services to the other party under this Agreement, (ii) taxes imposed or based on or with respect to or measured by any net or gross income or receipts of either party, (iii) any franchise taxes, taxes on doing business, gross receipts taxes or capital stock taxes (including any minimum taxes and taxes measured by any item of tax preference), (iv) any taxes imposed or assessed after the date upon which this Agreement is terminated, (v) taxes based upon or imposed with reference to either parties' real and/or personal property ownership and (vi) any taxes similar to or in the nature of those taxes described in (i), (ii), (iii), (iv) or (v) above, now or hereafter imposed on either party (or any third parties with which either party is permitted to enter into agreements relating to its undertakings hereunder) (all such amounts, together with any penalties, interest or any additions thereto, collectively "Taxes"). Neither party is liable for any of the other party's Taxes incurred in connection with or related to the sale of goods and services under this Agreement, and all such Taxes are the financial responsibility of the party obligated to pay such taxes as determined by the applicable law, provided that both parties shall pay to the other the appropriate Collected Taxes in accordance with subsection 7.b below. Each party agrees to indemnify, defend and hold the other party harmless from any Taxes (other than Collected Taxes, defined below) or claims, causes of action, costs (including, without limitation reasonable attorneys' fees) and any other liabilities of any nature whatsoever related to such Taxes to the extent such Taxes relate to amounts paid under this Agreement.

b. Any sales or use taxes described in 7.a above that (i) are owed by either party solely as a result of entering into this Agreement and the payment of the fees hereunder, (ii) are required to be collected from that party under applicable law, and (iii) are based solely upon the amounts payable under this Agreement (such taxes the "Collected Taxes"). will be stated separately as applicable on payee's invoices and will be remitted by the other party to the payee, upon request payee shall remit to the other party official tax receipts indicating that such Collected Taxes have been collected and paid by the payee. Either party may provide the other party an exemption certificate acceptable to the relevant taxing authority (including without limitation a resale certificate) in which case payee shall not collect the taxes covered by such certificate. Each party agrees to take such commercially reasonable steps as are requested by the other party to minimize such Collected Taxes in accordance with all relevant laws and to cooperate with and assist the other party, in challenging the validity of any Collected Taxes or taxes otherwise paid by the payor party. Each party shall indemnify and hold the other party harmless from any Collected

Taxes, penalties, interest, or additions to tax arising from amounts paid by one party to the other under this Agreement, that are asserted or assessed against one party to the extent such amounts relate to amounts that are paid to or collected by one party from the other under this section. If any taxing authority refunds any tax to a party that the other party originally paid, or a party otherwise becomes aware that any tax was incorrectly and/or erroneously collected from the other party, then that party shall promptly remit to the other party an amount equal to such refund or incorrect collection as the case may be plus any interest thereon.

c. If taxes are required to be withheld on any amounts otherwise to be paid by one party to the other, the paying party shall deduct such taxes from the amount otherwise owed and pay them to the appropriate taxing authority. At a party's written request and expense, the parties shall use reasonable efforts to cooperate with and assist each other in obtaining tax certificates or other appropriate documentation evidencing such payment, provided, however, that the responsibility for such documentation shall remain with the payee party. If publisher is required by any non-U.S.A. government to withhold income taxes on payments to Microsoft, then Publisher may deduct such taxes from the amount owed Microsoft and shall pay them to the appropriate tax authority, provided that within [*] of such payment, Publisher delivers to Microsoft an official receipt for any such taxes withheld or other documents necessary to enable Microsoft to claim a U.S.A. Foreign Tax Credit.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

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d. This Section 7 shall govern the treatment of all taxes arising as a result of or in connection with this Agreement notwithstanding any other section of this Agreement.

