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FORM 10-Q

TAKE TWO INTERACTIVE SOFTWARE INC - TTWO

Filed: March 11, 2009 (period: January 31, 2009)

Quarterly report which provides a continuing view of a company's financial position

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-Q

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

For the quarterly period ended January 31, 2009

OR

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

For the transition period from _____ to _____
Commission file number 0-29230

TAKE-TWO INTERACTIVE SOFTWARE, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

51-0350842
(I.R.S. Employer
Identification No.)

622 Broadway
New York, New York
(Address of principal executive
offices)

10012
(Zip Code)

Registrant's Telephone Number, Including Area Code: **(646) 536-2842**

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

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

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

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

As of March 5, 2009, there were 80,318,077 shares of the Registrant's Common Stock outstanding.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except per share amounts)

ASSETS	January 31, 2009 (Unaudited)	October 31, 2008
Current assets:		
Cash and cash equivalents	\$ 217,836	\$ 280,277
Accounts receivable, net of allowances of \$63,296 and \$68,448 at January 31, 2009 and October 31, 2008, respectively	60,320	157,458
Inventory	75,972	104,235
Software development costs and licenses	116,712	113,436
Prepaid taxes and taxes receivable	24,954	23,763
Prepaid expenses and other	49,052	44,605
Total current assets	544,846	723,774
Fixed assets, net		
Software development costs and licenses, net of current portion	29,358	32,361
Goodwill	66,745	61,991
Other intangibles, net	225,182	230,809
Other assets	24,970	26,123
Total assets	\$ 900,749	\$ 1,083,352
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 59,487	\$ 156,167
Accrued expenses and other current liabilities	130,679	153,089
Deferred revenue	53,840	56,163
Total current liabilities	244,006	365,419
Line of credit	70,000	70,000
Income taxes payable	27,526	26,399
Other long-term liabilities	6,874	6,416
Total liabilities	348,406	468,234
Commitments and contingencies		
Stockholders' Equity:		
Common Stock, \$.01 par value, 100,000 shares authorized; 78,757 and 77,694 shares issued and outstanding at January 31, 2009 and October 31, 2008, respectively	788	777
Additional paid-in capital	610,431	603,579
(Accumulated deficit) retained earnings	(32,113)	18,275
Accumulated other comprehensive loss	(26,763)	(7,513)
Total stockholders' equity	552,343	615,118
Total liabilities and stockholders' equity	\$ 900,749	\$ 1,083,352

See accompanying Notes.

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)
(in thousands, except per share amounts)

	<u>Three months ended January 31,</u>	
	<u>2009</u>	<u>2008</u>
Net revenue	\$ 256,810	\$ 240,442
Cost of goods sold	200,902	186,008
Gross profit	55,908	54,434
Selling and marketing	40,774	33,729
General and administrative	39,748	33,083
Research and development	20,943	15,810
Depreciation and amortization	5,108	6,409
Total operating expenses	106,573	89,031
Loss from operations	(50,665)	(34,597)
Interest and other income, net	2,349	1,367
Loss before income taxes	(48,316)	(33,230)
Provision for income taxes	2,072	4,767
Net loss	\$ (50,388)	\$ (37,997)
Net loss per share:		
Basic and diluted	\$ (0.66)	\$ (0.52)
Weighted average shares outstanding:		
Basic and diluted	76,102	73,148

See accompanying Notes.

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)
(in thousands)

	Three months ended January 31,	
	2009	2008
Operating activities:		
Net loss	\$ (50,388)	\$ (37,997)
Adjustments to reconcile net loss to net cash used for operating activities:		
Amortization and impairment of software development costs and licenses	20,092	18,581
Depreciation and amortization of long-lived assets	5,108	6,409
Amortization and impairment of intellectual property	390	351
Stock-based compensation	6,182	6,073
Deferred income taxes	(177)	(107)
Foreign currency transaction gain and other	(3,737)	(1,387)
Changes in assets and liabilities, net of effect from purchases of businesses:		
Accounts receivable	97,138	42,420
Inventory	28,263	16,844
Software development costs and licenses	(31,613)	(34,023)
Prepaid expenses, other current and other non-current assets	(6,957)	17,551
Accounts payable, accrued expenses, deferred revenue, income taxes payable and other liabilities	(121,110)	(74,080)
Total adjustments	(6,421)	(1,368)
Net cash used for operating activities	(56,809)	(39,365)
Investing activities:		
Purchase of fixed assets	(2,198)	(1,370)
Purchases of businesses, net of cash acquired	—	(151)
Net cash used for investing activities	(2,198)	(1,521)
Financing activities:		
Proceeds from exercise of options	4	937
Net borrowings on line of credit	—	18,000
Payment of debt issuance costs	—	(979)
Net cash provided by financing activities	4	17,958
Effects of exchange rates on cash and cash equivalents	(3,438)	(441)
Net decrease in cash and cash equivalents	(62,441)	(23,369)
Cash and cash equivalents, beginning of year	280,277	77,757
Cash and cash equivalents, end of period	\$ 217,836	\$ 54,388

See accompanying Notes.

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES
Notes to Unaudited Condensed Consolidated Financial Statements
(Dollars in thousands, except share and per share amounts)

1. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

Take-Two Interactive Software, Inc. ("the Company," "we," "us," or similar pronouns) is a leading global publisher, developer and distributor of interactive entertainment software, hardware and accessories. Our publishing segment, which consists of Rockstar Games, 2K Games, 2K Sports and 2K Play, develops, markets and publishes software titles for the following leading gaming and entertainment hardware platforms:

Sony	Microsoft	Nintendo
PLAYSTATION®3	Xbox 360®	Wii™
PlayStation®2		DS™
PSP®		
(PlayStation®Portable)		

We also develop and publish software titles for the PC. Our distribution segment, which primarily includes our Jack of All Games subsidiary, distributes our products as well as third party software, hardware and accessories to retail outlets primarily in North America.

Basis of Presentation

The accompanying condensed consolidated financial statements include the accounts of the Company and reflect all normal and recurring adjustments necessary for fair presentation of our financial position, results of operations and cash flows. Inter-company accounts and transactions have been eliminated. The preparation of these condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in these condensed consolidated financial statements and accompanying notes. We adhere to the same accounting policies in preparation of interim financial statements. As permitted under generally accepted accounting principles, interim accounting for certain expenses, including income taxes, are based on full year assumptions when appropriate. Actual results could differ materially from those estimates.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been omitted pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"), although we believe that the disclosures are adequate to make the information presented not misleading. These condensed consolidated financial statements and accompanying notes should be read in conjunction with our annual consolidated financial statements and the notes thereto, included in our Annual Report on Form 10-K for the year ended October 31, 2008.

Reclassifications

Certain prior year amounts have been reclassified to conform to current year presentation for comparative purposes.

Earnings (Loss) Per Share

Basic earnings (loss) per share ("EPS") is computed by dividing the net income (loss) applicable to common stockholders for the period by the weighted average number of shares of common stock outstanding during the same period. Diluted EPS is computed by dividing the net income (loss) applicable to common stockholders for the period by the weighted average number of shares of common stock and common stock equivalents outstanding, which includes shares of common stock

issuable upon the exercise of stock options and restricted stock outstanding during the same period. The computation for diluted number of shares excludes those unexercised stock options and unvested restricted stock which are antidilutive. For the three months ended January 31, 2009 and 2008, all common stock equivalents were excluded from our computation of diluted weighted average shares outstanding because their effect would have been antidilutive due to the net loss for those periods. The number of common stock equivalents excluded was approximately 8,318,000 and 7,561,000 for the three months ended January 31, 2009 and 2008, respectively. For the three months ended January 31, 2009, we issued approximately 1,082,000 shares of common stock in connection with employee stock option exercises and restricted stock awards and canceled 19,000 shares of unvested restricted stock awards.

Recently Issued Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board ("FASB") issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"), which provides guidance on how to measure assets and liabilities recorded at fair value. SFAS 157 does not expand the use of fair value to any new circumstances, but does require additional disclosure in annual and quarterly reports. We adopted SFAS 157 and its related amendments for financial assets and liabilities as of November 1, 2008 (see Note 3) and it did not have a material impact on our financial position or results of operations. SFAS 157 is effective for non-financial assets and liabilities for us beginning November 1, 2009. We have evaluated the non-financial assets and liabilities portion of the standard and expect that it will have no significant impact on our financial condition or results of operations.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 expands the use of fair value accounting but does not affect existing standards, which require assets or liabilities to be carried at fair value. Under SFAS 159, a company may elect to use fair value to measure certain financial assets and financial liabilities, on an instrument-by-instrument basis. If the fair value option is elected, unrealized gains and losses on existing items for which fair value has been elected are reported as a cumulative adjustment to beginning retained earnings. Subsequent to the adoption of SFAS 159, changes in fair value are recognized in earnings. The Company adopted this Statement as of November 1, 2008 but has not applied the fair value option to any eligible assets or liabilities as such. There was no impact to our financial condition or results of operations from the adoption of this Statement.

In June 2007, the FASB ratified the Emerging Issues Task Force's ("EITF") consensus conclusion on EITF 07-03, *Accounting for Nonrefundable Advance Payments for Goods or Services to Be Used in Future Research and Development*. EITF 07-03 addresses the diversity which exists with respect to the accounting for the non-refundable portion of a payment made by a research and development entity for future research and development activities. Under this conclusion, an entity is required to defer and capitalize non-refundable advance payments made for research and development activities until the related goods are delivered or the related services are performed. EITF 07-03 is effective for interim or annual reporting periods in fiscal years beginning after December 15, 2007 (November 1, 2008 for the Company), and requires prospective application for new contracts entered into after the effective date. The adoption of EITF 07-03 did not have a material effect on our consolidated financial position, cash flows or results of operations.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations* ("SFAS 141(R)"). This Statement provides greater consistency in the accounting and financial reporting of business combinations. It requires the acquiring entity in a business combination to recognize all assets acquired and liabilities assumed in the transaction, establishes the acquisition-date fair value as the measurement objective for all assets acquired and liabilities assumed, and requires the acquirer to disclose the nature and financial effect of the business combination. SFAS 141(R) is effective for all fiscal years beginning after December 15, 2008 (November 1, 2009 for the Company) and interim periods within those years, with earlier adoption prohibited. We are evaluating the impact that the adoption of SFAS 141(R) will have on our consolidated financial position, cash flows or results of operations.

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In April 2008, the FASB issued FSP FAS 142-3, *Determination of the Useful Life of Intangible Assets* ("FSP FAS 142-3"). FSP FAS 142-3 amends the factors an entity should consider in developing renewal or extension assumptions used in determining the useful life of recognized intangible assets under SFAS No. 142, *Goodwill and Other Intangible Assets*. This guidance for determining the useful life of a recognized intangible asset applies prospectively to intangible assets acquired individually or with a group of other assets in either an asset acquisition or business combination. FSP FAS 142-3 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2008 (November 1, 2009 for the Company), and early adoption is prohibited. We do not expect that the adoption of FSP FAS 142-3 will have a material effect on our consolidated financial position, cash flows or results of operations.

In June 2008, the FASB issued Staff Position EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities* ("FSP EITF 03-6-1"), which is effective for financial statements issued for fiscal years beginning after December 15, 2008 (November 1, 2009 for the Company). FSP EITF 03-6-1 clarifies that share-based payment awards that entitle holders to receive nonforfeitable dividends before they vest will be considered participating securities and included in the basic earnings per share calculation. We are still evaluating the impact of adopting FSP EITF 03-6-1 on our results of operations.

In October 2008, the FASB issued FASB Staff Position (FSP) FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*, which clarifies how companies should apply the fair value measurement methodologies of SFAS 157 to financial assets whose markets are illiquid or inactive. Under this FSP, companies may use their own assumptions about future cash flows and risk-adjusted discount rates when relevant observable inputs are either unavailable or based solely on transaction prices that reflect forced liquidations or distressed sales. We adopted this FSP as of November 1, 2008. There was no impact to our financial condition or results of operations from the adoption of this FSP.

2. MANAGEMENT AGREEMENT

In March 2007, we began operating under a management services agreement with ZelnickMedia (the "Management Agreement"), whereby ZelnickMedia provides us with certain management, consulting and executive level services. Strauss Zelnick, the President of ZelnickMedia, serves as our Executive Chairman. In addition, we have entered into employment agreements with Ben Feder and Karl Slatoff to serve as our Chief Executive Officer and Executive Vice President, respectively. Both Mr. Feder and Mr. Slatoff are partners of ZelnickMedia. The Management Agreement expires in October 2012 and provides for an annual management fee of \$2,500 (\$750 for periods prior to the amendment that was effective as of April 1, 2008) and a maximum bonus of \$2,500 per fiscal year (\$750 for periods prior to the amendment that was effective as of April 1, 2008) based on the Company achieving certain performance thresholds. In consideration for ZelnickMedia's services under the Management Agreement, we recorded consulting expense (a component of general and administrative expenses) of \$875 and \$446 for the three months ended January 31, 2009 and 2008, respectively.

Pursuant to the Management Agreement, in August 2007, we issued stock options to ZelnickMedia to acquire 2,009,075 shares of our common stock at an exercise price of \$14.74 per share, which vest over 36 months and expire 10 years from the date of grant. Each month, we remeasure the fair value of the unvested portion of such options and record compensation expense for the difference between total earned compensation at the end of the period, and total earned compensation at the beginning of the period. As a result, changes in the price of our common stock impacts compensation expense or benefit recognized from period to period. For the three months ended January 31, 2009 and 2008, we recorded \$1,201 and \$2,058, respectively, of stock-based compensation related to this option grant. In addition, on June 13, 2008, pursuant to an amendment to our Management Agreement, we granted 600,000 shares of restricted stock to ZelnickMedia, that vest annually over a three year period, and 900,000 shares of restricted stock that vest over a four year period through 2012, provided that the price of our

common stock outperforms 75% of the companies in the NASDAQ Industrial Index. For the three months ended January 31, 2009, we recorded \$392 of stock-based compensation related to these grants of restricted stock. No stock-based compensation expense was recorded in connection with this agreement for the three months ended January 31, 2008.

3. FAIR VALUE MEASUREMENTS

As of November 1, 2008, we adopted SFAS 157 for financial assets and liabilities. SFAS No. 157 establishes a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy requires entities to maximize the use of "observable inputs" and minimize the use of "unobservable inputs." The three levels of inputs used to measure fair value are as follows:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Observable inputs other than quoted prices included in Level 1, such as quoted prices for markets that are not active or other inputs that are observable or can be corroborated by observable market data.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

The table below segregates all financial assets and liabilities that are measured at fair value on a recurring basis (which, for purposes of SFAS No. 157, means they are so measured at least annually) into the most appropriate level within the fair value hierarchy based on the inputs used to determine the fair value at the measurement date.

