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April 2, 2010

Thomasenia P. Duncan, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

AOR 2010-06

Re: Advisory Opinion Request - Famos LLC

Dear Ms. Duncan:

Pursuant to the Commission's regulations, 11 C.F.R. § 112.1, on behalf of Famos LLC, ("Famos"), we request an advisory opinion confirming that a Political Affinity Account Holder program proposed to be offered by Famos to federal political committees is permissible under the Federal Election Campaign Act of 1971, as amended (the "Act") and the Commission's regulations.

**I. Famos Business Model**

Famos, founded in 2009, is a closely held, privately owned, for-profit LLC. Famos LLC is founded on the idea that every word, picture and video we share with friends and family has the power to influence their online purchase decisions. Until now, there has been no way to link these passive recommendations with real financial transactions that subsequently take place when someone purchases something based on the advice of a friend. A personal endorsement—however valuable to the people we know and to the companies we endorse—is currently not compensated.

Famos has built and markets a web-based technology platform<sup>1</sup> that provides Famos Account Holders, both individuals and organizations, the ability to benefit from any revenue generated from monetized events<sup>2</sup> within their personal referrals. The technology platform behind Famos ("Famos Platform") is able to monitor and monetize these types of personal endorsements for products, events and services, and reward Famos Account Holders when their referrals generate revenue down the line—whether that comes from a movie ticket purchase, a restaurant reservation or any other online transaction their referrals have influenced.

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<sup>1</sup> A "platform" is a software suite that provides added functionality to its users (Account Holders, subscribers, customers, et al.) within their digital tools.

<sup>2</sup> A monetized event is the action that takes place to trigger on-line commission or revenue generation, as described below. For example: If person "A" clicks on a "book this ticket now" button on a website which directs them to buy a ticket via Priceline, the website would receive the commission assigned to that airline ticket purchase by Priceline.

#### **A. The Famos Platform**

The Famos Platform can be accessed via applications downloaded from Famos, such as browser toolbars,<sup>3</sup> plug-ins<sup>4</sup> for existing applications (such as Outlook, Acrobat and Word), and, in the near future, as a mobile client<sup>5</sup> application.

The Famos Platform will, in its default setting, automate the syndication<sup>6</sup> of personal content, find and associate monetizable events around a Famos Account Holder's digital instantiations and track affiliate revenue commission sharing from search engines, retail sales and affiliate network payments as these terms are explained in more detail below.

An individual can decide to become a Famos Account Holder by registering on-line through another Account Holder's Platform, through a Famos Topic Page or by directly registering at Famos.com. Once a person has become a Famos Account Holder, the full functionality of the Famos Platform will be available to him. Regardless of the path a user (either individual or organizational) follows to become a Famos Account Holder, the registration procedure along with the accompanying Terms of Service Documents (See Exhibit 1) will remain identical for all Famos Account Holders.

Like virtually all web-based platforms now offered in the marketplace, the Famos Platform will be made available to prospective Famos Account Holders free of charge. Famos will then provide access to an administrative web page where the Famos Account Holder is able to:

- Choose which features will be available on the Famos Platform;
- Personalize these features;
- Personalize the default look and feel of their account (Account Holders<sup>7</sup> would also have the ability to further customize the Famos Platform look once installed);

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<sup>3</sup> In a program with a graphical user interface such as Internet Explorer, a browser toolbar is a strip of icons used to perform certain functions.

<sup>4</sup> A plug-in is a module or software that can be added to a system to enable extra features or functionality.

<sup>5</sup> A mobile client application is an application that will run on a mobile device such as a cellular phone.

<sup>6</sup> Where website material is made available to multiple other sites. Also known as web syndication, which refers to making web feeds available from a site in order to provide other people with a summary of the website's recently added content (for example, the latest news or forum posts).

<sup>7</sup> If any bespoke (non-standard) customization of the Famos Platform, such as insertion of proprietary news feed content, is necessary, the Famos Account Holder

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- Update contact information for the Account Holder;
- Track the usage of their digital instantiations, and
- Monitor revenue generation.

The Famos Platform is currently being deployed as a toolbar and browser application in a limited confidential release, and will shortly be available as a general release to the broader market. Famos would also like to offer the Famos Platform to political organizations, including federal political committees.

## **B. Digital IDs**

The Famos Platform allows Famos Account Holders to benefit from the existing revenues their digital instantiations are already generating on the web but are currently going unrewarded. Essentially, Famos takes advantage of the millions of emails, text messages, posts, links, tweets and other exchanges that happen every second. The Famos Platform is the first of its kind to effectively keep track of the steps leading from this myriad of social chatter to a successful online transaction. The technology is scalable,<sup>8</sup> non-intrusive<sup>9</sup> and works and across all platforms. It acts just like a bar code, traveling with the billions of explicit and implied referrals, which currently go unrecognized. Once a purchase is made, the Famos Account Holder(s) who helped influence the transaction is/are rewarded with a small percentage of the generated revenue that is currently paid to others.

The Famos Platform can follow the unique digital instantiations of the Famos Account Holder's content, track them through their referral paths, collect the revenues these digital instantiations generate and share the generated revenues with those Famos Account Holders who deserve a portion. (Note: the Famos Account Holder must self identify or register their differing digital instantiations with Famos, done through their account profile settings, in order for the Famos Platform to track them through the revenue stream.<sup>10</sup>)

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either individual or organizational will be charged the standard bespoke customization fee of \$200.00 US/hour. (See Exhibit 1)

<sup>8</sup> That is, the ability to either handle growing amounts of work or to be readily enlarged.

<sup>9</sup> That is, something that does not automatically show up online in an unwanted, unrequested, or unsolicited manner. (An intrusive ad for example might be a pop-up asking you to fill in an IQ test.)

<sup>10</sup> As with the tracking of individual Famos Account Holder's unique digital instantiations, in order for an organizational Famos Account Holder's digital instantiation to generate revenue the organizational Famos Account Holder must also register its unique digital instantiation(s) with Famos. The employees of an organizational Famos Account Holder would not be generating any revenue for the organizational Famos Account Holder by simply performing most of their daily employee duties and tasks or any non-work-related online activity. This is because an employee's individual email (for example amiller@famos.com) and non-work related online activities are digital instantiations of the individual employee and not

A real world example of personal instantiations would be a credit rating bureau. The credit rating bureau knows there are numerous sources which can represent a person's credit: a Tax ID number, a bank account number, various credit cards, a home mortgage account, a cellular phone bill, etc. Each of these accounts is an instantiation of an individual to a credit bureau. They all have different labels, different account numbers, and different functions but each is tied back to a unique person.

A person's digital instantiations follow a similar parallel. Examples could be a person's email account<sup>11</sup>, a website domain<sup>12</sup> name, a social network ID or a YouTube license. The list is endless. All are digital delivery mechanisms for different digital instantiations but all are tied to a unique person. It is these varying representations of a person on-line that the Famos Platform can identify and follow as these unique digital instantiations move throughout the web.

People share billions of digital communications every day:

- Text messages
- Twitter "Tweets"
- MySpace Status updates
- Facebook Wall Posts
- A Famos Topic Page (See Exhibit 2)

Within these seemingly trivial instances of "social media" are countless invaluable referrals from our most trusted sources. Some are overt, but most are only implied:

- "We saw a great movie last night"
- "Check out my pictures from Las Vegas"
- "Have you heard that new Killers song?"

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the organization. However, an organizational Famos Account Holder employee could generate revenue for an organizational Famos Account Holder through certain work-related activities associated with the organization's digital instantiations. This could include activities such as posting content to the organization's website or blog, or sending email via the organization's digital instantiations. (For example support@famos.com or reunlon@alumni.uofm.edu)

<sup>11</sup> The Famos Account Holder's registered email account is the unique personal email instantiation of that Account Holder irrespective of where or through whom the email account was obtained. That is to say, if a person receives an email account from their employer and then registers that email account as their Famos Account Holder registration email, that employer would not be involved in any of the Famos Account Holder's transactions by having simply supplied the Famos Account Holder with an email account.

<sup>12</sup> A domain name is an identification label that defines a realm of administrative autonomy, authority, or control in the Internet. An example might be a name assigned to a website, e.g., sfsailing.com

- "Heading to NYC for the week. Plan to see Jersey Boys and visit The Statue of Liberty"

### **C. How Revenue is generated for Account Holders<sup>13</sup>**

All Famos Account Holders, whether at the individual or organizational level, generate revenue from similar methods. Within the World Wide Web, there exist small payments that ad revenue networks, keyword search engines, retail commission aggregators and various "click per (fill in the blank)" models that are willing to pay out for online activity. Currently, these payments are only paid to the affiliate network<sup>14</sup> member's domain name that can be identified as the source of the transaction.

It is important to point out that when these unique identified transactions take place through the Famos Platform they have revenues associated with them that are assigned to Famos. The revenues are paid to Famos by the aforementioned affiliate networks because the networks can identify the Famos domain name as the source of the revenue generating transaction.

The Famos Account Holder can generate revenue from their referrals through three primary mechanisms: commissions on Internet searches, commissions via performance marketing<sup>15</sup> models and commissions on Internet shopping.

Famos bases its revenue model around the existing commerce that is currently going unrewarded to anyone connected via the World Wide Web. Numerous revenue streams are available to online users of the web - advertising revenues, retail sales commissions, and search engine traffic generation - all via their associated affiliate relationships.

Whether at the organizational or Individual Famos Account Holder level, revenue is only generated for a Famos Account Holder when a Famos Account Holder's content

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<sup>13</sup> See Exhibit 3 for more detailed discussion of common practice Internet revenue generation.

<sup>14</sup> An affiliate network program, also known as an affiliate marketing program, typically refers to an electronic commerce version of the traditional agent/referral fee sales channel concept. An e-commerce affiliate is a website which links back to an e-commerce site such as Amazon.com with the goal of making a commission for referred sales. Advertisers in an affiliate network make their ads available for placement by publishers. Each link is assigned a commission, such as a fixed amount per lead or a percentage of a resulting sale on the advertiser's website.

<sup>15</sup> Performance marketing is also known as on-line referral marketing. - Broadly speaking, performance marketing is the common marketing practice on the Internet whereby advertisers pay on a per-instance basis. (See Exhibit 3 for a more detailed discussion)

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is associated with a monetizable event via a Famos Topic Page and a viewer of that Famos Topic Page transacts upon an associated monetizable event.<sup>16</sup>

#### **D. The Famos Topic Page**

The Famos Platform allows a Famos Account Holder to chose to have Famos automatically annotate or allow the Account Holder to personally annotate<sup>17</sup> any of their digital instantiations. The Famos Platform then assigns each Famos Account Holder a unique Famos ID that is also attached to each of that Famos Account Holder's digital instantiations. This then allows viewers of a Famos Account Holder's digital instantiations to select any content of interest by simply highlighting or clicking a word, image, or any other media. This action by the viewer triggers the generation of the Famos Topic Page.

It is here on the Famos Topic Page that resides content based around the topic along with all of the aggregated monetizable events the Famos Platform can associate with that topic. A topic page can only be generated from a Famos Account Holder's unique digital instantiation.

If a viewer decides to transact around any of the content found on the Famos Topic Page, the generated revenue from that transaction is then assigned to the Famos Revenue Accounts of any Famos Account Holders associated with that transaction.

#### **E. How Revenue is shared through Famos**

Famos Account Holders will receive a portion of the generated revenue from a referral chain resulting in a transaction based on where their content was identified in that referral chain.

Famos makes these distributions directly to the Account Holder's Revenue Account. At this point, a Famos Account Holder could then do with their revenue portion as they see fit (see "Revenues" section from the Famos' Terms of Service- [Exhibit 1]). Any unclaimed portion of a transaction will be held in a unique anonymous account until such time that this user has joined Famos as an Account Holder. If after 365 days, no claims are made to these portions, Famos will take any unclaimed revenue and distribute it to "One LapTop per Child" (OLPC) as a corporate charitable outreach.

