

**Via Federal Express**

January 28, 2003

Mr. Michael Roe  
ioMedia Partners, Inc.  
4905 Belfort Road  
Suite 145  
Jacksonville, FL 32256

Dear Mr. Roe:

Congratulations on the success of radioio. We appreciate your efforts to legitimately bring music and videos to the online community while respecting the intellectual property rights of artists, composers, and publishers.

Acacia is a publicly traded company that develops and acquires patented technologies for licensing. We own a portfolio of five U.S. and seventeen International Patents covering the transmission and receipt of digital audio and video content via various means, including the Internet. We call the technology covered by these patents "DMT" or Digital Music Transmission technology. Our engineers and lawyers have reviewed the streaming services made available at the radioio.com website, and have determined that these activities are covered by our DMT Patents.

We have entered into Licensing Agreements with several companies that stream digital audio and video content over the Internet, including Radio Frée Virgin. We have also initiated patent infringement litigation in the United States District Court Central District of California, against several companies in the adult entertainment industry that stream audio and video content.

Enclosed is a packet of information regarding our DMT technology licensing program. The packet includes detailed information about the patents, as well as our standard License Agreement covering streaming music services. As you will note in Section 3.1 of the Agreement, our introductory licensing fees are extremely reasonable.

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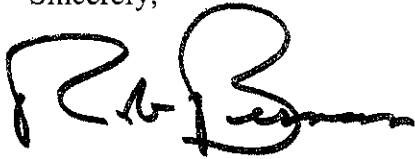
Our goal is to enter into a licensing arrangement with radioio. Upon your request, we are willing to provide you with additional information about our patents including file histories, engineering charts, claims analyses, and other pertinent information that will save you time and money in your due diligence of our patents. Once you look at the patents, we are confident that you will elect to enter into a licensing arrangement with us.

Additional information about our company and our DMT Patents is also available at [www.acaciaresearch.com](http://www.acaciaresearch.com). We will make our attorneys and engineers available to answer any questions you may have as you proceed with your due diligence.

Please contact me directly at 949-480-8333 and let me know how you would like to proceed. We hope that you will give our intellectual property the same respect as you give to the intellectual property of the creators and publishers of the music and video content that you promote and sell.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Berman', with a stylized, cursive script.

Rob Berman

RAB/sp

Enclosure

## STREAMING DIGITAL MUSIC LICENSE AGREEMENT

This Streaming Digital Music License Agreement ("Agreement") is entered into on January \_\_, 2003 (the "Effective Date") between Acacia Media Technologies Corporation (hereinafter "AMTC"), a Delaware corporation, with an address at 500 Newport Center Drive, 7th Floor, Newport Beach, CA 92660 Fax 949-480-8301 and \_\_\_\_\_ a \_\_\_\_\_ corporation with an address at \_\_\_\_\_. (hereinafter "Licensed User").

### BACKGROUND

A. AMTC is the owner of a portfolio of certain U.S. and International patents and patent applications relating to certain systems and/or methods for transmitting and/or receiving digital audio content (hereinafter "Audio Technology");

B. Licensed User currently provides a service via which digital music content is transmitted via the World Wide Web, Internet, or other download protocol, to customers ("Customers") who receive the transmissions and from which such Customers may not download or otherwise select particular music compositions (the "Streaming Music Service").

C. The transmission of the Streaming Music Service by Licensed User in the absence of a use license from AMTC, may constitute infringement of one or more claims of the Licensed Patents (as defined in Section 1.3 below) under one or more of the provisions of 35 U.S.C. § 271, including, but not limited to, §§ 271(a), (b), (c) and/or (g);

D. Licensed User desires to obtain a license under the Licensed Patents in connection with the Streaming Music Service.

**NOW, THEREFORE**, in consideration of the above premises and the mutual covenants of the parties to be faithfully performed, AMTC and Licensed User, intending to be legally bound, agree as follows:

### 1. DEFINITIONS

In addition to the terms defined above and elsewhere in this Agreement, as used in this Agreement:

- 1.1 "Licensed Patents" shall mean the patents listed on **Exhibit A** to this Agreement, as well as any additional patents obtained by AMTC *via* any divisionals, continuations and continuations-in-part thereof, and any other patents hereafter acquired by AMTC in which the novelty and primary focus is the Audio Technology.