	January 31, 2009	Quoted prices in active markets for identical assets (level 1)	Significant other observable inputs (level 2)	Significant unobservable inputs (level 3)
Money market funds	\$ 114,076	\$ 114,076	\$ —	\$ —
Bank time deposits	16,247	16,247	—	—

4. COMPREHENSIVE LOSS

Components of comprehensive loss are as follows:

	Three months ended January 31,	
	2009	2008
Net loss	\$ (50,388)	\$ (37,997)
Foreign currency translation adjustment	(19,250)	(6,249)
Comprehensive loss	\$ (69,638)	\$ (44,246)

5. INVENTORY

Inventory balances by category are as follows:

	January 31, 2009	October 31, 2008
Finished products	\$ 70,279	\$ 96,139
Parts and supplies	5,693	8,096
Inventory	\$ 75,972	\$ 104,235

Estimated product returns included in inventory at January 31, 2009 and October 31, 2008 are \$9,903 and \$9,394, respectively.

6. SOFTWARE DEVELOPMENT COSTS AND LICENSES

Details of our software development costs and licenses are as follows:

	January 31, 2009		October 31, 2008	
	Current	Non-current	Current	Non-current
Software development costs, internally developed	\$ 96,208	\$ 22,530	\$ 72,381	\$ 39,508
Software development costs, externally developed	18,848	42,366	37,422	20,495
Licenses	1,656	1,849	3,633	1,988
Software development costs and licenses	\$ 116,712	\$ 66,745	\$ 113,436	\$ 61,991

Software development costs and licenses as of January 31, 2009 and October 31, 2008 include \$160,642 and \$136,687, respectively, related to titles that have not been released.

7. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	January 31, 2009	October 31, 2008
Software development costs	\$ 37,573	\$ 39,803
Compensation and benefits	15,620	40,293
Income tax payable	13,668	13,263
Licenses	12,905	13,594
Marketing and promotions	9,572	7,430
Professional fees	7,907	7,618
Rent and deferred rent obligations	6,296	6,732
Other	27,138	24,356
Total	\$ 130,679	\$ 153,089

8. CREDIT AGREEMENT

In July 2007, we entered into a credit agreement with Wells Fargo (the "Credit Agreement"). The Credit Agreement provides for borrowings of up to \$140,000 and is secured by substantially all of our assets and the equity of our subsidiaries. The Credit Agreement expires on July 3, 2012. Revolving loans under the Credit Agreement bear interest at our election of (a) 2.00% to 2.50% above a certain base rate (8.00% at January 31, 2009), or (b) 3.25% to 3.75% above the LIBOR Rate with a minimum 4.00% LIBOR Rate (7.25% at January 31, 2009), with the margin rate subject to the achievement of certain average liquidity levels. We are also required to pay an annual fee on the unused available balance, ranging from 0.25% to 0.75% based on amounts borrowed.

We had borrowings outstanding of \$70,000 at January 31, 2009 and October 31, 2008 and had \$58,440 and \$28,964 available for borrowings, respectively. We had \$11,560 of letters of credit outstanding at January 31, 2009 and October 31, 2008 and were in compliance with all covenants and requirements in the Credit Agreement. We recorded \$1,796 and \$779 of interest expense and fees related to the Credit Agreement for the periods ended January 31, 2009 and 2008, respectively.

9. LEGAL AND OTHER PROCEEDINGS

Various lawsuits, claims, proceedings and investigations are pending involving us and certain of our subsidiaries as described below in this section. Depending on the amount and the timing, an unfavorable resolution of some or all of these matters could materially affect our business, financial condition, results of operations or cash flows. We have appropriately accrued amounts related to certain legal and other proceedings discussed below and in our Form 10-K and 10-Q for the periods

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ended October 31, 2008 and January 31, 2009, respectively. While there is a possibility that a loss may be incurred in excess of the amounts accrued in our financial statements, we believe that such losses, unless otherwise disclosed, would not be material. In addition to the matters described herein, we are, or may become, involved in routine litigation in the ordinary course of business which we do not believe to be material to our business, financial condition, results of operations or cash flows.

Consumer Class Action and City of Los Angeles Litigation—Grand Theft Auto: San Andreas. In July 2005, we received four complaints for purported class actions, which were consolidated in the U.S. District Court for the Southern District of New York (the "SDNY"). The plaintiffs, alleged purchasers of our *Grand Theft Auto: San Andreas* game, assert that we engaged in consumer deception and false advertising, breached an implied warranty of merchantability and were unjustly enriched as a result of our alleged failure to disclose that *Grand Theft Auto: San Andreas* contained "hidden" content. The complaints seek unspecified damages, declarations of various violations of law and litigation costs. In January 2006, the City Attorney for the City of Los Angeles filed a complaint in the Superior Court of California, alleging violations of California law on substantially the same basis as the consumer class action; we removed the LA City Attorney lawsuit to federal court, and it was consolidated with the consumer class action. In December 2007, the SDNY court preliminarily approved a settlement of the consumer class action. In July 2008, however, the SDNY Court refused to certify the proposed settlement class on the basis that, under controlling case law issued after the parties negotiated the settlement, the plaintiffs could no longer meet their burden of showing that the case could proceed on the proposed class basis, regardless of whether the purpose of certification was for litigation or settlement. The plaintiffs have applied for permission to appeal the SDNY Court's decision; that application is pending. We express no opinion as to the likelihood of permission to appeal being granted or the outcome of any such appeal, and, should the consumer class action or the related LA City Attorney action return to an active litigation posture, we will continue to defend those cases vigorously.

Securities Class Action—Grand Theft Auto: San Andreas and Option Backdating. In February and March 2006, four purported class action complaints were filed against us and certain of our then current and former officers and directors in the U.S. District Court for the Southern District of New York. The actions were consolidated, and in April 2007 the lead plaintiff filed a consolidated second amended complaint which contained allegations related to purported "hidden content" contained in *Grand Theft Auto: San Andreas* and the backdating of stock options, including the investigation thereof conducted by the Special Litigation Committee of the Board of Directors and the restatement of our financial statements relating thereto. This complaint was filed against us, our former Chief Executive Officer, our former Chief Financial Officer, our former Chairman of the Board, our Rockstar Games subsidiary, and one officer and one former officer of our Rockstar Games subsidiary. He sought unspecified compensatory damages and costs including attorneys' fees and expenses. In April 2008, the Court dismissed, with leave to amend, all claims as to all defendants relating to *Grand Theft Auto: San Andreas* and certain claims as to our former CEO, CFO and certain director defendants relating to the backdating of stock options. In September 2008, the lead plaintiff filed a third amended consolidated complaint seeking to reinstate these claims. We express no opinion as to the outcome of the complaint and will continue to defend this case vigorously.

St. Clair Derivative Action. In January 2006, the St. Clair Shores General Employees Retirement System filed a purported class and derivative action complaint in the U.S. District Court for the Southern District of New York against us, as nominal defendant, and certain of our directors and certain former officers and directors. The factual allegations in this action are similar to those in the securities class action described above. The plaintiff asserts that certain defendants breached their fiduciary duty by selling their stock while in possession of certain material non-public information and that we violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder by failing to disclose material facts in our 2003, 2004 and 2005 proxy statements in which we solicited approval to increase share availability under our 2002 Stock Option Plan. The plaintiff seeks the return of all profits from

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the alleged insider trading conducted by the individual defendants who sold our stock, unspecified compensatory damages with interest and its costs in the action. In March 2007, the Special Litigation Committee moved to dismiss the complaint based on, among other things, the Committee's conclusion that "future pursuit of this action is not in the best interests of Take-Two or its shareholders." In August 2007, the plaintiff filed an Amended Derivative and Class Action Complaint alleging, among other things, that defendants breached their fiduciary duties in connection with the issuance of proxy statements from 2001 through 2005. In September 2007, the Special Litigation Committee moved to dismiss the Amended Complaint or to consolidate certain of its claims with the securities class action. In July 2008, the Court dismissed all claims against us and all claims against all defendants that arose out of the plaintiff's derivative claims. The Court expressly did not determine whether the remaining claims, which are related to the proxy statements, would entitle the putative class to monetary damages. We intend to continue to vigorously defend against the remainder of the plaintiff's claims.

Derivative Action—Option Backdating. In July and August 2006, shareholders Richard Lasky and Raeda Karadsheh filed purported derivative actions in the U.S. District Court for the Southern District of New York against us, as nominal defendant, and certain of our directors and certain former officers and directors. These actions were consolidated in November 2006 and the plaintiffs filed a consolidated complaint in January 2007, which focused exclusively on our historical stock option granting practices, alleging violations of federal and state law, including breaches of fiduciary duties, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment. The complaints sought unspecified damages against all of the individual defendants, reimbursement from certain of the defendants of bonuses or other incentive or equity-based compensation paid to them, equitable and other relief relating to the proceeds from certain of the defendants' alleged improper trading activity in our stock, adoption of certain corporate governance proposals and recovery of litigation costs. These matters were referred to the Special Litigation Committee, which moved to dismiss certain parties from the litigation and to have any claims against the remaining parties be assigned to us for disposition by our management and Board of Directors. The parties are awaiting a decision by the Court.

Strickland et al. Personal Injury Action. In February 2005, the personal representatives of the Estates of Arnold Strickland, James Crump and Ace Mealer brought an action in the Circuit Court of Fayette County, Alabama against us, Sony Computer Entertainment America Inc., Sony Corporation of America, Wal-Mart, GameStop and Devin Moore, alleging under Alabama's manufacturers' liability and wrongful death statutes, that our video games resulted in "copycat violence" that caused the deaths of Messrs. Strickland, Crump and Mealer by Mr. Moore. The suit seeks damages (including punitive damages) against all of the defendants in excess of \$600,000. In April 2006, the plaintiffs amended the complaint to add a claim for civil conspiracy. Our motion to dismiss that claim is pending. At our request, the Court held an evidentiary hearing on October 30, 2008 to consider the exclusion of certain expert testimony and a second hearing was held on December 18, 2008. There currently is no scheduling order in effect. We believe that the claims are without merit and that this action is similar to lawsuits brought and uniformly dismissed by courts in other jurisdictions.

Stockholder Actions. In March 2008, Patrick Solomon, a stockholder, filed a purported class action complaint in the Court of Chancery of the State of Delaware against us and certain of our officers and directors. The plaintiff contends that the defendants breached their fiduciary duties by, among other things, allegedly refusing to explore premium offers by Electronic Arts Inc. to acquire all of the Company's outstanding shares of common stock, enacting a bylaw amendment allegedly designed to entrench the current board by preventing stockholders from nominating and electing alternative directors, agreeing to an amendment to a management agreement with ZelnickMedia and issuing a proxy statement for the 2008 annual meeting of stockholders that allegedly contained misleading and incomplete information. The complaint seeks preliminary and permanent injunctive relief, rescissory and other equitable relief and damages. After certain voluntary actions were taken by the Company, the plaintiff agreed to withdraw his motion for preliminary injunctive relief, and the annual meeting went forward without difficulty (and without any stockholders nominating directors or proposing

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business). On December 19, 2008, the plaintiff filed a supplement to his complaint. The supplement repeats his prior allegations and also alleges the stockholder vote on the amendment of the Company's Incentive Stock Plan and the amendment to the management agreement with ZelnickMedia and the grant of stock thereunder was invalid. On February 17, 2009, the Company filed its motion to dismiss all claims in both pleadings. On March 4, 2009, the plaintiff filed a motion to file a second supplement to his complaint. The second supplement contains additional allegations of breaches of fiduciary duties by the directors, and misleading and incomplete disclosure with respect to the proxy statement for the 2009 annual meeting of stockholders. The second supplement also seeks to enjoin the vote on the 2009 Stock Incentive Plan at the 2009 annual meeting of stockholders and a declaration that such Plan is invalid and void. We believe all of the claims described above lack merit, and intend to defend vigorously against them.

In April 2008, St. Clair Shores General Employees Retirement System, a stockholder, filed a purported derivative action on behalf of the Company in the Court of Chancery of the State of Delaware against our directors and ZelnickMedia. The allegations are essentially the same as those in the original Solomon complaint, above, with an additional complaint about the "poison pill" adopted by our board in March 2008, and an additional claim against ZelnickMedia for aiding and abetting the directors' alleged breach of fiduciary duty. Because the action was duplicative, the plaintiff agreed to stay all proceedings in the case in favor of the Solomon case. We believe the claims lack merit, and intend to defend vigorously against them. Also in April 2008, Michael Maulano, an alleged stockholder, filed a purported class action in New York Supreme Court, New York County, against us and our directors.

We intend to vigorously defend all of the above matters and, with respect to the derivative actions, we have been advised that the individual defendants will vigorously defend such actions. However, we cannot predict the outcome of these matters and, if determined adversely to us, such matters, either individually or in the aggregate, could result in the imposition of significant judgments, fines, penalties and/or injunctive relief, which could have a material adverse effect on our business, financial condition, results of operations or cash flows.

Grand Jury Subpoenas. In 2006, we received grand jury subpoenas issued by the District Attorney of the County of New York requesting production of documents covering various periods beginning on January 1, 1997, including those relating to, among other things: the so-called "Hot Coffee" scenes in *Grand Theft Auto: San Andreas*; the work of our Board of Directors, all board committees and the Special Litigation Committee; certain acquisitions entered into by us; billing and payment records relating to PricewaterhouseCoopers LLP and the termination of PricewaterhouseCoopers LLP as our auditors; communications to financial analysts and stockholders about acquisitions and financial results; compensation and human resources documents of certain of our directors and employees and former directors and employees; stock-based compensation; the SEC's July 2006 inquiry; legal services performed for employees; corporate credit card and expense records of certain individuals; the SEC bar of our former Chief Executive Officer, Ryan Brant; the resolution to amend our Incentive Stock Plan; and ethics, securities, and conflict of interest policies and questionnaires. Over time, the District Attorney's investigation focused on options backdating. We have fully cooperated and provided the documents and information called for by the subpoenas.