#### **F. Examples**

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<sup>16</sup> Note: In order for any revenue to be generated for any Famos Account Holder, the transactions from a Famos Topic Page must be taking place live and online. Working within a closed internal organizational network would not allow the Famos Platform to search the world wide web for monetizable events and not be able to associate these events with any content. Consequently, there is no revenue generated for a Famos Account Holder in the normal course of their off-line daily activities.

<sup>17</sup> To add the Famos Account Holder's metadata to all content visible in a digital instantiation. An example would be the unique user account's information around a YouTube video that the user has posted to their YouTube account.

Here is an email referral as an example:

- An email from a Famos Account Holder is sent to a friend about a great movie.
- The recipient is intrigued by the recommendation and decides to "tweet" the movie link to a social network.
- Someone following a Twitter feed about movies then clicks on the link and decides to buy a movie ticket.

This is a typical on-line interaction amongst a social circle.

Behind the scenes, the on-line ticket-booking agent (Fandango for example) has a commission waiting for the domain name (in this case Famos') that generated this movie ticket sale. In today's "online world", the domain name holder currently keeps the commission and adds it to their bank account.

Presume Fandango pays 25 cents commission for this online movie ticket booking in the above example. Since the movie ticket was booked online through the Famos Platform, Fandango "sees" the Famos domain name and knows that Famos is a member of their commission network.<sup>18</sup> Fandango would then pay Famos a commission for directing a movie ticket booking to the Fandango website.

Famos would then distribute the revenue for this ticket as follows:

- Famos keeps 5 cents. [This is our standard percentage (20%) for all revenues paid to Famos. (See "Revenues" section from the Famos' Terms of Service - See Exhibit 2)]
- Famos would then deposit 15 cents in the Famos Account Holder's Revenue Account
- The remaining 5 cents of the Fandango commission would be assigned to the Twitter feed owner<sup>19</sup> that caused the sale of the movie ticket through Fandango.

Here is an example of how Internet search revenue could be generated for a Famos Account Holder:

- The John Galt for President Committee (JGPC) decides to become a Famos Political Affinity Account Holder.
- The JGPC sets up a social network through Ning<sup>20</sup> for their followers to interact.

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<sup>18</sup> A commission network is a membership affiliation that distributes revenues to its members based on their earned commissions from vendors associated with the network.

<sup>19</sup> In this example if the Twitter feed owner were a Famos Account Holder then the proportionate revenue would be assigned to that Famos Account Holder's revenue account. If not, the Twitter feed owner would be assigned a Unique Anonymous Famos ID. If that Twitter Feed owner later joins Famos, those funds will be distributed to the Famos Account Holders revenue account.

- A JGPC campaign volunteer contributes a blog posting on the JGPC Ning site
- One of the followers of JGPC sees a blog posting on the JGPC Ning Social Network concerning voter fraud.
- She clicks on the words "voter fraud" from the follower's blog post for more information. (This is accomplished through the Famos spotlight window. See Exhibit 2)
- The resultant search, which was initiated when the follower clicked on the words "voter fraud", delivers numerous aggregated sponsored listings<sup>21</sup> onto the Famos Topic Page. One of which is from Amazon.com.
- Amazon.com has paid Google AdSense for Search a fee in order for that sponsored Link to show up and be clicked upon when the words "voter fraud" are searched for.
- Google's AdSense for Search Affiliate Network will pay Famos (an Affiliate Network member) a micro-portion of their (Google's) fee from Amazon because the Famos domain name was identified by Google as the source of the transaction. (In this simple case, the source was the keyword search for "voter fraud" done by the follower of the JGPC when they clicked the words "voter fraud.")
- Let us say this micro portion from Google payment is 1 cent.
  - Famos keeps .2 cents.
  - The blog poster on the JGPC social network would receive .8 cents if they were a Famos Account Holder (or when they become a Famos Account Holder.) It was their content that caused somebody to search for "voter fraud" so they should share in the revenue generated from it.

In a final example, let us look to how Famos would generate revenue through one of the many performance-marketing methods:

- An ESPN staff writer posts on their Famos powered website (via the Famos Platform) an article about the "Greatest Sports Documentaries of all Time."
- A viewer of the ESPN website, who happens to also be a Famos Account Holder, sees the article and likes a certain passage.
- He then copies a passage from the ESPN website to post into his blog about sports movies.
- A follower of the Famos Account Holder's blog reads the post and highlights the words "Sports Movies."
- This generates a Famos Topic Page about "Sports Movies"
- The Famos Topic Page delivers aggregated related content and advertising, including the ability to view movie trailers.
- The follower finds a result from the Walt Disney Company promoting their sailing movie "Morning Light" and clicks on it to watch the trailer.

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<sup>20</sup> Ning is an online platform for people to create their own social networks, launched in October 2005.

<sup>21</sup> Famos will not pay out revenues generated from paid political ads. Where it can, the Famos platform will filter for these advertisements and remove them from the revenue chain.

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- The Walt Disney Company distributes affiliate payments to their network members for views of their trailers because they deem that someone watching their movie trailer has a high value to their advertising campaign.
- If the Walt Disney Company affiliate payment to Famos is 10 cents for viewing of their trailer, Famos would distribute the revenues as follows:
  - Famos keep 2 cents,
  - ESPN would receive 5 cents, and
  - The viewer that posted the ESPN content to his blog would receive 3 cents.

In any of these examples, if there were multiple transactions associated around the Famos Account Holder identified content, the associated revenues for each of the identified transactions would be paid to the appropriate Famos Account Holder's Revenue Accounts.

For every transaction generated, the Famos Platform identifies the following:

1. The source of content.
2. Any monetizable events associated through the Famos Platform with this content.
3. The trail of the identified content and its ownership as it moves across the Famos Platform, and finally
4. Any transaction this identified content is involved with on the Famos Platform.

By doing so the Famos Platform can recognize if the identified content is involved with a single transaction or involved with many transactions associated with many different viewers.

## **II. Proposed Operation of Famos Platform for Political Affinity Account Holders**

Famos desires to expand its Platform program to include arrangements with 501(c)(4) organizations (including qualified non-profit corporations) and federal political committees, including authorized committees (herein further referred to as a "Political Affinity Account Holder"). The Political Affinity Account Holder program would be identical to that of any organizational Famos Account Holder with one minor addition:

- The reporting status of distributions to the Famos Political Affinity Account Holder committee and from whom these funds were derived would require Famos to generate an additional set of compliance reports required by the Federal Election Commission.

The Political Affinity Account Holder program would be promoted to and made available to any federal political committee that requests the ability to participate, including authorized candidate committees, non-connected political committees, and party committees, without regard to party affiliation or ideological orientation. Separate segregated funds, as defined by the Act and the Commission's regulations, would not be allowed to register as Famos Political Affinity Account Holders.

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The Famos Platform will be marketed and made available to Political Affinity Account Holders in the same manner as it is made available to other Famos Account Holders (both individual or organizational), as described in detail above. As is the case for all Famos Account Holders, the Famos Platform will be available at no cost to Political Affinity Account Holders. Any marketing of the Famos Platform by the Political Affinity Account Holder to its own members is the responsibility of the Famos Political Affinity Account Holder and at the Political Affinity Account Holder's own expense.

Political Affinity Account Holders will be given the same account management tools as all other Famos Account Holders (both individual and organizational) with an additional tier of accounting features in order to satisfy any Federal Election Commission reporting requirements (as described below). These additional reporting requirements will require customization for each Political Affinity Account Holder. This and any other additional bespoke customization of the Famos Platform for the Political Affinity Account Holder will be charged at the industry rate of \$200/hour.

Any individual or organization could decide to sign up to be a Famos Account Holder. Regardless of how the interested party registered as a Famos Account Holder, the interested party would be required to provide at minimum her/his name and email address (or organizational email address). The interested party will then create a Famos Account Holder name and password to log in. The Famos Account Holder creation page will clearly inform the Famos Account Holder that:

- They have joined Famos as a Famos Account Holder and are entitled to all of the Famos functionality afforded to all Famos Account Holders.
- By becoming a Famos Account Holder, they agree to abide by the Famos Terms of Service Agreement.
- The Famos Account Holder would be given the option to receive the remittance in the form of a check for any balance in excess of \$10.00. (See "Revenues" section from the Famos' Terms of Service- [Exhibit 1])
- The Famos Account Holder has the sole possession of that portion of the revenues generated from the Famos Account Holder's identified digital instantiations.
- The Famos Account Holder would be given the option to elect to enter more profile information.

All Famos Accounts Holders are allowed to direct a portion of their revenues to any Famos Charitable Account Holder or any Famos Non-Profit Account Holder. The proposed Political Affinity Account Holder program would also allow a Famos Account Holder to direct Famos to distribute a portion of their revenue to a Political Affinity Account Holder.<sup>22</sup>

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<sup>22</sup> Note: The contributing Famos Account Holder must satisfy the certifications required of any donor contributing to a federal political committee over the Internet, as set forth in Advisory Opinion 1995-09. This will represent a political contribution to the Political Affinity Account Holder, which will be used in connection with federal elections and which is subject to the limitations and prohibitions of the Federal

**As part of the Famos Political Affinity Account Holder program Famos proposes that:**

- **An individual Famos Account Holder can direct Famos to remit any of the Famos Account Holder's designated revenues to any Famos Political Affinity Account Holder. However, Famos will not directly remit any funds to any Famos Political Affinity Account Holder until the individual Famos Account Holder's revenues exceed \$10.00. (See "Your Reported Revenues" section from the Famos' Terms of Service- [Exhibit 1])**
- **The Famos Account Holder is required to certify that she is an individual U.S. citizen or legal permanent resident and that she would be receiving the remitted funds individually in the absence of the re-direction. The Famos Account Holder will also be asked to make the certifications required of any donor contributing to a federal political committee over the Internet, as set forth in Advisory Opinion 1995-09.**
- **The Political Affinity Account Holder is required by Federal law to use its best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year.**
- **The Famos Account Holder track their contributions by logging into the Famos Account Manager through their Famos Account Holder account.**
- **Famos will track the Famos Account Holder's Revenue Account and inform the Famos Account Holder if their contributions to a political committee have exceeded the Federal Election Commission's limits for annual contributions.**
- **The Famos Account Holder's Account Manager include public communications disclaimers that are intended to meet the specifications set forth at 11 C.F.R. § 110.11.**

**As is the case with distributions to Famos Charitable Account Holders or Famos Non-Profit Account Holders, Famos proposes to only distribute Famos Account Holder directed contributions to those political committees who are Political Affinity Account Holders with Famos. (See "Your Reported Revenues" section from the Famos' Terms of Service- [Exhibit 1]) All remittances directed to any Political Affinity Account Holder would be credited to the Political Affinity Account Holder through an automated clearinghouse transaction on the last day of each month. Famos would transmit the contributor information to the Political Affinity Account Holder within ten days of the transfer of funds per 11 C.F.R. § 102.8(b)(2). The only information that would be provided to the Political Affinity Account Holder would be the name, address, occupation and employer of the individual Famos Account Holder. As per the Famos Terms of Service, any additional transactional expenses related to processing of the contributions would be charged to the Political Affinity Account Holder at the same rate as is charged for all Famos Account Holders.**

**Political Affinity Account Holder program proposed is to be offered by Famos to federal political committees is permissible under the Federal Election Campaign Act of 1971. Again, separate segregated funds would not be allowed to register as Famos Political Affinity Account Holders.**

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**Election Campaign Act. The limits applicable to that particular type of political committee will be specified.**

### **III. Discussion**

We ask the Federal Election Commission (the "Commission") to confirm that Famos' proposed Political Affinity Account Holder program is permissible under the Act.