## 2. LICENSE

- 2.1 Grant of Limited Use License.** AMTC hereby grants to Licensed User a non-exclusive, non-transferable, non-assignable, worldwide limited use license under the Licensed Patents solely for the purpose of providing the Streaming Music Service (the "License").
- 2.2 Any Use Or Right Not Specifically Enumerated Is Excluded.** The limited use License defined by and granted in Section 2.1 is limited solely to the specified uses by Licensed User enumerated in Section 2.1. The License excludes any and all uses not specifically enumerated in Section 2.1. Third parties may provide content, services, or equipment to Licensed User for Licensed User's use in providing the Streaming Music Service. The limited use License defined by and granted in Section 2.1 does not apply to any such third party with respect to services or equipment that are not supplied directly to Licensed User for the Streaming Music Service and such third party is not licensed or granted immunity under the Licensed Patents with respect to services or equipment provided to any party other than Licensed User.
- 2.3 Reserved Rights.** Any and all rights not explicitly granted to Licensed User in Section 2.1 above are expressly reserved by AMTC. No license or immunity as to the Licensed Patents is granted by AMTC to Licensed User, either by implication, estoppel, or otherwise, other than the limited use license specifically enumerated and expressly provided in Section 2.1 to Licensed User, and no license or immunity as to the Licensed Patents is granted by AMTC to any other party, by implication, estoppel, or otherwise.
- 2.4 Sublicense and Assignment Rights.** The limited use License granted to Licensed User in Section 2.1 above does not confer upon Licensed User the right to sublicense any rights under the Licensed Patents to any other persons or entities for any purpose. Licensed User's rights under the Licensed Patents are limited to the specific uses set forth in Section 2.1. The limited use License granted to Licensed User in Section 2.1 above does not confer upon Licensed User the right to assign any rights under the Licensed Patents whether by merger, acquisition, operation of law, or otherwise.
- 2.5 Conditional Release for Past Infringement.** Provided that Licensed User maintains compliance with all of the terms and conditions of this Agreement, and as part of the consideration being given to Licensed User hereunder, Licensed User is conditionally relieved from any liability Licensed User may have incurred prior to the Effective Date for infringement of the Licensed Patents solely by virtue of Licensed User's acts and uses specified in Section 2.1 above.

**DIGITAL MUSIC LICENSE  
AGREEMENT (cont'd)**

**3. ROYALTIES AND AUDIT**

- 3.1 Royalty.** In consideration for the limited use license granted in Section 2.1 above, Licensed User shall pay AMTC a royalty (the "Royalty") of Three Quarters of One Percent (.75%) of Music Related Revenue for the period during which Licensed User provides the Streaming Music Service.
- 3.2 Music Related Revenue.** Music Related Revenue shall mean all revenue, including billings on behalf of, and payments made to Licensed User and its representatives and agents, for (i) access to and/or receipt of the Streaming Music Service, including without limitation one time or recurring subscription fees, connect time charges, access fees, download charges, and other transactional charges (ii) all payments made on or behalf of sponsors, advertisers, program suppliers, content providers, or others, including without limitation advertising embedded in audio or audio/visual programming, "hot links", the provision of time or space on any web site, and banner ads, less actual advertising commissions paid by Licensed User to an unaffiliated agency not to exceed fifteen percent (15%), (iii) the fair market value of merchandise, services, or any thing or service of value which Licensed User may receive in lieu of cash consideration, and (iv) Licensed User's proprietary software used to access the Streaming Music Service or receive or download any aspect thereof. With respect to services provided to any person, firm, or corporation directly or indirectly controlling, controlled by, under common control with, or enjoying a specially favored course of dealing with Licensed User, Music Related Revenue shall include the amount which would have been charged on an arm's length sale to a bona fide third party.
- 3.4 Royalty Payments.** Within thirty (30) days of the end of each calendar quarter, Licensed User shall provide Acacia with a statement indicating in reasonable detail Licensed User's Music Related Revenue for the preceding calendar quarter. Such statements shall be certified by an employee, officer, or principal of Licensed User authorized to make such certification. Any payment made pursuant to the provisions of this Agreement shall be paid in United States Dollars within thirty (30) days of the end of each calendar year. Any payment required hereunder that is more than ten (10) days late (including unpaid portions of amounts due) shall bear interest, compounded monthly, at the lesser of ten percent (10%) per annum, or the highest interest rate permitted to be charged by applicable law. Licensed User has determined and acknowledges that a royalty based upon Licensed User's Music Related Revenue is an accurate and convenient means for measuring the value of the licensed activities defined in Section 2.1 above
- 3.5 Audit Rights.** Licensed User shall keep accurate records of Music Related Revenue for a period not to exceed five (5) years, unless in dispute, in which event they shall