SEC Investigation. In July 2006, we received notice from the SEC that it was conducting an informal non-public investigation of certain stock option grants made from January 1997 to 2006 and in April 2007 we received notice from the SEC that it was conducting a formal investigation of such stock option grants. As a result of the Special Litigation Committee's internal review of our option grants, in February 2007 we restated our financial statements for prior periods in our Annual Report on Form 10-K for the fiscal year ended October 31, 2006. In August 2007, we received a "Wells" notice from the Staff of the Division of Enforcement of the SEC informing us of its intention to request authority to file charges, and to seek a civil monetary penalty in connection with its investigation. We submitted a response to the Staff's notice in September 2007, urging that no charges should be brought against us. We have continued to cooperate with the Staff and we continue to expect to resolve this investigation by means of a settlement rather than a contested litigation of charges.

10. SEGMENT AND GEOGRAPHIC INFORMATION

We are a publisher and distributor of interactive entertainment software games designed for personal computers, video game consoles and handheld platforms. Revenue earned by our publishing segment is primarily derived from the sale of internally developed software titles and software titles developed on our behalf by third parties. Revenue earned by our distribution segment is derived from the sale of third party software titles, accessories and hardware.

Our Chief Executive Officer is our chief operating decision maker ("CODM"). We are centrally managed and the CODM primarily uses consolidated financial information supplemented by sales information by product category, major product title and platform for making operational decisions and assessing financial performance.

Our CODM is presented with financial information that contains information that separately identifies our publishing and distribution operations, including gross margin information. Accordingly, we consider our publishing and distribution businesses to be distinct reportable segments.

Our operating segments do not record inter-segment revenue and therefore none has been reported. We do not allocate operating expenses, interest and other income, interest expense or income taxes to operating segments. Our accounting policies for segment reporting are the same as for the Company as a whole.

Information about our reportable segments is as follows:

Net revenue:	Three months ended January 31,	
	2009	2008
Publishing	\$ 149,186	\$ 122,419
Distribution	107,624	118,023
Total net revenue	\$ 256,810	\$ 240,442

Gross profit:	Three months ended January 31,	
	2009	2008
Publishing	\$ 46,603	\$ 42,172
Distribution	9,305	12,262
Total gross profit	\$ 55,908	\$ 54,434

	January 31, 2009			October 31, 2008		
	Publishing	Distribution	Total	Publishing	Distribution	Total
Accounts receivable, net	\$ 37,124	\$ 23,196	\$ 60,320	\$ 115,921	\$ 41,537	\$ 157,458
Inventory	24,483	51,489	75,972	38,446	65,789	104,235
Total assets	784,474	116,275	900,749	933,802	149,550	1,083,352

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We attribute net revenue to geographic regions based on product destination. Net revenue by geographic region is as follows:

Net revenue by geographic region:	Three months ended January 31,	
	2009	2008
United States	\$ 180,910	\$ 189,227
Canada	12,963	13,582
North America	193,873	202,809
United Kingdom	14,983	7,408
Continental Europe	38,373	21,417
Asia Pacific and other	9,581	8,808
Total net revenue	\$ 256,810	\$ 240,442

Net revenue by product platform for our reportable segments is as follows:

Net revenue by product platform:	Three months ended January 31,	
	2009	2008
Publishing:		
PC	\$ 35,520	\$ 12,423
Nintendo Wii	28,708	23,310
Microsoft Xbox 360	27,209	25,700
Sony PLAYSTATION 3	23,103	10,178
Sony PlayStation 2	14,042	30,714
Sony PSP	12,289	15,489
Nintendo handheld devices	7,563	3,236
Other	752	1,369
Total publishing	149,186	122,419
Distribution:		
Hardware and peripherals	40,600	53,168
Software:		
Nintendo Wii	20,942	11,000
Nintendo handheld devices	13,577	15,947
PC	13,080	12,367
Microsoft Xbox 360	8,318	6,433
Sony PlayStation 2	5,608	10,772
Sony PLAYSTATION 3	3,683	3,381
Sony PSP	1,331	1,429
Other	485	3,526
Total distribution	107,624	118,023
Total net revenue	\$ 256,810	\$ 240,442

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

CAUTIONARY NOTE ABOUT FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements made in reliance upon the safe harbor provisions of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. The statements contained herein which are not historical facts are considered forward-looking statements under federal securities laws and may be identified by words such as "anticipates," "believes," "estimates," "expects," "intends," "plans," "potential," "predicts," "projects," "seeks," "will," or words of similar meaning and include, but are not limited to, statements regarding the outlook for the Company's future business and financial performance. Such forward-looking statements are based on the current beliefs of our management as well as assumptions made by and information currently available to them, which are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict. Actual outcomes and results may vary materially from these forward-looking statements based on a variety of risks and uncertainties including those contained in the Company's Annual Report on Form 10-K for the fiscal year ended October 31, 2008, in the section entitled "Risk Factors," and the Company's other periodic filings with the SEC. All forward-looking statements are qualified by these cautionary statements and apply only as of the date they are made. The Company undertakes no obligation to update any forward-looking statement, whether as a result of new information, future events or otherwise.

Our Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is provided in addition to the accompanying condensed consolidated financial statements and footnotes to assist readers in understanding our results of operations, financial condition and cash flows. The following discussion should be read in conjunction with the MD&A included in our annual consolidated financial statements and the notes thereto, included in our Annual Report on Form 10-K for the year ended October 31, 2008.

Overview

Our Business

We are a global publisher, developer and distributor of interactive entertainment software, hardware and accessories. Our publishing segment consists of our Rockstar Games, 2K Games, 2K Sports and 2K Play publishing labels. We develop, market and publish software titles for the leading gaming and entertainment hardware platforms including: Sony's PLAYSTATION®3 ("PS3") and PlayStation®2 ("PS2") computer entertainment systems; Sony's PSP® (PlayStation®Portable) ("PSP") system; Microsoft's Xbox 360® ("Xbox 360") video game and entertainment system; Nintendo's Wii™ ("Wii") and DS™ ("DS") systems; and for the PC and Games for Windows®. The installed base for the prior generation of console platforms, including PS2 and DS ("prior generation platforms") is substantial. The release of the PS3, Xbox 360, and Wii platforms ("current generation platforms") has further expanded the video game software market. We are continuing to increase the number of titles released on the current generation platforms while also developing titles for certain prior generation platforms such as PS2 and DS given their significant installed base, as long as it is economically attractive to do so. Our distribution segment, which primarily consists of our Jack of All Games subsidiary, distributes our products as well as software, hardware and accessories produced by others to retail outlets in North America.

We endeavor to be the most creative, innovative and efficient company in our industry. Our strategy is to capitalize on the growth of the interactive entertainment market, particularly the expanding demographics of video game players, and focus on creating premium quality games and successful franchises for which we can create sequels. We develop most of our frontline products internally and own the intellectual property associated with most of our titles, which we believe best positions us financially and competitively. We have established a portfolio of proprietary software content for the

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major hardware platforms in a wide range of genres including action, adventure, racing, role-playing, sports and strategy. We believe that our commitment to creativity and innovation is a distinguishing strength, allowing us to differentiate many of our products in the marketplace by combining advanced technology with compelling story lines and characters that provide unique gameplay experiences for consumers. We have created, acquired or licensed a group of highly recognizable brands to match the variety of consumer demographics we aspire to serve, ranging from adults to children and game enthusiasts to casual gamers.

Revenue in our publishing segment is primarily derived from the sale of internally developed software titles and software titles developed on our behalf by third parties. Operating margins in our publishing business are dependent in part upon our ability to continually release new, commercially successful products and to manage software product development costs. We have internal development studios located in the United States, Canada, the United Kingdom, Czech Republic, Australia and China.

We expect Rockstar Games, our wholly-owned publisher of the hit *Grand Theft Auto* and *Midnight Club* franchises, to continue to be a leader in the action product category by leveraging our existing titles as well as developing new brands. Rockstar is also well known for developing brands in other genres, including the *Bully*, *Manhunt*, *Max Payne* and *Red Dead Revolver* franchises. 2K Games has published a variety of popular entertainment properties across multiple genres and platforms and we expect 2K Games to continue to develop new and successful franchises in the future. 2K Games' internally owned and developed franchises include the critically acclaimed, multi-million unit selling *BioShock*, *Mafia*, and *Sid Meier's Civilization* series. Externally developed titles have included *The Darkness*[™] and *The Elder Scrolls IV®: Oblivion*[™]. Our 2K Sports series, which includes *Major League Baseball 2K*, *NBA 2K* and *NHL 2K*, provides more consistent annual revenue streams than our Rockstar Games and 2K Games' businesses because we publish them on an annual basis. We develop most of our 2K Sports software titles through our internal development studios including the *Major League Baseball 2K* series, *NBA 2K* series, *NHL 2K* series, and our *Top Spin* tennis series. Since its formation, our 2K Sports label has secured major sports league licenses including long-term, third party exclusive licensing relationships with Major League Baseball Properties, the Major League Baseball Players Association and Major League Baseball Advanced Media. Our 2K Play label focuses on developing and publishing titles for the growing market of casual and family-friendly games. 2K Play titles are developed by third party developers and internal development studios. Internally developed titles include *Carnival Games* and the *Deal or No Deal* series. 2K Play also has a partnership with Nickelodeon to publish video games based on its top rated Nick Jr. titles such as *Dora the Explorer* and *Go, Diego, Go!* We expect family-oriented gaming to be an important component of our industry in the future. Furthermore, we have expansion initiatives in the rapidly growing Asia Pacific markets, where our strategy is to broaden the distribution of our existing products, develop a presence in Japan, and establish an online gaming presence, especially in China and Korea.

Our distribution segment, which is primarily comprised of our Jack of All Games subsidiary, distributes our products as well as third party software, hardware and accessories to retail outlets primarily in North America. Revenue in our distribution segment is derived from the sale of third party software titles, accessories and hardware in North America. Operating margins in our distribution business depend in large part on the mix of software and hardware sales, with software sales generally yielding higher margins than hardware. We have focused on improving margins in our distribution business. In September 2008, we sold certain assets of our distribution segment pertaining to the warehouse management, processing and value-added service operations of our distribution facility to Ditan Distribution LLC ("Ditan"), a logistics management solutions provider. In addition, we agreed to outsource the pick, pack, ship and warehousing functions for our publishing and distribution businesses to Ditan. This has allowed Jack of All Games to better focus on purchasing, sales and service for their customers.

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Trends and Factors Impacting our Business

Product Release Schedule. Our financial results are impacted by the timing of our product releases and the commercial success of those titles. Our *Grand Theft Auto* products in particular have historically accounted for a substantial portion of our revenue. The timing of our *Grand Theft Auto* releases varies significantly, which in turn impacts our financial performance on a quarterly and annual basis.

Economic Environment and Retailer Performance. Our business is dependent upon a limited number of customers who account for a significant portion of our revenue. The unfavorable economic environment has impacted several of our customers, and is expected to continue to do so during fiscal 2009. Bankruptcies or consolidations of our large retail customers could seriously hurt our business, due to uncollectible accounts receivables and the concentration of purchasing power among the remaining large retailers. Our business is also negatively impacted by the actions of certain of our large customers, who sell used copies of our games, which reduces demand for new copies of our games. We have begun to offer downloadable content for certain of our titles which requires the user to have a copy of the original game. While this may serve to reduce some used game sales, we expect sales of used games to continue to increase.

Hardware Platforms. The majority of our products are made for the hardware platforms developed by three companies—Sony, Microsoft and Nintendo. The success of our business is dependent upon the consumer acceptance of these platforms and the continued growth in the installed base of these platforms. When new hardware platforms are introduced, demand for software based on older platforms declines, which may negatively impact our business. Additionally, our development costs are generally higher for titles based on new platforms, and we have limited ability to predict the consumer acceptance of the new platforms, which may impact our sales and profitability. As a result, we believe it is important to focus our development efforts on a select number of titles, which is consistent with our strategy.

International Operations. Sales in international markets, primarily in Europe, have accounted for a significant portion of our revenue. We have also recently expanded our Asian operations in an effort to increase our geographical scope and diversify our revenue base. We are subject to risks associated with foreign trade, including credit risks and consumer acceptance of our products, and our financial results may be impacted by fluctuations in foreign currency exchange rates.

First Quarter 2009 Releases

We released the following key titles in the first quarter of fiscal year 2009:

<i>Title</i>	<i>Publishing Label</i>	<i>Internal or External Development</i>	<i>Platform(s)</i>	<i>Date Released</i>
<i>MLB® Superstars</i>	2K Sports	External	Wii	November 11, 2008
<i>Grand Theft Auto IV</i>	Rockstar Games	Internal	PC	December 2, 2008
<i>MLB® Front Office Manager</i>	2K Sports	External	PS3, Xbox 360, Games for Windows®	January 27, 2009

Product Pipeline

We have announced expected release dates for the following key titles (this list does not represent all titles currently in development):

<i>Title</i>	<i>Publishing Label</i>	<i>Internal or External Development</i>	<i>Platform(s)</i>	<i>Expected/Actual Release</i>
<i>Grand Theft Auto IV: The Lost and Damned</i>	Rockstar Games	Internal	Xbox 360	February 17, 2009
<i>Major League Baseball® 2K9</i>	2K Sports	Internal	Multiple platforms	March 3, 2009
<i>MLB® 2K9 Fantasy All-Stars</i>	2K Sports	External	DS	March 3, 2009
<i>Grand Theft Auto: Chinatown Wars</i>	Rockstar Games	Internal	DS	March 17, 2009
<i>Don King Boxing</i>	2K Sports	Internal	Wii, DS	March 31, 2009
<i>Beaterator</i>	Rockstar Games	Internal	TBA	Fiscal year 2009
<i>BioShock® 2</i>	2K Games	Internal	TBA	Fiscal year 2009
<i>Borderlands™</i>	2K Games	External	PS3, Xbox 360, Games for Windows®	Fiscal year 2009
<i>Grand Theft Auto IV Second Episode</i>	Rockstar Games	Internal	Xbox 360	Fiscal year 2009
<i>Mafia II</i>	2K Games	Internal	PS3, Xbox 360, Games for Windows®	Fiscal year 2009
<i>Major League Baseball® 2K9</i>	2K Sports	Internal	PSP	Fiscal year 2009
<i>Midnight Club: Los Angeles Downloadable Content—South Central Premium Upgrade</i>	Rockstar Games	Internal	PS3, Xbox 360	Fiscal year 2009
<i>NBA® 2K10</i>	2K Sports	Internal	Multiple platforms	Fiscal year 2009
<i>NHL® 2K10</i>	2K Sports	Internal	Multiple platforms	Fiscal year 2009
<i>Red Dead Redemption</i>	Rockstar Games	Internal	PS3, Xbox 360	Fiscal year 2009
<i>The BIGS™ 2</i>	2K Sports	External	Multiple platforms	Fiscal year 2009

Critical Accounting Policies and Estimates

Our most critical accounting policies, which are those that require significant judgment, include: revenue recognition; allowances for returns, price concessions and other allowances; capitalization and recognition of software development costs and licenses; valuation of goodwill and long-lived assets; valuation and recognition of stock-based compensation; and income taxes. In-depth descriptions of these can be found in our Annual Report on Form 10-K for the fiscal year ended October 31, 2008.