8. Audit

During the term of this Agreement and for [*] each party shall keep all usual and proper records related to its performance under this Agreement, including but not limited to audited financial statements and support for all transactions related to the ordering, production, inventory, distribution and billing/invoicing information. Such records, books of account, and entries will be kept in accordance with generally accepted accounting principles. Either party (the "Auditing Party") may audit and/or inspect the other party's (the "Audited Party") records no more than [*] in any [*] period in order to verify compliance with the terms of this Agreement. The Auditing Party may, upon reasonable advance notice, audit the Audited Party's records and consult with the Audited Party's accountants for the purpose of verifying the Audited Party's compliance with the terms of this Agreement and for a period of [*] Any such audit will be conducted during regular business hours at the Audited Party's offices. Any such audit will be paid for by Auditing Party unless Material discrepancies are disclosed. As used in this section, "Material" means [*] If Material discrepancies are disclosed, the Audited Party agrees to pay the Auditing Party for [*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

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EXHIBIT 2

XBOX 360 ROYALTY TIER SELECTION FORM

PLEASE COMPLETE THE BELOW INFORMATION, SIGN THE FORM, AND FAX IT TO MICROSOFT AT +1 (425) 708-2300 TO THE ATTENTION OF MICROSOFT LICENSING, GP (MSLI) AND YOUR ACCOUNT MANAGER.

NOTES:

- THIS FORM MUST BE SUBMITTED [*]. IF THIS FORM IS NOT SUBMITTED ON TIME, THE ROYALTY RATE WILL DEFAULT TO [*] FOR THE APPLICABLE SALES TERRITORY.**
- A SEPARATE FORM MUST BE SUBMITTED FOR EACH SALES TERRITORY.**

- Publisher Name: _____
- Xbox 360 Software Title Name: _____
- XeMID Number: _____
- Manufacturing Region (check one):
 - North American
 - European
 - Asian
- Sales Territory (check one):
 - North American Sales Territory
 - Japan Sales Territory
 - European Sales Territory
 - Asian Sales Territory
- Final Certification Date: _____
- Select Royalty Tier: (check one): [*] o [*] o

The undersigned represents that he/she has authority to submit this form on behalf of the above publisher, and that the information contained herein is true and accurate.

By (sign)

Name, Title (Print)

E-Mail Address (for confirmation of receipt)

Date (Print mm/dd/yy)

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

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EXHIBIT 3

XBOX 360 PUBLISHER ENROLLMENT FORM

PLEASE COMPLETE THIS FORM, SIGN IT, AND FAX IT TO MICROSOFT AT +1 (425) 708-2300 TO THE ATTENTION OF YOUR ACCOUNT MANAGER.

NOTE: PUBLISHER MUST COMPLETE, SIGN AND SUBMIT THIS ENROLLMENT FORM [*]

This Xbox 360 Publisher License Enrollment (“Enrollment”) is entered into between Microsoft Ireland Operations Ltd. (“MIOL”) and Activision UK, Ltd. (“Publisher”), and is effective as of the latter of the two signatures identified below. The terms of that certain Xbox 360 Publisher License Agreement signed by Microsoft Licensing GP and Activision Publishing, Inc. dated on or about _____ (the “Xbox 360 PLA”) are incorporated herein by reference.

- Term.** This Enrollment will expire on the date on which the Xbox 360 PLA expires, unless it is terminated earlier as provided for in that agreement.
- Representations and Warranties.** By signing this Enrollment, the parties agree to be bound by the terms of this Enrollment and Publisher represents and warrants that: (i) it has read and understood the Xbox 360 PLA, including any amendments thereto, and agree to be bound by those; (ii) it is either the entity that signed the Xbox 360 PLA or its affiliate; and (iii) the information that provided herein is accurate.
- Notices; Requests.** All notices and requests in connection with this Enrollment are deemed given on (i) the [*] after they are deposited in the applicable country’s mail system ([*] if sent internationally), postage prepaid, certified or registered, return receipt requested; or (ii) [*] after they are sent by overnight courier, charges prepaid, with a confirming fax; and addressed as follows:

Publisher: Activision UK, Ltd.
Address: Parliament House, St. Laurence Way
Slough, Berkshire, SL 1 2BW
Attention: George Rose, Director & SVP & General Counsel
Fax: 01753 756109
Phone: 01753 756100
Email: grose@activision.com

Microsoft: MICROSOFT IRELAND OPERATIONS LTD.
Microsoft European Operations Centre,
Atrium Building Block B,
Carmenhall Road,
Sandyford Industrial Estate
Dublin 18
Ireland
Fax: 353 1 706 4110

Attention: MIOL Xbox Accounting Services

with a cc to: MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399

Attention: Law & Corporate Affairs Department
Consumer
Legal Group, H&ED (Xbox)
Fax: +1 (425) 706-7329

or to such other address as the party to receive the notice or request so designates by written notice to the other.