#### **A. Commission Treatment of Affinity Programs**

The Act prohibits corporations from using their general treasury funds to make contributions or expenditures in connection with federal elections 2 U.S.C. § 441b(a). A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); see also 2 U.S.C. § 441b(b)(2). "Anything of value" is considered to include all in-kind contributions, including the provision of goods or services without charge or a charge that is less than the usual and normal charge for such goods or services. 11 C.F.R. § 100.52(d)(l). Section 100.52(d)(2) defines "usual and normal charge for goods" as the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution.

The Commission has examined various affinity programs in prior advisory opinions, including affinity wireless programs, credit cards, telemarketing services, certain pay-per-call services known commonly as "900-lines," and toolbar affinity programs. See, e.g., Advisory Opinions 2008-18 (Mid-Atlantic Benefits), 2006-34 (Working Assets), 2003-16 (Providian National Bank), 2002-7 (Careau & Co), 1995-34 (Politechs), 1994-33 (VITEL International), 1992-40 (Leading Edge Communications), 1991-26 (Versatel Corporation), 1991-20 (Call Interactive), 1990-14 (AT & T), 1990-01 (Digital Corrections), 1988-12 (Empire of America Federal Savings Bank), and 1979-17 (RNC) and recently Request for Advisory Opinion 2007-35 (FreeCause, Agenda Doc. No. 08-04). In essence, the Commission's rulings have established that, while it is not permissible for a corporation or bank to sponsor an affinity program in which a portion of the revenues charged and collected by the corporation or bank are donated to a federal political committee, e.g. AO 1988-12, AO 1979-17, it is permissible for a corporation to offer an affinity program in which (i) the customer has the option to direct some portion of the customer's own funds, that would otherwise be under the customer's exclusive personal control, to a federal political committee; and (ii) any services provided to the political committee are either paid for by the committee or received in exchange for fair, bargained-for consideration.

For example, in AO 1994-33, the Commission considered a program under which a company offered prepaid phone cards co-branded with the name and logo of federal political committees. The purchaser had the option to designate a portion of the purchase price of the card as a contribution to the committee, in which case the value of the minutes credited to the purchaser was reduced by the amount of the donation. The Commission approved the program on the grounds that the funds being contributed belonged to the customer, not the company, and the beneficiary committee paid all the costs associated with processing the contribution transactions.

Again, in AO 2003-16, the Commission considered a proposal in which a bank would offer a co-branded, affinity credit card with a national party committee sponsor. The

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bank (Providian) proposed to market the card, at the bank's own expense, to lists of party supporters identified by the national party committee. The national party committee had the opportunity to receive contributions from affinity cardholders in the form of customer rebates and bonuses that customers would receive through using their credit cards. Specifically, Providian proposed a rebate card that allowed cardholders to earn rebates by charging their purchases on their credit card. Providian would provide the national party committee with contributions from cardholders who authorized the Bank to forward their rebates to the national party committee. If a cardholder did not wish to forward his or her rebate to the national party committee, the rebate would be sent to the cardholder instead. Providian stated that it would charge the national party committee for any transactional expenses related to forwarding the contributions. In addition, there was a proposed bonus feature consisting of a payment to the cardholder from Providian of a certain fixed dollar amount once a cardholder charged a certain number of purchases or a certain dollar amount on the affinity credit card. Providian would give cardholders the option to have Providian forward the value of their bonuses to the national party committee. If any cardholder did not wish to contribute his or her bonuses to the national party committee, Providian would instead send the bonuses to the cardholder.

Finally, Providian proposed that the national party committee would pay for advertising space in Providian's communications to cardholders or prospective cardholders, even though the bank's other affinity sponsors were generally not required to pay for such advertising space.

The Commission determined, first, that the marketing of the card by the bank to lists of Party supporters provided by the Party, at the Bank's own expense, would not constitute an impermissible in-kind contribution but rather would be "equal exchanges of bargained-for-consideration" if two conditions were met:

- The value of the list to be provided by the national party "is sufficient to cover the costs of the services provided by the Bank under the proposed Affinity Program," and
- The arrangement to provide the services "will be similar to most affinity programs between the Bank and non-political entities."

Second, the Commission determined that, because the proposed program "will permit cardholders to choose whether or not to contribute part or all of their rebates to the national party committees," the contributions of rebates "would be treated as contributions from the cardholders' personal funds" and "the Bank will not be making an impermissible contribution." The Commission reached the same conclusion with respect to the bonus feature, for the same reasons.

Third, the Commission found that the bank would not be improperly facilitating the making of contributions because the national party committee would be charged the normal and usual rate for these services.

Finally, the Commission ruled that the bank would not be making an impermissible contribution when the national party committee purchased advertising space in mailings to cardholders and prospects because the bank would charge the normal

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**and usual fee for such advertising and no additional processing expenses would be associated with the communications or promotional materials.**

**Again, AO 2006-34, the Commission considered a proposal by Working Assets, in which a wireless phone company would offer co-branded affinity wireless phone service where new wireless phone service customers derived from political committee's mailing list were given the option of contributing billing rebates to the political committee sponsor. The political committee was given an opportunity to receive contributions from affinity wireless subscribers in the form of customer rebates (10% of their wireless bill) and direct contributions from their customers who chose to round up their bill with an additional contribution. Subscribers were offered the option of crediting the rebate to their next month's bill or donating it to the political committee. The political committee was given a further opportunity to place advertising in specific portions of the customer's bill. Working Assets, however, charged the committee fair market value for any such advertisement. The Commission approved the proposed Working Assets program.**

**First, the Commission concluded that the exchange of a mailing list for Working Assets expenditures in marketing the wireless subscriptions would not constitute a contribution to the political committee provided that:**

- The fair market value of the mailing list provided exceeded the value of the marketing services provided, and**
- The marketing services were valued in the usual and normal way by Working Assets.**

**Second, the Commission concluded that the provision by Working Assets of rebated and rounded-up amounts to the political committee would be contributions by Working Assets customers and not impermissible corporate contributions for two reasons:**

- The rebates and round-ups would occur in the ordinary course of Working Assets' business, and**
- Working Assets' customers, not Working Assets would control the disposition of the rebate and round up (directing them to the political committee or crediting them to the next bill).**

**Third, the Commission concluded that, as the political committee would be charged for any costs incurred in the transfer of funds to the committee, Working Assets would be acting as a commercial vendor and no impermissible contribution to the committee would result.**

**Finally, the Commission ruled that Working Assets would not be making an impermissible contribution when the political committee purchased advertising space in a customer's monthly bills because Working Assets would charge the normal and usual fee for such advertising and no additional processing expenses would be associated with the communications or advertisements.**

**In considering the request for Advisory Opinion 2008-18 (Mid-Atlantic Benefits), the Commission considered the contribution of transaction fees from Mid-Atlantic**

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Benefits to a party committee sponsor of the Agelity, Inc. prescription drug discount card program. Here the card holders would be able to use the cards offered by the party committee sponsors to obtain discounts on drug purchases at pharmacies in participating networks that honored the discount cards. For each purchase made by a cardholder the pharmacy network would pay Agelity, Inc. a transaction fee. Agelity, Inc. would then pay Mid-Atlantic Benefits ("MAB") \$.70 for each purchase. MAB would in turn pay a transaction fee out of what it receives from Agelity, Inc. of \$.25 to the party committee sponsor.

In this instance the proposal for MAB's political affinity program was denied by the Commission because it was deemed to result in prohibited corporate contributions by Agelity, Inc. to the Federal account of a participating political sponsor. The arrangement was deemed impermissible because:

- The transaction fees payable to the political committees were directly from Agelity, Inc's corporate funds and not from the individual's funds.
- The funds provided to the party committee by MAB were general treasury funds of Agelity, Inc. and,
- The transactions were not deemed to be isolated transactions but an on-going enterprise and would substantially exceed the value of the promotional and distribution services it would perform.

Finally, in considering the Request for Advisory Opinion 2007-35 (FreeCause), the Commission considered the contribution of revenue generated from search engines and retail commissions generated for political committees through use of a Political Affinity toolbar program offered by FreeCause. Here the political committee was allowed to receive those commissions if the individual users of the Political Affinity Toolbars were able to:

- Receive the revenues the toolbar usage generates in the ordinary course of business, and
- Individually control the disposition of the revenue.

FreeCause would also hold any remittances directed to the Political Affinity Sponsors in segregated accounts and which were not commingled with FreeCause's corporate funds.

Finally, since the political committee would be charged normal market rate costs for any specialized toolbar customization, the commission approved the FreeCause Political Affinity Sponsor program. The Commission voted 2-0 on a motion to approve Agenda Doc. No. 08-04. The Commission was unable to render an opinion in this matter because the affirmative vote of four members of the Commission is required to render an advisory opinion.

#### **B. Analysis of Proposed Famos' Political Affinity Account Holder Program**

The proposed affinity program Famos plans to offer to federal political committees meets the two the requirements established by the Commission to ensure that such affinity programs do not result in the making of any impermissible in-kind corporate contribution.

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**First, as in AO 1994-33, AO 2003-16, and AO 2006-34, the Famos Account Holder of the sponsored Famos Platform would have the option to direct some portion of the Famos Account Holder's own revenue that would otherwise be under the Famos Account Holder's exclusive personal control, to a federal political committee. Famos will however only direct funds at the Famos Account Holder's request to those political committees who are Famos Political Affinity Account Holders. As in AO 2003-16 and AO 2006-34, the amount of the revenue to which the Famos Account Holder is entitled would be the property of that Famos Account Holder at the time the remittance is directed to be made. The proposed program would permit Famos Account Holders to choose whether or not to contribute their revenue to a designated Political Affinity Account Holder. Again, Famos will only direct funds at the Famos Account Holder's request to those political committees who are Famos Political Affinity Account Holders. Consequently, as in AO 2003-16 and AO 2006-34, contributions of Famos Account Holders' remittances would constitute contributions from the Famos Account Holder's funds. Neither Famos nor any other corporation or incorporated entity would be making any form of contribution to the Political Affinity Account Holder. Famos Account Holders would be able to make these contributions as long as they do not exceed the applicable limits to the authorized committee, PAC or party committee or the applicable aggregate limit, and provided, of course, that such donating Famos Account Holders are not foreign nationals, or government contractors.**

**Second, as in the prior AO's, any services provided to the federal political committee are either paid for by the committee itself or received in exchange for fair, bargained-for consideration. As in AO 2003-16 and AO 2006-34, Famos would not be facilitating the making of any contributions. Furthermore, the Political Affinity Account Holder would pay for any costs for bespoke customization the Political Affinity Account Holder would request from Famos.**

**Third, unlike the Mid-Atlantic Benefits AO 2008-18, Famos will not direct any funds to the Political Affinity Account Holder that are in any way general treasury funds of Famos.**

**Fourth, unlike the Providian program, the Famos program will not involve any marketing or serving of political advertisements on behalf of the Political Affinity Account Holder. Rather, once an Political Affinity Account Holder signs up to incorporate the Famos Platform, it will be up to the Political Affinity Account Holder to post the appropriate links, materials, etc on its own website and to promote usage of the Famos Platform to its members and supporters, all at the Political Affinity Account Holder's own expense.**

**Fifth, as in the FreeCause opinion the Political Affinity Account Holder can receive the generated commissions and revenues because the Famos Account Holders are able to:**

- Receive these revenues generated for ordinary course of business, and**
- Control the disposition of the revenue.**

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Sixth, similar to the FreeCause request a Political Affinity Account Holder cannot compel or centralize any registration of its membership en masse. Because browser based applications such as the FreeCause toolbar and the Famos Platform do not function from a centralized network situation, a Famos Account Holder (including organizations and Political Affinity Account Holders) could not force its membership to unknowingly or coercively utilize the Famos Platform.