**DIGITAL MUSIC LICENSE  
AGREEMENT (cont'd)**

be kept until the later of when said dispute is settled and such five (5) year period. Such records shall be open during reasonable business hours and upon ten (10) days prior written notice, at the place where such records are customarily kept, for examination by AMTC or an agent of AMTC, for the sole purpose of verifying the accuracy of Licensed User's representations to AMTC regarding Licensed User's Music Related Revenue. AMTC may exercise its rights of inspection hereunder no more than once per calendar year. In the event that any audit performed by AMTC or its agent reveals a royalty underpayment in excess of five percent (5%), Licensed User shall bear the reasonable costs of such audit. Licensed User shall remit any underpaid royalty amounts due to AMTC, plus the costs of the audit if applicable, immediately upon receiving notice thereof.

**4. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**4.1 Representations, Warranties, and Covenants of Licensed User.** Licensed User represents, warrants, and covenants to AMTC that: (i) Licensed User has the full legal authority necessary to enter into this Agreement and perform the duties and obligations outlined in this Agreement (ii) Licensed User is licensing each patent constituting the Licensed Patents for its own convenience, and this Agreement may not provide Licensed User all of the rights that Licensed User needs to utilize the Audio Technology; and (vii) in the event that Licensed User contests or assists others in contesting the validity of the Licensed Patents or AMTC's ownership thereof during the term of this Agreement, AMTC, upon written notice to Licensed User, may immediately terminate this Agreement and the license granted hereunder, and in the event that a final determination is made adjudicating any of the contested claims in AMTC's favor, Licensed User shall reimburse AMTC for the actual costs and expenses incurred by AMTC in contesting Licensed User's position.

**4.2 Representations, Warranties, and Covenants of AMTC.** AMTC represents and warrants that it owns all right, title and interest in the Licensed Patents. THE LICENSE GRANTED TO LICENSED USER BY AMTC IS GRANTED IN "AS IS/WHERE IS" CONDITION. OTHER THAN WITH RESPECT TO ITS OWNERSHIP OF THE LICENSED PATENTS, AMTC MAKES NO REPRESENTATIONS OR WARRANTIES TO LICENSED USER OF ANY KIND, INCLUDING WITHOUT LIMITATION, EXPRESS, IMPLIED, STATUTORY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PATENT ENFORCEABILITY, OR PATENT VALIDITY. IN ADDITION, AMTC MAKES NO REPRESENTATION THAT THE USE OF THE AUDIO TECHNOLOGY WILL NOT INFRINGE, DIRECTLY, CONTRIBUTARILY, OR BY INDUCEMENT, ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY. AMTC SHALL NOT BE LIABLE TO LICENSED USER FOR ANY SPECIAL,

**DIGITAL MUSIC LICENSE  
AGREEMENT (cont'd)**

INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY THEREOF IN ADVANCE. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, FRAUD, MISREPRESENTATION AND OTHER TORTS, LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF SAVINGS OR OTHER LOSS.

**5. TERM AND TERMINATION**

- 5.1 Term.** This Agreement shall commence upon AMTC's countersignature of this Agreement after being signed by Licensed User, and shall terminate three (3) years thereafter.
- 5.2 Termination.** Notwithstanding Section 5.1 above, either AMTC or Licensed User may terminate this Agreement upon thirty (30) days written notice to the other party upon the breach by such party of any of the terms and conditions of this Agreement, or any other agreement between Licensed User and AMTC.

