

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CATHRYN ELAINE HARRIS, MARIO
HERRERA, and MARYAM HOSSEINY
on behalf of themselves and all others
similarly situated,

Plaintiff,

v.

BLOCKBUSTER INC.

Defendant.

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CIVIL ACTION NO. 2:08-cv-00155

MOTION TO COMPEL INDIVIDUAL ARBITRATION

Defendant Blockbuster Inc. (“Blockbuster” or “Defendant”) hereby moves to compel individual arbitration of plaintiffs Cathryn Elaine Harris, Mario Herrera, and Maryam Hosseiny’s claims in this case and would respectfully show the Court as follows:¹

I. SUMMARY OF ARGUMENT

In this case, plaintiffs’ claims arise from their use of Blockbuster’s website and their participation in Blockbuster’s online DVD subscription service, Blockbuster Online. Specifically, plaintiffs challenge a program that allows Blockbuster Online customers to share information with their friends through the social networking site, Facebook.com. Plaintiffs allege that this program violates the Video Privacy Protection Act (“VPPA”), 18 U.S.C. § 2710. These claims, however, are covered by an individual arbitration agreement that plaintiffs accepted when they became registered users of Blockbuster’s website and members of Blockbuster Online. That agreement, which broadly covers all claims relating to use of Blockbuster’s website and its handling of personal information, explicitly prohibits plaintiffs

¹ In support of this motion, Blockbuster has submitted the Declaration of Jennifer L. Dineen (“Dineen Decl.”) attached as Exhibit A.

from pursuing their claims through a class action or classwide arbitration. Numerous courts have confirmed that such agreements are binding, valid, and fully enforceable. Accordingly, plaintiffs should be compelled to individual arbitration.

II. BACKGROUND

A. Overview of the Case

According to the First Amended Complaint (“FAC”), plaintiffs are registered users of Blockbuster’s website and members of Blockbuster Online. *See* FAC at ¶¶ 2-4. Blockbuster Online is a DVD rental subscription program in which members pay a flat monthly rate to receive DVDs through the mail. *See* Dineen Decl. ¶ 3. To select the DVDs they wish to receive, Blockbuster Online members use Blockbuster’s website to create and manage their own “movie queue,” removing or adding movies as they choose. *Id.* ¶ 4.

As Blockbuster Online members, plaintiffs’ use of the Blockbuster website, including their management of their movie queues, is governed by a privacy policy, which contains the following provisions:

Third Party Features. From time to time Blockbuster may include additional features and functionality from third parties on our Web Sites. ***Certain of these features and functions, may require Blockbuster to send selected information about you, such as information about your movie queue, to the third party. If you do not wish for Blockbuster to share this information, you will have a reasonable opportunity to opt-out of these third party features and functions....***

Public postings. If you disclose your personal information in a manner that will be posted publicly such as in a product review your posting will be seen by others. In addition, if you elect to participate in certain community features offered from time to time, selected information about you, including information about your movie queue, may be shared with other participants in these community features. ***Also, Blockbuster may make it possible for certain third party web sites to be accessed directly from our Web Sites and for selected information about you to be provided to these third party web sites if you are also a user of these third***

party web sites. If a third party web site allows other users to view information about you (e.g., through posting to a publicly available profile page), the information provided by Blockbuster will be visible to other users of the third party web site.

See Ex. 3 to Dineen Decl. (emphasis added). This privacy policy is part of the terms and conditions that plaintiffs agreed to when they became registered users of Blockbuster Online. Dineen Decl. ¶ 9; FAC ¶¶ 2-4. Despite this privacy policy, plaintiffs allege that Blockbuster improperly allowed them to share movie queue information with their friends and family through Facebook, in supposed violation of the VPPA. FAC ¶¶ 25-26, 28-31.

B. Plaintiffs' Individual Arbitration Agreement with Blockbuster

All Blockbuster Online registered users sign-up for the program through Blockbuster's website, www.blockbuster.com. Dineen Decl. ¶¶ 5-6. Early in the sign-up process, prospective members are asked to provide basic information (e.g., name, email, selected password, etc.) that enables Blockbuster to open an account for them. *Id.* ¶ 6. Before they submit this information, all prospective members must "click" on a box that appears next to the following statement:

I have read and agree to the [blockbuster.com](http://www.blockbuster.com) (including Blockbuster Online Rental) **Terms and Conditions** and certify that I am at least 13 years of age.

Id. ¶ 7. By following the **Terms and Conditions** hyperlink,² prospective members are taken to a page containing the full Terms and Conditions governing membership in Blockbuster Online and use of the Blockbuster website. *Id.* ¶ 8. These Terms and Conditions include the privacy policy mentioned above as well as an individual arbitration agreement, which provides the sole method for resolving disputes relating to the use of Blockbuster's website and Blockbuster Online:

² A "hyperlink" is "an electronic link providing direct access from one distinctively marked place...to another in the same or a different document." See Merriam-Webster Online Dictionary, www.merriam-webster.com/dictionary/hyperlink. Here, the hyperlink to the Blockbuster website Terms and Conditions is underlined and in blue type, obviously identifiable as a hyperlink to any computer user.

DISPUTE RESOLUTION

All claims, disputes or controversies (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to: (a) these Terms and Conditions of Use; (b) this Site; (c) any advertisement or promotion relating to these Terms and Conditions of Use or this Site; or (d) transactions effectuated through this Site, or (e) the relationship which results from these Terms and Conditions of Use (including relationships with third parties who are not party to these Terms and Conditions of Use) (collectively "Claims"), will be referred to and determined by binding arbitration governed by the Federal Arbitration Act and administered by the American Arbitration Association under its rules for the resolution of consumer-related disputes, or under other mutually agreed procedures. Because this method of dispute resolution is personal, individual and provides the exclusive method for resolving such disputes, you further agree, to the extent permitted by applicable laws, to waive any right you may have to commence or participate in any class action or class-wide arbitration against Blockbuster related to any Claim.

This provision shall survive the termination of your right to use this Site.

See id. ¶ 8; Ex. 2 to Dineen Decl. If prospective members do not click the box, they are not allowed to continue with the sign-up process; instead, they are shown the same screen again, this time with the message, “*Please review and accept the terms and conditions*” appearing in red type at the top of the screen. Dineen Decl. ¶ 10.

Once prospective members click the Terms and Conditions box and complete the sign-up process, they receive a confirmation email from Blockbuster. That email contains another hyperlink to the Terms and Conditions—the same ones they read and accepted during the sign-up process. *Id.* ¶ 11. In addition, the Terms and Conditions are always accessible by hyperlink at the bottom on the Blockbuster website. *Id.*

III. ARGUMENT AND AUTHORITIES.

By its terms, the individual arbitration agreement between plaintiffs and Blockbuster is governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 *et seq.* See Ex. 2 to Dineen Decl. (“All claims, disputes, and controversies...will be referred to and determined by binding arbitration governed by the Federal Arbitration Act[.]”). The FAA creates a “body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). As the Fifth Circuit has recognized, the FAA establishes “a strong presumption in favor of arbitration,” and “individuals seeking to avoid the enforcement of an arbitration agreement face a high bar.” *Carter v. Countrywide Credit Indus., Inc.*, 362 F.3d 294, 297 (5th Cir. 2004).³ In determining whether to compel arbitration, courts applying this test need look only to “(1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement.” *Personal Sec. & Safety Sys., Inc. v. Motorola Inc.*, 297 F.3d 388, 392 (5th Cir. 2002); *Walker v. Countrywide Credit Indus., Inc.*, 2004 WL 246406, at *2 (N.D. Tex. Jan. 15, 2004) (Godbey, J.). Here, the undisputed evidence demonstrates that there is a binding, valid, and fully enforceable individual arbitration agreement and that the agreement covers plaintiffs’ claims.

A. There is a Binding, Valid, and Fully Enforceable Individual Arbitration Agreement Between Plaintiffs and Blockbuster.

The first part of the analysis under the FAA and Fifth Circuit case law looks to whether there is a valid arbitration agreement between the parties. This involves two issues: whether a binding agreement exists and whether that agreement is valid and enforceable. Here, an arbitration agreement was formed during the Blockbuster Online sign-up process when plaintiffs

³ Arbitration is similarly favored under Texas law. See, e.g., *Cantella & Co., Inc. v. Goodwin*, 924 S.W.2d 943, 944 (Tex. 1996) (“Federal and state law strongly favor arbitration.”).

clicked on the box indicating that they had reviewed and accepted the Terms of Conditions, including the individual arbitration agreement. Under applicable law, Blockbuster's agreement is valid and fully enforceable as written, including its prohibition on participation in class actions and classwide arbitrations.

1. Plaintiffs clearly manifested their acceptance of Blockbuster's Terms and Conditions, including the individual arbitration agreement.

Plaintiffs entered into a binding individual arbitration agreement with Blockbuster during the sign-up process for their Blockbuster Online memberships. As explained above and in the Declaration of Jennifer L. Dineen, plaintiffs could not have completed that process without clicking on the box next to the statement:

I have read and agree to the blockbuster.com (including Blockbuster Online Rental) **Terms and Conditions**....

See Dineen Decl. ¶¶ 7-8, 10-12; Ex. 1. This type of agreement, often referred to as a "clickwrap agreement," was described several years ago by Judge Fitzwater, who explained:

A "clickwrap agreement" allows a customer to assent to the terms of a contract by selecting an "accept" button on the website. [citation omitted] If the consumer does not accept the terms of the agreement, the web site will not complete the transaction.

American Eyewear, Inc. v. Peeper's Sunglasses & Accessories, Inc., 106 F. Supp. 2d 895, 904 (N.D. Tex. 2000); see also *Southwest Airlines Co. v. Boardfirst, L.L.C.*, 2007 WL 4823761, at *4 n.4 (N.D. Tex. Sept. 12, 2007) (Boyle, J.) (distinguishing "clickwrap" agreements from "browsewrap" agreements, where user does not have to click "yes" or "I agree");⁴ *Recursion Software, Inc. v. Interactive Intelligence, Inc.*, 425 F. Supp. 2d 756, 782-83 (N.D. Tex. 2006) (Boyle, J.) (discussing caselaw and concluding that "clickwrap licenses, such as at issue here, are

⁴ As noted above, in addition to the "clickwrap agreements" that plaintiffs accepted during the sign-up process, they also received a confirmation email containing the Terms and Conditions. Dineen Decl. ¶ 11. Furthermore, they manifested their acceptance of Blockbuster's Terms and Conditions, including the individual arbitration agreement, through their continued use of the website. See Dineen Dec. Ex. 2 at 5.

valid and enforceable contracts”). As Judge Boyle recently noted, “at least one Texas appellate court has upheld the enforceability of a [clickwrap] agreement.” *See Recursion*, 425 F. Supp. 2d at 782-83. In that case, *Barnett v. Network Solutions*, 38 S.W.3d 200, 204 (Tex. App.—Eastland 2001, pet. denied), the court enforced a clickwrap agreement, stating that “[i]t was [the plaintiff’s] responsibility to read the electronically-presented contract, and he cannot complain if he did not do so.” *Id.* at 204.

Courts outside Texas, applying Texas law, have come to the same conclusion. Just a few months ago, a New Jersey federal court held that, under Texas law, “a party may manifest assent to a contract by clicking on an “I Accept” button in connection with an internet transaction.” *Davis v. Dell, Inc.*, 2007 WL 4623030, *4 (D. N.J. Dec. 28, 2007). This decision was in accord with an earlier decision by an Illinois appellate court, *Hubbert v. Dell Corp.*, 835 N.E.2d 113 (Ill. App. Ct. 2005), which also analyzed the enforceability of a clickwrap agreement under Texas law. The *Hubbert* court noted that the company’s terms and conditions appeared via hyperlink during the ordering process. *Id.* at 121. It also observed that a computer user would have known to click on the hyperlink to access the terms and conditions. *Id.*

In light of these cases, plaintiffs are bound by Blockbuster’s Terms and Conditions, including the individual arbitration agreement, which they read and accepted before becoming registered users of Blockbuster’s website and members of Blockbuster Online.

2. The arbitration agreement is valid and fully enforceable as written, including the prohibition on participation in class actions and classwide arbitrations.

The arbitration agreement that governs plaintiffs’ claims in this case is valid and fully enforceable, as it provides a fair and efficient method to resolve individual consumer disputes such as this one. The Fifth Circuit has recognized that the FAA sets a “high bar” for plaintiffs seeking to avoid the enforcement of their arbitration agreements, even where, as here, “the

claims subject to arbitration are statutory in nature.” *Carter*, 362 F.3d at 297. Indeed, the FAA was intended “to reverse longstanding judicial hostility to arbitration agreements . . . and to place [them] upon the same footing as other contracts.” *Id.* (quoting *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 89 (2000)). Accordingly, such agreements are susceptible only to general contract defenses such as fraud, duress, or unconscionability, and only to the extent that those defenses would apply to all contracts generally; arbitration agreements may not be singled out for heightened scrutiny. *See Doctor’s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 686-87 (1996) (invalidating state law that singled out arbitration agreements for suspect status). The “party seeking to invalidate an arbitration agreement bears the burden of establishing its invalidity.” *Carter*, 362 F.3d at 297.

This is not one of the limited circumstances in which a general contract defense can be used to invalidate an otherwise enforceable arbitration agreement. Plaintiffs’ acceptance of the arbitration agreement was not obtained by fraud or duress. Moreover, there is no basis for a finding of unconscionability—the doctrine most often used (albeit unsuccessfully) by plaintiffs seeking to avoid the enforcement of arbitration agreements.

