

IDI, Inc.
Form 424B5
January 19, 2016
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Filed Pursuant to Rule 424(b)(5)
Registration No. 333-205614

PROSPECTUS SUPPLEMENT

(TO PROSPECTUS DATED JULY 21, 2015)

5,000,000 Shares

Common Stock

This prospectus supplement relates to the offer and sale of up to 5,000,000 of shares of our common stock, par value \$0.0005 per share (the "Common Stock"), from time to time through our sales agent, JonesTrading Institutional Services LLC, which we refer to herein as JonesTrading or the "agent". These sales, if any, will be made under an at market issuance sales agreement, dated January 15, 2016, between us and JonesTrading (the "Sales Agreement").

These shares will be offered at market prices prevailing at the time of sale. Unless we and JonesTrading agree otherwise, we will pay JonesTrading a commission of up to 3.0% of the sales price of all shares sold through it as our agent. The net proceeds, if any, that we receive from the sales of our Common Stock will depend on the number of shares actually sold and the offering price for such shares. The maximum number of shares we can sell under this prospectus supplement and the accompanying prospectus is 5,000,000. We estimate the offering expenses, other than the agent's commissions, will be approximately \$168,000. If we were to sell 5,000,000 shares of Common Stock at the January 14, 2016 closing sales price per share, we would receive \$25,950,000 in gross proceeds, or approximately \$25,003,500 in net proceeds, although actual net proceeds to us will vary. There is no arrangement for funds to be received in any escrow, trust or similar arrangement.

Our Common Stock is listed for trading on the NYSE MKT under the symbol "IDI". On January 14, 2016, the last reported sale price of our Common Stock on the NYSE MKT was \$5.19 per share.

Sales of our Common Stock under this prospectus supplement, if any, may be made by any method that is deemed to be an "at the market offering" as defined in Rule 415 under the Securities Act of 1933, as amended, or the Securities Act. This includes sales made directly on the NYSE MKT or sales made to or through a market maker other than on an exchange. With our prior written consent, sales may also be made in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices and/or any other method permitted by law. Subject to the terms of the Sales Agreement, JonesTrading will make all sales using commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the NYSE MKT, on mutually agreeable terms between JonesTrading and us.

Investing in our Common Stock involves significant risks. Before buying shares of our Common Stock, you should carefully consider the risks described under the caption Risk Factors beginning on page S-4 of this prospectus supplement, page 3 of the accompanying prospectus, and in the documents incorporated by reference into this prospectus supplement and accompanying prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus supplement or the accompanying prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus supplement is January 15, 2016

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ABOUT THIS PROSPECTUS SUPPLEMENT

This prospectus supplement is a supplement to the accompanying prospectus that is also a part of this document. This prospectus supplement and the accompanying prospectus are part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission (the SEC or the Commission), using a shelf registration process. This prospectus supplement and the accompanying prospectus contain specific information about us and the terms on which we are offering and selling shares of our common stock. To the extent that any statement made in this prospectus supplement is inconsistent with statements made in the prospectus, the statements made in the prospectus will be deemed modified or superseded by those made in this prospectus supplement. Before you purchase shares of our common stock, you should carefully read this prospectus supplement, the accompanying prospectus and the registration statement, together with the documents incorporated by reference in this prospectus supplement and the accompanying prospectus.

You should rely only on the information contained or incorporated by reference in this prospectus supplement, the accompanying prospectus and any free writing prospectus prepared by us or on our behalf. Neither we nor the agent have authorized anyone to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it. Neither we nor the agent are making an offer to sell or soliciting an offer to buy our Common Stock under any circumstance in any jurisdiction where the offer or solicitation is not permitted. You should assume that the information contained in this prospectus supplement, the accompanying prospectus and any free writing prospectus prepared by us or on our behalf is accurate only as of the date of the respective document in which the information appears, and that any information in documents that we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus supplement or any sale of a security. Our business, financial condition, results of operations and prospects may have changed since those dates.

Unless the context indicates otherwise, in this prospectus supplement and the accompanying prospectus the terms IDI, the Company, we, us and our refer to IDI, Inc., a Delaware corporation, and its subsidiaries on a consolidated basis.

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FORWARD-LOOKING STATEMENTS

This prospectus supplement, the accompanying prospectus, and the information incorporated by reference in this prospectus supplement and the accompanying prospectus contain forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Securities Exchange Act of 1934, or the Exchange Act, which are subject to the safe harbor created by those sections for such statements. Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to our management. All statements other than statements of historical facts are forward-looking statements. Terms such as anticipate, believe, could, estimate, expect, goal, intend, may, plan, potential, predict, project, should, will, and variations thereof are intended to identify forward-looking statements, but these terms are not the exclusive means of identifying such statements.

Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons, including the risks, uncertainties and other factors described in this prospectus supplement, the accompanying prospectus and the documents incorporated herein and therein by reference, particularly in the sections titled Risk Factors and Management's Discussion and Analysis of Financial Condition and Results of Operations. Given these risks, uncertainties and other factors, actual results or anticipated developments may not be realized or, even if substantially realized, may not have the expected consequences to or effects on our company, business or operations. Accordingly, you should not place undue reliance on these forward-looking statements, which represent our estimates and assumptions only as of the date they are made. You should read this prospectus supplement, the accompanying prospectus and the information incorporated by reference herein and therein with the understanding that our actual results in subsequent periods may materially differ from current expectations. Except as required by applicable law, including the securities laws of the United States and the rules and regulations of the SEC, we assume no obligation to update or revise any forward-looking statements contained herein, whether as a result of any new information, future events or otherwise.

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PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus supplement and the accompanying prospectus. It does not contain all of the information you should consider before making an investment decision. Before you decide to invest in our securities, you should read the entire prospectus supplement and the accompanying prospectus carefully, including the risk factors and the financial statements and related notes included or incorporated by reference herein and therein.

Company Overview

IDI, Inc., formerly known as Tiger Media, Inc. or Tiger Media, is a holding company incorporated in the State of Delaware. Through its consolidated subsidiaries, IDI's principal focus is in data analytics, serving as an information solutions provider to the risk management industry for purposes including due diligence, risk assessment, fraud detection and prevention, and authentication and verification. Further, IDI's cross-functional core systems and processes are designed to deliver products and solutions to the marketing industry and to enable the public and private sectors to layer our solutions over their unique data sets, providing otherwise unattainable insight. IDI previously provided advertising services in the out-of-home advertising industry in China, but has recently discontinued its Chinese operations.