**6. MISCELLANEOUS**

- 6.1 Indemnification by Licensed User.** Licensed User shall indemnify and hold harmless AMTC and its affiliates, principals, employees, officers, directors, consultants, stockholders, representatives and agents, successors and assigns (an "AMTC Indemnified Party") from and against all claims, disputes, debts, controversies, obligations, judgments, demands, liens, causes of action, liability, loss, damages, costs and expenses (including reasonable attorneys' fees and expenses of litigation) (collectively, "Claims") which an AMTC Indemnified Party may incur, suffer or be required to pay resulting from or arising in connection with the breach by Licensed User of any covenant or other provision contained in this Agreement. An AMTC Indemnified Party may retain counsel, as necessary, to defend against any such Claims.
- 6.2 Non-Agency.** Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the AMTC and Licensed User. Neither AMTC nor Licensed User shall incur any debts or make any commitments for the other.
- 6.3 Entire Agreement, Amendments, and Waivers.** This Agreement constitutes and contains the entire agreement between AMTC and Licensed User, and supersedes any and all prior negotiations, conversations, correspondence, understandings, and letters respecting the subject matter hereof. This Agreement may be amended or

**DIGITAL MUSIC LICENSE  
AGREEMENT (cont'd)**

modified or one or more provisions hereof waived only by a written instrument signed by the parties. No delay or omission by any party in exercising any right or power arising from any default by the other party shall be construed as a waiver of such default, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right or power arising from any default by a party. No waiver of any breach of any covenant or other condition shall be construed to be a waiver of or consent to any previous or subsequent breach of the same or of any other covenant or condition.

- 6.4 Severability and Captions.** If one or more provisions of this Agreement are held to be invalid or unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded. In the event a part or provision of this Agreement is held to be invalid or unenforceable or in conflict with law for any reason, the parties shall replace any invalid part or provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The captions to this Agreement are for convenience only and are to be of no force or effect in construing and interpreting the provisions of this Agreement.
- 6.5 Governing Law and Consent to Jurisdiction.** This Agreement shall be governed by and construed under applicable federal law and the laws of the State of California, excluding any conflict of law provisions. Licensed User and AMTC each irrevocably consent to the exclusive jurisdiction of any California state or federal court sitting in the Central District of California, over any suit, action or proceeding arising out of or relating to this Agreement. AMTC and Licensed User hereby waive personal service of any summons, complaint, or other process in any action in any California state or federal court sitting in the Central District of California, and agree that all service thereof may be made by (i) certified or registered mail, return receipt requested, to the other party's address identified in the opening paragraph of this Agreement; (ii) by facsimile to other party's facsimile number identified in the opening paragraph of this Agreement (or other facsimile number identified in writing by the parties for such purpose); or (iii) by such other method as if authorized by the California Long Arm Statute.
- 6.6 Notices.** Any notice required or permitted under this Agreement shall be given in writing and shall be sent via overnight carrier, or via facsimile and regular mail, to the addresses and fax numbers indicated in the opening paragraph of this Agreement above. Payment information shall be sent to the attention of Accounts Receivable Department of AMTC and all other notices to AMTC shall be sent to the attention of Robert Berman, Senior Vice President, AMTC.
- 6.7 Third Party Beneficiaries and Assignment.** Nothing in this Agreement shall be construed to give rise to any obligation on either party hereto for the benefit of a third party or to confer any rights other than to AMTC and Licensed User. Licensed



**DIGITAL MUSIC LICENSE  
AGREEMENT (cont'd)**

User may not assign, delegate, sell, transfer, sublicense or otherwise dispose of, voluntarily or involuntarily, by operation of law or otherwise, any or all of its rights or obligations under this Agreement to any other person, business or entity.

**6.8 Survival.** Sections 3.5, 4.1, 4.2, 6.1, 6.3, 6.5 and 6.7 of this Agreement shall survive the expiration or termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below.