[remainder of page intentionally left blank]

4. Billing Address. For purposes of the Xbox 360 PLA, Exhibit 1, Section 3, Publisher’s billing address forthe European Manufacturing Region is as follows:

Name: Activision UK, Ltd.
Address: Parliament House, St. Laurence Way
Slough, Berkshire SL1 2BW
VAT number: GB 387814408
Attention: Frank Borghouts, Head of Finance, Europe
Email address: tborghouts@activision.com
Fax: 01753 756109
Phone: 01753 756100

MICROSOFT IRELAND OPERATIONS LTD.

PUBLISHER: _____

By (sign) _____ By (sign) _____
Name (Print) _____ Name (Print) _____
Title _____ Title _____
Date (Print mm/dd/yy) _____ Date (Print mm/dd/yy) _____

EXHIBIT 4

AUTHORIZED AFFILIATES

Publisher affiliates authorized to perform the rights and obligations under this Agreement are:

I. Name: _____ II. Name: _____
Address: _____ Address: _____

Telephone: _____ Telephone: _____
Fax: _____ Fax: _____

Publisher will provide Microsoft at least [*] written notice of the name and address of each additional Publisher affiliate that Publisher wishes to add to this Exhibit 4. Any additional Publisher affiliate may not perform any rights or obligations under this Agreement until it has signed and submitted a Publisher Affiliate Agreement (attached below) to Microsoft

PUBLISHER AFFILIATE AGREEMENT

For good and valuable consideration, _____, a corporation of _____ (“Publisher Affiliate”) hereby covenants and agrees with Microsoft Licensing, GP, a Nevada general partnership that Publisher Affiliate will comply with all obligations of _____ (“Publisher”) pursuant to that certain Xbox 360 Publisher License Agreement between Microsoft and Publisher dated _____, 200__ (the “Xbox 360 PLA”) and to be bound by the terms and conditions of this Publisher Affiliate Agreement. Capitalized terms used herein and not otherwise defined will have the same meaning as in the Agreement.

Publisher Affiliate acknowledges that its agreement herein is a condition for Publisher Affiliate to exercise the rights and perform the obligations established by the terms of the Xbox 360 PLA. Publisher Affiliate and Publisher will be jointly and severally liable to Microsoft for all obligations related to Publisher Affiliate’s exercise of the rights, performance of obligations, or receipt of Confidential Information under the Xbox 360 PLA. This Publisher Affiliate Agreement may be terminated in the manner set forth in the Xbox 360 PLA. Termination of this Publisher Affiliate Agreement does not terminate the Xbox 360 PLA with respect to Publisher or any other Publisher Affiliates.

IN WITNESS WHEREOF, Publisher Affiliate has executed this agreement as of the date set forth below. All signed copies of this Publisher Affiliate Agreement will be deemed originals.

Signature

Title

Name (Print)

Date

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

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EXHIBIT 5
NON-DISCLOSURE AGREEMENT

[Attached]

1

EXHIBIT 6
JAPAN AND ASIA ROYALTY INCENTIVE PROGRAM

1. Overview

To encourage Publisher to release localized Software Titles in the Japan and Asian Sales Territories during [*] Publisher may qualify for a special incentive payment equal to [*] according to the terms of this Exhibit 6 (the "Royalty Incentive Program").