On November 16, 2015, IDI entered into an Agreement and Plan of Merger (the "Merger Agreement") by and among IDI, Fluent Acquisition I, Inc., a Delaware corporation and wholly-owned subsidiary of IDI ("Merger Sub"), Fluent Acquisition II, LLC, a Delaware limited liability company and wholly-owned subsidiary of the IDI ("Merger Co"), Fluent, Inc., a Delaware corporation ("Fluent"), the sellers of Fluent set forth on the signature page to the Merger Agreement (each, a "Seller" and collectively, the "Sellers"), and Ryan Schulke, as the representative of each Seller (the "Representative").

The parties to the Merger Agreement completed the Acquisition (as defined below) (the "Closing") on December 9, 2015 to be effective as of December 8, 2015 (the "Effective Time"). At the Effective Time, Merger Sub merged with and into Fluent, with Fluent as the surviving entity (the "Initial Merger"). Following consummation of the Initial Merger, IDI caused Fluent to consummate a subsequent merger (the "Subsequent Merger", and together with the Initial Merger, the "Acquisition") with Merger Co, with Merger Co as the surviving entity. Immediately following the Subsequent Merger, Merger Co. changed its name to "Fluent, LLC". At the Effective Time, Fluent, LLC assumed, all of the Fluent's continuing obligations under the Merger Agreement to be performed after the Subsequent Merger.

Fluent is a leader in people based digital marketing and customer acquisition, serving over 500 leading consumer brands and direct marketers. Fluent's proprietary audience data and robust ad-serving technology enables marketers to acquire their best customers, with precision, at a massive scale. Leveraging compelling content, first-party data, and real-time survey interaction with customers, Fluent has helped marketers acquire millions of new customers since its inception. Fluent, LLC, now a Delaware limited liability company, was formerly a Delaware corporation formed in 2010 and headquartered in New York City.

Company Information

Our principal executive offices are located at 2650 North Military Trail, Suite 300, Boca Raton, Florida 33431 and our telephone number is (561) 757-4000. Our Internet website address is www.ididata.com. The information on our website is not incorporated into this prospectus supplement.

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THE OFFERING

Common stock offered by us	Up to 5,000,000 shares of our Common Stock.
Common stock to be outstanding immediately after this offering	Assuming all 5,000,000 shares of our Common Stock is sold in this offering, we will have 20,845,486 shares of Common Stock outstanding.
Manner of offering	An at the market offering of shares of our Common Stock. The sale of shares of our Common Stock under this prospectus supplement, if any, may be made directly on the NYSE MKT, or through a market maker other than on an exchange. With our prior written consent, sales may also be made in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices and/or any other method permitted by law. See Plan of Distribution beginning on page S-17 of this prospectus supplement.
Sales agent	JonesTrading Institutional Services LLC.
Use of proceeds	We intend to use the net proceeds from sales under the Sales Agreement, if any, for general corporate purposes. The net offering proceeds may also be used for working capital, the repayment of debt obligations, acquisitions or investments in businesses, products or technologies that are complementary to our own, and other capital expenditures. See Use of Proceeds on page S-15 of this prospectus supplement.
Risk factors	Investing in our Common Stock involves significant risks. See Risk Factors beginning on page S-3 of this prospectus supplement.
NYSE MKT listing	Our Common Stock is listed on the NYSE MKT under the symbol IDI.
Outstanding Shares	

The number of shares of our Common Stock to be outstanding immediately after this offering, as reported above, is based on 15,845,486 shares outstanding as of January 14, 2016, and excludes as of that date:

7,467,000 shares of Common Stock underlying restricted stock units;

2,517,000 shares of Common Stock underlying restricted stock units subject to stockholder approval;

6,765,000 shares of Common Stock underlying restricted stock units issuable upon the achievement of performance milestones and subject stockholder approval;

462,000 shares of Common Stock issuable upon the exercise of incentive stock options;

749,625 shares of Common Stock issuable upon the exercise of the Warrants issued in connection with the private placement of our Series B Non-Voting Convertible Preferred Stock (Series B Preferred);

200,000 shares of Common stock issuable upon the exercise of the Warrants issued in connection with the Company's term-loan financing;

640,205 shares of Common Stock issuable upon the exercise of outstanding warrants;

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900,108 shares of Common Stock issuable upon the achievement of performance milestones;

4,736,102 shares of Common Stock issuable upon conversion of outstanding shares of our Series A Non-Voting Convertible Preferred Stock (Series A Preferred);

1,800,220 shares of Common Stock issuable upon conversion of shares of Series A Preferred issuable upon the achievement of performance milestones; and

22,548,100 shares of Common Stock issuable upon conversion of the shares of our Series B Preferred that we have issued or agreed to issue.

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RISK FACTORS

*An investment in our Common Stock involves a high degree of risk. Before deciding whether to invest in our Common Stock, you should consider carefully the risks described below and discussed under the section captioned **Risk Factors** in our Annual Report on Form 10-K for the year ended December 31, 2014, filed with the SEC on April 15, 2015, and our Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2015, June 30, 2015 and September 30, 2015, filed with the SEC on May 20, 2015, August 14, 2015 and November 16, 2015, respectively, which are each incorporated by reference in this prospectus supplement and the accompanying prospectus in their entirety, as well as any amendment or update to our risk factors reflected in subsequent filings with the SEC, together with other information in this prospectus supplement, the accompanying prospectus, and the information and documents incorporated by reference that we have authorized for use in connection with this offering. If any of these risks actually occur, our business, financial condition, results of operations or cash flows could be seriously harmed. This could cause the trading price of our Common Stock to decline, resulting in a loss of all or part of your investment.*

Risks Related to Our Common Stock and This Offering

The concentration of our stock ownership may limit individual stockholder ability to influence corporate matters.

As of January 14, 2016, officers, directors and managers of the Company and its affiliates owned 36.4% of the Company's Common Stock on a fully diluted basis. Following the conversion of Series B Preferred into the Company's Common Stock on the date that is the twenty first (21st) day following the mailing of an Information Statement to the non-consenting stockholder of the Company (the **Conversion Date**), and assuming the exercise of the warrants to purchase Common Stock issued in connection with the Acquisition (the **Warrants**) by the Company on the Conversion Date, officers, directors and managers of the Company and its affiliates will own 67.7% of the Company's Common Stock on a fully diluted basis. As a result, these stockholders may be in a position to exert significant influence over all matters requiring stockholder approval, including the election of directors and determination of significant corporate actions. The interests of these stockholders may not always coincide with the interests of other stockholders, and these stockholders may act in a manner that advances their best interests and not necessarily those of other stockholders, and might affect the prevailing market price for our securities.