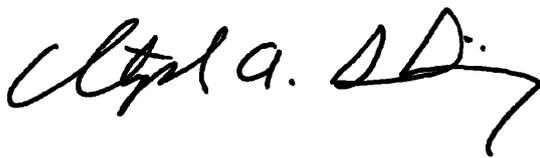
Finally, Famos understands that its forwarding of contributions to Political Affinity Account Holders does not relieve the Famos from obtaining and disclosing contributor information, such as the contributor's address, occupation, and employer information. See 2 U.S.C. § 431(13), and 434(b)(3)(A); 11 C.F.R. § 100.12 and 104.3(a)(4)(i). As explained above, in accordance with Advisory Opinion 2003-16 and AO 2006-34, Famos would collect and provide to the Political Affinity Account Holder the contributing Famos Account Holder's current address, occupation, and employer, and would forward the information to the Political Affinity Account Holder at the same time that the funds are transferred. Any expenses associated with this additional reporting operation would be charged, in full, to the Political Affinity Account Holder as it would be charged to any Famos Account Holder (individual or organizational) in need of specialized reporting procedures.

#### **IV. Conclusion**

Based on the foregoing, we respectfully request the Commission to determine that Famos' proposed Political Affinity Account Holder Program would be permissible under the Act and the Commission's regulations.

If you have any questions or need any further information, please contact the undersigned.

Respectfully Submitted,



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## **EXHIBIT 1**

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## **Famos' Terms of Service**

These Terms of Service ("Terms") govern your access to and use of Famos LLC ("Famos") services (the "Platform"), and any information, text, graphics, or other materials uploaded, downloaded or appearing on the Platform (collectively referred to as "Content"). Your access to and use of the Platform is conditioned on your acceptance of and compliance with these Terms. By accessing or using the Platform, you agree to be bound by these Terms.

### **Basic Terms:**

You are responsible for your use of the Platform, for any content you post to the Platform, and for any consequences thereof. The Content you submit, post, or display will be able to be viewed by other users of the Platform and through third party services and websites (go to the Account Settings page to control who sees your Content). You should only provide Content that you are comfortable sharing with others under these Terms.

What you say on Famos may be viewed all around the world instantly. You may use the Platform only if you can form a binding contract with Famos and are not a person barred from receiving services under the laws of the United States or other applicable jurisdiction. You may use the Platform only in compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations.

The Platform that Famos provides are always evolving and the form and nature of the Platform that Famos provides may change from time to time without prior notice to you. In addition, Famos may stop (permanently or temporarily) providing the Platform (or any features within the Platform) to you or to users generally and may not be able to provide you with prior notice. We also retain the right to create limits on use and storage at our sole discretion at any time without prior notice to you.

The Platform may include advertisements, which may be targeted to the Content or information on the Platform, queries made through the Platform, or other information. The types and extent of advertising by Famos on the Platform are subject to change. In consideration for Famos granting you access to and use of the Platform, you agree that Famos and its third party providers and partners may place such advertising on the Platform or in connection with the display of Content or information from the Platform whether submitted by you or others.

### **Privacy:**

Any information that you provide to Famos is subject to our Privacy Policy, which governs our collection and use of your information. You understand that through your use of the Platform you consent to the collection and use (as set forth in the Privacy Policy) of this information, including the transfer of this information to the United States and/or other countries for storage, processing and use by Famos. As part of providing you the Platform, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Platform and your Famos account, which you may not be able to opt-out from receiving.

You can opt-out of most communications from Famos. Please see the Notices tab of Settings for more.

### **Registration and Account Security:**

Famos Account Holders provide their real names and information, and we need your help to keep it that way. Here are some commitments you make to us relating to registering and maintaining the security of your account:

- You will not provide any false personal information on Famos, or create an account for anyone other than yourself without permission.
- You will not use your personal profile for your own commercial gain (such as selling your Account Holder profile to an advertiser).
- You will not use Famos if you are under 13.
- You will not use Famos if you are a convicted sex offender.
- You will keep your Account Holder contact information accurate and up-to-date.
- You will not share your password, let anyone else access your account, or do anything else that might jeopardize the security of your Account Holder account.
- You will not transfer your Account Holder account to anyone without first getting our written permission.
- If you select a username for your Account Holder account, we reserve the right to remove or reclaim it if we believe appropriate (such as when a trademark owner complains about a username that does not closely relate to a user's actual name).

## **Revenues**

### **Generated Revenues:**

Famos distributes affiliate payments to registered Account Holders whose digital syndicated media has generated revenue. By becoming a Famos Account holder, you are appointing Famos as your agent to handle all Famos transactions. It is entirely possible that circumstances will occur that will make it, in Famos' sole discretion, impossible to maintain the structure described in this document. We agree that we will not make any financial changes retroactively. Any changes will be for future payments. If we do need to change any significant terms, we will notify you by email before any change occurs. At that point, you will have the option of removing your account if you choose to stop receiving payments from Famos.

### **Your Reported Revenues:**

When you register for Famos as an Account Holder, Famos will establish Revenue Accounts for you as part of your Famos Account. Your Revenue Accounts will hold any revenues generated by your syndicated media from the use of the Famos Platform. Any revenues in your Famos Revenue accounts will not be held in an interest-bearing account and will not bear interest. Famos may adjust, both up or down, any reported revenue balances as may be necessary or required to reflect payment adjustments implemented, failures to pay, or other reasons caused, by third parties. The reports of revenues set forth in your Famos Revenue Account will include such information as will be determined by Famos from time to time in its sole discretion, and will be conclusive, final and binding on you.

You will be able to use, or receive, the revenues reported in your Famos Revenue Accounts in the manner (or manners) that Famos may set forth from time to time. When you have registered for a Famos Account, you will be asked to indicate how you would like Famos to distribute your revenues.

You may also direct Famos to distribute your revenues in your Famos Revenue Account(s) to any Famos Charitable Account Holder, Famos Non-Profit Account Holder, or Famos Political Affinity Account Holder.

If the you, the Famos Account Holder, wants Famos to direct any portion of your revenues in your Famos Revenue Account(s) to a Famos Charitable Account Holder, Famos Non-Profit Account Holder, or Famos Political Affinity Account Holder, the minimum accrued revenue (see below) in your Account Holder's Revenue Account must equal to or greater than \$10.00 before

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**a remittance will be made. Famos will not distribute your revenues to any Charitable, Non-Profit, or Political organization that is not a Famos Account Holder.**

**If you want to donate your revenue funds to a political, charitable or non-profit organization which is not a Famos Account Holder, then you must do so on your own.**

**The minimum ("Minimum Account Balance") amount for which Famos will issue a revenue payment to a Famos Account Holder is \$10.00. If an Account Holder's revenues do not equal or exceed \$10.00, the revenues will be accrued until they total at least that amount. Only then will a revenue payment be issued to an Account Holder provided you have a valid functioning Bank savings, checking account, or active PayPal (a registered trademark of eBay, Inc.) account. Each merchant agreement, affiliate agreement, and network operating agreement that Famos maintains specifies a holding period of varying length to validate transactions and allow for product returns or service cancellations. After the given holding period, the merchants, affiliates, and networks approve the revenue for payment and initiate a payment cycle from these groups to a commission aggregator to Famos. Famos will process payment to Account Holder 30 days after the end of the month in which the revenue status is approved, subject to Famos receiving payment of the revenue.**

**If a Famos Account Holder has a specific situation and needs to receive a revenue payout before their Famos Revenue Account has reached the \$10.00 threshold, Famos will do everything it can to respond to this request. The Famos Account Holder will need to contact customer service a customersupport@Famos.com to discuss their individual situation.**

**Famos shall have no obligation to make payment of any revenues for which Famos has not received payment from the relevant Merchant, Network, Affiliate, or Partner of all monies due to Famos or if you do not have a valid functioning Bank savings account, checking account, or active PayPal account and as further set forth herein. In addition, Famos reserves the right to suspend Revenue Accounts or revenue payments flagged as irregular or unusual in pattern or amount pending completion of investigation and validation of transaction(s) with the merchant(s). Accordingly, revenues will not be accrued to an Account Holder's Revenue Account until between 75 and 165 days after the date of the sales transaction that generated the commission. As a result, it may take up to 165 days after a sales transaction takes place before the revenues generated by that sale will be accrued to the Account Holder's Revenue Account. Member commissions will be paid by direct deposit to the Account Holder's Bank savings, checking account or PayPal account.**

**If we believe you are an Account Holder from whom we are obligated to obtain tax information and you do not provide this information to us after we have requested it, we may withhold your revenues until you provide this information or otherwise satisfy us that you are not a person or entity from whom we are required to obtain tax information. I UNDERSTAND THAT I WILL NOT BE TREATED AS AN EMPLOYEE OF FAMOS FOR FEDERAL OR STATE TAX PURPOSES. Famos is not responsible for withholding, and shall not withhold or deduct from my bonuses and commissions, if any, FICA or taxes of any kind. It is my responsibility to pay all local, state, and federal taxes on any income generated through my use of the Famos Platform. Any bank fees related to returned or cancelled checks due to a contact or payment information error or omission may be deducted from the newly issued payment.**

**In the event that your use of the Famos Platform has terminated, Famos will pay your earned revenue (net of offset for fees and other deductions) to you within approximately ninety (90) days after the end of the calendar quarter in which such termination occurred. If your earned revenue after termination is less than \$5, Famos will donate that balance to a charity pool of our choosing.**

**If you dispute any payment made in connection with the Famos Revenue Account, you must notify Famos in writing within thirty (30) days of any such payment. Failure to so notify Famos**

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shall result in the waiver by you of any claims related to such disputed payment. The number or amount of revenues, credits for Payouts, and debits for Charge-backs, as calculated by Famos, shall be final and binding on you. No other measurements or statistics of any kind shall be accepted by Famos or have any effect under these Additional Terms.

**Transactional Fees:**

Any transactional expenses related to processing of the Account Holder Revenues will be charged to the Famos Account Holder.

**Forfeiture of Revenues:**

There are several ways in which you may lose your ability to access, use, or withdraw your reported Revenues from your Famos Revenue Account. These include, without limitation, the following:

- If you in any way violate or otherwise breach these Terms of Service;
- If you engage in any activity intended to, or the result of which could or would, defraud Famos or any third party, including, without limitation, with respect to any advertising activity arising from your Famos Account Holder Account, taking any action (or authorizing any third party to take any action) to inflate or otherwise manipulate traffic or click-through counts from your Famos Account Holder Account to participating advertisers or merchants, or otherwise attempting, in Famos' good faith judgment, to simulate artificially the behavior or activity of an individual live Web user.

In the event of any downtime of the site, or a glitch that prevents Famos from updating, or any other technical problem the Famos Platform may undergo, Famos, as a free service, is not responsible for compensating Famos Account Holders for perceived loss of revenue potential. Famos cannot treat revenue potential the same as actual recorded revenue earned. By using the Famos Platform, you acknowledge and agree that Famos will not be responsible for, and will not be obligated in any manner to repay you for, any lost revenues.

**Unclaimed Revenues:**

Famos will do its best to notify the holder of any unclaimed revenues that it holds in any Unique Anonymous Revenue Account. Famos will make every attempt to communicate with the unique ID via the similar delivery mechanism assigned to that unique ID in any existing Unique Anonymous Revenue Accounts. (E.G. - the email address, Twitter feed, domain name, etc.) If the holder of the aforementioned unique ID can show a verifiable valid claim of ownership to that unique ID, Famos will remit the funds due that unique ID owner. If after 12 months a valid Famos Account Holder has not claimed these revenues, any funds in these unclaimed Unique Anonymous Revenue Accounts will be donated to a charity of Famos' choosing.