Recently Issued Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board ("FASB") issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"), which provides guidance on how to measure assets and liabilities recorded at fair value. SFAS 157 does not expand the use of fair value to any new circumstances, but does require additional disclosure in annual and quarterly reports. We adopted SFAS 157 and its related amendments for financial assets and liabilities as of November 1, 2008 (See Note 3 to the Condensed Consolidated Financial Statements) and it did not have a material impact on our financial position or results of operations. SFAS 157 is effective for non-financial assets and liabilities for us beginning November 1, 2009. We have evaluated the non-financial assets and liabilities portion of the standard and expect that it will have no significant impact on our financial condition or results of operations.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 expands the use of fair value accounting but does not affect existing standards, which require assets or liabilities to be carried at fair value. Under SFAS 159, a company may elect to use fair value to measure certain financial assets and financial liabilities, on an instrument-by-instrument basis. If the fair value option is elected, unrealized gains and losses on existing items for which fair value has been elected are reported as a cumulative adjustment to beginning retained earnings. Subsequent to the adoption of SFAS 159, changes in fair value are recognized in earnings. The Company adopted this Statement as of November 1, 2008 but has not applied the fair value option to any eligible assets or liabilities as such. There was no impact to our financial condition or results of operations from the adoption of this Statement.

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In June 2007, the FASB ratified the Emerging Issues Task Force's ("EITF") consensus conclusion on EITF 07-03, *Accounting for Nonrefundable Advance Payments for Goods or Services to Be Used in Future Research and Development*. EITF 07-03 addresses the diversity which exists with respect to the accounting for the non-refundable portion of a payment made by a research and development entity for future research and development activities. Under this conclusion, an entity is required to defer and capitalize non-refundable advance payments made for research and development activities until the related goods are delivered or the related services are performed. EITF 07-03 is effective for interim or annual reporting periods in fiscal years beginning after December 15, 2007 (November 1, 2008 for the Company), and requires prospective application for new contracts entered into after the effective date. The adoption of EITF 07-03 did not have a material effect on our consolidated financial position, cash flows or results of operations.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations* ("SFAS 141(R)"). This Statement provides greater consistency in the accounting and financial reporting of business combinations. It requires the acquiring entity in a business combination to recognize all assets acquired and liabilities assumed in the transaction, establishes the acquisition-date fair value as the measurement objective for all assets acquired and liabilities assumed, and requires the acquirer to disclose the nature and financial effect of the business combination. SFAS 141(R) is effective for all fiscal years beginning after December 15, 2008 (November 1, 2009 for the Company) and interim periods within those years, with earlier adoption prohibited. We are evaluating the impact that the adoption of SFAS 141(R) will have on our consolidated financial position, cash flows or results of operations.

In April 2008, the FASB issued FSP FAS 142-3, *Determination of the Useful Life of Intangible Assets* ("FSP FAS 142-3"). FSP FAS 142-3 amends the factors an entity should consider in developing renewal or extension assumptions used in determining the useful life of recognized intangible assets under SFAS No. 142, *Goodwill and Other Intangible Assets*. This guidance for determining the useful life of a recognized intangible asset applies prospectively to intangible assets acquired individually or with a group of other assets in either an asset acquisition or business combination. FSP FAS 142-3 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2008 (November 1, 2009 for the Company), and early adoption is prohibited. We do not expect that the adoption of FSP FAS 142-3 will have a material effect on our consolidated financial position, cash flows or results of operations.

In June 2008, the FASB issued Staff Position EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities* ("FSP EITF 03-6-1"), which is effective for financial statements issued for fiscal years beginning after December 15, 2008 (November 1, 2009 for the Company). FSP EITF 03-6-1 clarifies that share-based payment awards that entitle holders to receive nonforfeitable dividends before they vest will be considered participating securities and included in the basic earnings per share calculation. We are still evaluating the impact of adopting FSP EITF 03-6-1 on our results of operations.

In October 2008, the FASB issued FASB Staff Position (FSP) FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*, which clarifies how companies should apply the fair value measurement methodologies of SFAS 157 to financial assets whose markets are illiquid or inactive. Under this FSP, companies may use their own assumptions about future cash flows and risk-adjusted discount rates when relevant observable inputs are either unavailable or based solely on transaction prices that reflect forced liquidations or distressed sales. We adopted this FSP as of November 1, 2008. There was no impact to our financial condition or results of operations from the adoption of this FSP.

Results of Operations

Consolidated operating results, net revenue by geographic region and publishing revenue by platform as a percent of revenue are as follows:

	Three months ended	
	January 31,	
	2009	2008
Net revenue:		
Publishing	58.1%	50.9%
Distribution	41.9%	49.1%
Net revenue	100.0%	100.0%
Cost of goods sold	78.2%	77.4%
Gross profit	21.8%	22.6%
Selling and marketing	15.9%	14.0%
General and administrative	15.5%	13.8%
Research and development	8.2%	6.6%
Business reorganization and related	0.0%	0.0%
Depreciation and amortization	2.0%	2.7%
Total operating expenses	41.5%	37.0%
Loss from operations	(19.7)%	(14.4)%
Interest and other income, net	0.9%	0.6%
Loss before income taxes	(18.8)%	(13.8)%
Provision for income taxes	0.8%	2.0%
Net loss	(19.6)%	(15.8)%
Net revenue by geographic region:		
United States and Canada	75.5%	84.3%
Europe, Asia Pacific and Other	24.5%	15.7%
Publishing revenue by platform:		
Console	62.4%	74.2%
PC	23.8%	10.1%
Handheld	13.3%	15.3%
Accessories	0.5%	0.4%

Three Months ended January 31, 2009 compared to January 31, 2008**Publishing**

(thousands of dollars)	2009	%	2008	%	Increase/ (decrease)	% Increase/ (decrease)
Net revenue	\$ 149,186	100.0%	\$ 122,419	100.0%	\$ 26,767	21.9%
Product costs	51,627	34.6%	42,391	34.6%	9,236	21.8%
Software development costs and royalties ⁽¹⁾	23,302	15.6%	22,713	18.6%	589	2.6%
Internal royalties	20,472	13.7%	6,145	5.0%	14,327	233.1%
Licenses	7,182	4.8%	8,998	7.4%	(1,816)	(20.2)%
Cost of goods sold	102,583	68.8%	80,247	65.6%	22,336	27.8%
Gross profit	\$ 46,603	31.2%	\$ 42,172	34.4%	\$ 4,431	10.5%

(1) Includes \$1,172 and \$746 of stock-based compensation expense in 2009 and 2008, respectively.

Net revenue increased \$26.8 million for the three months ended January 31, 2009 as compared to the same period in 2008, primarily due to an increase of \$31.7 million in sales from our *Grand Theft Auto* franchise following the release of *Grand Theft Auto IV* for the PS3 and Xbox 360 in April 2008 and for the PC in December 2008, as well as an increase of \$13.0 million in sales from our *Midnight Club* franchise due to the release of *Midnight Club: Los Angeles* in October 2008. Sales of *Carnival Games*, our second largest revenue generator for the three months ended January 31, 2009, remained relatively flat compared to the same period of the prior year. This was partially offset by a decrease of \$19.8 million in sales from titles released in the fourth quarter of 2007 and the first quarter of 2008 including: *BioShock*, *College Hoops 2K8* and *The Elder Scrolls IV: Oblivion*.

Net revenue on current generation platforms accounted for approximately 53.0% of our total net publishing revenue in the first quarter of 2009 compared to 48.3% for the same period in 2008. PS3 software sales grew \$12.9 million (127.0%) fueled by sales of *Grand Theft Auto IV*, *Midnight Club: Los Angeles* and *NBA 2K9*. PC software sales increased \$23.1 million (185.9%) due primarily to the December 2008 release of *Grand Theft Auto IV*. Sales on the prior generation platforms continued to decline primarily due to a decrease of \$16.9 million (53.6%) on PS2, related to decreased sales of prior versions of *Grand Theft Auto* and various sports titles. We expect volume on prior generation platforms to continue to decline as a result of the continuing hardware transition to the current generation hardware platforms and have therefore reduced the number of titles in development for these older platforms. We have also continued to reduce pricing on software titles for the PS2 as the current generation hardware installed base grows.

Gross profit as a percentage of net revenue decreased from the same period of the prior year primarily due to higher internal royalty expense in 2009 based on the December 2008 release of *Grand Theft Auto IV* on the PC and continuing *Grand Theft Auto IV* console sales. Additionally, we offered greater price concessions in the 2009 period, primarily due to the economic slowdown and increased pressure to lower prices on certain titles.

Revenue earned from licensing our intellectual property to third parties increased \$1.7 million in the first quarter of 2009 primarily due to licensing from our *Grand Theft Auto* franchise. We recognize substantially higher gross profit margins on revenue earned in connection with licensing our products.

Publishing revenue earned outside of North America accounted for approximately \$62.8 million (42.1%) in the first quarter of 2009 compared to \$37.1 million (30.3%) in the 2008 period. The year-over-year increase was primarily attributable to higher sales of *Grand Theft Auto IV* and *Midnight*

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Club: Los Angeles. Foreign exchange rates reduced revenue and gross profit by approximately \$12.3 million and \$1.6 million, respectively, in the first quarter of 2009.

Distribution

(thousands of dollars)	2009	%	2008	%	Increase/ (decrease)	% Increase/ (decrease)
Net revenue	\$ 107,624	100.0%	\$ 118,023	100.0%	\$ (10,399)	(8.8)%
Cost of goods sold	98,319	91.4%	105,761	89.6%	(7,442)	(7.0)%
Gross profit	\$ 9,305	8.6%	\$ 12,262	10.4%	\$ (2,957)	(24.1)%

Net revenue decreased \$10.4 million for the three months ended January 31, 2009 as compared to the same period in 2008 primarily due to:

- i. a decrease of \$12.5 million in hardware sales due to our focus on higher margin software products; and
- ii. a decrease of \$6.6 million in sales for prior generation software due to declining consumer spending on titles for the prior generation platforms; partially offset by
- iii. An increase of \$9.9 million in sales of Wii software as consumers continued to shift their spending to this platform with the increasing popularity of casual gaming.

Gross profit margins decreased slightly in 2009 primarily due to the sale of older inventory at lower margins in order to reduce our inventory levels. Foreign currency exchange rates decreased net revenue and gross profit by approximately \$3.1 million and \$0.5 million, respectively, in the first quarter of 2009.

Operating Expenses

(thousands of dollars)	2009	% of net revenue	2008	% of net revenue	Increase/ (decrease)	% Increase/ (decrease)
Selling and marketing	\$ 40,774	15.9%	\$ 33,729	14.0%	\$ 7,045	20.9%
General and administrative	39,748	15.5%	33,083	13.8%	6,665	20.1%
Research and development	20,943	8.2%	15,810	6.6%	5,133	32.5%
Depreciation and amortization	5,108	2.0%	6,409	2.7%	(1,301)	(20.3)%
Total operating expenses⁽¹⁾	\$ 106,573	41.5%	\$ 89,031	37.0%	\$ 17,542	19.7%

(1)

Includes stock-based compensation expense, as follows:

	2009	2008
Selling and marketing	\$ 493	\$ 867
General and administrative	3,391	3,372
Research and development	1,126	1,088

As compared to first quarter 2008 the foreign currency exchange rates favorably impacted total operating expenses by approximately \$6.3 million in the first quarter of 2009.

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Selling and marketing

Selling and marketing expenses increased \$7.0 million for the three months ended January 31, 2009 as compared to the same period in 2008 primarily due to:

- i. an increase in advertising expense of \$11.3 million mainly for *Grand Theft Auto IV* and *Midnight Club: Los Angeles*; partially offset by
- ii. a decrease of \$1.4 million in personnel severance costs incurred for the termination of several key employees in our Europe operations in December 2007; and
- iii. a decrease of \$3.4 million in personnel and warehouse expenses at our distribution facility offset by approximately \$0.8 million in management fees related to the distribution services agreement that we entered into with Ditan in September 2008. The net savings was offset by the distribution fee recorded in cost of goods sold.

General and administrative

General and administrative expenses increased \$6.7 million for the three months ended January 31, 2009 compared to the same period in 2008 primarily due to:

- i. a \$5.5 million increase in legal fees and accrued settlement costs, primarily reflecting estimates to resolve certain ongoing legal and regulatory matters, and expenses related to contract negotiations; and
- ii. an increase of \$1.4 million for bad debt expense mainly for international customers as well as a recovery of bad debt in the quarter ended January 31, 2008.

General and administrative expenses for the three months ended January 31, 2009 and 2008 also includes occupancy expense (primarily rent, utilities and office expenses) of \$2.8 million and \$3.5 million, respectively, related to our development studios.

Research and development

Research and development expenses increased \$5.1 million for the three months ended January 31, 2009 compared to the same period in 2008 primarily due to

- i. an increase in personnel costs as a result of added headcount from the prior year acquisitions of Rockstar New England (formerly known as Mad Doc Software LLC) and 2K Czech (formerly known as Illusion Softworks, a.s.) as well as expansion initiatives in Asia Pacific markets; and
- ii. an increase of \$3.3 million of production expenses.

Provision for income taxes. For the three months ended January 31, 2009, income tax expense was \$2.1 million, compared to income tax expense of \$4.8 million in the first quarter of 2008. The reduction in tax expense was primarily attributable to foreign jurisdictions. We did not record an income tax benefit on our United States pre-tax loss in 2009 and 2008 due to uncertainty regarding the realization of our deferred tax assets, primarily those attributable to net operating loss carryforwards. We increased our valuation allowance by approximately \$12.8 million and \$7.3 million in the three months ended January 31, 2009 and 2008, respectively. Our effective tax rate differed from the federal, state and foreign statutory tax rates primarily due to the recording of valuation allowances.

We are regularly audited by domestic and foreign taxing authorities. Audits may result in tax assessments in excess of amounts claimed and the payment of additional taxes. We believe that our tax positions comply with applicable tax law, and that we have adequately provided for reasonably foreseeable tax assessments.