In addition, at the Effective Time, the Company entered into a Stockholders Agreement (the **Stockholders Agreement**), with certain, officers, directors and managers of the Company and its affiliates, solely in their respective capacities as stockholders of the Company, pursuant to which the parties thereto agreed to vote in a certain manner on specified matters, including the agreement to vote in favor of each party's duly approved nominees for the Board. The Stockholders Agreement also requires the Company to obtain the consent of certain, officers, directors and managers of the Company and their affiliates before effecting certain capital transactions of the Company or taking certain compensation action with respect to certain employees of Fluent until the Conversion Date.

Our stock price has been and may continue to be volatile, and the value of an investment in our Common Stock may decline.

During the year ended December 31, 2015, our stock traded as high as \$12.80 per share and as low as \$0.75 per share. The trading price of our Common Stock is likely to continue to be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. These factors could include:

additions or departures of key personnel;

changes in governmental regulations or in the status of our regulatory approvals;

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changes in earnings estimates or recommendations by securities analysts;

any major change in our board or management;

general economic conditions and slow or negative growth of our markets; and

political instability, natural disasters, war and/or events of terrorism.

From time to time, we estimate the timing of the accomplishment of various commercial and other product development goals or milestones. Also, from time to time, we expect that we will publicly announce the anticipated timing of some of these milestones. All of these milestones are based on a variety of assumptions. The actual timing of these milestones can vary dramatically compared to our estimates, in some cases for reasons beyond our control. If we do not meet these milestones as publicly announced, our stock price may decline.

In addition, the stock market has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of publicly traded companies. Broad market and industry factors may seriously affect the market price of companies' stock, including ours, regardless of actual operating performance. These fluctuations may be even more pronounced in the trading market for our stock. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

You will experience immediate and substantial dilution in the net tangible book value per share of the Common Stock you purchase.

Since the price per share of our Common Stock being offered is expected to be substantially higher than the net tangible book value per share of our Common Stock, your interest will be diluted to the extent of the difference between the price per share you pay and the net tangible book value per share of our Common Stock. The exercise of outstanding options and warrants will result in further dilution of your investment. See the section titled "Dilution" below for a more detailed discussion of the dilution you will incur if you purchase Common Stock in this offering.

Our management will have broad discretion as to the use of proceeds from this offering, and we may not use the proceeds effectively.

Our management will have broad discretion in the application of the net proceeds from this offering and could spend the proceeds in ways that do not improve our results of operations or enhance the value of our Common Stock. You will not have the opportunity, as part of your investment decision, to assess whether these proceeds are being used appropriately. Our failure to apply these funds effectively could have a material adverse effect on our business and cause the price of our Common Stock to decline.

We expect that we may need additional capital in the future; however, such capital may not be available to us on reasonable terms, if at all, when or as we require additional funding. If we issue additional shares of our Common Stock or other securities that may be convertible into, or exercisable or exchangeable for, our Common Stock, our existing shareholders would experience further dilution.

Although we expect that we may need additional capital in the future, we cannot be certain that it will be available to us on acceptable terms when required, or at all. Disruptions in the global equity and credit markets may limit our ability to access capital. To the extent that we raise additional funds by issuing equity securities, our shareholders would experience dilution, which may be significant and could cause the market price of our Common Stock to decline significantly. Any debt financing, if available, may restrict our operations. If we are unable to raise additional capital when required or on acceptable terms, we may have to significantly delay, scale back or discontinue certain operations. Any of these events could significantly harm our business and prospects and could cause our stock price to decline.

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A significant number of additional shares of our Common Stock may be issued upon the exercise or conversion of existing securities, including the Series B Preferred issued in connection with private placements, bridge financing, and the Acquisition, and the warrants to be issued to lender(s) in connection with our credit facility, which issuances would substantially dilute existing stockholders and may depress the market price of our Common Stock.

As of January 14, 2016, we have outstanding 4,736,102 shares of Series A Preferred which are convertible into 4,736,102 shares of Common Stock, 29,985 shares of Series B Preferred which are convertible into 1,499,250 shares of Common Stock, options to purchase 462,000 shares of Common Stock and warrants to purchase 1,389,830 shares of Common Stock outstanding. In addition, we have issued 119,940 shares of Series B Preferred in a private placement with Frost Gamma Investments Trust, an affiliate of Phillip Frost, M.D., (Frost Gamma) which are convertible into 5,997,000 shares of Common Stock, 1,000 shares of Series B Preferred in connection with the bridge financing which are convertible into 50,000 shares of Common Stock and 300,037 shares of Series B Preferred which are convertible into 15,001,850 shares of Common Stock in connection with the Acquisition. We have also agreed to issue warrants to the lender(s) under our term-loan financing to purchase 200,000 shares of our Common Stock. The issuance of these shares of Common Stock would substantially dilute the proportionate ownership and voting power of existing stockholders, and their issuance, or the possibility of their issuance, may depress the market price of our common stock.

We have never declared or paid dividends on our Common Stock, and we do not anticipate paying dividends in the foreseeable future.

Our business requires significant funding, and we have not generated any material revenue. We currently plan to invest all available funds, including the proceeds from this offering, and future earnings, if any, in the development and growth of our business. We currently do not anticipate paying any cash dividends on our Common Stock in the foreseeable future. As a result, a rise in the market price of our Common Stock, which is uncertain and unpredictable, will be your sole source of potential gain in the foreseeable future, and you should not rely on an investment in our Common Stock for dividend income.

Risks Related to the Acquisition

We have incurred significant additional indebtedness as a result of the Acquisition.

We financed approximately \$50.0 million of the cash portion of the purchase price of the Acquisition with the proceeds of securities purchase agreements and a stock purchase agreement, and the remaining \$50.0 million with the proceeds from bridge financing and term-loan financing (collectively, the New Indebtedness).

We incurred significant indebtedness in connection with the Acquisition. We may incur additional debt to meet future financing needs, subject to certain restrictions under the New Indebtedness. The New Indebtedness contains restrictive covenants which impose limitations on the way we conduct our business, including limitations on the amount of additional debt we are able to incur and restrictions on our ability to make certain investments and other restricted payments. Any additional debt may further restrict the manner in which we conduct business.