**[Name of Licensed User]**

**Acacia Media Technologies Corporation**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

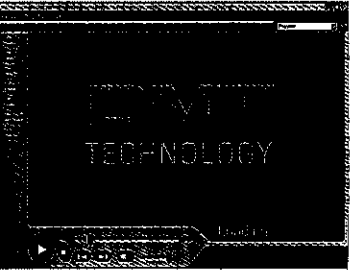
Date: \_\_\_\_\_

## Exhibit A

United States·····U.S. Patent No. 5,132,992  
United States·····U.S. Patent No. 5,253,275  
United States·····U.S. Patent No. 5,550,863  
United States·····U.S. Patent No. 6,002,720  
United States·····U.S. Patent No. 6,144,702  
Taiwan····· Taiwan Patent No. 72821  
Mexico····· Mexican Patent No. 180038  
Japan····· Japanese Patent No. 4-504433  
Belgium····· EP 0 566 662  
Switzerland·····EP 0 566 662  
France·····EP 0 566 662  
Italy····· EP 0 566 662  
Luxembourg·····EP 0 566 662  
Monaco····· EP 0 566 662  
Netherlands····· EP 0 566 662  
Sweden····· EP 0 566 662  
Great Britain·····EP 0 566 662  
Greece····· GR3032463T3  
Spain·····ES2138968T3  
Denmark·····DK566662T3  
Germany·····DE69230250T2  
Austria····· AT186437E  
European Patent Office·····European Patent No. EP 0 566 662 B1  
European Patent Office·····European Patent Application  
Publication No. EP 0 933 892 A3

## WHO IS ACACIA

Acacia Technologies is a publicly traded company (NASDAQ: ACTG) located in Newport Beach, CA, that develops and acquires patented technologies for licensing. Acacia and its subsidiaries currently have licensing agreements with many companies including:



Philips Electronics  
Thompson Multimedia  
Matsushita Corporation  
Pioneer  
JVC  
Orion  
Sanyo  
Samsung  
L.G. Electronics  
Daewoo  
Funai  
Loewe  
Hitachi  
Roche Diagnostics  
NASA  
Virgin Radio

For more information on Acacia, visit [www.acaciaresearch.com](http://www.acaciaresearch.com).

## WHY IS ACACIA CONTACTING ME

You are engaged in the transmission of digital audio and/or video content via the World Wide Web. Acacia owns a patented technology, called Digital Media Transmission ("DMT") Technology, that is protected by a portfolio of five United States Patents and seventeen International Patents. These patents cover the transmission and receipt of digital audio and/or video content, and date back to 1991. Acacia also has additional DMT patent claims pending via an open continuation.

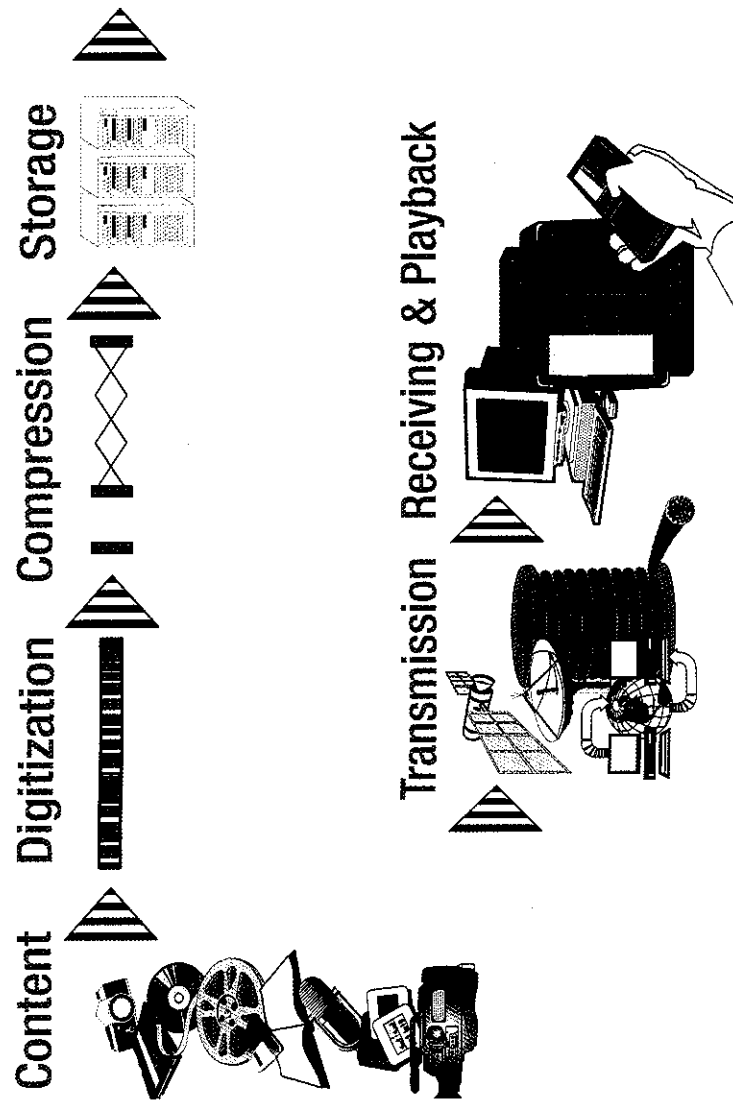
Acacia has recently launched a licensing program focusing on companies that transmit digital audio and/or video content via the internet, using our DMT Technology. In order for you to continue transmitting audio or video content without violating any of Acacia's patents, you need to purchase a license from Acacia. Acacia is offering special licensing rates for a limited period of time.