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Net loss and loss per share. For the three months ended January 31, 2009, our net loss was \$50.4 million, compared to \$38.0 million in the same period of 2008. Net loss per share for the three months ended January 31, 2009 was \$0.66 compared to \$0.52 for the three months ended January 31, 2008. Weighted average shares outstanding increased compared to the prior period, mainly due to an increase in the exercise of stock options over the last twelve months and the issuance of 1,496,647 shares of restricted stock in January 2008 in connection with our acquisition of 2K Czech.

Liquidity and Capital Resources

Our primary cash requirements have been to fund (i) the development, manufacturing and marketing of our published products (ii) working capital (iii) acquisitions and (iv) capital expenditures. Historically, we have relied on funds provided by operating activities and short and long-term borrowings to satisfy our working capital needs.

In July 2007, we entered into a credit agreement with Wells Fargo (the "Credit Agreement"). The Credit Agreement provides for borrowings of up to \$140.0 million and is secured by substantially all of our assets and the equity of our subsidiaries. The Credit Agreement expires on July 3, 2012. Revolving loans under the Credit Agreement bear interest at our election of (a) 2.00% to 2.50% above a certain base rate (8.00% at January 31, 2009 and October 31, 2008), or (b) 3.25% to 3.75% above the LIBOR Rate with a minimum 4.00% LIBOR Rate (7.25% at January 31, 2009 and October 31, 2008). We are also required to pay an annual fee on the unused available balance, ranging from 0.25% to 0.75% based on amounts borrowed.

Availability under the Credit Agreement is restricted by our domestic and United Kingdom based accounts receivable and inventory balances. The Credit Agreement also allows for the issuance of letters of credit in an aggregate amount of up to \$25.0 million.

As of January 31, 2009 there were \$70.0 million of borrowings and \$58.4 million was available for additional borrowings. We had \$11.6 million of letters of credit outstanding at January 31, 2009 and were in compliance with all covenants and requirements in the Credit Agreement.

We are subject to credit risks, particularly if any of our receivables represent a limited number of customers or are concentrated in foreign markets. If we are unable to collect our accounts receivable as they become due, it could adversely affect our liquidity and working capital position.

Generally, we have been able to collect our accounts receivable in the ordinary course of business. We do not hold any collateral to secure payment from customers. Effective March 1, 2008, we have purchased trade credit insurance on the majority of our customers to mitigate accounts receivable risk.

A majority of our trade receivables are derived from sales to major retailers and distributors. Our five largest customers accounted for 49.5% and 45.7% of net revenue for the three months ended January 31, 2009 and 2008, respectively. As of January 31, 2009 and October 31, 2008, amounts due from our five largest customers comprised approximately 63.2% and 39.0% of our gross accounts receivable balance, respectively, with our significant customers (those that individually comprised more than 10% of our gross accounts receivable balance) accounting for 46.7% and 11.8% of such balance at January 31, 2009 and October 31, 2008, respectively. We believe that the receivable balances from these largest customers do not represent a significant credit risk based on past collection experience, although we actively monitor each customer's credit worthiness and economic conditions that may impact our customers' business and access to capital. We are monitoring the current global economic conditions, including credit markets and other factors as it relates to our customers in order to manage the risk of uncollectible accounts receivable.

We have entered into various agreements in the ordinary course of business that require substantial cash commitments over the next several years. There were no material agreements requiring known

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cash commitments entered into during the first quarter of 2009 that were not previously reported in Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended October 31, 2008.

We believe our current cash and cash equivalents and projected cash flow from operations, along with availability under our Credit Agreement, will provide us with sufficient liquidity to satisfy our cash requirements for working capital, capital expenditures and commitments through at least the next 12 months.

Our cash and cash equivalents decreased by \$62.4 million for the quarter ended January 31, 2009 as follows:

(thousands of dollars)	Three months ended January 31,	
	2009	2008
Cash used for operating activities	\$ (56,809)	\$ (39,365)
Cash used for investing activities	(2,198)	(1,521)
Cash provided by financing activities	4	17,958
Effects of exchange rates on cash and cash equivalents	(3,438)	(441)
Net decrease in cash and cash equivalents	\$ (62,441)	\$ (23,369)

At January 31, 2009 we had \$217.8 million of cash and cash equivalents, compared to \$280.3 million at October 31, 2008. Our decrease in cash and cash equivalents from October 31, 2008 was primarily a result of cash used for operating activities. In the first quarters of 2009 and 2008, our net losses were partially offset by non-cash expenses and a decrease in accounts receivable, reflecting seasonality in our business as we collected on sales from the holiday season. Offsetting the collection of our accounts receivable were decreases in accounts payable and accruals, also reflecting seasonality. In addition, we continued to increase spending on capitalized expenditures for software development costs and licenses. Prepaid expenses and other assets decreased in the 2008 period, mainly as a result of a \$19.5 million income tax refund received.

Cash used for investing activities consisted of purchases of computer equipment and software which did not significantly increase for the first quarter 2009 compared to the prior period.

Cash provided by financing activities reflected an increase in net borrowings in the first quarter 2008 compared to the same period in 2009.

Cash and cash equivalents were negatively impacted by \$3.4 million in 2009 as a result of foreign currency exchange movements primarily due to the impact of the weakening European currencies against the United States dollar.

Off-Balance Sheet Arrangements

As of January 31, 2009 and October 31, 2008, we did not have any relationships with unconsolidated entities or financial parties, such as entities often referred to as structured finance or variable interest entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. As such, we do not have any off-balance sheet arrangements and are not exposed to any financing, liquidity, market, or credit risk that could arise if we had engaged in such relationships.

Fluctuations in Quarterly Operating Results and Seasonality

We have experienced fluctuations in quarterly operating results as a result of the timing of the introduction of new titles; variations in sales of titles developed for particular platforms; market acceptance of our titles; development and promotional expenses relating to the introduction of new titles; sequels or enhancements of existing titles; projected and actual changes in platforms; the timing and success of title introductions by our competitors; product returns; changes in pricing policies by us

and our competitors; the accuracy of retailers' forecasts of consumer demand; the size and timing of acquisitions; the timing of orders from major customers; and order cancellations and delays in product shipment. Sales of our titles are also seasonal, with peak shipments typically occurring in the fourth calendar quarter (our fourth and first fiscal quarters) as a result of increased demand for titles during the holiday season. Quarterly comparisons of operating results are not necessarily indicative of future operating results.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are subject to market risks in the ordinary course of our business, primarily risks associated with interest rate and foreign currency fluctuations.

Historically, fluctuations in interest rates have not had a significant impact on our operating results. Under our Credit Agreement, outstanding balances bear interest at our election of (a) 2.00% to 2.50% above a certain base rate (8.00% at January 31, 2009), or (b) 3.25% to 3.75% above the LIBOR rate with a minimum 4.00% LIBOR Rate (7.25% at January 31, 2009), with the margin rate subject to the achievement of certain average liquidity levels. Changes in market rates may impact our future interest expense. For instance, if the borrowing rate on our line of credit were to increase one percentage point (1.0%), our expected annual interest expense would change by approximately \$0.7 million based on our outstanding loan balance as of January 31, 2009. A decrease in the LIBOR rate would not have any impact on interest expense because of the 4.00% minimum LIBOR rate prescribed under our Credit Agreement.

We transact business in foreign currencies and are exposed to risks resulting from fluctuations in foreign currency exchange rates. Accounts relating to foreign operations are translated into United States dollars using prevailing exchange rates at the relevant quarter end. Translation adjustments are included as a separate component of stockholders' equity. For the three months ended January 31, 2009, our foreign currency translation adjustment loss was approximately \$19.3 million. The foreign exchange transaction gain recognized in interest and other income in our statement of operations for the three months ended January 31, 2009 and 2008 was \$3.9 million and \$1.5 million, respectively.

We use forward foreign exchange contracts as cash flow hedges to offset risks related to foreign currency transactions. These transactions primarily relate to non-functional currency denominated inter-company funding loans, non-functional currency denominated accounts receivable and non-functional currency denominated accounts payable. We do not enter into derivative financial instruments for trading purposes.

For the three months ended January 31, 2009, 29.6% of the Company's revenue was generated outside the United States. Using sensitivity analysis, a hypothetical 10% increase in the value of the U.S. dollar against all currencies would decrease revenues by 3.0%, while a hypothetical 10% decrease in the value of the U.S. dollar against all currencies would increase revenues by 3.0%. In the opinion of management, a substantial portion of this fluctuation would be offset by cost of goods sold and expenses incurred in local currency.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Based on an evaluation under the supervision and with the participation of management, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures as defined in rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended ("Exchange Act") were effective as of the end of the period covered by this report to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms and (ii) accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

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Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during the first quarter of 2009, which were identified in connection with management's evaluation required by paragraph (d) of Rules 13a-15 and 15d-15 under the Exchange Act, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

Various lawsuits, claims, proceedings and investigations are pending involving us and certain of our subsidiaries. Depending on the amount and the timing, an unfavorable resolution of some or all of these matters could materially affect our business, financial condition, results of operations or cash flows. Except as noted below, there were no new material legal proceedings or material developments to the pending legal proceedings that have been previously reported in Part I, Item 3 of our Annual Report on Form 10-K for the fiscal year ended October 31, 2008. In addition to the matters reported in our Annual Report on Form 10-K for the fiscal year ended October 31, 2008, we are, or may become, involved in routine litigation in the ordinary course of business which we do not believe to be material to our business, financial condition, results of operations or cash flows.

Stockholder Action. In March 2008, Patrick Solomon, a stockholder, filed a purported class action complaint in the Court of Chancery of the State of Delaware against us and certain of our officers and directors. On December 11, 2008, the plaintiff filed a motion for leave to file a supplement to his complaint. We agreed to permit the supplement to be filed, provided that there would be an agreed-upon schedule for the Company to move to dismiss both the original complaint and the supplement. On December 19, 2008, the plaintiff filed a supplement to his complaint. The supplement repeats his prior allegations and also alleges the stockholder vote on the amendment of the Company's Incentive Stock Plan and the amendment to the management agreement with ZelnickMedia and the grant of stock thereunder was invalid. On February 17, 2009, the Company filed its motion to dismiss all claims in both pleadings. On March 4, 2009, the plaintiff filed a motion to file a second supplement to his complaint. The second supplement contains additional allegations of breaches of fiduciary duties by the directors, and misleading and incomplete disclosure with respect to the proxy statement for the 2009 annual meeting of stockholders. The second supplement also seeks to enjoin the vote on the 2009 Stock Incentive Plan at the 2009 annual meeting of stockholders and a declaration that such Plan is invalid and void. We believe all of the claims described above lack merit, and intend to defend vigorously against them.

Item 1A. Risk Factors

There have been no material changes to the Risk Factors disclosed in Item 1A of our Annual Report on Form 10-K for the fiscal year ended October 31, 2008 other than the following.

We may be required to record a significant charge to earnings if our goodwill becomes impaired.

We are required under generally accepted accounting principles to review our goodwill for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Goodwill is required to be tested for impairment at least annually. Factors that may be considered a change in circumstances, indicating a requirement to reevaluate whether our goodwill continues to be recoverable, include a significant decline in stock price and market capitalization, slower growth rates in our industry or other materially adverse events. We may be required to record a significant charge to earnings in our financial statements during the period in which any impairment of our goodwill is determined. This may adversely impact our results of operations.

Increased sales of used video game products could lower our sales.

Certain of our larger customers sell used video games, which are generally priced lower than new video games. If our customers continue to increase their sales of used video games, it could negatively affect our sales of new video games and have an adverse impact on our results of operations.

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Item 6. Exhibits

Exhibits:

10.1	Amendment to Xbox 360 Publisher License Agreement, between Microsoft Licensing, GP and the Company*
31.1	Chief Executive Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Chief Financial Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Chief Executive Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Chief Financial Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

*

Portions hereof have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

SIGNATURES

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

**TAKE-TWO INTERACTIVE
SOFTWARE, INC.**
(Registrant)

Date: March 11, 2009 By: /s/ BEN FEDER

Ben Feder
Chief Executive Officer
(Principal Executive Officer)

Date: March 11, 2009 By: /s/ LAINIE GOLDSTEIN

Lainie Goldstein
Chief Financial and
Accounting Officer
(Principal Financial Officer)

**AMENDMENT TO THE
XBOX 360 PUBLISHER LICENSE AGREEMENT**

(2008 Renewal; Tier C; Hits Program Revisions; Expansion Packs; New Xbox 360 Live and PDLC Incentive Program; XLSP; Japan Volume Rebate Revision; Token Promotions; Joint Promotions)

This Amendment to the Xbox 360 Publisher License Agreement (this “Amendment”) is entered into and effective as of the later of the two signature dates below (the “Amendment Effective Date”) by and between Microsoft Licensing, GP, a Nevada general partnership (“Microsoft”), and TAKE-TWO INTERACTIVE SOFTWARE, INC. (“Publisher”), and supplements that certain Xbox 360 Publisher License Agreement between the parties dated as of November 17, 2005, as amended (the “Xbox 360 PLA”).

RECITALS

A. Microsoft and Publisher entered into the Xbox 360 PLA to establish the terms under which Publisher may publish video games for Microsoft’s Xbox 360 video game system.

B. The parties now wish to extend the term and otherwise amend certain terms of the Xbox 360 PLA as set forth below.

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

1. Definitions

1.1 The definitions of “**Asian Manufacturing Region**”, “**North American Manufacturing Region**”, “**European Manufacturing Region**” and “**Manufacturing Region**” are hereby deleted from the Xbox 360 PLA.

1.2 The definition of “**Online Content**” is hereby amended and restated in its entirety as follows:

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

1.3 The definition of “**Software Title**” is hereby expanded to include Expansion Pack(s).

1.4 The following definitions are hereby added to Section 2 of the Xbox 360 PLA.

1.4.1 “**Expansion Pack**” means an FPU that is an add-on, mission pack, game expansion, incremental content, and/or other addition to a Software Title that (i) would not be generally considered in the console game industry to be a next full version release (e.g., a version 1.0 to 1.5); (ii) requires another full version video game in order to operate, (iii) is derived from the content, story, characters or other intellectual property of the full version video game required to play it, and (iv) has a WSP (defined below) that is equal to or below the Threshold Price (defined below) listed for the royalty tiers applicable to Expansion Packs in Section 1 b. of Exhibit 1 attached hereto. In order to meet this definition of Expansion Pack, such addition to a Software Title must be approved by Microsoft as an Expansion Pack.

1.4.2 “**Family Hit**” means any Hits Software Title that (i) received an “E,” or an “E10” rating from the ESRB; a “PEGI 3+” or “PEGI 7+” rating in Europe, an “A: All Ages” rating from CERO in Japan and/or an equivalent rating in the applicable Sales Territory (to the extent Software Titles are rated by regulatory boards within the applicable Sales Territory); and (ii) is character based and/or appeals, as determined by Microsoft in its sole good faith discretion, to children 12 years of age and younger. Notwithstanding the foregoing, annual sports titles will not qualify as a Family Hit.