In Texas, the doctrine of unconscionability has two components—procedural and substantive—and the plaintiff must establish both. *In re Halliburton Co.*, 80 S.W.3d 566, 571 (Tex. 2002); *AutoNation USA Corp. v. Leroy*, 105 S.W.3d 190, 198 (Tex. App.—Houston [14th Dist.] 2003, no pet.). Procedural unconscionability “refers to the circumstances surrounding the adoption of the arbitration provision,” whereas substantive unconscionability “refers to the fairness of the arbitration provision itself.” *Halliburton*, 80 S.W.3d at 571. Here, plaintiffs cannot show either element. The arbitration agreement was clearly presented to them, conspicuously identified in the Terms and Conditions that each of them claimed to have read.

See Dineen Decl. ¶¶ 7-8, 10-11. Both the Texas Supreme Court and the Fifth Circuit have found that, under Texas law, such agreements are enforceable regardless of whether there is a disparity in bargaining power or whether the plaintiff actually read or understood the agreement. See, e.g., *In re Palm Harbor Homes, Inc.*, 195 S.W.3d 672, 679 (Tex. 2006) (“The principles of unconscionability do not negate a bargain because one party to the agreement may have been in a less advantageous bargaining position . . . The agreement before us is clearly labeled as an agreement providing that disputes will be settled by arbitration.”); *In re U.S. Home Corp.*, 236 S.W.3d 761, 764 (Tex. 2007) (noting that arbitration agreements in contracts of adhesion are not automatically unconscionable); see also *Carter*, 362 F.3d at 301 (rejecting reliance on superior bargaining position to establish procedural unconscionability, noting that such an argument “has no support in Texas law”).

Plaintiffs also cannot make the necessary showing of substantive unconscionability. The agreement between plaintiffs and Blockbuster is fair and reasonable. The designated arbitration rules, the American Arbitration Association’s (“AAA”) Consumer Rules, are well tailored to individual disputes such as this one. Under these rules, Blockbuster bears the burden of paying nearly all of the arbitration fees. Because their individual claims should not likely exceed \$10,000, each plaintiff’s share of the arbitrator’s fees would be limited to \$125—less than the filing fee they paid in this case. See *Carter*, 362 F.3d at 300 (holding that it was “impossible” for plaintiffs to demonstrate prohibitive costs under arbitration agreement where their fee burden was limited to \$125).

Nor can plaintiffs contend that the agreement’s prohibition on participation in class actions and classwide arbitrations renders the agreement unconscionable, as the precedents hold that it does not. In *AutoNation*, a Texas appellate court rejected a plaintiff’s challenge to an

individual arbitration agreement, noting that class treatment of claims was merely a procedural device, which must bow to the FAA's mandate "to ensure that private agreements to arbitrate are enforced according to their terms." *AutoNation USA Corp.*, 105 S.W.3d at 199-200. As the *AutoNation* court recognized, "there is no entitlement to proceed as a class action." *Id.* at 200.

The Fifth Circuit has reached the same conclusion. *See Carter*, 362 F.3d at 298-300 (rejecting argument that arbitration agreement's class waiver deprived plaintiffs of substantive rights under federal law). So has the Northern District of Texas. *See Marsh v. First USA, N.A.*, 103 F. Supp. 2d 909, 922-24 (N.D. Tex. 2000) (Maloney, J.) (rejecting argument that federal statute's remedial purpose would be frustrated by enforcement of class waiver). Furthermore, courts across the country, applying Texas law, have uniformly held that individual arbitration agreements like Blockbuster's are valid and fully enforceable. *See Davis*, 2007 WL 4623030, at *6 ("[T]he Court finds that class action waivers are not unconscionable under Texas contract law."); *Omstead v. Dell, Inc.*, 473 F. Supp. 2d 1018, 1024 (N.D. Cal. 2007) ("Under Texas law, an arbitration clause with a class action waiver is not substantively unconscionable; rather, it is likely to be enforceable."); *Sherr v. Dell, Inc.*, 2006 WL 2109436, at *7 (S.D.N.Y. July 27, 2006) ("[p]laintiff is not entitled to a class action suit or class-wide arbitration to vindicate the rights of everyone else with a similar problem."); *Provencher v. Dell, Inc.*, 409 F. Supp. 2d 1196, 1204 (C.D. Cal. 2006) ("*AutoNation* is illustrative of how Texas courts are unwilling to strike down an arbitration provision and class action waiver on the ground of unconscionability."); *Fiser v. Dell Computer Corp.*, 165 P.3d 328, 339 (N.M. Ct. App. 2007) ("[W]e look to Texas law, and conclude that the arbitration clause is not unconscionable merely because [plaintiff] is precluded from bringing his claim as a class action."); *Hubbert*, 835 N.E.2d at 126 (relying on

AutoNation in rejecting argument that individual arbitration agreement was substantively unconscionable).⁵

Based on this overwhelming authority, it is clear that the arbitration agreement between plaintiff and Blockbuster, including the agreement's class waiver, is valid and fully enforceable.

B. The Individual Arbitration Agreement Covers Plaintiffs' Claims In This Case.

Having established the existence of a valid arbitration agreement between the parties, the only remaining issue is whether the agreement covers plaintiffs' claims. In light of the FAA's strong pro-arbitration policy, "all doubts concerning the arbitrability of claims should be resolved in favor of arbitration." *Primerica Life Ins. Co. v. Brown*, 304 F.3d 469, 471 (5th Cir. 2002). Here, the arbitration agreement is extremely broad, covering "*all* claims, disputes or controversies," including statutory claims like plaintiffs', "arising out of or relating to" any of the following:

- (a) these Terms and Conditions of Use; (b) this Site; (c) any advertisement or promotion relating to these Terms and Conditions of Use or this Site; or (d) transactions effectuated through this Site; or (e) the relationship which results from these Terms and Conditions of Use (including relationships with third parties who are not party to these Terms and Conditions of Use)....

See Dineen Dec. ¶ 8; Ex. 2 (emphasis added). This broad agreement easily covers plaintiffs' claims in this case. All of the plaintiffs identify themselves as registered users of the Blockbuster website and Blockbuster Online. *See* FAC ¶¶ 2-4. Their claims arise from their use of the Blockbuster website and the way in which Blockbuster permits them to share information with third parties, namely Facebook and their Facebook community. Moreover, this case challenges Blockbuster's privacy policy and its compliance with that policy, which is part of the

⁵ Even if Texas had a policy against class waivers in arbitration agreements, that policy would be preempted by the FAA's strong pro-arbitration policy. *See, e.g., Gay v. CreditInform*, 511 F.3d 369, 394-95 (3d Cir. 2007) (holding that FAA preempts state law doctrine invalidating individual arbitration agreements).

Terms and Conditions referred to in the arbitration agreement. In covering all claims, including statutory claims, relating to those Terms and Conditions, website transactions, and relationships with third parties, the arbitration agreement covers plaintiffs' claims in this case.

IV. CONCLUSION

In short, plaintiffs should not have filed this case in court and should not be pursuing class treatment of their claims at all. By doing so, they have breached their individual arbitration agreements with Blockbuster. Because these agreements are binding, valid, and fully enforceable, all three plaintiffs should be compelled by the Court to resolve their disputes through individual arbitration under the AAA's Consumer Rules. Pending that resolution, this case should be stayed.

Respectfully submitted,

/s/Michael L. Raiff

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*ATTORNEYS FOR DEFENDANT
BLOCKBUSTER INC.*

CERTIFICATE OF CONFERENCE

I hereby certify that, in accordance with Local Rule CV-7(h), counsel for Blockbuster has complied with the meet and confer requirement contained therein and that Blockbuster's Motion to Compel Individual Arbitration is opposed. I certify that on July 29th, 2008, I personally conducted a telephone conference with Jeremy Wilson of the Corea Firm, counsel for Plaintiffs, and that counsel were not able to reach agreement on the Motion, resulting in an impasse, and leaving the issue for the Court to resolve.

/s/ Frank Brame w/permission Michael L. Raiff
Frank Brame

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Compel Individual Arbitration was served by ECF on the 30th day of July, 2008 on counsel of record for Plaintiffs.

/s/ Michael L. Raiff _____

Michael L. Raiff

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**IN THE UNITED STATES DISTRICT COURT
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CATHRYN ELAINE HARRIS, MARIO
HERRERA, and MARYAM HOSSEINY
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BLOCKBUSTER INC.

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CIVIL ACTION NO. 2:08-cv-00155

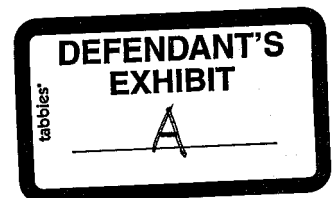
DECLARATION OF JENNIFER L. DINEEN

I, Jennifer L. Dineen, make this declaration under the penalty of perjury under the laws of the United States:

1. My name is Jennifer L. Dineen. I am over eighteen years of age and have never been convicted of any crime. I am fully competent to make this declaration, which I submit in support of Blockbuster's motion to compel individual arbitration. I have personal knowledge of these facts, which are true and correct.

2. I am an employee of Blockbuster Inc. ("Blockbuster") and my job title is Director of Online Consumer Experience and Brand. In that capacity, I am familiar with Blockbuster Online and the Blockbuster website. Specifically, I am familiar with the sign-up process for Blockbuster Online and the Terms and Conditions that apply to membership in the program and use of Blockbuster's website, www.blockbuster.com.

3. By way of background, Blockbuster Online is a DVD rental subscription program in which members pay a flat monthly fee to rent DVDs through the mail. The fee and the



number of DVDs that members may receive monthly vary according to the plan that members select.

4. To select movies that they want to receive, Blockbuster Online members use the Blockbuster website to create and manage their “movie queues.” Movies may be shipped to members based on the order in which the movies appear in the members’ queues, according to member’s plan and the movies’ availability among other considerations.

5. To open a Blockbuster Online account, all prospective members must complete the sign-up process. This process also allows prospective members to become registered users of Blockbuster’s website. Registered users differ from the general public in that they are able to access special content on the Blockbuster website, including the individualized content relating to their Blockbuster Online memberships and movie queues.

6. This sign-up process takes place through the Blockbuster website. After selecting a specific Blockbuster Online plan, prospective members are asked to provide certain basic information that will allow Blockbuster to open an Online account for them. This information includes their name, email address, and a selected password. A true and correct copy of this web page where they enter this information is attached to this declaration as Exhibit 1.

7. Before they submit the information requested on Exhibit 1, prospective members must “click” a box, next to which the following statement appears:

I have read and agree to the blockbuster.com (including BLOCKBUSTER Online Rental) Terms and Conditions and certify that I am at least 13 years of age.

8. By clicking on the Terms and Conditions hyperlink, prospective members are taken to a web page containing the Terms and Conditions applicable to use of Blockbuster’s website and Blockbuster Online. A true and correct copy of this page is attached to this declaration as Exhibit 2. It includes the following terms:

DISPUTE RESOLUTION

All claims, disputes or controversies (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to: (a) these Terms and Conditions of Use; (b) this Site; (c) any advertisement or promotion relating to these Terms and Conditions of Use or this Site; or (d) transactions effectuated through this Site, or (e) the relationship which results from these Terms and Conditions of Use (including relationships with third parties who are not party to these Terms and Conditions of Use) (collectively "Claims"), will be referred to and determined by binding arbitration governed by the Federal Arbitration Act and administered by the American Arbitration Association under its rules for the resolution of consumer-related disputes, or under other mutually agreed procedures. Because this method of dispute resolution is personal, individual and provides the exclusive method for resolving such disputes, you further agree, to the extent permitted by applicable laws, to waive any right you may have to commence or participate in any class action or class-wide arbitration against Blockbuster related to any Claim.

This provision shall survive the termination of your right to use this Site.

9. The Terms and Conditions also include the following privacy policy:

PRIVACY POLICY

Blockbuster's personal information practices on this Site are governed by Blockbuster's **privacy statement**. Please review this privacy statement and print a copy for your records. This Site does not intend to target or collect personal information from individuals under the age of 13.

By clicking on the **privacy statement** hyperlink, prospective members are taken to a web page containing the full privacy policy. A true and correct copy of this page is attached to this declaration as Exhibit 3.

10. Prospective members who do not indicate their agreement to the full Terms and Conditions by clicking on the box are not allowed to continue with the sign-up process and

cannot create a Blockbuster Online account or become a registered user of the Blockbuster website. Instead, they are shown the same page again, this time with the message:

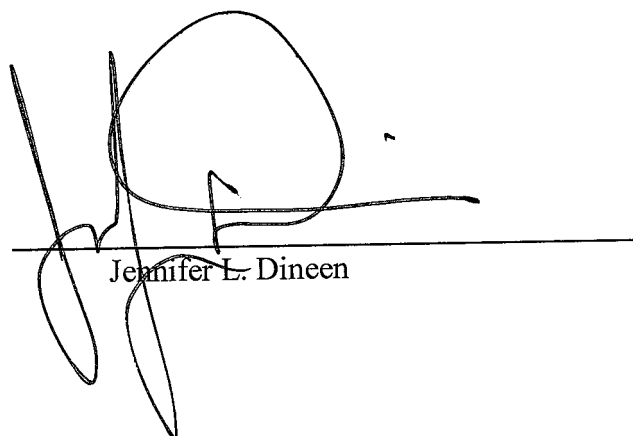
Please review and accept the terms and conditions.

This message appears in red type. A true and correct copy of the page with this message is attached to this declaration as Exhibit 4.