The Acquisition involves risks associated with acquisitions and integrating the acquired business, including the potential exposure to significant liabilities, and the intended benefits of the Acquisition may not be realized.

The Acquisition involves risks associated with acquisitions and integrating the acquired business into our existing operations, including that:

our senior management's attention may be diverted from the management of daily operations to the integration of the business acquired in the Acquisition;

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we could incur significant unknown and contingent liabilities for which we have limited or no contractual remedies or insurance coverage;

the business and operations acquired in the Acquisition may not perform as well as we anticipate; and

unexpected costs, delays, and challenges may arise in integrating the business acquired in the Acquisition into our existing operations.

Even if we successfully integrate the acquired business into our operations, it may not be possible to realize the full benefits we anticipate or we may not realize these benefits within the expected timeframe. If we fail to realize the benefits we anticipate from the Acquisition, then our business, results of operations, and financial condition may be materially and adversely affected.

We have incurred significant transaction and Acquisition-related costs in connection with the Acquisition.

We have incurred significant costs in connection with the Acquisition including legal, accounting, consulting, and related fees. We may incur additional costs to retain key employees. We may also incur fees and costs related to formulating integration plans. Although we expect that the elimination of duplicative costs, as well as the realization of other efficiencies related to the integration of the businesses, should allow us to more than offset incremental transaction and Acquisition-related costs over time, this net benefit may not be achieved in the near term, or at all.

The market price of our common stock may decline as a result of the Acquisition.

The market price of our common stock may decline as a result of the Acquisition if, among other things, we are unable to achieve the expected growth in earnings, or if the operational cost savings estimates in connection with the integration of Fluent's business are not realized, or if the aggregate transaction costs related to the Acquisition are greater than expected, or if the value of the cash savings attributable to the amortization of goodwill is less than anticipated. The market price also may decline if we do not achieve the perceived benefits of the Acquisition as rapidly or to the extent anticipated by financial or industry analysts or if the effect of the Acquisition on our financial results is not consistent with the expectations of financial or industry analysts.

Risks Related to Fluent's Business and Industry

Fluent operates in an industry that is still developing and has a relatively new business model that is continually evolving, which makes it difficult to evaluate its business and prospects.

Fluent derives nearly all of its revenue from the sale of online marketing and media services, which is a still developing industry that has undergone rapid and dramatic changes in its relatively short history and which is characterized by rapidly-changing Internet media and advertising technology, evolving industry standards, regulatory uncertainty, and changing user and client demands. As a result, Fluent faces risks and uncertainties such as:

its still-developing industry and relatively new business model;

changes in the economic condition, market dynamics, regulatory enforcement or legislative environment affecting its, its third-party publishers , and its clients' businesses;

its dependence on the availability and affordability of quality media from third-party publishers;

its dependence on Internet search companies to attract Internet visitors;

its ability to accurately forecast its results of operations and appropriately plan its expenses;

its ability to compete in its industry;

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its ability to manage cyber security risks and costs associated with maintaining a robust security infrastructure;

its inability to monetize users accessing its sites on mobile devices at the same levels as was achieved from users accessing its sites from PCs;

its ability to develop new services, enhancements and features to meet new demands from its clients; and

its ability to successfully challenge regulatory audits, investigations, or allegations of noncompliance with laws.

If Fluent is unable to address these risks, our business, results of operations, and prospects may be adversely affected.

Fluent's business is subject to changes in the applicable laws and regulatory environment that may have a material and adverse impact on its revenue, business, and growth.

Fluent is subject to many laws and regulations including federal, state, and local laws and regulations regarding unsolicited commercial email, telemarketing, user privacy, search engines, Internet tracking technologies, direct marketing, data security, data privacy, pricing, sweepstakes, promotions, intellectual property ownership and infringement, trade secrets, export of encryption technology, acceptable content and quality of goods, and taxation, among others. The introduction of new products or services or expansion of our activities in certain jurisdictions may subject us to additional laws and regulations. In addition, although Fluent presently operates only in the United States, in the event that Fluent introduces new products or services or expands its activities in ways that cause Fluent to be subject to the laws of foreign countries, such foreign data protection, privacy, and other laws and regulations can be more restrictive than those in the United States. These U.S. federal and state and foreign laws and regulations, which can be enforced by private parties or government entities, are constantly evolving and can be subject to significant change, and keeping Fluent's business in compliance with or bringing its business into compliance with new laws may be costly, and may affect its revenue and/or harm its financial results. In addition, the application, interpretation, and enforcement of these laws and regulations are often uncertain, particularly in the new and rapidly evolving industry in which we operate, and may be interpreted and applied inconsistently from jurisdiction to jurisdiction and inconsistently with our current policies and practices. Violations or alleged violations of laws by Fluent, its third-party publishers or its clients could result in damages, fines, criminal prosecution, unfavorable publicity, and restrictions on its ability to operate, any of which could have a material adverse effect on Fluent's business, financial condition, and/or results of operations. In addition, new laws or regulations or changes in enforcement of existing laws or regulations applicable to Fluent's clients could affect the activities or strategies of such clients and, therefore, lead to reductions in their level of business with Fluent.

For example, the Federal Communications Commission amended the regulations issued under the Telephone Consumer Protection Act (the "TCPA") that affects telemarketing calls. Fluent's efforts to comply with the TCPA have not had a material impact on traffic conversion rates. However, Fluent has had to pay nominal amounts to settle indemnification claims from some of its clients for TCPA claims. Fluent has incurred additional cost for insurance to insure against TCPA-related claims. The TCPA could potentially have a material effect on Fluent's revenue and profitability, including increasing its and its clients' exposure to enforcement actions and litigation. Fluent's failure to adhere to or successfully implement appropriate processes and procedures in response to existing regulations and changing regulatory requirements could result in legal and monetary liability, significant fines and penalties, or damage to its reputation in the marketplace, any of which could have a material adverse effect on its business,

financial condition, and/or results of operations. Furthermore, Fluent's clients may make business decisions based on their own experiences with the TCPA regardless of the changes Fluent may implement to comply with the new regulations. These decisions may negatively affect Fluent's revenue or profitability.