2. Qualified FPU's

In order to qualify for the Royalty Incentive Program, the following requirements must be met.

a. Approved Concept Submission Form. Publisher must send Microsoft a completed Concept submission form (in a format to be provided by Microsoft) for any Software Titles Publisher intends to qualify for the Royalty Incentive Program no later than [*] In order for FPU's to qualify for the Royalty Incentive Program, Publisher's Concept for the Software Title must be received on time and approved by Microsoft.

b. J-signed. Only FPU's that are "J-signed" (as defined in the Xbox 360 Publisher Guide) to technically restrict their operation to Xbox consoles made for the Japan and Asian Sales Territories will qualify for the Royalty Incentive Program.

c. [*]

d. [*]

e. Public Relations. In order to qualify for the Royalty Incentive Program, Publisher must allow Microsoft to publicly disclose that the Software Title will be released on Xbox 360 in the Japan or Asian Sales Territories.

f. Timely Payment. Publisher must pay royalty fees on time in accordance with this Agreement or its credit arrangement with Microsoft in order to qualify for the Royalty Incentive Program.

3. Payment

a. Manufacturing Periods. The Royalty Incentive Program will only apply to qualified FPU's manufactured [*] (as applicable for the FPU).

b. Incentive Payments. Microsoft will make royalty incentive payments within [*] in which qualified FPU's were manufactured.

c. Limit. Subject to the terms of this Exhibit 6, Publisher's royalty incentive payment will equal [*] Publisher acknowledges that the Royalty Incentive Payment will only apply to [*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT 7

XBOX 360 LIVE INCENTIVE PROGRAM

1. Xbox 360 Live Incentive Program

To encourage Publisher to support functionality for Xbox Live in its Xbox 360 Software Titles and to drive increased usage of Xbox Live via Xbox 360, Publisher may qualify for certain payments based on the amount of Xbox Live Market Share (defined in Section 2.a. of this Exhibit 7 below) created by Publisher's Multiplayer Software Titles (defined in Section 2.c. of this Exhibit 7 below). Each Accounting Period (defined in Section 3.c. of this exhibit below), Microsoft will calculate Publisher's Xbox Live Market Share. If it is above [*] then Microsoft will pay Publisher an amount [*] The basic equation for calculating the Publisher's payment under this program is:

[*]

The following sections define the elements of this basic equation.

Notwithstanding anything herein to the contrary, use of or revenue derived from online games for which an end user pays a subscription separate from any account established for basic use of Xbox Live, are excluded from this Xbox 360 Live Incentive Program.

2. Xbox Live Market Share

- a. "Xbox Live Market Share" = [*]
- b. "[*] Unique User Market Share" means [*]
- c. "Multiplayer Software Titles" means a Software Title for Xbox 360 that supports real-time multiplayer game play.
- d. "[*] Unique Users" means [*]
- e. "Paying Subscriber" [*]
- f. "[*] Unique User Market Share" means [*]
- g. "[*] Unique Users" means [*]
- h. "New Subscriber Market Share" means [*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

i. "New Subscriber" means a Paying Subscriber who pays for an Xbox Live account for the first time. A New Subscriber is attributed to the first Multiplayer Software Title he or she plays, even if such play was during a free-trial period which was later converted into a paying subscription. Each Paying Subscriber can only be counted as a New Subscriber once.

3. Participation Pool

- a. "Participation Pool" means [*]
- b. "Subscription Revenue" means [*]
- c. "Accounting Period" means [*] within the Term (defined below); provided that if the Effective Date of this Agreement or the expiration date of this program falls within such [*] then the applicable payment calculation set forth below shall be made for a partial Accounting Period, as appropriate.

4. Example

[*]

- [*]
- [*]
- [*]

[*]

- [*]
- [*]
- [*]

[*]

[*]

- [*]
- [*]
- [*]
- [*]

[*]

5. Term

This Xbox 360 Live Incentive Program will be available for [*] Microsoft reserves the right to change the weights for averaging set forth in Section 2.a. of this exhibit upon written notice to Publisher, but no more frequently than [*]

6. Payments

In the event Publisher qualifies for a payment under this program during an Accounting Period, Microsoft shall furnish Publisher with a statement, together with payment for any amount shown thereby to be due to Publisher within [*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT B

MICROSOFT CORPORATION NON-DISCLOSURE AGREEMENT (STANDARD – RECIPROCAL)