11. After prospective members click on the box indicating that they have reviewed and accepted the Terms and Conditions, they are allowed to continue with the sign-up process. When that process is complete, Blockbuster sends a confirmation email, which contains another hyperlink to the Blockbuster Online and website Terms and Conditions. At all times, the Terms and Conditions appear by hyperlink on the Blockbuster website.

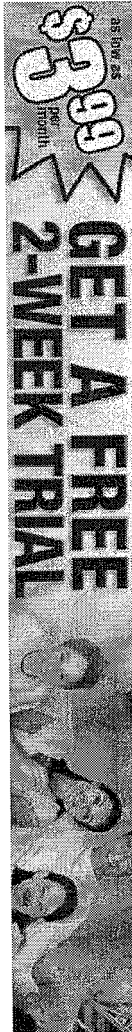
12. At all times relevant to the plaintiffs in this action and continuing to this day, the sign-up process described in paragraphs 5-11 above has remained the same, and the terms relating to the individual arbitration provision have remained unchanged. In becoming registered users, members have always been required to click on a box indicating that they read and reviewed the Terms and Conditions of use of Blockbuster's website and membership in Blockbuster Online.

Date: July ____, 2008



Jennifer L. Dineen

https://www.blockbuster.com/signup/shipPayment/pl16FFD662ED75A50A428B748C3E297B73/



STEP 1: START STEP 2: CHOOSE A PLAN

Your Plan:

- Unlimited DVDs through the mail
- 5 free in-store exchanges per calendar month
- \$19.99/mo. + tax
- FREE two week trial

Your trial is really FREE!

You will not be charged during your two week free trial period.

We are taking your payment information now so that your service can continue uninterrupted when your free trial is over.

Cancel anytime - we mean it!

We want you to be absolutely thrilled with your membership to Blockbuster Total Access, so you can cancel at any time if you are unsatisfied in any way.

YOUR SECURITY IS VERY IMPORTANT.
We take every step possible to provide you with a safe, secure online environment.

STEP 3: TRIAL CONFIRMATION

Final Step, DVDs will be on their way soon!

Choose a security question we can ask if you forget your password:

Security Question: Answer:

Shipping Information

First Name:

Last Name:

Address:

Address 2:

City:

State:

Telephone:

Select Your State: ZIP:

I have read and agree to the Blockbuster.com (including Blockbuster Online) Rental Terms and Conditions and certify that I am at least 13 years of age.

Almost Done

Terms and Conditions

This website ("Site") is provided to you by Blockbuster Inc. ("Blockbuster"). Your access to and use of this Site is subject to these Terms and Conditions of Use. By accessing this Site you ("you") agree to be bound by these Terms and Conditions of Use whether or not you have read them. If you do not agree to these Terms and Conditions of Use, do not access this Site. Blockbuster may at its sole discretion modify these Terms and Conditions of Use at any time and such modifications will be effective immediately upon being posted on this Site. Your continued use of this Site will indicate your acceptance of these modified Terms and Conditions of Use.

PRICE AND AVAILABILITY

The products and services offered or referred to on this Site are subject to availability. The prices stated for such products and services are subject to change without notice.

RELIANCE ON INFORMATION

This Site may include inaccuracies or typographical errors that may be corrected as they are discovered at Blockbuster's sole discretion.

CHANGES TO THE SITE

Changes may be made at any time to the information, names, text, software, images, pictures, logos trade-marks, products and services and any other material displayed on, offered through or contained on this Site.

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PRIVACY POLICY

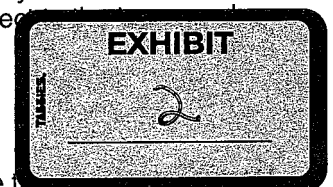
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In providing registration and transactional information to Blockbuster, you agree to provide true and correct information about yourself, and to maintain and update registration information to keep it true, accurate, current and complete. If Blockbuster has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Blockbuster has the right to suspend or terminate your account and refuse any and all current or future use of the account.



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To the extent that any of the following activities materially interfere with this Site or the network and systems of a Blockbuster service provider ("Service"), you will not: (a) post, disseminate or transmit any worm, viruses or other harmful, disruptive or destructive files, code or programs on this Site; (b) use Internet Relay Chat (IRC) bots, i.e., programs that utilize excessive resources by connecting to an IRC network and running 24 hours per day; (c) hinder the ability of others to use IRC; (d) disrupt the normal flow on this Site or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges; (e) interfere with, disrupt, or harm in any way the servers or networks connected to this Site or Service; (f) use this Site or Service to access the accounts of others without permission; (g) attempt to penetrate security measures of this Site, Service, or another entity, or obtain or bypass others passwords; or (h) engage in denial of service attacks, i.e., actions designed to impair network access by flooding a site or the Internet with useless traffic.

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UNSOLICITED SUBMISSION POLICY

Blockbuster Inc. does not accept, by any means of transmission, any unsolicited submissions, in any form whatsoever including, without limitation, any marketing, advertising and/or creative suggestions, scripts, lyrics, jingles, product samples, prototypes, movies and/or games (hereinafter referred to as "Submissions"). If you elect to forward to us any such Submission, then by doing so, you acknowledge that said Submission has not been requested by us and that (1) we are not liable for any use, disclosure, or return to you of your Submission, (2) no confidential relationship is established or is to be implied in any way from our receipt of the Submission and any statement to the contrary with your Submission shall not alter this condition, (3) you understand that you will not

be entitled to any compensation from us based upon your Submission, (4) the receipt of your Submission shall not constitute a waiver by us of our rights to contest the validity of any copyright, or other intellectual property rights that you may now or hereafter claim for the Submission, and (5) any previously, concurrently or subsequently submitted materials relating to this Submission shall be considered to have been submitted in accordance with these conditions.

MANAGING YOUR PASSWORD AND YOUR ACCOUNT

You are solely responsible for managing your password and for keeping your password confidential. No one from Blockbuster will be authorized to provide your password. If you have forgotten your password, go to the Sign In link at the top of the screen, then click on "Forgot your password." Follow the instructions, and a link to change your password will be emailed to you. You are also solely responsible for restricting access to any computer you use to access your blockbuster.com account or your BLOCKBUSTER ONLINE membership. You agree that you are responsible for all activities that occur on your account or through use of your password by yourself or by other persons.

NOTICE AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT

If you believe that your work has been copied in a way that constitutes copyright infringement, please provide Blockbuster's copyright agent the written information specified below. Please note that this procedure is exclusively for notifying Blockbuster and its affiliates that your copyrighted material has been infringed.

An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
A description of the copyrighted work that you claim has been infringed upon;
A description of where the material that you claim is infringing is located on the Site;
Your address, telephone number, and e-mail address;
A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Blockbuster's Copyright Administrator for notice of claims of copyright infringement on this Site can be reached as follows:

*Copyright Administrator
Blockbuster Inc. Legal Department
1201 Elm Street, Suite 2100
Dallas, TX 75270
Email address: copyrightadministrator@blockbuster.com
phone: (214) 854-3392
fax: (214) 854-3271*

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YOU ACKNOWLEDGE THAT YOU WILL BE FULLY LIABLE FOR ALL DAMAGES RESULTING DIRECTLY OR INDIRECTLY FROM YOUR USE OF THIS SITE.

INDEMNIFICATION

You agree to indemnify and hold harmless Blockbuster and its affiliates and their respective directors, officers, employees, agents or other representatives from and against all claims, liability and expenses, including all legal fees and costs arising from or relating to (a) your breach of these Terms and Conditions of Use; and (b) your use of this Site including transmission or placement of information or material by you on this Site. This provision shall survive the termination of your right to use this Site.

DISPUTE RESOLUTION

All claims, disputes or controversies (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to: (a) these Terms and Conditions of Use; (b) this Site; (c) any advertisement or promotion relating to these Terms and Conditions of Use or this Site; or (d) transactions effectuated through this Site, or (e) the relationship which results from these Terms and Conditions of Use (including relationships with third parties who are not party to these Terms and Conditions of Use) (collectively "Claims"), will be referred to and determined by binding arbitration governed by the Federal Arbitration Act and administered by the American Arbitration Association under its rules for the resolution of consumer-related disputes, or under other mutually agreed procedures. Because this method of dispute resolution is personal, individual and provides the exclusive method for resolving such disputes, you further agree, to the extent permitted by applicable laws, to waive any right you may have to commence or participate in any class action or class-wide arbitration against Blockbuster related to any Claim.

This provision shall survive the termination of your right to use this Site.

TERMINATION

Blockbuster may at any time and at its sole discretion terminate your right to use this Site.

GOVERNING LAW

These Terms and Conditions shall be governed by, construed and enforced in accordance with the laws of the State of Texas, without regard to its conflict of laws provisions.

RELIANCE ON INFORMATION

This Site may include publications with technical inaccuracies or typographical errors that may be corrected as they are discovered at Blockbuster's sole discretion. Also, changes are periodically made to the information contained herein.

GENERAL

Except for the portion of these Terms and Conditions specifically labeled as the BLOCKBUSTER Online Rental Terms and Conditions, which govern all subscriptions to the BLOCKBUSTER Online rental service, and the agreements, terms and conditions applicable to in-store Blockbuster rental memberships which apply to all dealings between Blockbuster and its members (the "Membership Rules"), these Terms and Conditions of Use constitute the entire agreement between you and Blockbuster with respect to your use of this Site and supersede all previous agreements, understandings and representations relating thereto. In the event of an inconsistency between these Terms and Conditions of Use and the Membership Rules, these Terms and Conditions of Use shall prevail. In the event of an inconsistency between these Terms and Conditions of Use and the BLOCKBUSTER Online Rental Terms and Conditions, the BLOCKBUSTER Online Rental Terms and Conditions shall prevail. No failure by Blockbuster or you to exercise any rights, powers or remedies hereunder or its delay to do so shall constitute a waiver of these rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy. If any provision of this Agreement or part thereof is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remainder of the provision or the remaining provisions of this Agreement, as the case may be, or the legality, validity or enforceability of that provision or part thereof in any other jurisdiction.

BLOCKBUSTER Online® RENTAL TERMS AND CONDITIONS ("ONLINE RENTAL TERMS AND CONDITIONS")

In addition to the foregoing BLOCKBUSTER Online Site Terms and Conditions of Use, membership in the BLOCKBUSTER Online rental service ("BLOCKBUSTER Online") is subject to the following additional Online Rental Terms and Conditions, and to payment of the applicable periodic membership fee plus applicable taxes. Amount of the membership fee may be changed from time to time as provided herein. BLOCKBUSTER Online membership is not transferable and is only available in the United States. The BLOCKBUSTER Online membership term commences on the date you sign up for BLOCKBUSTER Online membership and is valid with renewals until cancellation as outlined below (the "Membership Term"). By subscribing to BLOCKBUSTER Online, you agree to be bound by these Online Rental Terms and Conditions. You must be at least eighteen years old and have Internet access, a valid email address, and a valid credit card, check card or checking account to be a member of BLOCKBUSTER Online.

These Online Rental Terms and Conditions are subject to change by Blockbuster at any time, in its sole discretion, with or without advance notice. The most current version of the Online Rental Terms and Conditions, which will supersede all earlier versions, can be accessed through the hyperlink at the bottom of the blockbuster.com site. You should review the Online Rental Terms and Conditions regularly, to determine if there have been changes. Continued use of your BLOCKBUSTER Online membership constitutes acceptance of the most recent version of the Online Rental Terms and Conditions.

Membership Plans.

All BLOCKBUSTER Online membership plans allow members to rent DVDs from BLOCKBUSTER Online by paying a periodic fee. You can rent as many DVDs as you choose, up to the limit on outstanding rentals applicable to each membership plan (the "BLOCKBUSTER Online Rentals"). You may keep BLOCKBUSTER Online Rentals as long as you choose during your Membership Term, for no charge other than the applicable periodic BLOCKBUSTER Online membership fee (plus applicable taxes). You may only rent one (1) copy per title at a given time as part of your BLOCKBUSTER Online Rentals. However, you can rent the same movie title at different times. Redeemed BLOCKBUSTER Online Rentals will not count as paid rentals towards BLOCKBUSTER Rewards® benefits. BLOCKBUSTER Online Rentals may be any DVD available on www.blockbuster.com for rental as part of the BLOCKBUSTER Online service.

If you have the maximum number of BLOCKBUSTER Online Rentals allowed by your plan checked out, no additional movies will be shipped until you return one or more of the BLOCKBUSTER Online Rentals. You may have only one BLOCKBUSTER Online membership plan per email address at any one time. However, you may upgrade or downgrade among membership plans, as described below.

All BLOCKBUSTER Online membership plans allow members to return BLOCKBUSTER Online Rentals to participating BLOCKBUSTER stores. In addition, certain BLOCKBUSTER Online membership plans include BLOCKBUSTER Total Access™, which allows members to receive free in-store movie rentals in exchange when BLOCKBUSTER Online Rentals are returned to a store. See "BLOCKBUSTER Total Access" below for more detail. However, it is possible that the in-store return and BLOCKBUSTER Total Access features may be unavailable to subscribers in certain geographic areas where there are no corporate BLOCKBUSTER stores and no participating franchised BLOCKBUSTER stores.

Selection and Allocation of Product.

BLOCKBUSTER Online will automatically ship titles to you, up to your maximum number of outstanding BLOCKBUSTER Online Rentals, from and in the order that you have listed in your rental queue, subject to availability. However, BLOCKBUSTER Online reserves the right to determine product allocation among members in its sole discretion. In determining product allocation, we use various factors including, but not limited to, (i) the historical rental volume for each subscriber, (ii) historical number of outstanding rentals relative to the maximum number of outstanding BLOCKBUSTER Online Rentals allowed under a subscriber's plan, and (iii) the average rental queue position of BLOCKBUSTER Online Rentals that have shipped to a subscriber in the past.