**Passwords:**

You are responsible for safeguarding the password that you use to access the Platform and for any activities or actions under your password. We encourage you to use "strong" passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your account. Famos cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

**Content on the Platform:**

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All Content, whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such Content. We may not monitor or control the Content posted via the Platform and, we cannot take responsibility for such Content. Any use or reliance on any Content or materials posted via the Platform or obtained by you through the Platform is at your own risk.

We do not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any Content or communications posted via the Platform or endorse any opinions expressed via the Platform. You understand that by using the Platform, you may be exposed to Content that might be offensive, harmful, inaccurate or otherwise inappropriate, or in some cases, postings that have been mislabeled or are otherwise deceptive. Under no circumstances will Famos be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Platform or broadcast elsewhere.

**Your Rights:**

You retain your rights to any Content you submit, post or display on or through the Platform. By submitting, posting or displaying Content on or through the Platform, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).

This license is you authorizing us to make your Topic Page(s) available to the rest of the world and to let others do the same. However, what is yours is yours – you own your content. You agree that this license includes the right for Famos to make such Content available to other companies, organizations or individuals who partner with Famos for the syndication, broadcast, distribution or publication of such Content on other media and Platform, subject to our terms and conditions for such Content use.

Famos has an evolving set of rules for how API developers can interact with your content. These rules exist to enable an open system with your digital rights in mind. Such additional uses by Famos, or other companies, organizations or individuals who partner with Famos, may be made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Platform.

We may modify or adapt your Content in order to transmit, display or distribute it over computer networks and in various media and/or make changes to your Content as are necessary to conform and adapt that Content to any requirements or limitations of any networks, devices, services or media.

You are responsible for your use of the Platform, for any Content you provide, and for any consequences thereof, including the use of your Content by other users and our third party partners. You understand that our partners may rebroadcast your Content and if you do not have the right to submit Content for such use, it may subject you to liability. Famos will not be responsible or liable for any use of your Content by Famos in accordance with these Terms. You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to any Content that you submit.

Famos gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software that is provided to you by Famos as part of the Platform. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Platform as provided by Famos, in the manner permitted by these Terms.

**Famos Rights:**

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All right, title, and interest in and to the Platform (excluding Content provided by users) are and will remain the exclusive property of Famos and its licensors. The Platform is protected by copyright, trademark, and other laws of both the United States and foreign countries. Nothing in the Terms gives you a right to use the Famos name or any of the Famos trademarks, logos, domain names, and other distinctive brand features. Any feedback, comments, or suggestions you may provide regarding Famos, or the Platform is entirely voluntary and we will be free to use such feedback, comments or suggestions as we see fit and without any obligation to you.

**Restrictions on Content and Use of the Platform:**

We reserve the right at all times (but will not have an obligation) to remove or refuse to distribute any Content on the Platform and to terminate users or reclaim usernames. Please review the Famos Rules (which are part of these Terms) to better understand what is prohibited on the Service. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce the Terms, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of Famos, its users and the public.

Famos does not disclose personally identifying information to third parties except in accordance with our Privacy Policy.

Except as permitted through the Platform (or these Terms), you have to use the Famos API (see the Famos Rules for API Use) if you want to reproduce, modify, create derivative works, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the Content or Platform.

We encourage and permit broad re-use of Content. The Famos API exists to enable this. You may not do any of the following while accessing or using the Platform: (i) access, tamper with, or use non-public areas of the Platform, Famos' computer systems, or the technical delivery systems of Famos' providers; (ii) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures; (iii) access or search or attempt to access or search the Platform by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by Famos (and only pursuant to those terms and conditions), unless you have been specifically allowed to do so in a separate agreement with Famos (NOTE: crawling the Platform is permissible if done in accordance with the provisions of the robots.txt file, however, scraping the Platform without the prior consent of Famos is expressly prohibited); (iv) forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Platform to send altered, deceptive or false source-identifying information; or (v) interfere with, or disrupt, (or attempt to do so), the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, mail-bombing the Platform, or by scripting the creation of Content in such a manner as to interfere with or create an undue burden on the Platform.

**Copyright Policy:**

Famos respects the intellectual property rights of others and expects users of the Platform to do the same. We will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to us. If you believe that your Content has been copied in a way that constitutes copyright infringement, please provide us with the following information: (i) a physical or electronic signature of the copyright owner or a person authorized to act on their behalf; (ii) identification of the copyrighted work claimed to have been infringed; (iii) identification of the material that is claimed to be infringing or to be the

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subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; (iv) your contact information, including your address, telephone number, and an email address; (v) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (vi) a statement that the information in the notification is accurate, and, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

We reserve the right to remove Content alleged to be infringing without prior notice and at our sole discretion. In appropriate circumstances, Famos will also terminate a user's account if the user is determined to be a repeat infringer. Our designated copyright agent for notice of alleged copyright infringement appearing on the Platform is:

Famos, Inc.  
Attn: Copyright Agent  
8645 Holloway Drive  
Los Angeles, CA 90069  
Email: copyright@Famos.com

**The Platform is Available "AS-IS":**

Your access to and use of the Platform or any Content is at your own risk. You understand and agree that the Platform is provided to you on an "AS IS" and "AS AVAILABLE" basis. Without limiting the foregoing, Famos AND ITS PARTNERS DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. We make no warranty and disclaim all responsibility and liability for the completeness, accuracy, availability, timeliness, security or reliability of the Platform or any content thereon. Famos will not be responsible or liable for any harm to your computer system, loss of data, or other harm that results from your access to or use of the Platform, or any Content. You also agree that Famos has no responsibility or liability for the deletion of, or the failure to store or to transmit, any Content and other communications maintained by the Platform. We make no warranty that the Platform will meet your requirements or be available on an uninterrupted, secure, or error-free basis. No advice or information, whether oral or written, obtained from Famos or through the Platform, will create any warranty not expressly made herein.

**Links:**

The Platform may contain links to third-party websites or resources. You acknowledge and agree that we are not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by Famos of such websites or resources or the content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

**Limitation of Liability:**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FAMOS AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, DATA, USE, GOOD-WILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (i) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE PLATFORM; (ii) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE PLATFORM, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES; (iii) ANY CONTENT OBTAINED FROM THE PLATFORM; AND (iv) UNAUTHORIZED ACCESS, USE OR ALTERATION OF

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**YOUR TRANSMISSIONS OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT FAMOS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.**

**Exclusions:**

Some jurisdictions do not allow the exclusion of certain warranties or the exclusion or limitation of liability for consequential or incidental damages, so the limitations above may not apply to you.

**Waiver and Severability:**

The failure of Famos to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. In the event that any provision of these Terms is held to be invalid or unenforceable, the remaining provisions of these Terms will remain in full force and effect.

**Controlling Law and Jurisdiction:**

These Terms and any action related thereto will be governed by the laws of the State of California without regard to or application of its conflict of law provisions or your state or country of residence. All claims, legal proceedings or litigation arising in connection with the Platform will be brought solely in Los Angeles County, California, and you consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum. If you are accepting these Terms on behalf of a United States federal government entity that is legally unable to accept the controlling law, jurisdiction or venue clauses above, then those clauses do not apply to you but instead these Terms and any action related thereto will be governed by the laws of the United States of America (without reference to conflict of laws) and, in the absence of federal law and to the extent permitted under federal law, the laws of the State of California (excluding choice of law).

**Entire Agreement:**

These Terms, the Famos Rules and our Privacy Policy are the entire and exclusive agreement between Famos and you regarding the Platform (excluding any services for which you have a separate agreement with Famos that is explicitly in addition or in place of these Terms), and these Terms supersede and replace any prior agreements between Famos and you regarding the Platform.

**Famos reserves the right to revise these Terms from time to time; the most current version will always be at Famos.com/tos. If the revision, in our sole discretion, is material, we will notify you via a Famos update or e-mail to the email associated with your account. By continuing to access or use the Platform after those revisions become effective, you agree to be bound by the revised Terms.**

This Platform is operated and provided by Famos LLC, 8645 Holloway Drive, Los Angeles, CA 90069. If you have any questions about these Terms, please contact us.

***Effective: November 1, 2009***

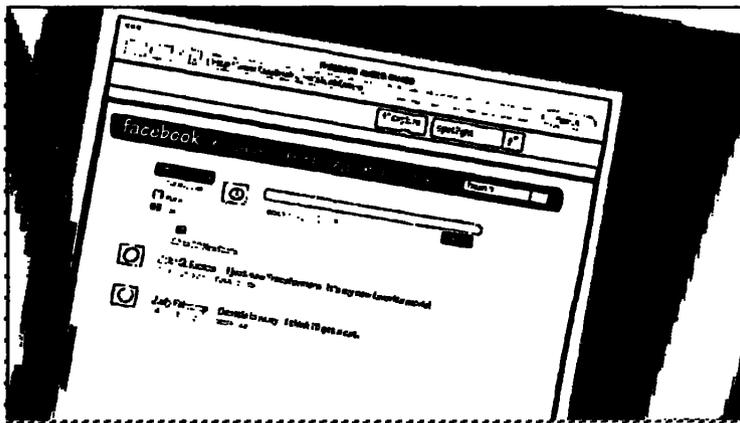
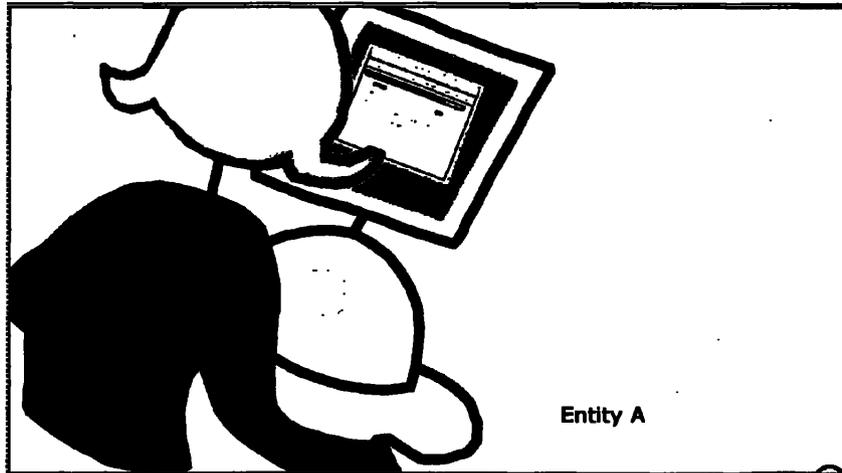
Thomasenia P. Duncan, Esq.  
April 2, 2010

## **EXHIBIT 2**

**Step 1: An individual or organization joins Famos as an Account Holder.**

This now enables the Famos Platform's functionality across all of the Famos Account Holder's digital instantiations\*

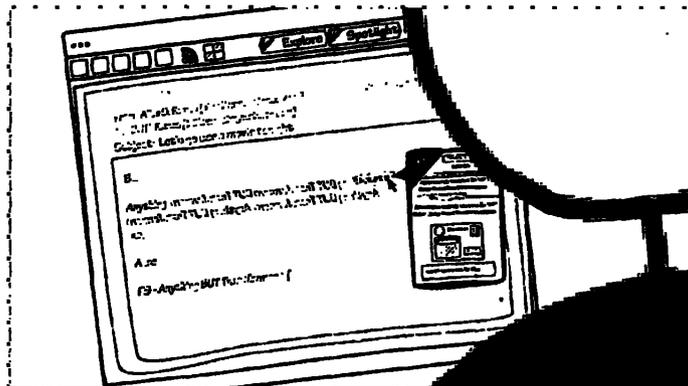
(\* Browser Bars, Social Networks, Blog Posts, email, etc.)