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In connection with Fluent and its third-party publishers' email campaigns to generate traffic for Fluent's websites, Fluent is subject to various state and Federal laws regulating commercial email communications, including the federal CAN-SPAM Act and the California Anti-Spam Act. If Fluent or any of its third-party publishers fail to comply with any provisions of these laws or regulations, Fluent could be subject to regulatory investigation, enforcement actions, and litigation, as well as indemnification obligations with respect to its clients. Any negative outcomes from such regulatory actions or litigation, including monetary penalties or damages, could have a material adverse effect on our financial condition, results of operation, and reputation.

An increasing percentage of Fluent's users are accessing Fluent's websites from their mobile devices. Fluent's ability to remain competitive with the shift to mobile devices is critical to maintaining its revenues and margins.

A greater percentage of Fluent's users are accessing Fluent's websites from their mobile devices. Fluent will need to ensure its websites continue to perform well as more consumers shift their online interactions from desktop computers to smartphones, tablets, wearables, and other next generation platforms and devices. While Fluent designs and builds its websites' mobile first, as more of Fluent's users access its websites from mobile devices, the monetization of Fluent's online marketing services and content on these mobile devices might not be as lucrative for Fluent compared to those on desktop and laptop computers. If Fluent fails to develop the monetization of the mobile versions of its websites effectively, our business and results of operations may be adversely affected.

Fluent depends on third-party publishers for a significant portion of its visitors. Any decline in the supply of media available through these websites or increase in the price of this media could cause Fluent's revenue to decline or increase its cost to acquire visitors to its websites.

A significant portion of Fluent's revenue is attributable to visitor traffic originating from third-party publishers. Third-party publishers can change the media inventory they make available to Fluent at any time and place significant restrictions on Fluent's content offerings. These restrictions may limit the websites that Fluent can promote or prohibit advertisements from specific clients or specific industries, or restrict the use of certain creative content or formats. If a third-party publisher decides not to make media inventory available to Fluent, or decides to demand a higher revenue share or places significant restrictions on the use of such inventory, Fluent may not be able to find media inventory from other websites that satisfy Fluent's requirements in a timely and cost-effective manner. In addition, the number of competing online marketing service providers and advertisers that acquire inventory from websites continues to increase. Consolidation of Internet advertising networks and third-party publishers could eventually lead to a concentration of desirable inventory on websites or networks owned by a small number of individuals or entities, which could limit the supply or impact the pricing of inventory available to Fluent. Fluent cannot provide assurance that it will be able to acquire media inventory that meets Fluent's performance, price, and quality requirements, in which our business and results of operations may be adversely affected.

Fluent depends upon Internet search providers to direct a portion of the visitors to its websites. Changes in search engine algorithms applicable to Fluent's websites' placements in paid search result listings may cause the number of visitors to Fluent's websites and as a result, cause its revenue, to decline.

Fluent's success depends on its ability to attract online visitors to its websites and monetize them in a cost-effective manner. Fluent uses paid search listings from search engine providers such as Google, Bing and Yahoo! by bidding on particular keywords and other strategies. The search engine operators use a quality score which is determined by the relevancy of the ad to the keyword bid on, the click-through rates of the ad, and the amount bid, to determine the placement of the ad in the search results listings. The search engine providers frequently change the algorithms and bidding rules and may exclude certain sites they deem unacceptable from bidding on paid search listings. Fluent may fail to optimally manage its paid listings or operate its websites in a manner that does not run afoul of the search

engine requirements. In that case, our business and results of operations may be adversely affected.

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If Fluent does not effectively manage any future growth or if Fluent is not able to scale its products quickly enough to meet its clients' needs, Fluent's operating performance will suffer and it may lose clients.

Fluent has historically experienced growth in its operations. This growth has placed, and any future growth will continue to place, significant demands on Fluent's management and its operational and financial infrastructure. Growth, if any, may make it more difficult for Fluent to accomplish the following:

successfully scaling its technology to accommodate a larger business and integrate acquisitions;

maintaining its standing with key vendors, including Internet search companies and third-party publishers;

maintaining its client service standards; and

developing and improving its operational, financial and management controls and maintaining adequate reporting systems and procedures.

Fluent's future success depends in part on the efficient performance of its software and technology infrastructure. As the numbers of websites, Internet users and the amount of data collected increases, Fluent's technology infrastructure may not be able to meet the increased demand. Unexpected constraints on Fluent's technology infrastructure could lead to slower website response times or system failures and adversely affect the availability of websites and the level of user responses received, which could result in the loss of clients or revenue or harm to Fluent's business and/or results of operations.

In addition, Fluent's personnel, systems, procedures, and controls may be inadequate to support its future operations. The improvements required to manage growth may require Fluent to make significant expenditures, expand, train and manage its employee base, and reallocate valuable management resources. Fluent may spend substantial amounts to secure hosting and other technical services and data storage, upgrade its technology and network infrastructure to handle increased traffic on its owned-and-operated websites and roll out new products and services. This expansion could be expensive and complex and could result in inefficiencies or operational failures. If Fluent does not implement this expansion successfully, or if it experiences inefficiencies and/or operational failures during its implementation, the quality of Fluent's products and services and its users' experience could decline. This could damage Fluent's reputation and cause it to lose current and potential users and clients. The costs associated with these adjustments to Fluent's architecture could harm its operating results. Accordingly, if Fluent fails to effectively manage growth, its operating performance will suffer, and it may lose clients, key vendors and key personnel.

Fluent's revenue and profits have grown dramatically over the past years which may make it difficult to sustain this growth and could cause its results of operations to fall short of analysts' and investors' expectations.

Historically Fluent's quarterly and annual results of operations have rapidly increased due to several favorable factors, some of which are beyond its control. Moreover, Fluent is one of the larger players in its market segment. Because of these factors, Fluent may not be able to increase its market share and/or sustain the rapid growth in its revenues and gross profits. Fluent's inability to sustain its growth could cause its performance and outlook to be below the expectations of securities analysts and investors. Fluent's business is changing and evolving, and, as a result, its historical results of operations may not be useful in predicting its future results of operations. Factors that may

increase the volatility of Fluent's results of operations include the following:

changes in client volume;

loss of or reduced demand by existing clients;

the availability and price of quality media;

consolidation of media sources; and

regulatory and legislative changes.

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As a result of changes in Fluent's business model, increased investments, increased expenditures for certain businesses, products, services, and technologies, Fluent may fail to maintain its margins, attract new clients, or grow its revenues.