Multiple Discs.

In most instances, each disc you request counts as a BLOCKBUSTER Online Rental and will take up one place in your queue, even if you are requesting a set, series or title with multiple discs (for example, if you select a title that offers both the movie itself and a bonus disc, if you request both discs, each disc counts as a BLOCKBUSTER Online Rental, and will be shipped separately and should be returned separately). You always have the option to only select one disc in those instances. However, if the movie itself requires multiple discs due to its length, in those instances the movie counts as one BLOCKBUSTER Online Rental regardless of the number of discs. This information will be available as part of the description of the movie and will be noted when you place your selection in your rental queue.

Delivery and Return of Rented DVDs.

Delivery of your BLOCKBUSTER Online Rentals will be via U.S. Postal Service ("USPS"). Members have the option to return BLOCKBUSTER Online Rentals via USPS or at a participating BLOCKBUSTER store. When BLOCKBUSTER Online Rentals are returned to a participating store, the BLOCKBUSTER Online Rentals are immediately checked in and the next available DVD(s) in the subscriber's online rental queue is shipped in accordance with our normal shipping process. Rentals must be presented at the checkout counter of a participating BLOCKBUSTER® store in the return mail envelope provided by BLOCKBUSTER Online. BLOCKBUSTER Online Rentals presented without the return mail envelope will not be accepted. BLOCKBUSTER Online Rentals should not be placed in the drop box of a BLOCKBUSTER store.

Postage is prepaid each way. The time it takes for a BLOCKBUSTER Online Rental to be delivered or returned via USPS depends on several factors, including circumstances generally affecting service times of the USPS (for example, holidays and heavy mail usage times such as Christmas), whether you returned your BLOCKBUSTER Online Rental via USPS or to a participating store, when you added the BLOCKBUSTER Online Rental to your

queue, the availability of your selection in inventory and the location of the distribution center at which the selection is available, and the address you are using for your delivery address. Blockbuster makes no guarantees with respect to DVD delivery times. Email notifications will alert you when your selections have been mailed and when your returned items have been received.

Access to Your BLOCKBUSTER Online Account.

If you opt for the "Remember me" feature for your BLOCKBUSTER Online account, a cookie helps BLOCKBUSTER Online recall certain items of your specific information on subsequent visits, including your user name and password. When you return to BLOCKBUSTER Online, the information you previously provided can be retrieved, so that it is not necessary to enter your user name and password to access certain functionality. While cookies are a convenience, please remember that if you elect the "Remember Me" option, anyone who can access the computer you are using will have the ability to access your account for certain functions and view certain information about your account, including viewing and making changes to your rental queue. Certain functions, such as accessing your complete Payment Card information, cannot be viewed through the use of cookies.

Consent to Electronic Communications.

You consent to receive communications from Blockbuster about your BLOCKBUSTER Online membership electronically, either by e-mail or by notices posted on this site, as determined by Blockbuster in its sole discretion. You agree that any requirement that a notice, disclosure, agreement, or other communication be sent to you by Blockbuster in writing is satisfied by such electronic communication. You agree that BLOCKBUSTER Online may send you e-mails which include notices about your account as well as information pertaining to our service, such as featured products or new offerings. You agree that this information is part of your subscription and your relationship with BLOCKBUSTER Online.

BLOCKBUSTER Total Access.

All BLOCKBUSTER Total Access plans allow a subscriber to return BLOCKBUSTER Online Rentals to a participating BLOCKBUSTER store in exchange for one (1) free in-store movie rental or one (1) discounted game rental for each BLOCKBUSTER Online Rental returned to the store. These free movie/ discounted game in-store rentals are in addition to the number of DVDs out at a time allowed under the BLOCKBUSTER Online membership plan. Some BLOCKBUSTER Total Access plans offer an unlimited number of free movie/discounted game in-store exchanges, while other BLOCKBUSTER Total Access plans limit the number of free movie/discounted game exchanges per calendar month. For plans which limit the number of free movie/discounted game in-store exchanges, the number of exchanges is calculated based on a calendar month, not the monthly subscription billing period. If a subscriber's Membership Term begins or ends at a time other than the beginning of a calendar month, the subscriber receives up to the full number of allowed free movie/discounted game in-store exchanges during that portion of the calendar month included in the member's Membership Term, without proration. For example, if a subscriber begins his or her Membership Term on August 10 in a plan that allows three free movie/discounted game in-store exchanges per month, that subscriber will receive three free movie/discounted game in-store exchanges per month through August 31, than another three in the calendar month of September, October, etc., throughout the Membership Term, even though the subscriber's anniversary date for Membership Term purposes is the 10th of each month.

In addition, for plans which limit the number of free movie/discounted game exchanges per calendar month, once the subscriber has reached the applicable monthly limit the subscriber may continue to exchange BLOCKBUSTER Online Rentals for discounted in-store movie rentals. However, once the subscriber has reached the applicable monthly limit the subscriber may not exchange BLOCKBUSTER Online Rentals for additional discounted in-store game rentals.

Defensive driving courses and equipment rentals are excluded from free or discounted in-store exchanges. BLOCKBUSTER Total Access may from time to time offer additional exchange benefits, including, without limitation, free or discounted store merchandise such as confection items or previously rented product, at the time of exchange. All such additional benefits are at Blockbuster's sole discretion.

Subscribers to BLOCKBUSTER Online plans which do not include BLOCKBUSTER Total Access can still exchange BLOCKBUSTER Online Rentals for discounted in-store movie rentals.

When BLOCKBUSTER Online Rentals are returned to a participating store and exchanged for in-store rentals, the BLOCKBUSTER Online Rentals are immediately checked in and the next available DVD(s) in the subscriber's online rental queue are shipped in accordance with our normal shipping process. Movies rented in-store which are also in the subscriber's online rental queue will not be automatically removed from the online rental queue. The subscriber must remove the title from the online rental queue to avoid shipment of that title.

A separate in-store membership is required for in-store rentals. In-store rentals are subject to store rental terms and conditions, including due dates and charges which may apply to rentals not returned by the due date. Subscribers should see the store of rental for that store's complete in-store rental terms and conditions. Free and discounted in-store rentals must be returned to the store where they were originally rented. Subscribers should see their store receipt for store location and due dates. Store rentals returned via the postage prepaid envelope for BLOCKBUSTER Online Rentals will be sent back to you and you will be responsible for any applicable charges for product not returned to the store of rental by the due date.

BLOCKBUSTER Online Rentals must be presented at the checkout counter of a participating BLOCKBUSTER® store in the return mail envelope provided by BLOCKBUSTER Online. BLOCKBUSTER Online Rentals presented without the return mail envelope will not be accepted. In-store free or discounted movie or game rental or other free or discounted rental or purchase must be taken in the same transaction as return of the BLOCKBUSTER Online Rentals. No rain checks or account credit will be given. If a subscriber does not wish to check out a free in-store rental, BLOCKBUSTER Online Rentals can still be returned to the counter of a participating store for check-in, releasing the next available DVDs in the subscriber's online rental queue.

BLOCKBUSTER Online Rentals should not be placed in the drop box of a BLOCKBUSTER store, even if the subscriber does not want to obtain the free or discounted in-store rentals. BLOCKBUSTER Online Rentals must be returned to the checkout counter of a participating store.

Only BLOCKBUSTER Online Rentals may be exchanged for free or discounted in-store rentals. Free or discounted in-store rentals may not be exchanged for additional free or discounted rentals. A subscriber may exchange as many of the subscriber's BLOCKBUSTER Online Rentals as the subscriber chooses, up to any applicable monthly limit on the number of free or discounted exchanges. However, Blockbuster's corporate store rental terms provide that a member may not have more than a total of twenty (20) in-store rentals of any nature checked out on the member's BLOCKBUSTER store account at any one time. This includes paid in-store rentals or free or discounted in-store rentals that are not part of the BLOCKBUSTER Total Access plan. If a subscriber has twenty in-store rentals checked out, no additional rentals (including BLOCKBUSTER Total Access in-store exchanges) will be permitted until the subscriber has less than twenty items checked out on the subscriber's in-store account. In addition, Blockbuster's corporate store rental terms provide that if a member has five (5) games checked out on the member's in-store account, no additional rentals of any type (including BLOCKBUSTER Total Access in-store movie or discounted game exchanges) will be permitted until the member has less than five games checked out on the member's in-store account. Finally, in order to make in-store exchanges, the subscriber's BLOCKBUSTER store account must be in good standing. If a subscriber has a past due balance on the subscriber's in-store account which exceeds a dollar amount determined from time to time by Blockbuster in its sole discretion, Blockbuster may refuse to allow the subscriber to make any additional in-store rentals (including in-store exchanges) until the past due balance has been satisfied. However, in each of the foregoing instances, the subscriber may still return BLOCKBUSTER Online Rentals to a participating store, even if the subscriber is not allowed to rent additional product.

Blockbuster may change the terms of BLOCKBUSTER Total Access, including discontinuing BLOCKBUSTER Total Access or any plan feature or benefit, at any time in its sole discretion, with or without notice.

In-store Coupons.

Certain BLOCKBUSTER Online plans may include one or more e-coupons at periodic intervals to use toward free rentals at participating BLOCKBUSTER stores. The frequency, expiration date and specific terms of these e-coupons (including, without limitation, products for which these coupons may be used) will vary depending upon your membership plan and may also be changed from time to time by Blockbuster in its sole discretion. Each e-coupon is subject to the specific terms and conditions found on the e-coupon. A separate in-store membership is required for in-store rentals. In-store rentals are subject to store rental terms and conditions, including due dates and charges which may apply to rentals not returned by the due date. Subscribers should see the store of rental for that store's complete in-store rental terms and conditions. Free in-store rentals must be returned to the store

where they were originally rented. Subscribers should see their store receipt for store location and due dates. Store rentals returned via the postage prepaid envelope for BLOCKBUSTER Online Rentals will be sent back to you and you will be responsible for any applicable charges for product not returned to the store of rental by the due date. E-coupons may not be used for payment of an account balance at a BLOCKBUSTER store.

How to Subscribe.

To subscribe to BLOCKBUSTER Online, you must provide to Blockbuster your name, shipping address, e-mail address and credit card, check card, or checking account charge authorization information for the payment method that you provide for payment of the periodic membership fee (hereinafter referred to as your "Payment Method"). By requesting membership in BLOCKBUSTER Online and by accepting the benefits of BLOCKBUSTER Online, you agree that as a condition of your continued membership in BLOCKBUSTER Online you authorize Blockbuster or its agent to charge your Payment Method the periodic BLOCKBUSTER Online membership fee (plus applicable taxes) applicable to your membership plan (e.g., 1 month, 2 months, 3 months, 6 months), in effect from time to time, on each periodic anniversary date of that plan, until your BLOCKBUSTER Online membership is canceled as herein provided. For example, if you have a monthly plan, and your paid membership began on June 19, your periodic anniversary date is the 19th of each month, and your Payment Method will be charged for the applicable periodic (monthly) membership fee on that date each month. If you have a six-month plan, and your paid membership began on June 19, your periodic anniversary date is the 19th of every sixth month (that is, each December and June), and your Payment Method will be charged for the applicable periodic (six months) membership fee on that date every six months. If your periodic anniversary date falls on a date that is not contained in your anniversary month (for example, if your paid membership started on the 31st day of a month), your Payment Method will be charged on the first day of the following month. You will not be provided with copies of charge slips evidencing the recurring charges of the applicable periodic membership fee. You agree to pay the applicable periodic membership fees (plus taxes) in accordance with your Payment Method issuer agreement, if applicable. You also authorize Blockbuster to charge your Payment Method for any other charges you may incur associated with your BLOCKBUSTER Online membership, including, without limitation, any charges for product not returned at the end of your Membership Term.

Pending Charges for Payment Cards.

If your Payment Method is a credit or charge card (the Payment Card), you also authorize Blockbuster to place a pending charge to your Payment Card when you sign up for membership, and prior to each subsequent periodic charge. Pending charges are used to verify your billing address and the validity of your Payment Card, are temporary (typically 3 to 7 days in length), and will not be converted into an actual charge to you. Pending charges, while pending, will, however, reduce the available amount of credit on your Payment Card in the amount of \$1 per pending charge.

Fees Relating to your Payment Method.

You are solely responsible for any and all fees charged to your Payment Method by the issuer, bank, or financial institution including, but not limited to, membership, overdraft, insufficient funds and over the credit limit fees.

Electronic Fund Transfer Authorization By Checking Account Users.

If the Payment Method you have provided is a checking account, you authorize Chase Paymentech Check Services, Inc. ("Chase Paymentech") to create an EFT which will be presented to your bank for payment from your checking account. The checking account must be at a bank in the United States, and the check must be payable in U.S. Dollars. To extend your Membership Term period to period, you authorize Chase Paymentech to charge your checking account on periodic anniversary dates and therefore to effect pre-authorized transfers from your checking account. Your request to pay your recurring periodic BLOCKBUSTER Online membership fee (plus applicable taxes) with pre-authorized charges to your checking account and your electronic execution of an acknowledgement of your acceptance of these terms and conditions constitutes your pre-authorized EFT authorization for future charges on your checking account and your assent to these terms and conditions. You further acknowledge that the amount charged to your checking account may be different from time to time, in accordance with these BLOCKBUSTER Online Terms and Conditions, including, without limitation, differing amounts due to promotional offers, differing amounts due to changes in your membership plan, changes in the amount of applicable sales tax, or charges for product not returned upon cancellation or termination of your membership, and you authorize Chase Paymentech to charge your checking account for such varying amounts. You agree that if an EFT is returned unpaid, you will pay a service charge of the maximum allowed by law. EFTs

returned for insufficient or uncollected funds together with service charges, may be debited electronically from your account or collected using a bank draft drawn from your account. You may cancel your BLOCKBUSTER Online membership as described below. This cancellation will cancel any checking account authorization that was to occur on any day after the date of cancellation. No refunds will be made for BLOCKBUSTER Online membership fees already paid or debited. You may also cancel your pre-authorized debit authorization by contacting your bank within a sufficient time to cancel the authorization (see your agreement with your bank for the terms and conditions of cancellation), but cancellation of your authorization with your bank will not serve as notice to Blockbuster concerning cancellation of your BLOCKBUSTER Online membership.