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1.4.3 “**Hit(s) FPU**” means each unit of a Software Title that is qualified and participating in a Hits Program.

1.4.4 “**Hits Program(s)**” mean Xbox 360 Platinum or Classic Hits and/or the Xbox 360 Family Hits programs.

1.4.5 “**Hits Software Title**” means any Software Title that qualifies to participate in the Hits Program pursuant to Section 2 of Exhibit 1 attached hereto.

1.4.6 “**Standard FPU**” means an FPU of a Software Title that is not a Hits FPU.

1.4.7 “**Standard Software Title**” means any Software Title that is not a Hits Software Title or an Expansion Pack.

1.4.8 “**Threshold Price**” means the Wholesale Price (WSP) in the case of the North American, European, and Asian Sales Territories, or Suggested Retail Price (SRP) in the Japan Sales Territory at which Publisher intends to sell the Software Title. If the Software Title is bundled with any other product or service that is not another Software Title, the Threshold Price will be the applicable WSP or SRP for the entire bundle.

1.5 Except as expressly provided otherwise in this Amendment, capitalized terms shall have the same meanings as those ascribed to them in the Xbox 360 PLA.

2. Term

Section 17.1 of the Xbox 360 PLA is hereby amended and restated in its entirety as follows:

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

3. Pre-Certification

Section 4.1.2 of the Xbox 360 PLA is hereby amended and restated in its entirety as follows:

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

4. Exhibits

4.1 Exhibits 1, 2 and 3 of the Xbox 360 PLA are hereby amended and restated in their entirety as attached hereto. Exhibit 6 (Japan/Asian Royalty Incentive Program) of the Xbox 360 PLA has expired. Exhibits 6, 8 and 9 attached hereto are hereby added to the Xbox 360 PLA.

4.2 The term of the Xbox 360 Live Incentive Program attached as Exhibit 7 of the Xbox 360 PLA (the “Original Live Incentive Program”) is hereby [****]. Effective [****], the Original Live Incentive Program is replaced by the Xbox Live and PDLC Incentive Program attached as Exhibit 7 to this Amendment.

5. Non-Disclosure

Section 13.1 of the Xbox 360 PLA is hereby deleted and replaced by the following:

“**13.1 Non-Disclosure Agreement.** The information, materials and software exchanged by the parties hereunder or under an XDK License, including the terms and conditions hereof and of the XDK License, are subject to the Non-Disclosure Agreement between the parties attached hereto as Exhibit 5 (the “Non-Disclosure Agreement”), which is

incorporated herein by reference; provided, however, that for purposes of the foregoing, any time limitation in the Non-Disclosure Agreement on the parties' obligations to refrain from disclosing information protected under the Non-Disclosure Agreement ("Confidential Information") shall be extended so that any Confidential Information provided in relation to this Agreement or by way of the XDK License in whatever form (e.g. information, materials, tools and/or software exchanged by the parties hereunder or under an XDK License), including the terms and conditions hereof and of the XDK License, unless otherwise specifically stated, will be protected from disclosure for as long as it remains confidential."

6. Promotions

6.1 **Token Promotions.** In the event Publisher desires to distribute password-protected codes representing "tokens" (a "Token Promotion") that are redeemable by users for Online Content downloads from Xbox Live ("Content Tokens") as part of promotional activities related to a Software Title using Xbox Live Marketplace, Publisher shall submit to Microsoft a Content Token Request form available in the Xbox 360 Publisher Guide ("Token Form") for approval by Microsoft. Upon approval by Microsoft, [****] or Microsoft may, but is not obligated to, offer Publisher credit terms for payment of such fees. As soon as commercially feasible after payment by Publisher for an order for Content Tokens (or Microsoft's determination of Publisher's credit worthiness), Microsoft shall create Content Tokens and deliver them to Publisher. Publisher may distribute the Content Tokens for the Content download solely as part of the Token Promotion within the Sales Territory and during the term of the Token Promotion specified on the Token Form. No other payments under the Xbox 360 PLA (MS Points or otherwise) will be paid with respect to the Content Tokens. Publisher shall be solely responsible for all aspects of marketing and fulfillment of the Token Promotion, including without limitation all advertising and other promotional materials related to the Token Promotion which shall be deemed Marketing Materials.

6.2 **Joint Promotions.** Microsoft and Publisher may from time to time to develop, execute, and administer promotions involving the Software Title(s) (e.g., Play and Win weekends for the Software Titles on Xbox LIVE, promotional sweepstakes involving the Software Titles, etc.) (each, a "Promotion"). In connection therewith, the parties shall execute a promotion schedule to this Agreement in the form set forth in the Xbox 360 Publisher Guide (each, a "Promotion Schedule"). The parties agree that the following additional terms and conditions shall apply to each Promotion for which a Promotion Schedule has been fully executed: (i) each party shall have the right and license to use the specific properties identified in the Promotion Schedule solely in connection with the Promotion during the promotional period and territory identified in the Promotion Schedule; (ii) all promotional materials prepared by or on behalf of the parties for the Promotion shall be subject to the other party's approval. The party approving such materials shall have [****] to approve or disapprove such materials. Failure to respond within such [****] period shall be deemed an approval; and (iii) the parties shall comply with all other obligations set forth in the Promotion Schedule.

7. Online Content Samples.

7.1 **Xbox LIVE Arcade.** For each piece of Online Content that is an Xbox LIVE Arcade game, Microsoft will be entitled to create [****] Content Tokens, [****] of which Microsoft will provide to the Publisher and [****] of which Microsoft may use in marketing, as product samples, for customer support, testing and archival purposes. Publisher shall not be entitled to any Royalty Fee or other compensation with respect to Microsoft's distribution of Content Tokens as authorized under this Section 7.1.

7.2 **Premium Online Content.** For each piece of Premium Online Content, Microsoft will be entitled to create up to [****] Content Tokens, which Publisher and Microsoft may use in marketing, as product samples, for customer support, testing and archival purposes (the Content Tokens will be split approximately [****] between Publisher and Microsoft respectively). Publisher shall not be entitled to any Royalty Fee or other compensation with respect to Microsoft's distribution of Content Tokens as authorized under this Section 7.2

8. Online Content

Notwithstanding any termination or expiration of Microsoft's license to distribute Online Content, Publisher acknowledges and agrees that Microsoft will retain a copy of Online Content, and Publisher hereby grants Microsoft the license to redistribute the final version of any Online Content to Xbox Live Users who have previously purchased it, directly or indirectly, from Microsoft.

9. Minimum Order Quantities

9.1 The MOQ per Software Title set forth in Section 7.5.1 of the Xbox 360 PLA for the [****].

9.2 Section 7.5.2 of the Xbox 360 PLA is hereby amended and restated as follows:

“7.5.2 For the purposes of this section, a “Disc” shall mean an FPU that is signed for use on a certain defined range of Xbox 360 hardware, regardless of the number of languages or product skus contained thereon. Publisher must meet the MOQs independently for each Sales Territory. For example, if an FPU is released in both the North American Sales Territory and the European Sales Territory, then the Publisher must place orders to manufacture (i) at least [****] FPU’s for sale in the North American Sales Territory, including a minimum of [****] per Disc included in such FPU’s, and (ii) [****] FPU’s for the European Sales Territory, including a minimum of [****] per Disc included in such FPU’s.”

10. Except and to the extent expressly modified by this Amendment, the Xbox 360 PLA shall remain in full force and effect and is hereby ratified and confirmed. In the event of any conflict between this Amendment and the Xbox 360 PLA the terms of this Amendment shall control.

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

MICROSOFT LICENSING, GP

TAKE-TWO INTERACTIVE SOFTWARE, INC.

/s/ Astrid B. Ford
By (sign)
Astrid B. Ford
Name (Print)
Sr. Xbox Program Manager
Title
12/04/08
Date (Print mm/dd/yy)

/S/ Daniel P. Emerson
By (sign)
Daniel P. Emerson
Name (Print)
Vice President and Associate General Counsel
Title
11/26/08
Date (Print mm/dd/yy)

EXHIBIT 1
PAYMENTS

1. Platform Royalty

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

b. To determine the applicable royalty rate for a particular Software Title that will be sold in a particular Sales Territory, the applicable Threshold Price from Table 1 below for the category of Software Title (Standard Software Title, Hits Software Title and Expansion Pack) will determine the correct royalty "Tier" (except with respect to the first Commercial Release of Hits Software Titles as described further in (ii) below). The royalty rate is then as set forth in Table 2 based on such Tier and the Sales Territory in which the FPUs will be sold. For example, assume the Wholesale Price of a Standard Software Title to be sold in the European Sales Territory is [****]. According to Table 1, Tier B royalty rates will apply to that Software Title and the royalty rate for each FPU as set forth in Table 2 is [****].

Table 1: Tier

[****]

Table 2: Royalty Rate

[****]

c. [****]

(i) Standard Software Titles and Expansion Packs. Publisher shall submit to Microsoft, at least [****] for a Standard Software Title or an Expansion Pack, a completed and signed "Xbox 360 Royalty Tier Selection Form" in the form attached to this Agreement as Exhibit 2 for each Sales Territory. The selection indicated in the Xbox 360 Royalty Tier Selection Form will only be effective once it has been approved by Microsoft. If a Standard Software Title or Expansion Pack does not have an approved Xbox 360 Royalty Tier Selection Form as required hereunder (e.g. as a result of the Publisher not providing a Xbox 360 Royalty Tier Selection Form or because Microsoft has not approved the Xbox 360 Royalty Tier Selection Form), the royalty rate for such Standard Software Title will default to [****] or for such Expansion Pack will default to [****], regardless of the actual Threshold Price (i.e., if Microsoft does not approve an Xbox 360 Royalty Tier Selection Form because it is filled out incorrectly, the royalty rate will default to [****]). Except as set forth in Section 2 (Hits Programs), the selection of a royalty tier for a Standard Software Title or Expansion Pack in a Sales Territory is binding for the life of that Software Title or Expansion Pack even if the Threshold Price is reduced following the Software Title's Commercial Release.

(ii) Hits Software Title. Publisher shall submit to Microsoft, at least [****] a completed and signed Hits Programs Election Form in the form attached hereto as Exhibit 6 for each Sales Territory. The Hits Programs Election Form will only be effective once it has been approved by Microsoft. If a Hits Software Title does not have an approved Hits Programs Election Form as required hereunder (e.g. as a result of the Publisher not providing a Hits Programs Election Form or because Microsoft has not approved the Hits Programs Election Form), the royalty rate for such Hits Software Title will default to [****] (i.e., if Microsoft does not approve a Hits Programs Election Form because it is filled out incorrectly, the royalty rate will default to [****]). Unless the Software Title is a Family Hits Title, the first time a Software Title is Commercially Released as a Hits Software Title, the [****] royalty rate will apply. However, if the Software Title is a Family Hits Title and meets the WSP requirements set forth in Table 1 above, Publisher may select the [****] royalty rate. For the avoidance of doubt, all Hits Software Titles for the European Sales Territory shall default to the [****] royalty rate.

[****] after the Commercial Release of a Hits Software Title at the [****] royalty rate, Publisher may elect to change the previously elected royalty rate for such Hits Software Title to [****] in a specific Sales Territory provided that the Hits Software Title has a WSP or SRP that meets the requirements for [****] royalty rate in Table 1 above. Publisher must submit to Microsoft, at least [****] before placing the first manufacturing order for the applicable Hits Software Title, a completed Xbox 360 Royalty Tier Migration Form (a “Tier Migration Form”) set forth in Exhibit 8 for each Sales Territory. The change in royalty rate will only apply to manufacturing orders for such Hits Software Title placed after the relevant Tier Migration Form has been approved by Microsoft.

(iii) Cross Territory Sales. Except for FPUs manufactured pursuant to Section 5 below (Asia Simship Program), Publisher may not sell FPUs in a certain Sales Territory that were manufactured for a different Sales Territory. For example, if Publisher were to manufacture and pay royalties on FPUs designated for sale in the Asian Sales Territory, Publisher could not sell those FPUs in the European Sales Territory.

d. Unit Discounts. Publisher is eligible for a discount to FPUs manufactured for a particular Sales Territory (a “Unit Discount”) based on the number of FPUs that have been manufactured for sale in that Sales Territory as described in Table 3 below. Except as provided in Section 5 below, units manufactured for sale in a Sales Territory are aggregated only towards a discount on FPUs manufactured for that Sales Territory; there is no worldwide or cross-territorial aggregation of units for a particular Software Title. The discount will be rounded up to the nearest Cent, Yen or hundredth of a Euro.

Table 3: Unit Discounts

[****]

2. Hits Programs

a. If a Software Title meets the criteria set forth below and the applicable participation criteria in a particular Sales Territory at the time of the targeted Commercial Release date of the Hits FPU and Microsoft receives the Hits Programs Election Form within the time period set forth in Section 2.a.iv below, Publisher is authorized to manufacture and distribute Hits FPUs in such Sales Territory and at the royalty rate in Table 2 of Section 1 above applicable to Hits FPUs. In order for a Software Title to qualify as a Hits FPU in a Sales Territory, the following conditions, as applicable per Hits Program, must be satisfied:

i. the Software Title must have been commercially available as a Standard FPU in the applicable Sales Territory for at least [****] but not more than [****] at the time of Commercial Release of the Hits FPU.

ii. In any calendar year in a Sales Territory, Publisher may not publish more than [****] Software Titles as a Family Hit.

iii. The Threshold Price for the Hits FPU must not exceed a maximum Threshold Price for the relevant Sales Territory ([****] for the North American Sales Territory, [****] in the European Sales Territory, [****] in the Japan Sales Territory, or the equivalent of [****] for the Asian Sales Territory).

iv. Publisher must provide notice to Microsoft, at least [****] prior to the targeted Commercial Release, of its intent to have a certain Software Title participate in the Hits Program by providing Microsoft with a completed Hits Program Election Form.

b. As of the date Publisher wishes to Commercially Release the Software Title as a Hits FPU, Publisher must have manufactured the following minimum FPUs of the Software Title as a Standard Software Title for the applicable time period, Sales Territory and Hits Program.