COMPANY: Activision Publishing, Inc.
Address: 3100 Ocean Park Blvd.
Santa Monica, CA 90405

MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399

Sign: /s/ Greg Deutsch

Sign: [ILLEGIBLE]

Print Name: Greg Deutsch

Print Name: [ILLEGIBLE]

Print Title: Director, Business & Legal Affairs

Print Title: Director

Signature Date: 2-18-2004

Signature Date: 2-24-04

1. Definition of Confidential Information and Exclusions

(a) "Confidential Information" means nonpublic information that a party to this Agreement ("Disclosing Party") designates as being confidential to the party that receives such information ("Receiving Party") or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party. "Confidential Information" includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased Disclosing Party software or hardware products, the marketing or promotion of any Disclosing Party product, Disclosing Party's business policies or practices, and information received from others that Disclosing Party is obligated to treat as confidential. Except as otherwise indicated in this Agreement, the term "Disclosing Party" also includes all Affiliates of the Disclosing Party and, except as otherwise indicated, the term "Receiving Party" also includes all Affiliates of the Receiving Party. An "Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with a party. Prior to the time that any Confidential Information is shared with an Affiliate who has not signed this Agreement, the Receiving Party that executed this Agreement (the "Signatory Receiving Party") shall have entered into an appropriate written agreement with that Affiliate sufficient to enable the Disclosing Party and/or the Signatory Receiving Party to enforce all of the provisions of this Agreement against such Affiliate.

(b) Confidential Information shall not include any information, however designated, that: (i) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed Disclosing Party; (ii) became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to the terms of this Agreement; (iii) became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party; (iv) is independently developed by Receiving Party; or (v) constitutes Feedback (as defined in Section 5 of this Agreement).

2. Obligations Regarding Confidential Information

(a) Receiving Party shall:

- (i) Refrain from disclosing any Confidential Information of the Disclosing Party to third parties for [*] following the date that Disclosing Party first discloses such

- (ii) Confidential Information to Receiving Party, except as expressly provided in Sections 2(b) and 2(c) of this Agreement;
- (iii) Take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information of the Disclosing Party;
- (iv) Refrain from disclosing, reproducing, summarizing and/or distributing Confidential Information of the Disclosing Party except in pursuance of Receiving Party's business relationship with Disclosing Party, and only as otherwise provided hereunder; and
- (v) Refrain from reverse engineering, decompiling or disassembling any software code and/or pre-release hardware devices disclosed by Disclosing Party to Receiving Party under the terms of this Agreement, except as expressly permitted by applicable law.

(b) Receiving Party may disclose Confidential Information of Disclosing Party in accordance with a judicial or other governmental order, provided that Receiving Party either (i) gives the Disclosing Party reasonable notice prior to such disclosure to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent, or (ii) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. Notwithstanding the foregoing, the Receiving Party shall not disclose any computer source code that contains Confidential Information of the Disclosing Party in accordance with a judicial or other governmental order unless it complies with the requirement set forth in sub-section (i) of this Section 2(b).

(c) The Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party will have executed or shall execute appropriate written agreements with its employees and consultants sufficient to enable Receiving Party to enforce all the provisions of this Agreement.

(d) Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

(e) Receiving Party shall, at Disclosing Party's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of the same.

3. Remedies. The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

4. Miscellaneous

(a) All Confidential Information is and shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Disclosing Party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein.

(b) In the event that the Disclosing Party provides any computer software and/or hardware to the Receiving Party as Confidential Information under the terms of this Agreement, such computer software and/or hardware may only be used by the Receiving Party for evaluation and providing Feedback (as defined in Section 5 of this Agreement) to the Disclosing Party. Unless otherwise agreed by the

Disclosing Party and the Receiving Party, all such computer software and/or hardware is provided "AS IS" without warranty of any kind, and Receiving Party agrees that neither Disclosing Party nor its suppliers shall be liable for any damages whatsoever arising from or relating to Receiving Party's use of or inability to use such software and/or hardware.