Fluent has invested and expects to continue to invest in new businesses, products, markets, services and technologies and plans to expand its work force to meet the needs of revenue growth. Based on Fluent's experiences, new websites, products and services have lower margins than more established websites, products and services. If Fluent is unsuccessful in its optimization efforts for new websites and products, Fluent may fail to maintain its margins, attract new clients or grow its revenues.

As result of Fluent's growth, it will need to hire additional qualified employees. Fluent's ability to grow its workforce and effectively train, integrate and manage these new employees poses risks.

Fluent will need to expand its workforce to meet the needs of its business. Fluent operates in a specialized niche of the online advertising marketplace and finding experienced qualified applicants and training them can prove challenging. If Fluent is unable to hire, train and effectively manage new employees, its results may be adversely affected. Fluent may also not be able to hire a sufficient number of qualified employees to meet the growing demands of its business, in which case it may not be able to capitalize on opportunities or may not be able to continue to grow its business at past levels.

If Fluent fails to compete effectively against other online marketing and media companies and other competitors, it could lose clients and its revenue may decline.

The market for online marketing is intensely competitive, and Fluent expects this competition to continue to increase in the future both from existing competitors and, given the relatively low barriers to entry into the market, from new competitors. Fluent competes both for clients and for limited high-quality media. Fluent competes for clients on the basis of a number of factors, including return on investment of client's marketing spending, price, and client service.

Fluent competes with Internet and traditional media companies for a share of clients' overall marketing budgets, including:

offline and online advertising agencies;

major Internet portals and search engine companies with advertising networks;

other online marketing service providers, including online affiliate advertising networks and industry-specific portals or lead generation companies;

third-party publishers with their own sales forces that sell their online marketing services directly to clients;

in-house marketing groups and activities at current or potential clients;

offline direct marketing agencies;

mobile and social media; and

television, radio, and print companies.

Competition for web traffic among websites and search engines, as well as competition with traditional media companies, has resulted and may continue to result in significant increases in media pricing, declining margins, reductions in revenue, and loss of market share. In addition, if Fluent expands the scope of its services, it may compete with a greater number of websites, clients, and traditional media companies across an increasing range of different services, including in vertical markets where competitors may have advantages in expertise, brand recognition, and other areas. Major internet search companies such as Google, Yahoo! and Microsoft as well as social media platforms such as Facebook have significant numbers of direct sales personnel and

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substantial proprietary advertising inventory and web traffic that provide a significant competitive advantage. The trend toward consolidation in online marketing may also affect pricing and availability of media inventory and web traffic. Many of Fluent's current and potential competitors also enjoy other competitive advantages over Fluent, such as longer operating histories, greater brand recognition, larger client bases, greater access to advertising inventory on high-traffic websites, and greater financial, technical, and marketing resources. As a result, Fluent may not be able to compete successfully. The online advertising marketplace is increasingly analytically driven and if the performance of Fluent's advertising services is not better than other marketing service providers' offerings, it could lose clients and market share.

Fluent is exposed to online security risks and security breaches particularly given that it gathers, transmits and stores personally identifiable information. Unauthorized access to or accidental disclosure of confidential or proprietary data may cause Fluent to incur significant expenses and may negatively affect its reputation and business.

Fluent gathers, transmits, and stores information about its users including personally identifiable information. While Fluent doesn't currently collect or store the most sensitive personal information such as social security numbers, credit scores, credit card information or in-depth financial information, Fluent does collect personally identifiable information that subjects it to federal and state laws and regulations designed to protect personally identifiable information. Despite Fluent's implementation of security measures and controls, Fluent's information technology and infrastructure are susceptible to electronic or physical computer break-ins, cyber-attacks, malware, phishing, viruses, fraud, employee error, and other disruptions and security breaches that could result in third parties gaining unauthorized access to its systems and data. In addition, third parties may attempt to fraudulently induce employees or users to disclose information in order to gain access to our data or our users' data. The increased use of mobile devices also increases the risk of intentional and unintentional theft or disclosure of data including personally identifiable information. Fluent may be unable to anticipate all of its vulnerabilities and implement adequate preventative measures and, in some cases, it may not be able to immediately detect a security incident. In the past, Fluent has experienced security incidents involving access to its databases. Although, to Fluent's knowledge, no personal information has been compromised to date, any future security incidents could result in the compromise of such data and subject Fluent to liability, civil or criminal penalties or result in cancellation of client contracts. Any security incident may also result in a misappropriation of Fluent's proprietary information or that of its users, clients, and third-party publishers, which could result in legal and financial liability, as well as harm to Fluent's reputation and ours.

In addition, some of Fluent's developers or other partners may receive or store information provided by Fluent or by Fluent's users. Fluent provides limited information to such third parties based on the scope of services provided to Fluent. However, if these third parties or developers were to fail to adopt or adhere to adequate data security practices, or in the event of a breach of their networks, Fluent's data or Fluent's users' data may be improperly accessed, used, or disclosed.

Privacy concerns relating to Fluent's data collection practices and any perceived or actual unauthorized disclosure of personally identifiable information, whether through breach of its network by an unauthorized party, employee theft, misuse, or error could harm Fluent's reputation, impair its ability to attract website visitors and to attract and retain its clients, result in a loss of confidence in the security of its products and services, or subject Fluent to claims or litigation arising from damages suffered by consumers, and thereby harm its business and results of operations. In addition, Fluent could incur significant costs for which its insurance policies may not adequately cover and cause Fluent to expend significant resources in protecting against security breaches and complying with the multitude of state, federal and foreign laws regarding data privacy and data breach notification obligations.

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A reduction in online marketing spend by Fluent's clients, a loss of clients or lower advertising yields may seriously harm Fluent's business, financial condition, and results of operations. In addition, a substantial portion of Fluent's revenue is generated from a limited number of clients and, if Fluent loses a major client, its revenue will decrease and its business and prospects may be harmed.

Fluent relies on clients' marketing spend on its owned-and-operated websites. Fluent has historically derived, and expects to continue to derive, a significant portion of its revenue through the delivery of targeted advertisements, applications, installs and actions and the delivery of qualified customers. One component of Fluent's platform that it uses to generate client interest is its system of monetization tools, which is designed to match users with client offerings in a manner that optimizes revenue yield and end-user experience. Clients will stop spending marketing funds on Fluent's owned-and-operated websites if their investments do not generate leads, actions or qualified users cost effectively. If Fluent's yield-optimized monetization techniques to effectively target and match advertisements to its client offerings fails to increase revenue or ROI for Fluent's clients, its clients could curtail their advertising spend with Fluent or cease using its services altogether.