Table 1: Manufacturing Requirements

[****]

c. All Marketing Materials for a Hits Software Title must comply with all Microsoft branding requirements as may be required in each Sales Territory, and Publisher shall submit all such Marketing Materials to Microsoft for its approval in accordance with the Xbox 360 PLA. Notwithstanding the foregoing, all Hit FPUs must comply with the basic branding and other requirements for Marketing Materials set forth in the Xbox 360 Publisher Guide.

d. The Hit FPU version must be the same or substantially equivalent to the Standard FPU version of the Software Title. Publisher may modify or add additional content or features to the Hit FPU version of the Software Title (e.g., demos or game play changes) subject to Microsoft's review and approval, and Publisher acknowledges that any such modifications or additions may require the Software Title to be re-Certified at Publisher's expense.

e. Publisher acknowledges that Microsoft may change any of the qualifications for participation in a Hit Program upon [****] advanced written notice to Publisher.

3. Payment Process

[****], in United States dollars for all FPUs manufactured for sale in the North American Sales Territory, in Euros for all FPUs manufactured for sale in the European Sales Territory and in Yen for all FPUs manufactured for sale in the Japan and Asian Sales Territories. Publisher shall not authorize its Authorized Replicators to begin production until such time as [****]. Depending upon Publisher's credit worthiness, Microsoft may, but is not obligated to, offer Publisher credit terms for the payment of royalties due under this Agreement within [****] from invoice creation. All payments will be made by wire transfer only, in accordance with the payment instructions set forth in the Xbox 360 Publisher Guide.

4. Billing Address

a. Publisher may have only two "bill to" addresses for the payment of royalties under this Agreement, one for FPUs manufactured by Authorized Replicators located in the North American Sales Territory and one for FPUs manufactured by Authorized Replicators located in the Japan Sales Territory and Asian Sales Territory. If Publisher desires to have a "bill-to" address in a European country, Publisher (or a Publisher Affiliate) must execute an Xbox 360 Publisher Enrollment Form with MIOL within [****] prior to establishing a billing address in a European country in the form attached to this Agreement as Exhibit 3.

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

North American Sales Territory:

Name: _____
Address: _____

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

Japan and Asian Sales Territory (if different than the North American billing address):

Name: _____
Address: _____

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

5. Asia Simship Program

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

number of FPU's to be manufactured, number of FPU's to be shipped into the Simship Territory, date of shipment, etc. Publisher remains responsible for complying with all relevant import, distribution and packaging requirements as well as any other applicable requirements set forth in the Xbox 360 Publisher Guide.

6. Online Content

a. For the purpose of this Section 6, the following capitalized terms have the following meanings:

[****]

[****]

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

c. [****]

d. [****]

e. [****]

f. [****]

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

7. Xbox Live Billing and Collection

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

8. Taxes

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

b. Any sales or use taxes described in a. above that (i) are owed by either party solely as a result of entering into this Agreement and the payment of the fees hereunder, (ii) are required to be collected from that party under applicable law, and (iii) are based solely upon the amounts payable under this Agreement (such taxes the "Collected Taxes"), will be stated separately as applicable on payee's invoices and will be remitted by the other party to the payee, upon request payee shall remit to the other party official tax receipts indicating that such Collected Taxes have been collected and paid by the payee. Either party may provide the other party an exemption certificate acceptable to the relevant taxing authority

(including without limitation a resale certificate) in which case payee shall not collect the taxes covered by such certificate. Each party agrees to take such commercially reasonable steps as are requested by the other party to minimize such Collected Taxes in accordance with all relevant laws and to cooperate with and assist the other party, in challenging the validity of any Collected Taxes or taxes otherwise paid by the payor party. Each party shall indemnify and hold the other party harmless from any Collected Taxes, penalties, interest, or additions to tax arising from amounts paid by one party to the other under this Agreement, that are asserted or assessed against one party to the extent such amounts relate to amounts that are paid to or collected by one party from the other under this section. If any taxing authority refunds any tax to a party that the other party originally paid, or a party otherwise becomes aware that any tax was incorrectly and/or erroneously collected from the other party, then that party shall promptly remit to the other party an amount equal to such refund, or incorrect collection as the case may be plus any interest thereon.

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

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

9. Audit

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

EXHIBIT 2

XBOX 360 ROYALTY TIER SELECTION FORM

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

NOTES:

- 1. THIS FORM MUST BE SUBMITTED AT LEAST [****]. IF THIS FORM IS NOT SUBMITTED ON TIME OR IS REJECTED BY MICROSOFT, THE ROYALTY RATE WILL DEFAULT TO [****] FOR THE APPLICABLE SALES TERRITORY.**
- 2. A SEPARATE FORM MUST BE SUBMITTED FOR EACH SALES TERRITORY.**

1. Publisher Name: _____

2. Xbox 360 Software Title Name: _____

3. XeMID Number:

4. Sales Territory (check one):

- North American Sales Territory
- Japan Sales Territory
- European Sales Territory
- Asian Sales Territory

5. Final Certification Date: _____

6. Select Royalty Tier: (check one): [****]

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

By (sign)

Name, Title (Print)

E-Mail Address (for confirmation of receipt)

Date (Print mm/dd/yy)

EXHIBIT 3

XBOX 360 PUBLISHER ENROLLMENT FORM

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

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

This Xbox 360 Publisher Enrollment Form (“Enrollment”) is entered into between Microsoft Ireland Operations Ltd. (“MIOL”) and the following publisher (“Publisher”):

Publisher: _____
Address: _____

Attention: _____
Fax: _____
Phone: _____
Email: _____
VAT number: _____

and is effective as of the latter of the two signatures identified below. The terms of that certain Xbox 360 Publisher License Agreement signed by Microsoft Licensing, GP and _____ dated _____ (the “Xbox 360 PLA”) are incorporated herein by reference.

1. Term. This Enrollment will expire on the date on which the Xbox 360 PLA expires, unless it is terminated earlier as provided for in the Xbox 360 PLA.

2. Representations and Warranties. By signing this Enrollment, the parties agree to be bound by the terms of this Enrollment, and Publisher represents and warrants that: (i) it has read and understands the Xbox 360 PLA, including any amendments thereto, and agrees to be bound by those; (ii) it is either the entity that signed the Xbox 360 PLA or its affiliate; and (iii) the information that it has provided herein is accurate.

3. Notices; Requests. All notices and requests in connection with this Enrollment are deemed given on (i) the [****] after they are deposited in the applicable country’s mail system ([****] if sent internationally), postage prepaid, certified or registered, return receipt requested; or (ii) [****] after they are sent by overnight courier, charges prepaid, with a confirming fax; and addressed to the Publisher as set forth above and to MIOL as follows:

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

Fax: 353 1 706 4110

Attention: MIOL Xbox Accounting Services

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

Attention: Legal & Corporate Affairs Department
Legal Group, E&D (Xbox)
Fax: +1 (425) 706-7329

MICROSOFT CONFIDENTIAL

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

4. Billing Address. For purposes of the Xbox 360 PLA, Exhibit 1, Section 4, Publisher's billing address for FPUs manufactured by Authorized Replicators located in the European Sales Territory is as follows:

Name: _____

Address: _____

Attention: _____

Email address: _____

Fax: _____

Phone: _____

MICROSOFT IRELAND OPERATIONS LTD.

PUBLISHER: _____

By (sign)

By (sign)

Name (Print)

Name (Print)

Title

Title

Date (Print mm/dd/yy)

Date (Print mm/dd/yy)

EXHIBIT 6

XBOX 360 HITS PROGRAMS ELECTION FORM

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

NOTES:

- **THIS FORM MUST BE SUBMITTED BY A PUBLISHER AT LEAST [****].**
- **A SEPARATE FORM MUST BE SUBMITTED FOR EACH SALES TERRITORY IN WHICH THE PUBLISHER WISHES TO PUBLISH A SOFTWARE TITLE AS PART OF A HITS PROGRAM AND FOR EACH HITS PROGRAM.**

1) Publisher Name: _____

2) Xbox 360 Software Title Name: _____

3) XMID Number: _____

4) Hits Program (circle one)

Platinum Hits
Classic Hits

Platinum Family Hits
Classic Family Hits

5) Royalty Tier if Family Hits (select one; [****]):

[****]

6) Sales Territory for which Publisher wants to publish the Software Title as a Hit FPU (check one):

North American Sales Territory
 European Sales Territory

Japan Sales Territory
 Asian Sales Territory

7) Date of Commercial Release of Software Title in applicable Sales Territory: _____

8) Number of Standard FPU's manufactured to date for the Software Title in the applicable Sales Territory: _____

9) Projected Commercial Release date of Software Title in the applicable Sales Territory as part of Hits Program: _____

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

By (sign)

Name, Title (Print)

E-Mail Address (for confirmation of receipt)

Date (Print mm/dd/yy)

EXHIBIT 7

XBOX 360 LIVE AND PDLC INCENTIVE PROGRAM

1. Xbox 360 Live and PDLC Incentive Program

To encourage Publisher to support functionality for Xbox Live in its Xbox 360 Software Titles, to drive increased usage of Xbox Live via Xbox 360 and to increase support of Premium Downloadable Content, Publisher may qualify for certain payments based on the amount of Xbox Live Market Share (defined in Section 2.k. of this Exhibit 7 below) created by Publisher's Multiplayer Software Titles (defined in Section 2.c. of this Exhibit 7 below). Each Accounting Period (defined in Section 2.a. of this Exhibit 7 below), Microsoft will calculate Publisher's Xbox Live Market Share. If Publisher [****], then Microsoft will pay Publisher the applicable Incentive set forth in the table in Section 3 of this Exhibit 7 based on [****] in the applicable Accounting Period.

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

2. Definitions

- a. "Accounting Period" means [****], within the Term (defined in Section 5 below); provided that if the Effective Date of this Agreement or the expiration date of this program falls within such [****], then the applicable payment calculation set forth below shall be made for a partial Accounting Period, as appropriate.
- b. "[****] Unique User Market Share" means [****]
- c. "Multiplayer Software Titles" means a Software Title for Xbox 360 that supports real-time multiplayer game play.
- d. "[****] Unique Users" means [****]
- e. "New Subscriber Market Share" means [****]
- f. "New Subscriber" means a Paying Subscriber who pays for an Xbox Live account for the first time. A New Subscriber is attributed to the first Multiplayer Software Title he or she plays, even if such play was during a free-trial period which was later converted into a paying subscription. Each Paying Subscriber can only be counted as a New Subscriber once, [****].
- g. "Paying Subscriber" [****]
- h. "PDLC Revenue" means [****]
- i. "PDLC Revenue Market Share" means [****]
- j. "Subscription Revenue" means [****]
- k. "Xbox Live Market Share" [****]

3. Incentive Table

Publisher's "Incentive" shall be determined pursuant to the following table:

[****]

4. Example

[****]
[****]
[****]
[****]
[****]
[****]
[****]
[****]

5. Term

This Xbox 360 Live and PDLC Incentive Program will commence [****]. Microsoft reserves the right to change the Xbox Live Market Share upon written notice to Publisher, but no more frequently than [****].

6. Payments

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

7. Modifications to Xbox 360 Live and PDLC Incentive Program

[****]

EXHIBIT 8

XBOX 360 HITS ROYALTY TIER MIGRATION FORM

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

NOTES:

- THIS FORM MUST BE SUBMITTED AT LEAST [****] PRIOR TO THE FIRST MANUFACTURING ORDER TO WHICH PUBLISHER DESIRES THE NEW BASE ROYALTY TO APPLY FOR EACH RESPECTIVE SALES TERRITORY.
- A HITS SOFTWARE TITLE MAY NOT CHANGE ROYALTIES TIERS UNTIL AFTER IT HAS BEEN IN THE HITS PROGRAM FOR AT LEAST [****].
- A SEPARATE FORM MUST BE SUBMITTED FOR EACH SALES TERRITORY IN WHICH PUBLISHER DESIRES TO CHANGE THE APPLICABLE BASE ROYALTY.

1. Publisher Name: _____

2. Xbox 360 Software Title Name: _____

3. XMID Number: _____

4. Sales Territory (check one; [****]):

- North American Sales Territory
- Japan Sales Territory
- Asia Sales Territory

5. Date of First Commercial Release:

7. Current royalty tier: [****]

8. Select New Royalty Tier: [****]

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

By (sign)

Name, Title (Print)

E-Mail Address (for confirmation of receipt)

Date (Print mm/dd/yy)

EXHIBIT 9

XLSP Terms

The following terms and conditions apply to Publisher's use of the Xbox Live Server Platform ("XLSP Terms"):

1. Definitions

- 1.1 **"Publisher Hosted Online Content"** means any content, including without limitation any Online Content, that is hosted and served through the Publisher Hosting Services.
- 1.2 **"Publisher Hosting Services"** means Publisher's hosting of Publisher Hosted Online Content pursuant to these XLSP Terms, whether performed by Publisher or a Third Party Host, including operating, maintaining and controlling the servers necessary for the provision of Publisher Hosted Online Content.
- 1.3 **"Third Party Host"** means a third party providing Publisher Hosting Services on behalf of Publisher.
- 1.4 **"Xbox Live Server Platform" or "XLSP"** means Microsoft's platform and/or server architecture which enables the Publisher Hosting Services to function as an expansion to the features available from the Xbox Live service.
- 1.5 **"Xbox Live User Content"** means any content that originates from Xbox Live Users in any format and that is published through or as part of any Publisher Hosted Online Content, but excluding Xbox Live User Communications.
- 1.6 **"Xbox Live User Communications"** means transient voice and text communications sent from an Xbox Live User to one or more Xbox Live Users (e.g., voice chat).

2. Approval and Certification

All proposed Publisher Hosting Services and Publisher Hosted Online Content must go through the same approval process as set forth in the Xbox 360 PLA (i.e., the stages for Concept approval, pre-Certification, Certification and Marketing Materials approvals that apply to all aspects of the Software Title). All Publisher Hosting Services and Publisher Hosted Online Content is subject to the same terms to which any Software Title and/or Online Content is subject per the Xbox 360 PLA. In order to pass a Software Title using XLSP through Certification, Publisher may be required to submit additional information about its server architecture and access to its server environment sufficient to enable Microsoft to conduct testing of the Publisher Hosting Services. In addition to the requirements under these XLSP Terms, Publisher acknowledges and agrees that it will be bound by all XLSP policies set forth in the Xbox 360 Publisher Guide.