Promotional Offers.

From time to time, in BLOCKBUSTER Online's sole discretion, BLOCKBUSTER Online may offer a reduced membership fee for the BLOCKBUSTER Online service for a specified promotional period, to first-time or other selected customers. If you are taking advantage of an introductory offer for new customers, at the time of registration for the BLOCKBUSTER Online service, your Payment Method will be charged the promotional price plus applicable taxes for the promotional period. For all promotional offers, you agree that any such reduced price is only valid for the specified promotional period, and that the regular applicable periodic membership fee plus applicable taxes will be charged to your Payment Method for each automatic renewal following the end of the promotional period. Terms of the promotional offer, including the promotional price and duration of the promotional price, may vary from time to time. Specific details of your offer not covered in these Online Rental Terms and Conditions will be explained on the web page on which you land prior to beginning the sign-up process or as part of the sign-up process.

Free Trials.

From time to time, in BLOCKBUSTER Online's sole discretion, BLOCKBUSTER Online may offer a free trial period to first-time customers, limit one per household and/or Payment Method provided. Where such an offer is made, at the time of registration for your free trial, your credit or check card will be authorized for one month of service plus applicable taxes, though your Payment Card will not be charged for the duration of the free trial period. Other terms of free trial offers, including duration of free trial, may vary. Specific details of your free trial not covered in these Online Rental Terms and Conditions will be explained on the web page you land on prior to beginning the sign-up process or as part of the sign-up process. Your trial period begins the day you sign up for BLOCKBUSTER Online membership, not the day you receive your first BLOCKBUSTER Online Rentals.

Upon completion of the free trial period, your subscription to BLOCKBUSTER Online will renew automatically on a monthly basis regardless of the length of your free trial period. The first day following the expiration of your free trial period will be your anniversary date for billing purposes during your Membership Term. Your Payment Method will be charged the recurring monthly membership fees and any applicable sales tax on the day following the expiration of your free trial period unless you have chosen to cancel your subscription prior to the conclusion of the free trial period. **YOU MUST CANCEL YOUR SUBSCRIPTION PRIOR TO THE END OF THE FREE TRIAL OFFER TO AVOID CHARGES TO YOUR PAYMENT METHOD.** You will not receive any notification from BLOCKBUSTER Online at the expiration of your free trial. Please note the expiration date of your free trial for your records.

During the free trial period, you will receive the benefits of BLOCKBUSTER Online (including BLOCKBUSTER Total Access, if your free trial is for a BLOCKBUSTER Total Access plan) for no charge. Free trial participants may receive as many BLOCKBUSTER Online Rentals as they wish during the free trial, up to maximum number of outstanding rentals allowed under the applicable membership plan. Membership may be cancelled or modified at any time prior to the end of your free trial through the "My Account" link at BLOCKBUSTER Online. Any plan changes made to your account prior to the end of your free trial will nullify the remaining period of your free trial and you will be charged for the new plan selected. For example, if you are in a free trial for a 1-DVD out-at-a-time plan, but decide to change to a 2-DVDs out-at-a-time plan, your free trial for the 1-out plan will immediately terminate and your credit card will be charged for the 2-out plan. If you cancel your membership prior to the end of your free trial, all BLOCKBUSTER Online Rentals must be received by Blockbuster no later than ten (10) days past the expiration date of your free trial, or your Payment Method will be charged as explained in "BLOCKBUSTER Online Rentals at Time of Cancellation or Termination," below.

Expiration Date and Refusal of Charges to Your Payment Card.

EXPIRATION DATE AND REFUSAL OF CHARGES TO YOUR PAYMENT CARD: If your Payment Card reaches its original expiration date, your failure to cancel your BLOCKBUSTER Online membership constitutes authorization for Blockbuster to continue billing that Payment Card. If your Payment Card for any reason will not accept charges for any periodic membership fee, you have a period of nine (9) days from the date that your Payment Card was declined to make your Payment Card information valid by either rectifying the issue with the Payment Card issuer or providing new Payment Card information at www.blockbuster.com. If Blockbuster is able to charge your Payment Card (existing or new, if you have provided new Payment Card information,) during the nine (9) -day period and any past due BLOCKBUSTER Online membership fees are paid, then BLOCKBUSTER Online benefits will continue uninterrupted and this Payment Card will be used to charge the applicable periodic membership fee for each consecutive renewal period until you BLOCKBUSTER Online membership is canceled (your original anniversary date will still apply) and will be your Payment Card for all purposes. If Blockbuster is unable to charge your Payment Card (existing or new, if you have provided new Payment Card Information), within the nine (9) -day period, then your BLOCKBUSTER Online membership will be indefinitely suspended beginning on the tenth (10th) day from the date your Payment Card was initially declined. For the thirty (30) days immediately following the suspension day, Blockbuster may attempt to charge the Payment Card the periodic membership fee every ten (10) days. If the charge is accepted, then your BLOCKBUSTER Online benefits will be reinstated as of the date the charge is accepted. This charge date now becomes your new periodic anniversary date and the Payment Card will be used to charge the applicable periodic membership fee for each consecutive renewal period until your BLOCKBUSTER Online membership is canceled and will be your Payment Card for all purposes.

Cancellation by You.

The initial periodic BLOCKBUSTER Online membership fee is valid for an initial membership period starting on the date your paid membership begins and continuing through the periodic anniversary date. For example, if you are on a free trial membership and your free trial expires on June 17 and your paid BLOCKBUSTER Online membership begins on June 18, your initial membership fee entitles you to BLOCKBUSTER Online benefits until July 18 and your Payment Method will be charged on July 18 (the anniversary date) for the period of July 19 through August 18. You can cancel your BLOCKBUSTER Online membership at any time and you will not be charged for any additional renewals. For example, if your anniversary date is the 5th of each month and you cancel your BLOCKBUSTER Online membership on Oct. 20, then you will not be charged on Nov. 5 (for the Nov. 6 - Dec. 5 period) and your BLOCKBUSTER Online Membership Term will terminate on Nov. 5. However, if you canceled on Oct. 2, then your BLOCKBUSTER Online Membership Term would terminate Oct. 5. To cancel click on My Account, then click on Cancel My Account and follow the directions to complete the cancellation. When you cancel, you will be required to provide Blockbuster with certain information regarding your reason for cancellation. There are no refunds for any time period (or portions thereof) already billed or paid for. Upon cancellation, BLOCKBUSTER Online will stop the shipment of BLOCKBUSTER Online Rentals to you on the date you cancelled or ten (10) days prior to the effective date of termination, whichever is later.

BLOCKBUSTER Online Rentals At Time of Cancellation or Termination.

The rental period for BLOCKBUSTER Online Rentals is the Membership Term remaining as of the date of rental. All outstanding rentals must be received by BLOCKBUSTER Online no later than ten (10) days past the end of the Membership Term. For example, if your Membership Term ends on June 5 and on June 4 you receive a BLOCKBUSTER Online Rental in the mail, that BLOCKBUSTER Online Rental must be received by BLOCKBUSTER Online on June 15th. If Blockbuster does not receive any BLOCKBUSTER Online Rentals by 10 days past the end of the Membership Term, your Payment Method will be charged \$19.99 (plus applicable taxes) for each outstanding BLOCKBUSTER Online Rental. If Blockbuster later receives any BLOCKBUSTER Online Rental for which you have previously been charged, Blockbuster will refund to your Payment Method the amount of the charge, less a restocking fee of up to \$4.20 per item. If the title is not returned within 30 days of the charge, no refund will be given. Blockbuster may change both the amount that you are charged for unreturned product and the amount of any restocking fee at any time.

Modifying of BLOCKBUSTER Online Memberships.

You may modify your BLOCKBUSTER Online membership plan, i.e., upgrade, downgrade, and/or change from a monthly plan to a plan with longer initial and renewal membership periods, as long as there is no lapse in your membership. To modify your BLOCKBUSTER Online membership, go to www.blockbuster.com, go to "My Account", and request to modify. You will be asked to give your authorization to the new periodic membership fee. By modifying your BLOCKBUSTER Online membership, you are also agreeing and directing Blockbuster or its

agent to continue to automatically renew your new BLOCKBUSTER Online membership on each anniversary date applicable to the new membership plan, for the applicable membership fee (plus taxes) by charging your Payment Method until your BLOCKBUSTER Online membership is canceled as provided herein. The new membership plan will begin on the day which would have been the anniversary date of the prior membership plan. When you modify your BLOCKBUSTER Online membership, any outstanding BLOCKBUSTER Online Rentals will automatically transfer to your new BLOCKBUSTER Online membership. If you've downgraded, you must return any BLOCKBUSTER Online Rentals that would exceed the new maximum number of BLOCKBUSTER Online Rentals before you can rent additional DVDs. For example, if you downgrade from a five movie BLOCKBUSTER Online membership to a three movie BLOCKBUSTER Online membership plan, and you have five BLOCKBUSTER Online Rentals checked out, you must return at least three BLOCKBUSTER Online Rentals before you can rent any additional BLOCKBUSTER Online Rentals. If you've upgraded, you can add additional BLOCKBUSTER Online Rentals as of the effective date of your upgrade (which would be your normal anniversary date). For example, if you upgrade from a three movie BLOCKBUSTER Online membership plan to a five movie BLOCKBUSTER Online membership plan, and you have three BLOCKBUSTER Online Rentals checked out, you may check out two additional BLOCKBUSTER Online Rentals on the effective date of your upgrade.

Blockbuster initiated Cancellations.

Blockbuster may suspend or cancel a BLOCKBUSTER Online membership account, or otherwise restrict your use of BLOCKBUSTER Online, in Blockbuster's sole discretion, with or without cause.

Fraud, Abuse or Piracy.

Fraudulent or abusive practices such as repeatedly falsely reporting DVDs as damaged or stolen may result not only in cancellation of your BLOCKBUSTER Online membership account and charges to your Payment Method, but also in actions by Blockbuster for recovery of civil damages as well as referral for criminal prosecution. DVDs provided by Blockbuster are for personal, non-commercial use only. Blockbuster does not condone unauthorized copying, distribution or other infringement of protected intellectual property of Blockbuster or of third parties.

Cancellation or Changes to Program by Blockbuster.

Blockbuster may make changes to the BLOCKBUSTER Online service, including, without limitation, any promotional offers and free trials or availability and amount of e-coupons or other in-store free rentals, at any time, and from time to time, without prior notice. In addition, Blockbuster may change the BLOCKBUSTER Online periodic membership fees and the number or composition of permitted rentals from time to time, provided, however, that Blockbuster will give prior notice via e-mail of any change to the periodic membership fees or price or the number or composition of permitted rentals that will adversely affect you. You agree that, unless you cancel your membership prior to the effective date of the change, you will be charged the new applicable BLOCKBUSTER Online periodic membership fee (plus applicable taxes) on each anniversary date after the effective date of such change, and you authorize Blockbuster to charge the new applicable periodic membership fee (plus applicable taxes) to your Payment Method. Blockbuster reserves the right to suspend or end the BLOCKBUSTER Online service (including, without limitation, ceasing to offer one or all of BLOCKBUSTER Online membership plans, BLOCKBUSTER Total Access, promotional offers or free trials) without prior notice, in Blockbuster's sole discretion. Blockbuster also reserves the right to suspend or end the BLOCKBUSTER Online service or certain aspects thereof such as BLOCKBUSTER Total Access in certain geographic areas without prior notice, in Blockbuster's sole discretion. You agree that membership in BLOCKBUSTER Online does not involve an extension of credit or a retail installment sale since Blockbuster does not impose a finance charge and you may cancel membership at any time. Void where prohibited.

IN-STORE MOVIE AND GAME RENTAL TERMS.

As of Jan. 1, 2005, movie and game rentals are due back at the date and time stated on the transaction receipt. There is no additional rental charge if a member keeps a rental item beyond the pre-paid rental period. However, if a member chooses to keep a rental item more than a week after the end of the rental period, Blockbuster will automatically convert the rental to a sale on the eighth day after the end of the rental period. Blockbuster will charge the membership account the selling price for the item in effect at the time of the rental, which is either (1) the retail price charged by that BLOCKBUSTER store for the product if sold as new, if the product is not available for sale as previously rented product at that BLOCKBUSTER store at the time of rental, or (2) the selling price charged by that BLOCKBUSTER store for the product if sold as previously rented product, if the product is available for sale as previously rented product at that BLOCKBUSTER store at the time of rental. If the member

returns the item within 30 days of the sale date, Blockbuster will credit back to the membership account the amount previously charged to the member's account or the member's credit card, as applicable, for the selling price of the item, but the member will be charged a restocking fee. All rental items must be returned to the proper BLOCKBUSTER store. These rental terms are subject to change without notice at any time. Participating stores only. Rental terms and policies may vary in franchised locations. Additional membership rules apply for rentals. See store for full details.