(c) The parties agree to comply with all applicable international and national laws that apply to (i) any Confidential Information, or (ii) any product (or any part thereof), process or service that is the direct product of the Confidential Information, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see <http://www.microsoft.com/exporting/>.

(d) The terms of confidentiality under this Agreement shall not be construed to limit either the Disclosing Party or the Receiving Party's right to independently develop or acquire products without use of the other party's Confidential Information. Further, the Receiving Party shall be free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the Disclosing Party, provided that the Receiving Party shall not disclose the Confidential Information except as expressly permitted pursuant to the terms of this Agreement. The term "residuals" means information in intangible form, which is retained in memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The Receiving Party shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this sub-paragraph shall not be deemed to grant to the Receiving Party a license under the Disclosing Party's copyrights or patents.

(e) None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, the Receiving Party, their agents, or employees, but only by an instrument in writing signed by an authorized employee of Disclosing Party and the Receiving Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

(f) If either Disclosing Party or the Receiving Party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. This Agreement shall be construed and controlled by the laws of the State of Washington, and the parties further consent to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal subject matter jurisdiction exists, in which case the parties consent to the exclusive jurisdiction and venue in the Superior Court of King County, Washington. Company waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule.

(g) This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that neither party may assign this Agreement (whether by operation of law, sale of securities or assets, merger or otherwise), in whole or in part, without the prior written approval of the other party. Any attempted assignment in violation of this Section shall be void.

(h) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(i) This Agreement shall expire on the Expiration Date set forth above, provided that either party may terminate this Agreement with or without cause upon thirty (30) days prior written notice to the other party sent to the address listed above (and if to Microsoft, with a cc to "Law & Corporate Affairs, attn. NDA, LCA Records"). All sections of this Agreement relating to the rights and obligations of the parties concerning Confidential Information disclosed during the term of the Agreement shall survive any such expiration or termination.

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(j) This copy of this Agreement may not be altered except to complete any blanks in the signature blocks above (e.g., signature date), and any other modifications, additions, or other alterations are void and not part of this Agreement. This Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties.

(k) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous non-disclosure agreements or communications, but only with respect to the Limited Purpose set forth above. It shall not be modified except by a written agreement that explicitly references the Limited Purpose, is dated subsequent to the date of this Agreement, and is signed on behalf of the parties by their respective duly authorized representatives.

5. Suggestions and Feedback. The Receiving Party may from time to time provide suggestions, comments or other feedback ("Feedback") to the Disclosing Party with respect to Confidential Information provided originally by the Disclosing Party. Both parties agree that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by the party offering the Feedback, shall not, absent a separate written agreement, create any confidentiality obligation for the receiver of the Feedback. Receiving Party will not give Feedback that is subject to license terms that seek to require any Disclosing Party product, technology, service or documentation incorporating or derived from such Feedback, or any Disclosing Party intellectual property, to be licensed or otherwise shared with any third party. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, the receiver of the Feedback shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

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**XBOX 360 REVIEW DISC PROGRAM ADDENDUM TO THE
XBOX 360 PUBLISHER LICENSE AGREEMENT**

This Xbox 360 Review Disc Program Addendum to the Xbox 360 Publisher License Agreement (this “Addendum”) is entered into and effective as of the later of the two signature dates below (the “Addendum Effective Date”) by and between Microsoft Licensing GP, a Nevada general partnership (“Microsoft”), and Activision Publishing, Inc. (“Publisher”), and supplements the Xbox 360 Publisher License Agreement between the parties dated as of (the “Xbox 360 PLA”). Accordingly, for and in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, receipt of which each party hereby acknowledges, Microsoft and Publisher agree as follows:

1. Xbox 360 Review Disc Program

1.1 Pursuant to the terms herein, Publisher may manufacture and distribute a limited number of specially packaged FPUs for marketing and promotional purposes [*] and on a “not for resale or redistribution” basis in the European Sales Territory (each a “Review Disc FPU,” the program being the “Xbox 360 Review Disc Program”)

1.2 To participate in the Xbox 360 Review Disc Program, Publisher must honor the terms of this Addendum and submit to Microsoft a fully completed Xbox 360 Review Disc Program Qualification Form in the form attached hereto no later than [*] for certification in the European Sales Territory. The Review Disc FPU of the Software Title must be the same or substantially equivalent to the standard FPU of the Software Title.

