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Attorney General McKenna Sues Movieland.com and Associates for Spyware

SEATTLE – Washington State Attorney General Rob McKenna today announced the filing of Washington's second lawsuit under the state's computer spyware act. The state's suit accuses four California-based corporations of installing software that takes control of a consumer's computer by launching aggressive and persistent pop-ups that demand payment for a movie download service.

"The defendants in our suit promote a movie download service through Web sites including movieland.com that offer consumers a free three-day trial," McKenna said. "After the trial period, consumers are inundated with pop-ups that appear at least hourly and subject the consumer to a 40-second payment demand that cannot be closed. These messages are generated by software installed on their computers that cannot be easily removed.

"To stop these aggressive pop-ups, many frustrated consumers ultimately give in to the defendants' unfair tactics and pay anywhere from \$19.95 to nearly \$100 for the service," McKenna said. "Thousands of consumers nationwide have complained to my office, the Federal Trade Commission, the Better Business Bureau and others about the defendants' unfair practices."

Washington's lawsuit charges Digital Enterprises, of West Hills, doing business as Movieland.com; Alchemy Communications, of Los Angeles; AccessMedia Networks, of Los Angeles; and Innovative Networks, of Woodland Hills, with violating the state's Computer Spyware and Consumer Protection acts. Two company officials are also charged in the suit: Digital Enterprises' Easton A. Herd, and Alchemy's Andrew M. Garroni. Both men live in Los Angeles.

If found liable, each defendant could be fined \$100,000 per violation of the Computer Spyware Act and \$2,000 per violation under the Consumer Protection Act. They may also be required to pay restitution to affected consumers.

The state filed the suit today in King County Superior Court in Seattle following a seven-month investigation by the Attorney General's Consumer Protection High-Tech Unit.

Washington's suit lays out six causes of action that include taking control of a user's computer; misrepresenting the method to uninstall the software; using threats, harassment and intimidation in billing practices; failing to disclose material facts; and other unconscionable business practices and misrepresentations.

According to the state's complaint, the defendants sell a subscription-based entertainment service that provides access to a variety of information and movie clips including adult content.

Defendants have operated several Web domains including movieland.com, moviepass.tv, and popcorn.net in connection with the service. Defendants advertise a free, three-day trial offer that requires users to download software. After the trial period, defendants remotely activate billing software that causes a pop-up window to appear that includes a message indicating the trial period has expired. The message takes up much of the screen, obstructs consumers from working in other windows and lacks any obvious way to minimize or close it. The message reads: "Click 'Continue' to purchase your license and stop these reminders."

Clicking "Continue" launches a 40-second video that features a woman speaking over background music. As part of her message, she says, "Because you did not cancel during the trial period, you are now legally obligated to make your payment ... Just choose the payment option that's right for you ..."

"The defendants' claim that users are legally obligated to pay for their service lacks merit because consumers did not provide knowing consent to the installation of the relentless pop-up demands," McKenna said. "Furthermore, computer owners are not responsible to satisfy contracts that other people, including minors, entered into while using a computer."

At the conclusion of the video, computer users are presented with a menu of payment options, as well as links labeled "Close this Window. Remind me later." and "Frequently Asked Questions." Consumers who choose the "Close this Window" option are freed from pop-ups temporarily. However, the payment demands soon return with increasing frequency.

Clicking on the FAQ option directs users to a Web site that reinforces the need to pay. Under the heading "I never signed up for this service, I would like to cancel," the Web site states that "the machine's owner is solely responsible for regulating access to the computer. ... Failure to satisfy your payment obligation may result in an escalation of collection proceedings that could have an adverse effect on your credit status."

"Their threat is an empty one," McKenna said. "In fact, defendants are unable to affect a consumer's credit record because they have no way to personally identify the computer user."

The defendants' software also prevents users from using the Windows Control Panel to uninstall the program. Attempting to uninstall the program launches a Web site that presents payment options.

Washington's Computer Spyware Act prohibits, among other things, taking control of a user's computer; modifying security settings; and interfering with a user's ability to identify and remove the spyware.

Consumers who have experienced similar problems concerning Movieland.com

or other defendants named in the state's suit can file a complaint with the Attorney General's Office online at www.atg.wa.gov or call 1-800-551-4636 (number available in-state only) to request a complaint form.

[Click here for a copy of the Movieland Complaint:](#)

<http://www.atg.wa.gov/releases/2006/Documents/MovielandComplaint8-14-06.pdf>

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