GUARANTEED IN STOCK

Available at participating stores only. Guaranteed In Stock refers to rental product only. If a Guaranteed Movie is out, get a rain check for a free rental on DVD for that title within the next 30 days. Only one (1) free rental rain check will be issued/may be redeemed per member per day. Membership rules apply. Not valid in combination with any other offer or discount. Recipient responsible for applicable taxes and any charges other than the initial rental fee. Franchisees may or may not participate. Other restrictions apply. See free rental rain check for details. Not all movies are guaranteed.

IMPORTANT GIFTCARD POLICY CHANGE EFFECTIVE 11/06/07:

BLOCKBUSTER GiftCards® (GiftCards) purchased on or after 11/06/07 are not subject to any service fees or expiration dates. This new policy supersedes any language on the back of any GiftCard that you have purchased stating that there may be an expiration date. All other terms and conditions on the back of your GiftCard remain in effect. GiftCards sold prior to 11/06/07 remain subject to expiration dates as noted on the back of the GiftCard, unless prohibited by applicable law.

Your use of a GiftCard constitutes your acceptance of these terms. GiftCards may be applied toward the cost of any eligible merchandise sold or rented at any participating BLOCKBUSTER® store location located in the United States up to the remaining value, except that GiftCards cannot be used to purchase GiftCards, or online rental service subscriptions. GiftCards with pin numbers may also be redeemed online at www.blockbuster.com. Membership rules and certain restrictions apply for rental. GiftCards are not redeemable for cash, except where required by law, and may not be returned.

Lost, stolen or damaged GiftCards may be replaced with a new GiftCard in the amount of any remaining balance on the GiftCard on the date of receipt of a completed Lost, Stolen or Damaged GiftCard Report Form by Blockbuster Inc. GiftCard Number is required for replacement. If your GiftCard has been lost, stolen or damaged, please complete a Report Form available at checkout counter and mail the completed Report Form along with an original BLOCKBUSTER store receipt and a copy of a valid government issued photo identification to BLOCKBUSTER Customer Relations Department at:

*BLOCKBUSTER Customer Care
P.O. Box 49364
Strongsville, OH 44149-0364*

Upon receipt of the completed Report Form, Blockbuster will cancel the GiftCard identified on the form and issue a new GiftCard in the amount of any remaining balance on the GiftCard on the date of receipt of the Report Form by Blockbuster. The replacement GiftCard will be mailed to the address provided on the form. You must provide a valid street address. P.O. Boxes will not be accepted. Please make a copy of the Report Form and submissions for your records. Report Forms and documents submitted become the property of Blockbuster and will not be returned. Please allow up to 8 weeks for delivery of the replacement GiftCard. Blockbuster shall not be responsible for any lost, late, illegible, damaged, misdirected, incomplete or postage due mail. Reproduction, purchase, trade or sale of Report Forms, GiftCard numbers, and or cash register receipts are prohibited. Fraudulent submissions may result in prosecution under applicable federal mail fraud statutes.

Information Required For GiftCard Replacement

- * The GiftCard Number
- * The original receipt indicating purchase of GiftCard
- * A copy of Valid Photo Identification or Drivers License
- * The Completed "Report Form"

To fairly resolve any dispute arising between you and Blockbuster regarding your purchase or use of this

GiftCard, you and Blockbuster agree that any claims by either you or Blockbuster shall be settled exclusively by binding arbitration governed by the Federal Arbitration Act and administered by the American Arbitration Association under its rules for the resolution of consumer-related disputes, or under other mutually-agreed procedures. Because this method of dispute resolution is personal, individual, and provides the exclusive method for resolving such disputes, you further agree that you will not participate in a class action or class-wide arbitration for any claims covered by this agreement. Your use of this GiftCard constitutes your acceptance of this arbitration agreement. BLOCKBUSTER name, design and related marks are trademarks of Blockbuster Inc.© 2008 Blockbuster Inc. All rights reserved.

For balance inquiry, call 1-800-406-6843.

BLOCKBUSTER Online® RETAIL PURCHASE TERMS AND CONDITIONS ("ONLINE RETAIL PURCHASE TERMS AND CONDITIONS")

You may purchase both new and previously viewed (used) DVDs (each a "Retail Product") through BLOCKBUSTER Online. In order to purchase a Retail Product, you must be either a Registered Site User or a subscriber to the BLOCKBUSTER Online subscription rental service.

In addition to the overall Terms and Conditions for general Site use, your purchase of a Retail Product is subject to the following additional terms and conditions (the "Retail Terms and Conditions"). Purchase of a Retail Product constitutes your acceptance of these Retail Terms and Conditions. If you do not wish to accept these Retail Terms and Conditions, do not purchase a Retail Product.

PAYMENT METHODS

BLOCKBUSTER Online will accept only the following major credit cards for purchases of Retail Product: MasterCard, Visa, Discover and American Express. In addition, BLOCKBUSTER Online will accept check cards issued by MasterCard, Visa, Discover and American Express. These payment methods are referred to as "Retail Payment Method").

Electronic checks will not be accepted for Retail Purchases at this time. We are sorry, but cash on delivery (COD) is not available for purchases of Retail Product.

BLOCKBUSTER Online reserves the right to change the Retail Payment Methods accepted at any time, at its sole discretion, without prior notice.

Your Retail Payment Method will be charged when you submit your order for a Retail Product, at checkout. You will be charged for the total cost of the items, plus all applicable taxes and shipping and handling.

If a Retail Product you ordered is not available, we will continue to attempt to fulfill your order for 14 days. We will notify you by email that your order is on backorder. You will have the option to contact us to cancel your order and receive a refund. If we are unable to fulfill your order during that time, we will automatically issue a refund at the end of the 14 days to the Retail Payment Method used for your order. If we are unable to process the refund, we will contact you via the email address you provided at the time of purchase. Therefore, it is important that you make sure we have your current e-mail address.

SALES TAX POLICY

BLOCKBUSTER Online will charge all applicable state and local taxes.

SHIPPING AND DELIVERY

Orders will ship either by United States Postal Service ("USPS") standard First Class Mail or USPS Priority Mail, depending on the shipping method you select at checkout. Shipping and handling costs are charged per item and are not based on delivery location. If you enter a promotional code for shipping when you check out but elect to use a more expensive shipping option than is covered by the promotional code we will apply the promotional code discount and charge you any remaining balance for shipping and handling costs.

Estimated delivery time once we ship your order is four to five days for items shipped via standard shipping and two to three days for items shipped via Priority shipping.

After you have placed your order, we will send you an email confirming your order with an order summary including the items you purchased and a purchase total. We will send you an email when your order ships and let you know when you can expect delivery. If your order is sent in multiple shipments you will receive a separate notification for each shipment. Orders containing multiple items may be shipped from multiple distribution centers. You may receive more than one package for a single order.

We cannot ship to multiple addresses for the same order. If you want to ship items to multiple addresses you must place a separate order for each shipping address.

Currently, we do not offer package tracking for your order.

If your order is undeliverable it will be returned to us and we will notify you via email address provided at checkout that your order could not be delivered. We will automatically refund the cost of the order including shipping and handling charges to the Retail Payment Method used on the order. Therefore, it is important that you provide us with your current e-mail address at all times.

RETURN POLICY

We will accept returns of a Retail Product as set forth below as long as you contact us within 50 days of your purchase date and obtain a return authorization number, which must be included in your return shipment. This number will be provided to you by Customer Care when you complete your return request and allows us to tie you with your order. If your item is sent to us without this authorization number it cannot be processed.

We will accept returns of new, unopened items in the original shipping condition that you no longer want because you have changed your mind. We will refund the cost of the items, but not shipping and handling charges. If a promotional code was used for purchasing an item, you will be refunded the cost of the product less the promotional discount received. You will be required to pay the cost of returning the item and may also be charged a restocking fee of \$1.90. We reserve the right to modify the restocking fee policy and amount at any time. We will accept returns of used items in the original shipping condition that you no longer want because you have changed your mind. We will refund the cost of the items, but not shipping and handling charges. If a promotional code was used for purchasing an item, you will be refunded the cost of the product less the promotional discount received. You will be required to pay the cost of returning the item and may also be charged a restocking fee of \$1.90. We reserve the right to modify the restocking fee policy and amount at any time.

We will accept returns of new, unopened items that are damaged, defective or not the correct item. We will replace the item or refund the cost of the items as well as shipping and handling charges depending on what you request and the availability of the product you are returning. You will be required to pay the cost of returning the item, but we will refund to you an amount equal to the to the amount of the original shipping and handling charge for your original order, regardless of your actual cost in returning the item. For example, if you ordered an item that cost \$20, paid \$5 shipping and handling as part of your original order, and then returned the item to us because it was damaged, defective, or not the correct item, we will refund you \$30 (\$25 for the original cost plus shipping and handling and \$5 for the return shipping).

We will accept returns of used items in the original shipping condition that are damaged, defective or not the correct item. We will replace the item or refund the cost of the items as well as shipping and handling charges depending on what you request and the availability of the product you are returning. You will be required to pay the cost of returning the item, but we will refund to you an amount equal to the amount of the original shipping and handling charge for your original order, regardless of your actual cost in returning the item. For example, if you ordered an item that cost \$20, paid \$5 shipping and handling as part of your original order, and then returned the item to us because it was damaged, defective, or not the correct item, we will refund you \$30 (\$25 for the original cost plus shipping and handling and \$5 for the return shipping).

All refunds are made to the Retail Payment Method used for the original purchase. Refunds typically take 72 hours to post to the Retail Payment Method.

Items purchased at BLOCKBUSTER store locations may not be returned to BLOCKBUSTER Online. Items purchased through BLOCKBUSTER Online may not be returned to a BLOCKBUSTER store.

For more information on returns, please visit our [FAQ](#) or contact Customer Care at 1-866-692-2789 during our hours of operation which are 8:00AM - 8:00PM Central, Monday through Friday.

RISK OF LOSS

With all items purchased from BLOCKBUSTER Online, there is a risk of loss during shipment. We will deliver all items to our carrier, but this does not guarantee delivery to you. If you do not receive your order, please contact us so that we can send a replacement order.

We reserve the right to not replace orders for customers who have made excessive loss and replacement requests.

CONDITION OF PREVIOUSLY VIEWED PRODUCT

Retail Products sold as "previously viewed" are used products that have been used for rental, both for BLOCKBUSTER Online and BLOCKBUSTER stores.

Previously viewed Retail Products:

- Will not be shrink wrapped or in new condition
- Will contain original studio box art for the title (however, the original studio box art may be for a different format of the title)
- Will be inspected for any damage prior to being shipped to you
- Will be in a hard DVD case

FRIENDS AND FAMILY SERVICE

The Friends and Family service ("Friends and Family") allows a user of Friends and Family to grant others access to certain information about the user's movie preferences, including the ability for those granted access to view the user's BLOCKBUSTER Online movie queue, the user's BLOCKBUSTER Online rental history, including movies recently sent to the user (if the user is a subscriber to the BLOCKBUSTER Online rental service), the user's movie ratings and personal notes or comments the user makes about specific titles. In order to use Friends and Family, you must be either a Registered Site User or a subscriber to the BLOCKBUSTER Online rental service.

Friends and Family users can send invitations to people who are already BLOCKBUSTER Online rental service subscribers or Registered Site Users. They can also send invitations to people who are not Registered Site Users or BLOCKBUSTER Online rental service subscribers, inviting them to participate in Friends and Family. In order to accept your invitation and participate in your Friends and Family the invited person must become a Registered Site User or subscribe to the BLOCKBUSTER Online rental service. However, a person does not have to do so in order to decline the invitation.

Once you are connected with another Friends and Family user, you will be able to view each other's movie queues, rental history (if one or both of you subscribe to the BLOCKBUSTER Online rental service), recently sent movies (if one or both of you subscribe to the BLOCKBUSTER Online rental service), any "favorites" list you may create and/or any personal notes you make about a title. There is no limit to the number of people you can include in your Friends and Family. However, access to information is only between two connected users. Others who are included in your Friends and Family cannot access the information being shared between the two connected users.

You can control which individual titles will display under the Friends and Family section by selecting [Privacy Settings](#).

If you no longer wish to allow someone to continue to be a part of your Friends and Family, you can manage your friends' list by going to the "Friends and Family" button of the BLOCKBUSTER movies page and selecting [Manage Friends](#). Simply click "remove" and delete that specific person from your Friends and Family and they will no longer have access to your Friends and Family information. If someone invites you to connect and you're

not interested, simply decline the invitation. You will not be connected and they won't be given access to any of your information. If you no longer wish to participate in Friends and Family at all and you have people in your list, you will need to remove these Friends and Family members as described above in order to no longer have any connections at all. Once you've removed all Friends and Family from your list, you are no longer participating or sharing any information. Please note that any suggestions and comments that you made previously will no longer appear to them on the website. Your emails may still be in their email history in their private email accounts if they did not delete them but all of your connections will be removed online. You will also need to decline or ignore any future invitations to participate in Friends and Family, unless you again wish to participate.