2. Review Disc FPUs

2.1 In order for a Software Title to qualify for the Xbox 360 Review Disc Program, Publisher must manufacture at least [*] standard FPUs for the European Sales Territory per the Minimum Order Quantity requirements under the Xbox 360 PLA. In such event, Publisher may manufacture and distribute up to [*] Review Disc FPUs of such Software Title (regardless of SKUs or languages). The manufacture of such Review Discs FPUs must take place within a [*] period. Publisher shall be solely responsible for any costs associated with such Review Disc FPUs, including the manufacture and distribution thereof.

2.2 All Marketing Materials for a Review Disc FPU must clearly indicate that such FPU is being distributed on a “not for resale” basis and Publisher shall submit all such Marketing Materials to Microsoft for its approval in accordance with the requirements set forth in the Xbox 360 PLA. Packaging Materials for Review Disc FPUs shall be in accordance with the requirements set forth for such materials in the Xbox 360 Publisher Guide.

2.3 Publisher shall provide to Microsoft without charge [*] Review Disc FPUs (“Microsoft Units”) of each Software Title that participates in the Xbox 360 Review Disc Program. The Microsoft Units shall be in addition to the Review Disc FPU quantity amounts required under Section 2.1 above.

3. Program Compliance

3.1 Unauthorized Manufacture of Review Disc Units If (i) Publisher does not qualify for the Xbox 360 Review Disc Program hereunder manufactures Review Disc FPUs anyway or (ii) Publisher manufactures more Review Disc FPUs than it is entitled to, such unauthorized Review Disc FPUs shall be assessed a royalty at the [*] level without any Unit Discount or any other deduction otherwise applicable and Publisher shall be permanently barred from participating in the Xbox 360 Review Disc Program.

3.2 Marketing and Promotional Purposes. Publisher agrees and acknowledges that it is obligated to exercise its best efforts to ensure that Review Disc FPUs are distributed for marketing and promotional purposes in the European Sales Territory (including Australia and New Zealand) only and are not to be offered on a resale or redistribution basis. To the

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

MICROSOFT

CONFIDENTIAL

extent that Microsoft determines, in its good faith judgment, that Publisher is not exercising sufficient care in its distribution of Review Disc FPUs in accordance with the requirements set forth herein, Microsoft shall have the right, upon reasonable notice to Publisher, to disqualify Publisher from the Xbox 360 Review Disc Program for a specific Software Title or Titles or on a permanent basis.

4. General

4.1 The terms of the Xbox 360 Review Disc Program are subject to change by Microsoft upon [*] prior written notice.

4.2 Publisher agrees to keep accurate and comprehensive records as to the distribution of each Review Disc FPU. Further, the parties acknowledge that Microsoft’s audit rights under the Xbox 360 PLA shall also apply to Publisher’s records under this Addendum.

4.3 [*] to Microsoft under the Xbox 360 PLA with respect to Review Disc FPUs that qualify under this Addendum [*].

4.4 Except as expressly provided otherwise in this Addendum, capitalized terms shall have the same meanings ascribed to them in the Xbox 360 PLA. The terms of the Xbox 360 PLA are incorporated by reference, and except and to the extent expressly modified by this Addendum or any previous amendments, the Xbox 360 PLA shall remain in full force and effect and is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed as of the Addendum Effective Date.

MICROSOFT LICENSING, GP

ACTIVISION PUBLISHING, INC.