Furthermore, Fluent's top 20 advertisers account for a substantial portion of its revenue and two of Fluent's advertisers each account for 10% or more of its net revenue. Fluent's advertising clients can generally terminate their contracts with Fluent at any time on little or no notice. Clients may also fail to renew their contracts or reduce their level of business with Fluent, leading to lower revenue.

Fluent relies on its management team and other key employees, and the loss of one or more key employees could harm its business.

Fluent's success and future growth depend upon the continued services of its management team, including Ryan Schulke, Matthew Conlin, and other key employees in all areas of its organization. If Fluent loses the services of these key Fluent employees our business and growth may be adversely affected.

Third-party publishers or vendors may engage in unauthorized or unlawful acts that could subject Fluent to significant liability or cause it to lose clients.

Fluent generates a significant portion of its web visitors from online media that it purchases from third-party publishers. While Fluent actively monitors its publishers' activities, it cannot police all such behavior. Any activity by third-party publishers that clients view as potentially damaging to their brands, whether or not permitted by Fluent's contracts with its clients, could harm its relationship with the client and cause the client to terminate its relationship with Fluent, resulting in a loss of revenue. In addition, Fluent may also face liability for any failure of its third-party publishers or vendors to comply with regulatory requirements. Users or customers may complain about the content of publisher ads which may expose Fluent to lawsuits and regulatory scrutiny. The law is unsettled on the extent of liability that an advertiser in Fluent's position has for the activities of third-party publishers or vendors. Fluent and the Company could be subject to costly litigation and, if it is unsuccessful in defending itself, could incur damages for the unauthorized or unlawful acts of third-party publishers or vendors.

If Fluent fails to continually enhance and adapt its products and services to keep pace with rapidly changing technologies and industry standards, it may not remain competitive and could lose clients or advertising inventory.

The online media and marketing industry is characterized by rapidly changing standards, changing technologies, frequent new product and service introductions, and changing user and client demands. The introduction of new technologies and services embodying new technologies and the emergence of new industry standards and practices could render Fluent's existing technologies and services obsolete and unmarketable or require unanticipated

investments in technology. Fluent continually makes enhancements and other modifications to its proprietary technologies, and these changes may contain design or performance defects that are not readily apparent. If Fluent's proprietary technologies fail to achieve their intended purpose or are less effective than technologies used by its competitors, Fluent's business could be harmed.

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Fluent's future success will depend in part on its ability to successfully adapt to these rapidly changing online media formats and other technologies. If Fluent fails to adapt successfully, it could lose clients or advertising inventory.

Fluent relies on certain advertising agencies for the purchase of various advertising and marketing services on behalf of its clients. Such agencies may have or develop high-risk credit profiles, which may result in credit risk to Fluent. Some of Fluent's advertising clients pose credit risks and Fluent may not be able to collect on amounts owed to it.

A portion of Fluent's client business is sourced through advertising agencies and, in many cases, Fluent contracts with these agencies and not directly with the underlying client. Contracting with these agencies subjects Fluent to greater credit risk than when Fluent contracts with clients directly. In many cases, agencies are not required to pay Fluent unless and until they are paid by the underlying client. In addition, many agencies are thinly capitalized and have or may develop high-risk credit profiles. Recently, one of Fluent's agency clients which owed Fluent more than \$200,000 went out of business. This credit risk may vary depending on the nature of an agency's aggregated client base. If an agency became insolvent, or if an underlying client did not pay the agency, Fluent may be required to write off accounts receivable as bad debt. Any such write-offs could have a materially negative effect on Fluent's results of operations for the periods in which the write-offs occur.

Many of Fluent's advertising clients are thinly capitalized and pose credit risks. While Fluent runs credit checks on its clients, Fluent may nevertheless have difficulty collecting on all amounts owed to it. Some of Fluent's clients may challenge the determination of amounts Fluent believes they owe or may refuse to pay because of claims that the performance of Fluent's advertising campaigns was unsatisfactory. In these circumstances, Fluent may have difficulty collecting on amounts it believes are owed.

Damage to Fluent's reputation could harm its business, financial condition and results of operations.

Fluent's business is dependent on attracting a large number of visitors to its and its third-party publishers' websites and providing subscribers, leads, inquiries, clicks, calls, applications, and customers to Fluent's clients, which depends in part on Fluent's reputation within the industry and with its clients. Certain other companies within Fluent's industry regularly engage in activities that others may view as unlawful or inappropriate. These activities by third parties may be seen as indicative of participants in Fluent's industry and may therefore harm the reputation of all participants in Fluent's industry, including Fluent.

Fluent's ability to attract potential users and, thereby, clients, also depends in part on users receiving incentives, job listings, prizes, samples and other content as well as attractive offers from Fluent's clients. If Fluent's users are not satisfied with the content of its websites or its clients' offerings, Fluent's reputation and therefore its ability to attract additional clients and users could be harmed.

In addition, from time to time, Fluent may be subject to investigations, inquiries or litigation by various regulators, which may harm Fluent's reputation regardless of the outcome of any such action.

Any damage to Fluent's reputation, including from publicity from legal proceedings against it or companies that work within Fluent's industry, governmental proceedings, consumer class action litigation, or the disclosure of information security breaches or private information misuse, may adversely affect our business, financial condition and results of operations.

Interruption or failure of Fluent's information technology and communications systems could impair its ability to effectively deliver its services, which could cause Fluent to lose clients and harm its results of operations.

Fluent's delivery of marketing services depends on the continuing operation of its technology infrastructure and systems. Any damage to or failure of Fluent's systems could result in interruptions in its ability to deliver offerings quickly and accurately or process users' responses from its various web presences. Interruptions in Fluent's service could reduce its revenue and profits, and its reputation could be damaged if users or clients perceive Fluent's systems to be unreliable. Fluent's systems and operations are vulnerable to damage or interruption from earthquakes, terrorist attacks, floods, fires, power loss, break-ins, hardware or software failures, telecommunications failures, cyber-attacks, computer viruses or other attempts to harm its systems, and similar

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events. If Fluent or third-party data centers that Fluent utilizes were to experience a major power outage, Fluent would have to rely on back-up generators. These back-up generators may not operate properly through a major power outage and their fuel supply could also be inadequate during a major power outage or disruptive event.