3. Privacy

As a condition for Certification, Microsoft may require Publisher to have a separate terms of use or privacy policy under Publisher's name and implemented in a manner that is acceptable to Microsoft. Microsoft must expressly consent to any collection of Xbox Live User's personally identifiable information and in such event, Publisher may collect only what user data that is legitimately necessary for the intended purpose and may not use any such user data relating to the Xbox 360 and the Xbox Live service in any manner outside of the Publisher Hosting Services. In the event Microsoft requires that Publisher use a separate terms of use or privacy policy for the Publisher Hosting Services, then such policies will clearly state that (i) that the Xbox Live User's personal information will be shared with Microsoft, and (ii) that the Xbox Live User will be subject to the terms and conditions of the Microsoft Privacy Statement and the Xbox Terms of Use. Such notice must contain hyperlinks to the Xbox Live terms of use, privacy statement, and code of conduct currently located at <http://www.xbox.com/en-US/xboxlive>. Publisher agrees that any separate terms of use or privacy policy will be in addition to and not conflicting with the Xbox Live terms of use, privacy statement and code of conduct.

4. Beta Trials

At any time prior to Certification of the Software Title, Microsoft may require that internal or public beta testing be conducted by or on behalf of Microsoft (the "Beta Trials"). Microsoft's prior written approval, which may be withheld in Microsoft's sole discretion, is required for any Beta Trials. All feedback provided by Microsoft to Publisher as a result of the Beta Trials is advisory in nature, and satisfactory feedback from the Beta Trials is not an indication that the Publisher Hosted

Online Content will be approved following the Certification submission. Likewise, Beta Trial feedback may include information regarding violations of technical Certification requirements that could, if not addressed by Publisher, result in Certification failure.

5. Publisher Hosting Services

5.1 **Publisher Responsibility.** Publisher is responsible for hosting the Publisher Hosted Online Content and providing the Publisher Hosting Services. Publisher shall operate the Publisher Hosting Services in a manner that meets or exceeds standards of quality, performance, stability, and security generally accepted in the industry, and those specific requirements set forth below in this section and in the Xbox 360 Publisher Guide.

5.2 **Third Party Host.** If Publisher is using a Third Party Host to provide the Publisher Hosting Services, Publisher may provide the Third Party Host with access to only those portions of the XDK that are necessary for the Third Party Host to perform the Publisher Hosting Services. Prior to using the services of any Third Party Host, the Third Party Host and Publisher must sign a Third Party Hosting Agreement substantially and materially in the form set forth in the Xbox 360 Publisher Guide, and Microsoft must accept and approve such agreement in writing. Publisher hereby unconditionally and irrevocably guarantees the Third Party Host's performance of the applicable obligations and restrictions imposed by these XLSP Terms and the Third Party Hosting Agreement.

5.3 **Publisher Hosting Service Requirements.** Publisher shall adhere to the following requirements and upon request from Microsoft, Publisher shall provide Microsoft with sufficient information to verify compliance with these requirements:

5.3.1 **Operation.** Publisher shall monitor the operation and performance of the Publisher Hosting Services, respond to technical and Xbox Live User inquiries, and have rules, policies, and procedures for the Publisher Hosting Services that are consistent with the standards defined below or as otherwise provided by Microsoft from time to time in the event Microsoft reasonably determines that the standards need to be updated in light of industry standards.

5.3.2 **Reporting and Technical Policies.** The parties shall follow the communication processes for sharing and updating each other's technical teams set forth in the Xbox 360 Publisher Guide. In addition, Publisher shall follow the technical processes, policies, rules, and detailed procedures for notification, escalation and reporting of scheduled and unscheduled maintenance, and problems that might occur with the Publisher Hosting Services as set forth in the Xbox 360 Publisher Guide. Each party is responsible for notifying the other in the event that it discovers a technical problem with the service of the other party. Publisher shall provide Microsoft [****] advanced written notice of Publisher's scheduled downtimes, and Publisher shall use commercially reasonable efforts to schedule maintenance downtimes for the Publisher Hosting Services at the same time as Microsoft's scheduled downtimes for Xbox Live. Upon notification of a scheduled downtime for the Publisher Hosting Services, Microsoft may at its option request an alternate time for such scheduled maintenance and Publisher shall use commercially reasonable efforts to accommodate Microsoft's request.

5.3.3 **Server Capacity and Load.** Publisher shall use commercially reasonable efforts to support all users of its Publisher Hosting Services, including operating sufficient computing resources for user traffic, and shall immediately inform Microsoft of the failure of relevant Publisher Hosting Services. Publisher shall ensure that load on the Publisher Hosting Services system does not exceed [****] of the measured capacity of the system, where "capacity" is defined as the maximum load which can be sustained by the system. Publisher must describe in writing the tools and techniques to be used in measuring system capacity and load, which tools and techniques must be recognizable as industry standard practices and which must be agreed to in advance by Microsoft. Publisher shall measure the load on the Publisher Hosting Services at intervals of no more than [****]. Publisher shall retain records of load measurements for no less than one week, and shall make such records accessible to Microsoft upon request. Should changes to the system occur which necessitate changes in the tools and techniques used to measure capacity and load, or should the capacity of the system materially increase or decrease, Publisher shall inform Microsoft within [****].

5.3.4 **Uptime.** The Publisher Hosting Services shall have uptime of [****], where uptime is defined as the portion of time when the system is accessible and available to Xbox Live Users. Uptime will be calculated on a monthly basis assuming conformance with the industry standard of monitoring uptime [****]. Publisher will report the uptime statistics to Microsoft upon request. Scheduled maintenance done pursuant to Section 5.3.2 above may be deducted when calculating uptime.

5.3.5 **Server Location.** Publisher must locate all servers used to operate the Publisher Hosting Services in approved territories as provided for in the Xbox 360 Publisher Guide.

5.3.6 **Troubleshooting; Notice to Users.** If the Publisher Hosting Services are unable to establish a connection to Xbox Live, then Publisher will work with Microsoft to troubleshoot the cause of the problem and diligently work to fix any such problem. During any time in which a Software Title or any Publisher Hosted Online Content using the Publisher Hosting Services are unable to establish a connection to the Publisher Hosting Services, then Publisher will display the appropriate message to the Xbox Live User in accordance with the Xbox 360 Publisher Guide.

5.4 **Customer Support.** As set forth in the Xbox 360 PLA, as between Microsoft and Publisher, Publisher is solely responsible for providing customer support to Xbox Live Users for Publisher Hosted Online Content and Publisher Hosting Services. Except as expressly set forth herein, Publisher acknowledges and agrees that Microsoft has no support responsibilities whatsoever to Xbox Live Users for the Publisher Hosted Online Content and Publisher Hosting Services.

5.5 **Xbox Live Family Settings Features.** Publisher Hosting Services and Publisher Hosted Online Content shall at all times comply with the requirements of the Xbox 360 Publisher Guide and the technical Certification requirements related to the family settings features of the Xbox 360 and Xbox Live..

5.6 **Law Enforcement and Regulatory Requirements.** Publisher is responsible for ensuring that the Publisher Hosting Services and Publisher Hosted Online Content comply with all legal and regulatory requirements that apply in the jurisdictions in which such services or content are made available. Publisher may be required to provide Microsoft with information including legal opinions to verify that the Publisher Hosting Services and Publisher Hosted Online Content comply with applicable laws. In addition, Publisher agrees that it will promptly reply to and comply with any requests by any law enforcement officials regarding the Publisher Hosting Services or Publisher Hosted Online Content.

5.7 **Publisher Contact.** As provided in the Xbox 360 Publisher Guide, Publisher shall designate at least one full-time employee as a product or program manager to the services contemplated under these XLSP Terms, responsible for serving as Microsoft's liaison, performing Publisher's obligations under this Agreement, and serving as primary contact to Microsoft.

6. Xbox Live User Content

6.1 **Microsoft Approval.** Publisher may not allow Xbox Live Users to create, share or otherwise provide Xbox Live User Content in connection with a Software Title without Microsoft's express approval. If Publisher wants to make Xbox Live User Content available as part of Publisher Hosted Online Content, Publisher will provide to Microsoft a detailed description of the process and procedures Publisher will have in place regarding such Xbox Live User Content.

6.2 **Claim of Infringement.** If Microsoft has approved Publisher allowing Xbox Live User Content, Publisher shall maintain a procedure for removing Xbox Live User Content in the event of a claim of infringement, which procedure shall comply with all applicable laws and regulations. Microsoft may notify Publisher of any complaints Microsoft receives related to Xbox Live User Content. Publisher shall remove allegedly infringing Xbox Live User Content upon receipt of a third party claim or notice from Microsoft, but in any event no later than [****] after receipt of such claim. Publisher agrees to notify Microsoft as soon as commercially reasonable (and in any event no later than [****] after receipt) of any such claims of infringement and to update Microsoft as to steps taken in response thereto. In order to mitigate escalation of any such claims, Microsoft may in its good faith discretion take control over any such claim and be the sole source of communications to the claimant.

6.3 **Additional Circumstances for Removal of Xbox Live User Content.** Microsoft may in its discretion request that Xbox Live User Content be removed by Publisher pursuant to the procedures described above for Xbox Live User violations of the Xbox Terms of Use and/or Code of Conduct.

7. Action by Microsoft

In the event Publisher fails to perform any of its obligations under these XLSP Terms, including failure to conform to the approved Concept for the Software Title and/or Publisher Hosting Services, Microsoft has the right, without limiting any of its other rights and remedies under the Agreement, to restrict access to the Publisher Hosted Online Content and disconnect Publisher Hosting Services from Xbox Live. Microsoft, in its discretion, may restrict the uploading of Xbox Live User

Content to, or require Publisher to remove Xbox Live User Content from, Xbox Live in accordance with the Xbox Live Terms of Use, the Xbox Live Privacy Policy and the Xbox Live Code of Conduct.

8. Termination

8.1 **Termination.** In addition to the termination provisions of the Xbox 360 PLA, Microsoft may terminate Publisher's use of XLSP at any time for Publisher's failure to comply with these XLSP Terms.

8.2 **Effect of Termination.** Upon termination or expiration of the Xbox 360 PLA Publisher shall continue to support existing Publisher Hosted Online Content until the earlier of (1) the end of the FPU sell-off period as set forth in the Xbox 360 PLA, or (2) the end of the Minimum Commitment term for Online Content (as defined in the Xbox 360 PLA). Additionally, Publisher shall continue to support any event-based Publisher Hosted Online Content that started before termination or expiration. To the extent Publisher has support obligations pursuant to this Section 8.2 following termination or expiration, all of Publisher's obligations under these XLSP Terms will continue to apply. If Publisher's use of XLSP is terminated due to Publisher's failure to comply with these XLSP Terms or Publisher's breach of the Xbox 360 PLA, then Microsoft has the right to immediately terminate the availability of the Publisher Hosted Online Content and require that the operation of Publisher Hosting Services immediately cease, and all Microsoft software or materials be immediately returned to Microsoft.

8.3 **Survival.** The following Sections of these XLSP Terms shall survive expiration or termination of these XLSP Terms: 9 and 10. Other sections shall survive in accordance with their terms.

9. Warranties

In addition to the warranties set forth in the Xbox 360 PLA, Publisher additionally warrants and represents that:

9.1 Any and all information, data, logos, software or other materials provided to Microsoft and/or made available to Xbox Live Users via Publisher Hosted Online Content or the Publisher Hosting Services complies with all laws and regulations and does not and will not infringe upon or misappropriate any third party trade secrets, copyrights, trademarks, patents, publicity, privacy or other proprietary rights.

9.2 The Publisher Hosted Online Content and the Publisher Hosting Services do not and will not contain any messages, data, images or programs which are, by law, defamatory, obscene or pornographic, or in any way violate any applicable laws (including without limitation laws of privacy) of the territory where the Publisher Hosted Online Content is distributed or hosted.

9.3 The Publisher Hosted Online Content and the Publisher Hosting Services do not harvest or otherwise collect information about Xbox Live Users, including e-mail addresses, and the Publisher Hosted Online Content and the Publisher Hosting Services do not link to any unsolicited communication sent to any third party.

9.4 Publisher will not serve any Publisher Hosted Online Content that is not approved in the Software Title's Concept.

9.5 Publisher has obtained all necessary rights and permissions for its and Microsoft's use of the Xbox Live User Content and the Xbox Live User Content does not infringe the intellectual property rights of any third party.

10. Indemnification

The indemnification obligations of the parties under the Xbox 360 PLA extends to any breach by either party of its warranties, representations or covenants set forth in these XLSP Terms. With regard to the Publisher Hosting Services, Publisher's warranties, representation, covenants and indemnification obligations apply regardless of whether or not Publisher has engaged a Third Party Host to perform all or any of the Publisher Hosting Services. Publisher's indemnity obligation applies to any third party claims arising out of Microsoft's use of the Xbox Live User Content.

11. Sub-Publishing

Publisher may enter into sub-publishing arrangements as provided for in the Xbox 360 PLA with respect to Software Titles subject to these XLSP Terms, provided that Publisher remains in control of and responsible for the operations of all Publisher Hosted Online Content and Publisher Online Services. If Publisher desires to transfer the ownership and operation of Publisher Online Services to its sub-publishing partner, then the sub-publisher must be treated as a Third Party Host hereunder or Publisher must get confirmation in writing that the sub-publisher has its own XLSP Addendum in place with Microsoft.

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
Section 302 Certification

I, Ben Feder, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended January 31, 2009 of Take-Two Interactive Software, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

March 11, 2009

/s/ BEN FEDER

Ben Feder
Chief Executive
Officer

QuickLinks

[Exhibit 31.1](#)

[CERTIFICATION OF CHIEF EXECUTIVE OFFICER Section 302 Certification](#)

CERTIFICATION OF CHIEF FINANCIAL OFFICER
Section 302 Certification

I, Lainie Goldstein, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended January 31, 2009 of Take-Two Interactive Software, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

March 11, 2009

/s/ LAINIE
GOLDSTEIN

Lainie Goldstein
Chief Financial
Officer

QuickLinks

[Exhibit 31.2](#)

[CERTIFICATION OF CHIEF FINANCIAL OFFICER Section 302 Certification](#)

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

In connection with the Quarterly Report of Take-Two Interactive Software, Inc. (the "Company") on Form 10-Q for the period ended January 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ben Feder, as Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

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

March 11, 2009

/s/ BEN FEDER

Ben Feder
Chief Executive
Officer

QuickLinks

[Exhibit 32.1](#)

[CERTIFICATION PURSUANT TO 18 U. S. C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)

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

In connection with the Quarterly Report of Take-Two Interactive Software, Inc. (the "Company") on Form 10-Q for the period ended January 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Lainie Goldstein, as Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

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

March 11, 2009

/s/ LAINIE
GOLDSTEIN

Lainie Goldstein
Chief Financial
Officer

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[Exhibit 32.2](#)

[CERTIFICATION PURSUANT TO 18 U. S. C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)

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