To see a list of the U.S. and foreign DMT patents owned by Acacia and to view a copy of Acacia's U.S. Patents covering the DMT Technology, please visit [www.acaciaresearch.com](http://www.acaciaresearch.com). Click on the DMT Technology icon, and select Acacia's U.S. DMT Patents.



# WHAT IS DMT TECHNOLOGY?

DMT Technology is a patented process for transmitting and receiving digital audio and/or video content via various means including the Internet, Cable and Satellite. The technology is protected by 5 U.S. and 17 International patents.



DMT  
TECHNOLOGY

DMT  
TECHNOLOGY

**Q. What is a Patent?**

**A.** A patent is a legal right to exclude others from making, using, offering for sale, or selling an invention for a limited period of time. Acacia's U.S. Patents expire in 2011. In the United States, patents are issued by the United States Patent and Trademark Office. For more information, go to [www.uspto.gov](http://www.uspto.gov).

**Q. Where can I get more information about Acacia's DMT Technology and the patents?**

**A.** To see a visual depiction of Acacia's DMT Technology, please visit [www.acaciaresearch.com](http://www.acaciaresearch.com), click on the DMT Technology icon, and select [Visual Depiction of Acacia's DMT Technology](#). To see a list of the U.S. and foreign DMT patents owned by Acacia, or to view an actual copy of Acacia's U.S. DMT Patents covering the transmission and receipt of digital audio and/or video content, please visit [www.acaciaresearch.com](http://www.acaciaresearch.com), click on the DMT Technology icon, and select the applicable link. To view engineering diagrams illustrating examples of how some of the claims of Acacia's patents apply to your activities, please visit [www.acaciaresearch.com](http://www.acaciaresearch.com), click on the DMT Technology icon, and select [Engineering Diagrams](#).

**Q. I buy my hardware and software for transmitting videos from legitimate third party companies like Microsoft, Real Networks and Apple; why do I need a license from Acacia?**

**A.** Even though you may purchase hardware and software products from a third party does not mean that certain uses of the products will not infringe rights, such as patent rights, belonging to others.

**Q. Exactly what am I doing on my Website that infringes Acacia's Patents?**

**A.** Acacia's patents cover the process of transmitting and receiving digital audio and/or video content via several means, including the Internet. Activities such as showing previews of videos on a website, and sending audio or video content via the Internet for download use Acacia's DMT Technology and are covered by Acacia's patents.

**Q. I use a third party to host and transmit my digital content to my customers. Shouldn't Acacia be contacting them?**

**A.** Under U.S. Patent Law, a party who encourages or contributes to the infringement by someone else may be held liable as an infringer. The License Agreements cover you and activities provided by your third party host on your behalf.

**Q. I own several websites that transmit audio and video content. Will the license with Acacia cover all of my sites?**

**A.** All websites owned by you and your affiliates will be covered by the license, as long as they are legally owned by you or your affiliates and they are listed on exhibit to the Agreement.

**Q. What if I don't enter into a license with Acacia?**

**A.** Our preference is to enter into a license agreement with you without the need for patent litigation, which is very expensive. In the event that you elect to not enter into a license agreement with Acacia, Acacia will have the right to seek royalties for past and future infringing activities at rates that are higher than the rates we are currently seeking.