Using Friends and Family means you are giving others access to information about your use of BLOCKBUSTER Online, including your movie preferences, your opinion about specific movies, and, if you are a subscriber to the BLOCKBUSTER Online rental service, movies you have rented and plan to rent. Blockbuster only gives access to this type of information about you to others with your consent. YOU ACKNOWLEDGE AND AGREE THAT BY ELECTING TO PARTICIPATE IN FRIENDS AND FAMILY YOU ARE GIVING BLOCKBUSTER YOUR CONTINUOUS CONSENT TO GIVE ACCESS TO YOUR INFORMATION TO ALL PERSONS WHO YOU DESIGNATE TO BE PART OF YOUR FRIENDS AND FAMILY. YOU FURTHER ACKNOWLEDGE AND AGREE THAT A DESIGNATED FRIENDS AND FAMILY MEMBER MAY GIVE ACCESS TO YOUR INFORMATION TO OTHERS, INCLUDING WITHOUT LIMITATION OTHERS WHO HAVE ACCESS TO SUCH DESIGNATED FAMILY MEMBER'S COMPUTER OR BLOCKBUSTER ONLINE ACCOUNT, AND YOU CONSENT TO SUCH FURTHER DISCLOSURE. YOU FURTHER ACKNOWLEDGE AND AGREE THAT BLOCKBUSTER IS NOT RESPONSIBLE FOR ANY SUCH SUBSEQUENT DISCLOSURE. FINALLY, YOU ACKNOWLEDGE AND AGREE THAT EACH TIME YOU USE FRIENDS AND FAMILY, INCLUDING WITHOUT LIMITATION EACH TIME YOU ADD A PERSON TO YOUR FRIENDS AND FAMILY OR SEND MESSAGES TO YOUR FRIENDS AND FAMILY ABOUT SPECIFIC MOVIE TITLES, YOU ARE GIVING CONSENT TO BLOCKBUSTER TO GIVE ACCESS TO YOUR INFORMATION TO ALL PERSONS WHO YOU DESIGNATE TO BE PART OF YOUR FRIENDS AND FAMILY. If you do not wish to give this consent, do not participate in Friends and Family. If you wish to revoke this consent at any time, you must stop participating in Friends and Family (see the preceding paragraph for how to stop participating).

Please note that you are solely responsible for any personal notes or content you post as part of your use of Friends and Family, as well as for any content (other than content provided by Blockbuster) that you may include in your e-mail invitations to others to be part of your Friends and Family (collectively, "Friends and Family Content"). Blockbuster is not responsible for, and does not review, Friends and Family Content. However, Blockbuster reserves the right (but not the obligation) to remove, restrict, or edit such Friends and Family Content at any time. Please see the [Your Obligations](#) section of these Terms and Conditions for more information about your responsibility for material you post on this Site.

Blockbuster reserves the right to change any or all features of Friends and Family at any time, without prior notice. Your continued use of Friends and Family constitutes acceptance of these changes, whether or not such changes are reflected in these Terms and Conditions. Blockbuster also reserves the right to terminate Friends and Family at any time, without prior notice.

You can read more about this service here [About Friends](#).

BLOCKBUSTER Online® Gift Subscription Terms and Conditions

BLOCKBUSTER Online® Gift Subscriptions ("Gift Subscriptions") allow a purchaser ("Purchaser") to buy and transfer a BLOCKBUSTER Online subscription to a recipient ("Recipient"). Each Gift Subscription may only be transferred once. Purchasers and Recipients must be at least 18 years old and must provide a valid email address. The purchase price of Gift Subscriptions is nonrefundable. No Gift Subscription may be redeemed for cash. Gift Subscriptions cannot be combined with any other promotional offers, free trial offers or sign-up incentives.

Upon purchase, BLOCKBUSTER Online will send to the Recipient, at the email address for the Recipient that was provided by the Purchaser, an ecard with the Recipient's unique Gift Subscription activation code (the "Gift Code"). The Recipient must then enter the Gift Code where requested at blockbuster.com/giftsubscription within one (1) year of the date of purchase by Purchaser (not the date of receipt by Recipient). Upon redemption of the Gift Subscription by a Recipient, BLOCKBUSTER Online will send an email notification to the Purchaser at the email address provided by the Purchaser at the time of purchase. Gift Subscriptions that are not redeemed by a

Recipient within one (1) year of the date of purchase will be automatically activated for the Purchaser on the day following the one (1) year anniversary of the date of purchase and BLOCKBUSTER Online will send notification of such activation to the Purchaser at his/her email address provided by Purchaser to BLOCKBUSTER Online at the time of purchase. It's important to keep your e-mail address up to date with BLOCKBUSTER Online. If Purchaser is not a BLOCKBUSTER Online rental member, then he/she must register for the service in order to use the Gift Subscription. No refund or credit will be given to Purchaser if Purchaser fails to register or use the service.

If a Recipient is not currently a BLOCKBUSTER Online rental member, he/she must register for the service and enter the Gift Code in the appropriate field to redeem the Gift Subscription. If a Recipient is a current BLOCKBUSTER Online rental member and the Gift Subscription is equal to or less than the level of the Recipient's current subscription plan, BLOCKBUSTER Online will automatically apply the purchase price of the Gift Subscription to the Recipient's current BLOCKBUSTER Online account. If a Recipient is a current BLOCKBUSTER Online rental member and the level of the Gift Subscription is greater than the level of the Recipient's current subscription plan, BLOCKBUSTER Online will automatically upgrade the Recipient's current subscription plan to the higher level.

Regardless of whether a Recipient is a current BLOCKBUSTER Online rental member, he/she must provide BLOCKBUSTER Online with a valid email address and a valid credit card or check card or checking account charge authorization information ("Payment Method") to redeem the Gift Subscription. The Recipient will not be charged a periodic membership fee during the Gift Subscription period. BLOCKBUSTER Online will begin to bill the Recipient's Payment Method for monthly membership fees (plus applicable sales taxes) then in effect for the Recipient's membership level at the completion of the Gift Subscription period unless the Recipient cancels prior to the end of the Gift Subscription period. The Recipient also authorizes BLOCKBUSTER Online to charge the Payment Method for any BLOCKBUSTER Online Rentals not returned by Recipient. A Gift Subscription can be cancelled at any time, but no refund or credit for any unused portion of a Gift Subscription period will be given to the Purchaser or the Recipient. BLOCKBUSTER is not responsible for lost or stolen Gift Codes or unauthorized redemption of Gift Subscriptions.

Gift Subscriptions are subject to [BLOCKBUSTER Online Terms and Conditions](#). BLOCKBUSTER Online reserves the right to alter the Site Terms and Conditions, including these Gift Subscription Terms and Conditions, at any time.

RSS FEEDS

RSS (Really Simple Syndication) feeds are provided as a quick and easy way for you to distribute information from the blockbuster.com web site or from your BLOCKBUSTER Online account. RSS Feeds are accessible through an XML-based URL that can be accessed with an RSS reader of your choice. Use of personal RSS feeds that contain information about your blockbuster.com account (Queue, Movie Ratings and Rental Activity) is at your own discretion. If you use personal RSS feeds, you consent that the information in the feeds will be transferred to the location in which you enable the RSS feed. Blockbuster will not pass any personally identifiable information in your feed. However, your use of an RSS feed may cause personally identifiable information that is associated with the RSS feed to be associated with you. You acknowledge that your use of an RSS feed and any personally identifiable information associated with it is at your sole discretion and risk.

Use of the Blockbuster RSS feeds is for non-commercial, personal use whether or not you use an RSS feed is entirely at your discretion. You may not modify the RSS feeds. If an RSS feed contains an attribution to Blockbuster, you may not remove the attribution. Blockbuster provides no warranty regarding its RSS feeds and reserves the right to terminate or modify the feeds at any time without notice. Blockbuster is not responsible for any loss or damage incurred by you or anyone else due to your use of an RSS feed.

WIDGETS

A widget is a small software application that allows you to share content from your blockbuster.com account, including your Queue, movie ratings, and favorites list. Each Widget you create accesses a personal RSS feed. You can use your Blockbuster Widgets anywhere you can publish JavaScript, including your webpage, your blog or on social networking sites that support web page customization.

Your personal Widget will display movie titles that pertain to the Widget type you choose (Queue, Top Rated, or

Favorites). Blockbuster will not reveal any personally identifiable information within the Widget. However, if you choose to install a Widget, this may cause personally identifiable information that is associated with the widget to be associated with you. Blockbuster does not take responsibility for any personal information you choose to be associated with Widgets. You acknowledge that your use of a widget and any personally identifiable information associated with it is at your sole discretion and risk. Do not install a Widget if you are not comfortable allowing indefinite access to the information feeds from your blockbuster.com account pertaining to that Widget (Queue, Top Rated, or Favorites).

Use of the Blockbuster Widgets is for non-commercial, personal use. Whether or not you use a Widget is entirely at your discretion. You may not modify the Widget. If the Widget contains an attribution to Blockbuster, you may not remove that attribution. Blockbuster provides no warranty regarding its Widgets and reserves the right to terminate or modify Widgets at any time without notice. Blockbuster is not responsible for any loss or damage incurred by you or anyone else due to your use of a Widget.

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Effective July 26, 2007

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Privacy Policy

Updated November 3, 2006

Blockbuster Inc. ("Blockbuster") operates a variety of web sites ("Web Site" or "Site") including www.blockbuster.com and is committed to protecting the privacy of our Web Site users ("Users") and BLOCKBUSTER® members ("Members"). To that end, we offer this Privacy Policy to inform our Members and Users (referred to individually, or collectively, as "you") of how we collect, use and disclose your personal information. Blockbuster will take reasonable steps to protect your personal information in accordance with this Privacy Policy and applicable laws. To make this notice easy to find, we provide a link to our policy at the bottom of most pages of our Web Site.

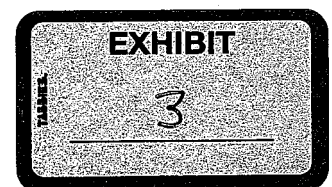
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What is Personal Information?

Blockbuster defines personal information as information about an individual that enables someone to identify or contact a person and includes, among other things, a person's full name, address, telephone number and e-mail address, as well as other information we maintain about a person in identifiable form in combination with one of the foregoing identifiers, such as account history, financial information, titles rented or purchased or categories of products rented or purchased. Categories of personal information that we collect include, for example:

- Basic identifying information such as e-mail address and first and last names
- Security information such as password, secret question and answer or driver's license
- Contact information such as address and phone number
- Store membership information such as membership number, names of others allowed to use your account and favorite stores
- Billing information such as credit or check card, expiration date, billing address and account history
- Site preferences such as movie categories you like, game platforms you have and whether you wish for cover art to be displayed
- Ratings and reviews of movies and games
- Lists of movies and games, such as for online subscription, rental or purchase
- E-newsletter selections and preferences
- Direct marketing contact preferences
- Rental and purchase history
- Sweepstakes entries
- Complaints, questions and information submitted to customer service agents or similar individuals either in person, by phone, by e-mail or by entry on a Site
- Site behavior such as pages visited or searches requested
- Browser information such as browser version, connection speed, IP address and the presence of various



related plug-ins and tools such as media players
When Does Blockbuster Collect Personal Information?

Blockbuster collects personal information from you when you voluntarily submit that information to Blockbuster, for example: when you apply for a customer membership in our stores; register on a Site; sign up for a subscription service; register for our e-newsletter service; participate in one of our sweepstakes, contests, or surveys; respond to an offer; purchase or rent products; or request to be on a mailing list. After you have registered your e-mail address on the Site and if you have clicked "Remember Me" or signed in to the Site, Blockbuster collects Site behavior and browser information as you navigate through the Site. This information may be used to create a profile that we keep on individual Users that details their preferences, personal information and behavior. Consequently, collected information is tied to the User's personally identifiable information and may be used to provide offers and improve the content of the Site for the User. This profile may also be used to tailor a User's visit to our Web Site, and to direct pertinent marketing promotions to them.

We may also collect personal information from other sources. For example, we purchase third party marketing data and add it to our existing databases of User and Member information to better target our advertising and provide pertinent offers we think our Users and Members would be interested in. We use this information to enhance or overlay the 'profile' of individual Users. This aggregate marketing data is therefore tied to the User's or Member's personally identifiable information.

What Happens When I Register On The Web Site?

In order to use certain features of this Web Site, a User must first complete a registration process. During registration a User is required to provide basic contact information (such as name and e-mail address) and establish a password. Depending on the feature being used, the User may be required to provide other information associated with the use of that particular feature. For example, a User signing up for our subscription service will be required to provide an address to which products will be mailed and financial information in the form of a credit card or check card number and expiration date for billing purposes. Users signing up for our e-newsletter service may enter the types of movies or games in which they are interested and about which they wish to receive information in the newsletter.

What Happens When I Place An Order On The Web Site?

Certain features of the Web Site do not require registration but may still require personal information to be entered, such as placing an order for a product. We request information from the User during the ordering process. For example, a User will be required to provide contact information (such as name, e-mail, and shipping address) and financial information (such as credit card or check card number, expiration date). This information is used for billing purposes and to fill Users' orders. If we have trouble processing an order, the information is used to contact the User.

Does Blockbuster Use Cookie Technology?

Blockbuster uses cookie technology to make your use of the Sites more convenient and to support our internal business purposes. A cookie is a piece of information that is transferred to a User's hard drive for record-keeping purposes. For example, Blockbuster uses cookies to remember your e-mail address so that you will not have to re-enter this information each time you visit the Site. Blockbuster also uses cookies to help track referrals from third party web sites. Most browsers are initially set up to accept cookies, but you can set up your browser to alert you every time a cookie is offered, letting you decide whether or not to accept it. You can use and visit the Site with cookies disabled, but you will not automatically be recognized by the Site upon re-visiting. However, cookies allow you to take full advantage of some of our Sites' best features, so we recommend that you leave them turned on.

Some of our business partners use cookies on our Site (for example, advertising partners). However, we have no access to or control over these cookies, once we have given permission for them to set cookies.

What Other Mechanisms Does Blockbuster Use to Track User Behavior?