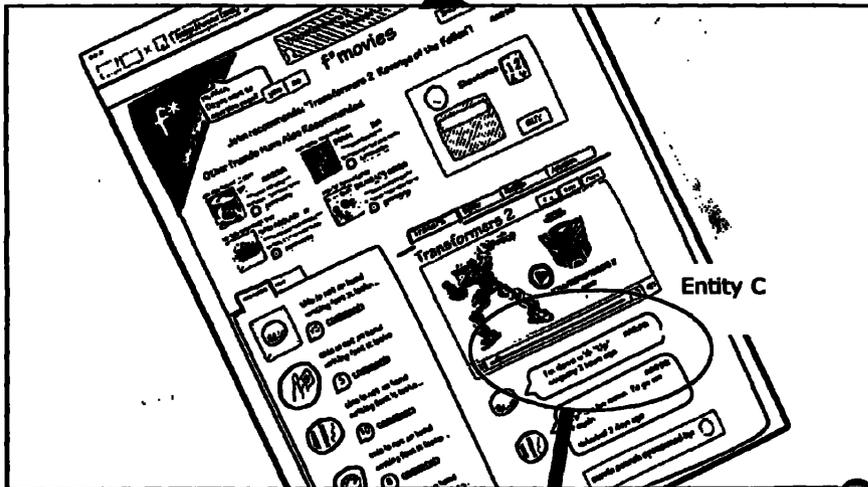
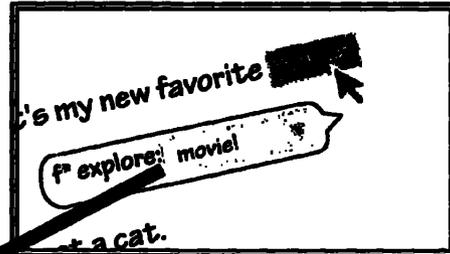
**Step 2: A social network contributor posts on a Famos Account Holder's social network**

**Step 3: Someone "views" the Account Holder's content and finds an interesting reference.**

The Famos Platform allows a viewer to select any content of interest in order to explore for more information by simply highlighting or clicking a word, image, or any other content.



**Step 4:** "Hey that's interesting what happens when I click on the word? Answer: The Famos Spotlight Window is activated and populated with your topic of interest.



**Step 5:** From the spotlight window a Famos Topic Page is dynamically generated. Herein resides content based around the spotlight topic and all of the monetizable events the Famos Platform can find.

**Step 6:** From a post on someone's computer to a dynamically generated Famos Topic page a viewer finds a movie trailer interesting and plays it. A seemingly mundane post on a social network can now generate revenue for all of the Famos Account Holders involved.



### ***What is the Famos Platform doing in the background?***

When a viewer finds an interesting topic (Step 3 above) and triggers a spotlight topic (Step 4),

- At the moment the viewer spotlights a topic, Famos assigns the Famos Account Holder's ID to that content (let's call them **Entity A** for this example). If that topic came from another source [EG an affinity member's forum posting (**Entity B**) or the Associated Press (AP)] but was found on a Famos powered Account Holder's digital instantiation, Famos also assigns an ID to that other source and identifies in this transactional/referral chain.
- The Famos Platform is searching the web for all content it can find based around the spotlight word.
- Famos then dynamically compiles all the content it has found and delivers it in the form of a Famos Topic Page.
- If there are any associated monetizable events around any results and the spotlight word, the Famos Platform then associates it with the content. Not all content has associated monetizable events, but all content has a connection to the spotlighted topic.
- On the revenue side, the affiliate networking and search engine companies have now assigned a micro payment for search to Famos (since they can recognize that the spotlight topic that has generated search came from their affiliate Famos.com)

Now the viewer is looking at a Famos Topic page of dynamic content generated by the spotlight topic.

At Step 5, the viewer has found on the Famos Topic Page an interesting "Facebook" wallpost as related to a movie. The viewer sees a movie trailer and decides to "play" it.

- The Famos Platform has again associated a Famos Account Holder ID with the "Facebook" wallpost and adds it to this referral chain. (**Entity C**) (Note: this might be an Anonymous Famos Account Holder ID if this "Facebook" poster is not already a Famos Account Holder.)
- The monetized event found by the Famos Platform associated with the "Facebook" wallpost is the playing of a movie trailer.
- The assigned commission for playing the trailer is paid by the movie distribution company through their affiliate network to their recognized affiliate, in this instance, Famos.
- The Famos platform then assigns the revenue portions to all of the Famos Account Holder IDs found in this transactional/referral chain.

In this example, Famos would recognize three links in this transactional/referral chain.

- **Entity A** - The Famos Account Holder that has a Famos powered digital instantiation; in this case a social network.
- **Entity B** - The member of Entity A's affinity group who added content to Entity A's social network, and
- **Entity C** - is the owner of the "Facebook" post that the Famos Topic Page found and associated with the monetizable event.

(Note: The "transaction" by the viewer could have just as easily been a purchase of a DVD through Amazon of about the spotlighted topic. If the DVD purchase has a commission assigned to it then that associated revenue would be assigned to Famos through its affiliate networks.)

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## **EXHIBIT 3**

## **Discussion of common on-line revenue generation: Current Practices**

### **A. Specifics on Internet Search Commissions**

It is now a common practice in Internet marketing for website owners - for example, online retailers - to pay search engine companies (such as Google<sup>23</sup> or Yahoo!) for advantageous placement of their website in search engine results (also known as sponsored links<sup>24</sup>). Search engine companies, in turn, encourage the use of their search engine by entering into commission-based agreements with companies, such as a toolbar provider, who direct traffic to their particular search engine. While search engine companies commonly provide their own platforms and tools (such as Google), there are many other independent providers of platforms and toolbars, including media sites, organizational websites and companies that specialize in developing web based applications.

Search engine companies very much want those independent platforms to direct users to their search engines. For that reason, they commonly enter agreements with platform and toolbar providers to pay those providers commissions on searches generated through the toolbar.

Recently, toolbar providers in turn have begun to promote use of their toolbars by arranging to share these commissions, in certain cases, with users of the toolbar. For example, a new company called Conduit™ offers users of its toolbar an opportunity to share in the revenue paid to Conduit by search engine providers. Any Internet user joins the "Rewards Program" of Conduit by signing up online and downloading Conduit's proprietary toolbar. (Attached hereto as Exhibit 4 is a sheet explaining Conduit's "Rewards Program" program.) Every time an individual user uses the toolbar to do an Internet search, Conduit earns a fee from the search engine provider—for example, up to 10 cents per search from Google. "Rewards Program" members earn a monthly share of Conduit's revenue from search engine commissions, based on the individual user's use of the proprietary toolbar that month.

Famos has an affiliate agreement with all of the search engine providers (Google,

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<sup>23</sup> Google AdSense for search allows website owners to place Google search boxes on their websites. When a user searches the Internet or the website with the search box, Google shares any advertising revenue it makes from those searches with the website owner. However the website owner is paid only if the advertisements on the page are clicked: AdSense does not pay publishers for mere searches.

<sup>24</sup> Sponsored Links are links paid for to show up first on a search engine result page. Websites that utilize ads will display an advertisement when a keyword query matches an advertiser's keyword list, or when a content site displays relevant content. Such advertisements are called sponsored links or sponsored ads, and appear adjacent to or above search engine results pages, or anywhere a web developer chooses on a content site.

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Yahoo! Search et al.) These providers pay a commission to Famos for each search generated through a Famos Platform. Every time an individual member or supporter of the organization uses the Platform to make a search, Famos will receive revenue as explained above. Famos will then rebate a portion of that revenue to the Famos Account Holder's account from which that search was generated, as described below.

The amount of revenue generated by searches will vary and is determined by proprietary formula held by the search engine companies which takes into account what the various search engines are paid by those companies and organizations listed in the "sponsored" section of the results.

#### **B. Specifics on Performance Marketing Commissions**

Performance Marketing, which is also commonly known as Affiliate Marketing, is an Internet-based marketing practice in which a business rewards members of their affiliate network for each visitor or customer brought generated by the affiliate's marketing efforts. Because marketing on the Internet is relatively inexpensive when compared to the ratio of cost against the reach of the target audience, companies can reach a wide audience for a small fraction of traditional advertising budgets. The nature of the medium allows consumers to research and purchase products and services at their own convenience. Therefore, businesses have the advantage of appealing to consumers in a medium that can bring results quickly.

However, in order for on-line or Internet marketing efforts to work, the marketer needs to have traffic driven to their on-line presences (Domain name, website, URL, etc.) In order to achieve this traffic the marketer or advertiser is willing to pay the search engine companies and the originating websites (domain names) a commission for producing this traffic. Exposure, response, and overall efficiency of Internet media are easier to track than traditional off-line media Internet marketing can offer a greater sense of accountability for advertisers.

Advertising networks are the major source of these Performance Marketing revenues. For example, an on-line ad unit (a given sized standard advertising "spot") that is seen on a website page has been paid for by an advertiser or advertising network. The revenue generated when somebody interacts with this "spot" is typically priced by the large on-line ad placement networks (e.g. Google.) This pricing is established through a series on on-going keyword auctions through the advertisers and/or their advertising agencies.

Based on the number of times a "spot" is "viewed" (by clicking on it, or when it happens to pop-up on a website, depending on the terms for that advertisement) the advertiser will pay Google an agreed upon price for that type of action. This could be a straight view of the "spot" or a more sophisticated action that would require a viewer to click on or watch certain embedded content. These are charged to the advertiser at a higher rate since the viewer has had to take a specific action in order to view these "spots." Because the advertising networks (e.g. Google) want to be able to establish a value per view, click, transaction, etc. they are willing to share a portion of the fees received from their advertisers with their customers. Google's customer's are website owners, content publishers, web loggers ("Bloggers") etc. who have signed up (subscribed) for these free services that Google offers through their series of products and the Google ad network. All large ad networks (Google,

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Yahoo, Bing etc.) are open to any subscribers interested in utilizing their services and products.

The revenue model for these large on-line networks is drive traffic to and through their systems. This traffic can be in the form of keyword searches, page views, clicks on ads, or downloading movie trailers. The list is endless (see performance marketing).

### **C. Specifics on Retail Commission Revenue**

Similar to advertising networks, on-line retailers will also pay commissions based on transactions on their website. These retailers will offer this service through affiliate networks. An affiliate program can be of the "in-house" type like that offered through Amazon or of the type arranged through an affiliate aggregation service such as Commission Junction. As with the large advertising networks example these affiliate programs are open on a free sign-up (subscription) basis.

Subscribers of these affiliate networks receive compensation through commissions or finders fee ascribed to the associated transaction. The amount and nature of these commissions vary widely, but the practice is common and is widely used, from an individual blogger who collects commissions off a link to Amazon.com facilitating purchase of a reviewed book, to online comparison-shopping sites like PriceGrabber.com.

For example, when a user of the Conduit toolbar executes a search, clicks on an advertisement, and/or makes a purchase from an online retailer located through a search using the toolbar, Conduit receives a referral fee or a commission from that retailer. As an example, Amazon pays an 8.5% commission to most websites who refer customers that purchase something from Amazon. In this case Conduit would then be paid the resultant commission by Amazon if the sale on Amazon came through the Conduit toolbar action.

Some website owners, including online retailers, have also developed affinity programs to allow nonprofit organizations to use retail commissions as fundraising programs, a practice sometimes called "affinity shopping." Under some systems, users register at an online shopping website and specify charities that they would like to benefit. An example of this commission stream is OneCause. (Attached hereto as Exhibit 5 is a sheet explaining OneCause's program.) By shopping through their website, users generate affiliate commissions for OneCause. OneCause will share a portion of those commissions with the users' indicated charities. Under other systems, a charity provides a link to an external shopping website. When users follow that link to access that shopping website instead of accessing it directly, the referring charity via their domain name receives a commission on the users' purchases.