<u>/s/ Roxanne V. Spring</u> By (sign)	<u>/s/ Greg Deutsch</u> By (sign)
<u>Roxanne V. Spring</u> Name (Print)	<u>Greg Deutsch</u> Name (Print)
<u>SPM</u> Title	<u>Sr. Director, Business Affairs & Corporate Compliance</u> Title
<u>15-DEC-2005</u> Date	<u>November 15, 2005</u> Date

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

XBOX 360 REVIEW DISC PROGRAM QUALIFICATION FORM

PLEASE COMPLETE THE BELOW INFORMATION, SIGN THE FORM, AND FAX IT TO MICROSOFT +I (125) 708-2300 TO THE ATTENTION OF MICROSOFT LICENSING, GP (MSLI) AND YOUR ACCOUNT MANAGER. THIS FORM MUST BE SUBMITTED AT LEAST [*] TO MICROSOFT FOR CERTIFICATION FOR THE EUROPEAN SALES TERRITORY. A SEPARATE FORM MUST BE COMPLETED FOR EACH SOFTWARE TITLE.

1. Publisher name:
2. Xbox 360 Software Title Name:
3. XMID Number for Europe:
4. Date of Commercial Release within European Sales Territory:
5. Initial order quantity of Standard FPU's manufactured for European Sales Territory:
6. Order quantity of Review Disc FPU's:
7. Countries planned to be supported with Review discs:

[Note: Possible United Kingdom, France, Germany, Spain, Italy, Netherlands, Belgium, Sweden, Denmark, Norway, Finland, Austria, Switzerland, Ireland, Portugal, Greece, Australia, New Zealand and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide]

8. Microsoft can share this information with its affiliates for potential additional marketing activity:
Yes/No

The undersigned represents that he/she has authority to submit this form on behalf of the above publisher, and that the information contained herein is true and accurate.

By (sign)

Name (Print)

Title

E-Mail Address (for confirmation)

Summary of Current Director Compensation

Cash Compensation for Directors

Annual Retainer	\$	45,000
For Each Board Meeting	\$	1,500
For Each Telephone Board Meeting	\$	1,000
For Each Committee Meeting	\$	1,000
For Each Telephone Committee Meeting	\$	750
For Serving as Chairman of the Audit Committee	\$	20,000
For Serving as Chairman of the Compensation Committee	\$	20,000
For Serving as Chairman of the Nominating and Corporate Governance Committee	\$	10,000
Per Day for Special Assignments	\$	1,000
For Serving as an Audit Committee Member	\$	5,000

Equity Compensation for Directors

Annual Stock Option Grant upon Re-election to the Board		12,500
Initial Stock Option Grant upon Appointment or Election to the Board		30,000

These options vest ratably every six months over a two-year period. In addition to the compensation listed in the table, non-employee directors are reimbursed for expenses incurred in attending Board, committee and stockholder meetings.

CERTIFICATION

I, Robert A. Kotick, Chief Executive Officer of Activision, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Activision, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 8, 2006

/s/ Robert A. Kotick

Robert A. Kotick
Chief Executive Officer

CERTIFICATION

I, Michael Griffith, President and Chief Executive Officer of Activision Publishing, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Activision, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 8, 2006

/s/ Michael Griffith

Michael Griffith
President and
Chief Executive Officer,
Activision Publishing, Inc.

CERTIFICATION

I, Thomas Tippl, Chief Financial Officer of Activision Publishing, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Activision, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 8, 2006

/s/ Thomas Tippl

Thomas Tippl
Chief Financial Officer,
Activision Publishing, Inc.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Activision, Inc. (the "Company") on Form 10-Q for the period ending December 31, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert A. Kotick, Chief Executive Officer of the Company, certify, to my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Robert A. Kotick

Robert A. Kotick
Chief Executive Officer,
February 8, 2006

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Activision, Inc. (the "Company") on Form 10-Q for the period ending December 31, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Griffith, President and Chief Executive Officer of Activision Publishing, Inc., certify, to my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Michael Griffith

Michael Griffith
President and
Chief Executive Officer,
Activision Publishing, Inc.
February 8, 2006

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Activision, Inc. (the "Company") on Form 10-Q for the period ending December 31, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Thomas Tippl, Chief Financial Officer of Activision Publishing, Inc., certify, to my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Thomas Tippl

Thomas Tippl
Chief Financial Officer,
Activision Publishing, Inc.
February 8, 2006

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.