Fluent's primary data center is at a third-party co-location center in Ashburn, Virginia. All of the critical components of the system are redundant and Fluent has backup copies of its database including one maintained in the Cloud. Fluent has implemented these backup systems and redundancies to minimize the risk associated with earthquakes, fire, power loss, telecommunications failure, and other events beyond its control; however, these backup systems may fail or may not be adequate to prevent losses.

Any unscheduled interruption in Fluent's service would result in an immediate loss of revenue. If Fluent experiences frequent or persistent system failures, the attractiveness of its technologies and services to clients and third-party publishers could be permanently harmed. The steps Fluent has taken to increase the reliability and redundancy of its systems are expensive, reduce Fluent's operating margin and may not be successful in reducing the frequency or duration of unscheduled interruptions.

Fluent's quarterly revenue and results of operations may fluctuate significantly from quarter to quarter due to fluctuations in advertising spending, including seasonal and cyclical effects.

In addition to other factors that cause Fluent's results of operations to fluctuate, results are also subject to significant seasonal fluctuation. In particular, Fluent's fourth quarter tends to be its strongest because of holiday advertising budgets which continue into the first quarter, while Fluent's second and third calendar quarters are typically weaker.

Furthermore, advertising spend on the Internet, similar to traditional media, tends to be cyclical and discretionary as a result of factors beyond Fluent's control, including budgetary constraints and buying patterns of clients, as well as economic conditions affecting the Internet and media industry. Poor macroeconomic conditions could decrease Fluent's clients' advertising spending and thereby have a material adverse effect on our business, financial condition, and operating results.

If the market for online marketing services fails to continue to develop, Fluent's success may be limited, and its revenue may decrease.

The online marketing services market is relatively new and rapidly evolving, and it uses different measurements from traditional media to gauge its effectiveness. Some of Fluent's current or potential clients have little or no experience using the Internet for advertising and marketing purposes and have allocated only limited portions of their advertising and marketing budgets to the Internet. The adoption of online marketing, particularly by those companies that have historically relied upon traditional media for advertising, requires the acceptance of a new way of conducting business, exchanging information and evaluating new advertising and marketing technologies and services.

In particular, Fluent is dependent on its clients' adoption of new metrics to measure the success of online marketing campaigns. Certain of Fluent's metrics are subject to inherent challenges in measurement, and real or perceived inaccuracies in such metrics may harm its reputation and negatively affect its business. Fluent periodically reviews and refines some of its methodologies for monitoring, gathering, and calculating these metrics. While Fluent's metrics are based on what it believes to be reasonable measurements and methodologies, there are inherent challenges in deriving its metrics. In addition, Fluent's user metrics may differ from estimates published by third parties or from similar metrics of its competitors due to differences in methodology. If clients or publishers do not perceive Fluent's metrics to be accurate, or if Fluent discovers material inaccuracies in its metrics, it could negatively affect Fluent's business model and current or potential clients' willingness to adopt its metrics.

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Fluent cannot assure that the market for online marketing services will continue to grow. If the market for online marketing services fails to continue to develop or develops more slowly than Fluent anticipates, our business and resale of operations may be adversely affected.

If Fluent does not adequately protect its intellectual property rights, its competitive position and business may suffer.

Fluent's ability to compete effectively depends upon its proprietary systems and technology. Fluent relies on patent, trade secret, trademark and copyright law, confidentiality agreements, and technical measures to protect its proprietary rights. Fluent enters into confidentiality agreements with its employees, consultants, independent contractors, advisors, client vendors, and publishers. These agreements may not effectively prevent unauthorized disclosure of confidential information or unauthorized parties from copying aspects of Fluent's services or obtaining and using its proprietary information. Further, these agreements may not provide an adequate remedy in the event of unauthorized disclosures or uses, and Fluent cannot assure that its rights under such agreements will be enforceable. Effective patent, trade secret, copyright, and trademark protection may not be available in all countries where Fluent currently operates or in which Fluent may operate in the future. Some of Fluent's systems and technologies are not covered by any copyright, patent or patent application. Fluent cannot guarantee that: (i) its intellectual property rights will provide competitive advantages to Fluent; (ii) its ability to assert its intellectual property rights against potential competitors or to settle current or future disputes will be effective; (iii) its intellectual property rights will be enforced in jurisdictions where competition may be intense or where legal protection may be weak; (iv) any of the patent, trademark, copyright, trade secret or other intellectual property rights that Fluent presently employs in its business will not lapse or be invalidated, circumvented, challenged, or abandoned; (v) competitors will not design around Fluent's protected systems and technology; or (vi) that Fluent will not lose the ability to assert its intellectual property rights against others.

Policing unauthorized use of Fluent's proprietary rights can be difficult and costly. Litigation, while it may be necessary to enforce or protect its intellectual property rights, could result in substantial costs and diversion of resources and management attention and could adversely affect Fluent's business, even if Fluent is successful on the merits. In addition, others may independently discover trade secrets and proprietary information, and in such cases Fluent could not assert any trade secret rights against such parties.

Third parties may sue Fluent for intellectual property infringement, which, even if unsuccessful, could require it to expend significant costs to defend or settle.

Fluent cannot be certain that its internally developed or acquired systems and technologies do not and will not infringe the intellectual property rights of others. In addition, Fluent licenses content, software and other intellectual property rights from third parties and may be subject to claims of infringement if such parties do not possess the necessary intellectual property rights to the products they license to Fluent.

Some of Fluent's websites promote gift cards issued by companies with trademarked brand names and promote branded merchandise. Fluent has, in the past, received cease and desist letters alleging trademark infringement from some of the trademark holders. While Fluent believes that its use of the brand names falls within the fair use exception to U.S. trademark laws, trademark holders have disagreed. While none has instituted an action, there is the risk that Fluent could be sued for trademark infringement which, if successful, may adversely affect its operations and limit its ability to promote offers with branded merchandise.

Limitations on Fluent's ability to collect and use data derived from user activities, as well as new technologies that block Fluent's ability to deliver Internet-based advertising, could significantly diminish the value of its services

and have an adverse effect on Fluent's ability to generate revenue.

When a user visits Fluent's websites, Fluent uses technologies to collect information such as the user's IP address and the user's past responses to its offerings. Fluent also uses registration data provided by users and user