The retail book-selling outlet Alibris offers an example of an Affiliate Shopping program. (Attached hereto as Exhibit 6 is Alibris' explanation of its affiliate program.) Under this program, a nonprofit organization can sign up free of charge to be an affiliate. The organization agrees to link their website to Alibris' online retailing site, together with various optional promotional graphics, designs, etc that the nonprofit organization can include on its own site. Every time the nonprofit organization refers

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a customer to Alibris through the link on the organization's site, and that customer makes a purchase, the nonprofit organization earns a commission. If the commission's total \$25 or more in any month, Alibris sends the organization a check for the amount of the commission that it has earned.

**D. Famos' Role in Revenue Sharing from Affiliate and Advertising Networks**

Famos is a member of all of these affiliate and advertising networks, as are numerous other web sites and individuals throughout the web. Most affiliate members simply use their on-line presence (domain name) to collect the revenue that these networks pay out per their revenue or commission programs. Our business model takes these existing commissions and revenues ("revenue") and shares them with the Account Holders of the Famos Platform who were involved in the revenue generating transaction. The Famos Platform can follow the transaction path and remunerate the Account Holder for their portion of the generated revenue. When revenue is paid to Famos, Famos retains its portion, 20% per Famos' Term of Service, and then pays the proportionate amount of the remaining revenue received to the Account Holders involved in that given transaction.

In the example of an email or a text message sent by a Famos Account Holder, simply highlighting any word or phrase generates a templated topic page ("Famos Topic Page" See Exhibit 2) around that highlighted word or phrase. The Famos Platform finds opportunities for monetizing existing links and media within the Famos Topic Page. This is done in real time and through Famos' affiliations with every major ad server and commission aggregator. Whenever any revenue is generated, whether it is an impression, action, engagement, or transaction, Famos keeps a fee from the revenue and then splits the remainder between those digital instantiations Famos can identify in the transaction referral chain. These small payments add up over time. (See Exhibit 7 – The Long Tail)

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April 2, 2010

## **EXHIBIT 4**

conduit

Log in Get Started Now

search:...

Home Community Toolbars Conduit Open Benefits Gallery About Resource Center

# Conduit Your Site.

Create a toolbar for your users. Share your content with the world.

Get started now

Play Video

Sri Lanka Toolbar  
Searching the Web  
Milano, Italy

**► Your Community Toolbar**

- Increase site traffic, user loyalty and revenue
- Hosted solution (US Patent 7,529,766)
- Adopted by over 90% of toolbar publishers

Google

**► Conduit Open — New!**

- Reach 60M Conduit-powered toolbar users
- Share your content with 200,000 publishers
- Thousands of gadgets for your toolbar

[More info >](#)

*“Just like Google and Yahoo we have our own useful toolbar.”*  
Sparklebox - online resources for teachers

## 200,000 publishers. 60 million users. One company.

▼ Create It yourself   ► Promote & optimize   ► Increase revenue   ► Conduit Open™

**The most powerful community toolbar you can build. You don't need a tech wiz to do it, and it's FREE!**

About

► Overview

Media Coverage

Press Releases

Case Studies

Awards

Partners

Major Publishers

Agencies

Content Syndication

Social Platforms

Web Hosting ISPs

Leadership

Careers

Media Kit

Contact Us

# One Company.

Conduit > About > Overview

## About Conduit

con-duit (kɒn'dɪt)

Definition: "A means of access or communication"

### The Conduit Vision

Conduit was founded in 2005 by technology innovators who understood that web publishers needed more effective methods for creating a conduit with their community. The company introduced a ground-breaking, easy-to-use SaaS platform that any web publisher can use to offer content and applications to users across the World Wide Web.

The free SaaS platform proved to be so popular that by early 2009, more than 200,000 web publishers of all sizes were using it to increase website traffic, improve brand awareness, and generate new revenue streams. Leading brands such as Fox News, Major League Baseball, Travelocity, Softonic, TechCrunch and thousands of smaller communities and businesses now offer branded community toolbars as an extension of their website and business model. To date, community toolbars powered by Conduit have been installed by more than 60 million users and deployed in more than 80 languages and 120 countries.

In 2009, Conduit was ready to leverage this massive network of web publishers and users to create direct and indirect distribution opportunities for its customers and introduced **Conduit Open™**. This initiative reflected the company's vision that Internet technologies should be free and easy to use so that anyone can share their ideas, products and services without limits. Conduit publishers now have access more than 60 million users and 200,000 other Conduit publishers through the Conduit Open modules.

### Conduit Technologies

Since day one the company was focused on innovating and creating disruptive technologies. In 2005, Conduit introduced the "hosted toolbar model" enabling publishers to easily maintain and update their branded software without engineering resources, thus eliminating the need for software development, hosting services, and long product cycles. The SaaS technology earned a US patent in 2009.

The Conduit platform provides an intuitive environment in which web publishers can create a custom Community Toolbar in any language, free of charge. The flexible solution offers rich APIs, and enables easy integration with any software or social media technology. The platform includes modules for sharing content and applications, including the Conduit Marketplace, the 2go syndication tool, and powerful push marketing solutions like Desktop Alerts, personalized components, toolbar gadgets and more. The platform also provides a complete set of tools necessary to manage the entire marketing lifecycle, such as promotional tools and advanced analytics. Branded community toolbars can be deployed on all major browsers, including Internet Explorer, Firefox and Safari, on Windows, MAC and Linux.

### Conduit Success

The company has seen tremendous growth -- its network of publishers and users doubles in size every few months and continues to grow rapidly. In 2006, the company signed a strategic partnership with Google to embed Google powered search in its core technology. In 2008, Conduit earned the TRUSTe safe download certification after an exhaustive review of its platform.

Conduit has earned numerous awards for excellence from Forrester, AlwaysOn, OnHollywood, Red Herring, American Business, and more. The company and its products have received significant media coverage in hundreds of publications including BusinessWeek, USA Today, Advertising Age, American Marketing Association magazine, The Street, PC Magazine, ZDnet, TechCrunch and others.

### Conduit Investors and Partners

Conduit was founded in January 2005 by a team of entrepreneurs with successful track records in bringing new technologies to market. The company is headquartered in Israel and Silicon Valley, California and was seed funded by its founders and Zack Rinat, in a Series A round by Yozma, a leading Israeli VC, and in a Series B round by Benchmark Capital, a tier one VC focused on technology-driven companies.

## Featured Publisher



"Our toolbar provides a powerful, easy-to-use interface for gadget-savvy users."

Ran Ben-Yair  
LabPixies

## Six New Users Every Second!

Somewhere in the world, a new user is downloading a Conduit network toolbar right now!

[Find Out Where](#)

## Join the Conduit Network

Create Your Community Toolbar Today!



# conduit

Log in  Get Started Now 

search...

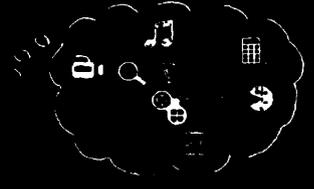
[Home](#) [Community Toolbars](#) [Conduit Open](#) [Benefits](#) [Gallery](#) [About](#) [Resource Center](#)

## Community Toolbars

- Toolbar Benefits
- Why Choose Conduit
- Toolbar Components
- Toolbar Platform
  - Analytics
  - Desktop Alerts
  - Promotional Tools
- Trust Conduit
- **Conduit Rewards**

# Whatever you can imagine

...imagine it on your community toolbar



Conduit > Community Toolbars > Conduit Rewards

## Conduit Rewards Program

Promote your community toolbar and earn rewards with every install

Develop a new revenue stream by participating in the Conduit Rewards program.

Each community toolbar provides its publisher the opportunity to start earning revenue in accordance with toolbar performance and installs. The more value you provide to your users, the higher your rewards will be.



### Pay-per-install (PPI)

For each installation you earn revenue based on your PPI rate. The rate is determined by how engaging and "sticky" your toolbar is and by the geographical distribution of your users.

### Promotion Bonus

To help you get your toolbar promotions going, we will give you an extra reward credit on top of the regular PPI rate for the first 30 days after you create your community toolbar.

Publishers who join the Conduit Rewards program can track their daily revenue using an advanced reporting system and cash out their earnings whenever they want.

### How do I join?

Get started now! [Build a free toolbar.](#)

### Already have a toolbar?

[Login to your Control Panel](#), go to the Rewards tab, and sign up for the program!

## Featured Publisher



"A large number of people can now be supplied with relevant information simultaneously."

Holger Thiemann  
LYCOS Webhosting Europe

## Six New Users Every Second!

Somewhere in the world, a new user is downloading a Conduit network toolbar right now!

[Find Out When](#)

## Join the Conduit Network

Create Your Community Toolbar Today!



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April 2, 2010

## **EXHIBIT 5**



"It's so easy! You can earn money for your cause or school by doing what you already do -- shopping with your favorite merchants."

Home Shop Causes Schools

Support your favorite cause or school when you shop at hundreds of well-known merchants. [Take the tour](#) [Join Now!](#)

*"Our funds from OneCause go toward 'bread and butter' items, including curriculum, consumable materials and in-school enrichments, like physical education and music."*

Champion, Lara P. of North Oakland Community Charter School

OneCause will support your favorite cause or school. You can earn money at your favorite merchants. OneCause will contribute with every eligible purchase you make.

OneCause is a simple way to earn much-needed contributions for your cause or school.

**\$211,544,991** in contributions

**73,635** schools

**7,044** nonprofit causes

**685,132** supporters

**797** online merchants [see all merchants](#)

Find a Cause or School

Causes  Schools

All States

Go

Featured Causes

1. Asheville Buncombe Youth Soccer Association
2. Junsau Soccer Club
3. Rhino Wrestling Club
4. Naydenov Booster Club
5. North Bay Juniors Foundation
6. Northern Chautauqua County Youth Hockey Association
7. Mandarin Athletic Association Football & Cheerleading
8. BevSicks Volleyball Club

Most Successful Supporters

- CMachinski - Erlanger, KY  
Raised \$10,642.76
- SueD13119 - Chicago, IL  
Raised \$9,285.30
- JOANL96574 - Bozeman, MT  
Raised \$8,854.50
- KevinM44888 - Allentown, PA  
Raised \$8,769.03

Featured Merchants

- 2% contribution
- 1% contribution
- 2% contribution
- 1.56% contribution
- 2.50% contribution
- 1% contribution



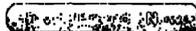
- o About Us
- Programs
- Terms of Service
- Terms of Use
- Privacy Policy
- Press Releases
- Testimonials
- Contact Us



Invite friends to join OneCause between Aug. 10 and Oct. 14 and your cause or school could win:

- **\$250** if it's one of the first 10 causes or schools to get 20 new Supporters to join!
- **\$1,000** extra if it gets 20 new Supporters to join and earns the most contributions between Aug. 10 and Dec. 31!

Remember to always support your cause or school through OneCause!



### Our Company

The OneCause community is managed by CauseLoyalty, a wholly owned subsidiary of RakutenUSA, Inc. Since being founded in 1999, OneCause has provided simple ways to turn thousands of consumers' everyday purchases into much-needed contributions totaling over \$200 million to more than 30,000 causes and schools nationwide.

### Our Brand

OneCause promises socially-conscious consumers they can support their chosen cause through simple shopping that will result in doing good with every purchase. Cause Something Good.™

### Our Vision

OneCause empowers consumers who care about doing good to improve their world by making their everyday purchases make a difference – every day.

### Our Mission

OneCause funds a consumer's chosen cause or school by channeling their everyday purchases to well-known merchants and service providers, who contribute a percentage of every purchase back to the cause or school.

### Our Community

OneCause, based in Boston, Mass., strives to bring like-minded consumers together in our online community, which offers:

- A single place to shop at hundreds of well-known merchants.
- Coupons & Deals to save money on your everyday purchases.
- Simple ways for causes and their supporters to connect directly.
- Tools to spread the word about news, events and contribution goals.
- Reporting to track how much has been contributed.
- And much more...

### Our Press Releases

October 20, 2009 - OneCause launches new social networking community

June 12, 2009 - TRUIST and OneCause partner to boost nonprofit funding

August 18, 2009 - New Capital One, OneCause.com partnership enhances PTA fundraising efforts

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April 2, 2010

## **EXHIBIT 6**

Your account | Wishlist | Help | 0 items in your cart

Alibris for Libraries | Sell at Alibris

FIND A SELLER | ABOUT ALIBRIS

SEARCH Books Enter title, author, ISBN, and/or keyword 60

### Search and ye shall find it (at Alibris)

Find every book you want to read. They're all here. Discover books of every kind—new releases with the loudest buzz, quietly confident classics, and anything else that speaks to you.

#### BOOKS, MOVIES, AND MUSIC YOU MIGHT LIKE



**The Story of Edgar Sawtelle**  
Wroblewski, David



**What to Expect When You're... Expecting**  
Murkoff, Heidi



**Complete Book of Home...**  
Kingry, Judi



**End the Fed**  
Paul, Ron



**Bob Books First**  
by Bobby Lynn Masien  
Bob Books Set 1: Beginning Readers Teach a child letter sounds with Bob Books Set 1! With four letters in the first story, children can read a whole book. Consistent new sounds are added gradually... > read more



**The Conversation: How Black Men and Women Can Build Loving, Trusting Relationships**  
by Hill Harper  
In his first book for adults, the award-winning, "New York Times"-bestselling author sparks honest dialogue about the crisis in African-American relationships.



**The Game: Penetrating the Secret Society of Pickup Artists**  
by Neil Strauss  
In this pickup artist's memoir, Neil Strauss tells how he went from average guy (loser) to master seducer. Neil's Harvard was a secret society of seducers, a subculture of like-minded men who share... > read more



**The going to bed book**

**FREE SHIPPING**  
search for eligible books

Now accepting **PayPal**

**SELL YOUR USED BOOKS, MUSIC, & MOVIES**

[learn more](#)



#### FEATURED INDEPENDENT SELLERS

**Ad Valorem Books**  
Clovenstone, California  
Seller rating: ●●●●●  
Alibris seller since August 2008

**Miss Easley Bookstore**  
Mechanicsville, Virginia  
Seller rating: ●●●●●  
Alibris seller since April 2009



[Your account](#) | [Wishlist](#) | [Help](#) | [LOG IN](#)  
 0 items in your cart

SEARCH   GO

**FREE SHIPPING**  
search for eligible books

**DISCOUNT SHIPPING**  
> order one two books from the same seller

Now accepting  
**PayPal**

**"I saved \$475!"**

pay less & get paid

### About Us

**"Think how Alibris or Amazon.com have radically changed the buying and selling of used books."**  
*The New York Times, 12.03.2005*

Alibris (pronounced "uh-LEE-brihs") is the premier online marketplace for independent sellers of new and used books, music, and movies, as well as rare and collectible titles. We connect people who love books, music, and movies to thousands of independent sellers around the world. Our proprietary technology and advanced logistics allow us to offer more than 100 million used, new, and out-of-print books to consumers, libraries, and retail business partners. Alibris was founded in 1998.

### Your independent marketplace since 1998

More than a decade of helping people find hard-to-find books, music, and movies

Since launching in November 1998, we've grown to become the Internet's largest independently owned and operated marketplace. That's more than ten years of doing the following:

- > Supporting thousands of independent sellers
- > Providing you with our sellers' great prices and unbeatable selection
- > Giving you the peace of mind of our proven track record of satisfying customers just like you

Join us in our second decade. We promise you'll always be able to find plenty of good books, music, and movies. We look forward to many more years together.

### about us

- Corporate
- Alibris Cares
- Management
- Alibris Business Services
- Business Partners
- The Alibris story
- Policies
- Employment
- Contact Alibris
- Newsroom
- Press Releases
- Media Coverage
- Alibris Logos

### account

- your shopping cart
- order status
- wish list
- book fetch
- order history
- preferences
- log in

SEARCH  Enter title, author, ISBN, and/or keyword

**FREE SHIPPING**  
SEARCH FOR ELIGIBLE BOOKS

**DISCOUNT SHIPPING**  
\*order over \$25.00  
from the same seller

Now accepting  
**PayPal**

"I saved \$475!"



SELL BACK

BUY NOW

pay less & get paid

**account**

your shopping cart  
order status  
wishlist  
book fetch  
order history  
preferences  
[View It](#)

## Allbris Affiliate Program

Join the Allbris Affiliate Program in 3 easy steps!



- 1 Sign up with the Allbris Affiliate Program via LinkShare to earn 5% commission on sales made within 30 days of clickthrough.
- 2 Feature books, music, and movies on your web site. You'll find banners, buttons, taxidms and searchboxes on the create links area of LinkShare. Copy and paste the code to your web site, blog, or newsletter to start selling books, music, & movies.
- 3 Allbris Affiliates can opt for monthly or weekly payments via LinkShare; opt for direct deposit or check; set payment thresholds; and have full access to tracking and payment history via LinkShare.

### About the Allbris Affiliate Program

The Allbris Affiliate Program allows you to generate revenue by placing Allbris banners, searchboxes, and links on your site. When a visitor clicks an Allbris link on your Web site and makes a purchase at Allbris, you'll earn a baseline 5% commission. And for any purchase made within 30 days of initial clickthrough, you'll collect a commission. Our partners range from shopping comparison sites, book, music & movie review sites, search engine marketers, and rebate sites, to blogs and niche content sites. With over 100 million books, cd's, and dvd's you'll have an easy time getting profitable selling new, used, rare and out-of-print items.

The Allbris Affiliates Program enhances your site by pointing your visitors to resources that interest them, and you gain the financial benefits of selling online without the cost of maintaining an e-commerce site. The program is free and is open to Web sites of all sizes. And because Allbris is dedicated to offering world-class customer service, you can be confident that you're providing value to your visitors.

### How to Become an Allbris Affiliate

It's easy to set up an Allbris Affiliates account through LinkShare. Review the Allbris Affiliates Program's Terms and Conditions and accept the terms by selecting the Join Now link at the bottom of that page. Then complete the Allbris Affiliates Application on the LinkShare Web site. Once we notify you that you've been accepted as an Allbris Affiliate, you'll be able to go to the Create Links section of the LinkShare Web site, choose the banners or text links that you want to appear on your Web site, and copy the HTML code to paste on the pages of your site where you want the Allbris links to appear. The code will already have been customized for your account number. For more information, check out our FAQ page. You can also link directly to book, music or movie titles and author/artist names.

[> Yes, I want join via LinkShare after reviewing the terms & conditions!](#)

Allbris Affiliate Program  
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[Direct Product Linking](#)  
[Join](#)



Thomasenia P. Duncan, Esq.  
April 2, 2010

## **EXHIBIT 7**

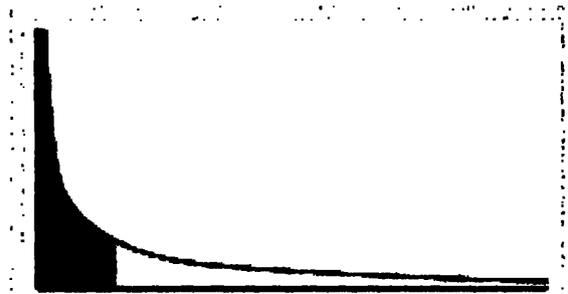
## The Long Tail and the Famos Business Model.

### Long Tail

The Long Tail or long tail is a retailing concept describing the niche strategy of selling a large number of unique items in relatively small quantities – usually in addition to selling fewer popular items in large quantities. Wired Magazine Chief Editor, Chris Anderson, popularized the concept in an October 2004 *Wired Magazine* article. In which he mentioned Amazon.com and Netflix as examples of businesses applying this strategy.

The distribution and inventory costs of businesses successfully applying the Long Tail strategy allow them to realize significant profit out of selling small volumes of hard-to-find or unique items to many customers instead of only selling large volumes of a reduced number of popular items. The total sales of this large number of “non-hit items” are called the Long Tail. **It is on this principle that Famos has based its business model.**

Given a large enough availability of choice, a large population of customers, negligible stocking and distribution costs, and negligible cost of scalability, the selection and buying pattern of the population results in a power law distribution curve (see graph), or Pareto distribution. This suggests that a market with a high freedom of choice will create a certain degree of inequality by favoring the upper 20% of the items (“hits” or “head”) against the other 80% (“non-hits” or “long tail”). This is known as the Pareto principle or 80–20 rule.



An example of a power law graph showing popularity ranking. To the right is the long tail; to the left are the few that dominate.

In a digital world the Long Tail concept has found ground for application, research, and experimentation. It is a term used in online business, mass media, micro-finance (Grameen Bank, for example), user-driven innovation (Eric von Hippel), and social network

mechanisms (e.g., crowdsourcing, crowdcasting, peer-to-peer), economic models, and marketing (viral marketing).

### Chris Anderson and Clay Shirky

The concept drew in part from a February 2003 essay by Clay Shirky, “Power Laws, Weblogs and Inequality”, which noted that a relative handful of weblogs have many links going into them but “the long tail” of millions of weblogs may have only a handful of links going into them. Beginning in a series of speeches in early 2004 and culminating with the publication of a *Wired* magazine article in October 2004, Chris Anderson described the effects of the Long Tail (a term coined by Anderson himself) on current and future business models. Anderson later extended it into the book *The Long Tail: Why the Future of Business is Selling Less of More* (2006).

Thomasenia P. Duncan, Esq.  
April 2, 2010

Anderson argued that products that are in low demand or have low sales volume could collectively make up a market share that rivals or exceeds the relatively few current bestsellers and blockbusters, if the store or distribution channel is large enough. Anderson cites earlier research by Erik Brynjolfsson, Yu (Jeffrey) Hu, and Michael D. Smith, that showed that a significant portion of Amazon.com's sales come from obscure books that are not available in brick-and-mortar stores. The Long Tail is a potential market and, as the examples illustrate, the distribution and sales channel opportunities created by the Internet often enable businesses to tap that market successfully.

An Amazon employee described the Long Tail as follows: "We sold more books today that didn't sell at all yesterday than we sold today of all the books that did sell yesterday."

Anderson has explained the term as a reference to the tail of a demand curve. The term has since been re-derived from an XY graph that is created when charting popularity to inventory. In the graph shown above, Amazon's book sales or Netflix's movie rentals would be represented along the vertical axis, while the book or movie ranks are along the horizontal axis. The total volume of low popularity items exceeds the volume of high popularity items.

#### **Internet companies**

Some of the most successful Internet businesses have leveraged the Long Tail as part of their businesses. Examples include eBay (auctions), Yahoo! and Google (web search), Amazon (retail) and iTunes Store (music and podcasts) amongst the major companies, along with smaller Internet companies like Audible (audio books) and Netflix (video rental).

#### **The Famos business model and the Long Tail**

Famos has based our business model around the concept of the Long Tail. Instead of relying upon a large profit from a few products or transactions, Famos bases our revenue stream on a small revenue percentage from a very large number of transactions. Because the digital realm allows for large scalability without a resultant increase in general and administrative costs, Famos can be highly profitable on a small fee repeated over many transactions. That is to say, Famos would rather make \$.10 on a billion transactions than make \$10.00 on a million transactions.