Some Site web pages and HTML-formatted e-mails and e-newsletters use web beacons to compile statistics about Web Site usage. A web beacon is an electronic image, called a single-pixel (1x1) or clear GIF. Web beacons can recognize certain types of information on a visitor's computer, such as a visitor's cookie number, time and date of a page view, and a description of the page where the Web beacon is placed. You may render some web beacons unusable by rejecting their associated cookies.

Blockbuster and its third party vendors use web beacons to track and analyze non-personally identifiable usage information and to compile statistical information about our Users in order to improve the Web Site's quality and to support our business. All data collected on behalf of Blockbuster is owned and used by Blockbuster. Blockbuster reserves the right to publish non-personally identifiable, summary information regarding its Web Site visitors for promotional purposes and as a representative audience for business partners.

We also collect information in log files that include data such as internet protocol (IP) addresses, browser type, internet service provider (ISP), referring/exit pages, platform type, date/time stamp, and number of clicks. We and our business partners use this information to analyze trends, administer the Site, track User's movement in the aggregate, and gather broad demographic information for aggregate use. IP addresses, etc. are not linked to personally identifiable information.

How Does Blockbuster Handle Information from Children?

Please note that Blockbuster has no intention of collecting personal information from individuals under the age of 13 ("children"). We are committed to protecting children's privacy on the Internet and we comply fully with the Children's Online Privacy Protection Act (COPPA). Where appropriate, we will instruct children not to provide such information to us. If a parent becomes aware that a child has provided us with personal information, we ask that the parent or legal guardian of the child contact us by sending an e-mail to blockbuster@custhelp.com or in writing to 1201 Elm Street, ATTN: Online Customer Loyalty, Dallas, TX 75270 to request that this information be deleted from our records.

How Does Blockbuster Use Personal Information?

Use of Personal Information for our internal business purposes. Blockbuster uses the personal information you provide for the purposes for which it was provided, for example, to process an order; to record your rental of a product and its return date; to support an online subscription service; to collect debts and recover overdue rental products; to notify you that you have won a contest or sweepstakes; to respond to your inquiries or complaints or to contact you or send you information about your membership. In addition, Blockbuster, its subsidiaries and franchisees may share and use information collected through the Site to administer and manage our business, including, for example for account maintenance and collections purposes, and in connection with information technology services. In addition, personal information may be used to create a profile that we keep on individual Users that details their preferences and behavior. This profile may be used to develop and improve the products, benefits and services, Blockbuster, its subsidiaries, franchisees and business partners offer to our Members or Users, to improve the Site and the associated user experience, and to develop pertinent marketing promotions to Users and Members.

Where permitted or required by law, Blockbuster may collect, use or disclose your personal information without your consent, for example in response to a court order or subpoena or to comply with a legally permitted inquiry by a government agency.

When Will I Be Contacted by Blockbuster?

You may receive products and communications associated with your transactions with Blockbuster, such as rentals, purchases, subscriptions, sweepstakes and contests. You may also receive communications from Blockbuster related to transactions that appear to be from you or which appear to be fraudulent. You may be contacted in regards to an issue on your account or in response to a customer service contact by you or in response to a specific request from you such as clicking on a "forgot my password" link. Users who sign up for e-newsletter subscriptions will receive e-mails in accordance with their selection and preferences. These administrative communications also may be accompanied by information about products and services, special offers and upcoming promotions or events offered by Blockbuster, our

subsidiaries, our franchisees or our marketing partners that we think may be of interest to you ("direct marketing").

You may periodically receive from Blockbuster, its subsidiaries and franchisees unsolicited direct marketing communications by mail (delivered via the United States Postal Service). Blockbuster and its subsidiaries will send standalone direct marketing e-mail communications to you only if you have agreed previously. We support the option to not receive these types of communications. Please see the following section: How Can I Opt Out of Receiving Direct Marketing from Blockbuster?

How Can I Opt Out of Receiving Direct Marketing from Blockbuster?

By providing us with your personal information, you consent to our collection, use and disclosure of that information as described in this Privacy Policy as amended from time to time or as described at or before the time of collection, use or disclosure, as the case may be. Blockbuster is the owner of the personal information collected on our Web Site. If you do not want your personal information to be collected, used or disclosed in this manner, please do not submit your personal information to us.

If you would prefer that Blockbuster not use your personal information for standalone direct marketing communications, subject to legal, or contractual restrictions and legal notice you may opt out of such uses and/or disclosures by (a) checking the appropriate "Opt Out" box in any applicable e-mail communication or e-newsletter, (b) sending an e-mail to blockbuster@custhelp.com (c) writing to us at 1201 Elm Street, ATTN: Online Customer Loyalty, Dallas, TX 75270 or (d) visiting your local BLOCKBUSTER store. Once you have opted out, your subsequent registration for our direct marketing services and promotions like our e-newsletter, or our sweepstakes and contests may void, temporarily or permanently, your prior elections to opt out of receiving direct marketing communications from Blockbuster. Please consult the applicable rules of the promotion or service before participating. Note that when you elect to opt out we do not delete your personal information.

E-mails that are sent to you as a result of you performing a business transaction with us or requesting specific information from Blockbuster are not subject to an Opt Out process. If you have any suggestions on how to improve these e-mails, please communicate to our Online Customer Service group using the Contact Us functionality on the Site. We appreciate your feedback but cannot commit to taking action.

What Personal Information Does Blockbuster Give to Others?

Transfer of Personal Information to Third Party Goods and Services Providers. Blockbuster employs third party vendors, service providers, and suppliers to perform various functions on our behalf. Such services include: fulfilling orders; processing credit card or check card payments; collecting debts; removing repetitive information from customer lists; analyzing data; developing, hosting and maintaining our Web Sites and databases; sending and receiving e-mail and other communications; and staffing customer service call centers. These third parties may have access to personally identifiable information as reasonably necessary for the third party to provide these services. These third parties are not allowed to use personally identifiable information except for the purpose of providing these services. Certain information collected in connection with transactions may be provided to third parties for use in transaction authorization, fraud scoring and payment card fraud prevention modeling.

Blockbuster, its affiliates and franchisees (if permitted by Blockbuster) on occasion may disclose to their business partners certain data, such as names and addresses and the genre of products rented or purchased by Users or Members, so that the business partner may send their own direct marketing communications to Users and Members. Blockbuster will not provide User or Member e-mail addresses to business partners, unless the User or Member has provided express permission to Blockbuster. If you would prefer that Blockbuster not use disclose your personal information to its business partners for direct marketing purposes, subject to legal, or contractual restrictions and legal notice you may opt out of such uses and/or disclosures by (a) checking the appropriate "Opt Out" box in any applicable e-mail communication or e-newsletter, (b) sending an e-mail to blockbuster@custhelp.com (c) writing to us at 1201 Elm Street, ATTN: Online Customer Loyalty, Dallas, TX 75270 or (d) visiting your local BLOCKBUSTER store.

Third Party Features. From time to time Blockbuster may include additional features and functionality from third parties on our Web Sites. Certain of these features and functions, may require Blockbuster to send selected information about you, such as information about your movie queue, to the third party. If you do not wish for Blockbuster to share this information, you will have a reasonable opportunity to opt-out of these third-party features and functions. Blockbuster will never send your password or your financial information to any third party through these features or functions.

Cleaned Data. We periodically remove from personal information data that can be used to identify individuals for example by summarizing, aggregating or removing certain data elements. The resulting cleaned data is no longer considered personal information and is not subject to this Privacy Policy. The cleaned data may be published by Blockbuster and provided to various third parties.

Disclosures Attendant to a Merger or Acquisition. If Blockbuster or its assets are acquired by another company, your personal information may be disclosed to the acquiring company to allow it to fulfill your order or provide the products, services or information that Blockbuster would otherwise provide to you and generally to carry on the Blockbuster business. We may also use and disclose your personal information to parties connected with the contemplated or actual financing, insuring, sale, assignment or other disposal of all or part of our business or assets, including for the purposes of determining whether to proceed or continue with such transaction or business relationship or fulfilling any records or other reporting requirements to such parties. We will require such parties to treat your personal information in accordance with this privacy policy and to use and disclose it only for the purposes for which it was collected.

Public postings. If you disclose your personal information in a manner that will be posted publicly such as in a product review your posting will be seen by others. In addition, if you elect to participate in certain community features offered from time to time, selected information about you, including information about your movie queue, may be shared with other participants in these community features. Also, Blockbuster may make it possible for certain third party web sites to be accessed directly from our Web Sites and for selected information about you to be provided to these third party web sites if you are also a user of these third party web sites. If a third party web site allows other users to view information about you (e.g., through posting to a publicly available profile page), the information provided by Blockbuster will be visible to other users of the third party web site.

How does Blockbuster Protect Personal Information?

Blockbuster takes reasonable measures to protect the personal information it collects, uses, stores or discloses. We have implemented physical, technological and organizational procedures designed to protect the integrity and security, and to ensure the appropriate use, of your personal information. These procedures are appropriate to the nature, sensitivity and format of the personal information collected, used, stored or disclosed by Blockbuster. For example, Blockbuster uses Secure Sockets Layering (SSL) to encrypt your personal credit information, including your credit card or check card number, before it travels over the Internet. SSL technology is the industry standard for secure online transactions.

What About Links to Other Web Sites?

This Privacy Policy applies solely to information collected by Blockbuster. However, our Site contains links to other web sites owned and operated by third parties. The third parties who operate these sites may treat the collection, use and disclosure of personal information differently than we do. This could be the case even for those web sites that carry Blockbuster's or its affiliates' trademarks or logos or which are framed by a Site. Please be aware that Blockbuster is not responsible for the data collection, use and disclosure practices of companies or organizations to which our Sites may provide links. We encourage our Users to be aware when they leave our Site and to read the privacy statements of each and every Web site that collects personally identifiable information.

How Can I Access or Correct My Personal Information?

If a User's personally identifiable information changes (such as zip code, phone, e-mail or postal address), or if a User no longer desires our service, we provide a way to correct or, update or delete/deactivate Users' personally identifiable information. You can review or change some of your personal information as

follows:

You can review and change certain store related information by visiting one of our stores, presenting suitable identification and giving the store agent your changes such as providing a new address or phone number, removing names from your account, changing your credit card or check card information, etc. You can review and change certain Site related information by visiting the Site, entering your e-mail address and password and accessing the "My Account" area.

Note that in most cases, Blockbuster will retain the previously entered data.

Legal Notices

Video Privacy Protection Act of 1988. Blockbuster supports the Video Privacy Protection Act of 1988 and will use reasonable commercial efforts to require employee and business partner compliance with the Act.

REQUIRED BY NEW YORK LAW: This videotape service provider from time to time provides to marketers of goods and services, the names and addresses of customers and a description or subject matter of materials rented by video customers. You have the right to elect not to have your name, address or the description or subject matter of any material rented included in such lists. This election may be changed by you, in writing, at any time.

Can Blockbuster Change This Privacy Policy?

Blockbuster reserves the right to change this Privacy Policy from time to time. If Blockbuster makes a change, this Privacy Policy will be updated accordingly. We recommend that you review this Privacy Policy periodically so that you are aware of any changes. If we make a material change to this Privacy Policy we will make reasonable efforts to notify you. For example, your continued consent to our collection, use and disclosure of your personal information or your continued use of our Sites following the notification or posting of any changes to this Privacy Policy shall constitute your acceptance of these changes.

How Do I Contact Blockbuster Regarding The Web Site And This Privacy Policy?

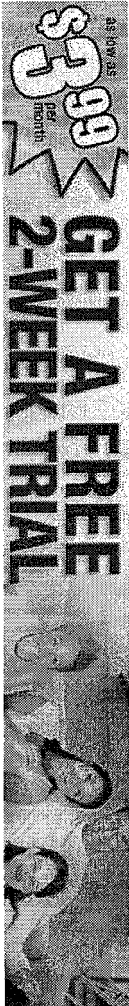
If Users have any questions or suggestions regarding our privacy policy, please contact us at:

Email: blockbuster@custhelp.com

Postal Address: ATTN: Online Customer Loyalty, 1201 Elm Street, Dallas, TX 75270

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STEP 1: START STEP 2: CHOOSE A PLAN

Your Plan:



Unlimited DVDs through the mail

2 DVDS AT-A-TIME

3 free in-store exchanges per calendar month \$16.99/mo. + tax FREE two week trial

Your trial is really FREE!

You will not be charged during your two week free trial period.

We are taking your payment information now so that your service can continue uninterrupted when your free trial is over.

Cancel anytime - we mean it!

We want you to be absolutely thrilled with your membership to Blockbuster Total Access, so you can cancel at any time if you are unsatisfied in any way.

YOUR SECURITY IS VERY IMPORTANT. We take every step possible to provide you with a safe, secure online environment.

STEP 3: TRIAL CONFIRMATION

- Please review and accept the terms and conditions.
- Please select a Payment Method.

Final Step. DVDs will be on their way soon!

Required Items

Choose a security question we can ask if you forget your password:

Security Question

Answer

In which city were you born? Houston

Shipping Information

First Name: Vinson
 Last Name: Elms
 Address: 2001 Ross
 Address 2: Suite 3700
 City: Dallas
 State: Texas
 ZIP: 75201
 Telephone: 214 220 7859

I have read and agree to the Blockbuster.com (including BLOCKBUSTER Online Rental) Terms and Conditions and certify that I am at least 13 years of age.

Billing Information

- Use my shipping address for all billing related activities.
- My billing address is different from my shipping address.

EXHIBIT

4

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CATHRYN ELAINE HARRIS, §
MARIO HERRERA, and MARYAM §
HOSSEINY on behalf of themselves and §
all others similarly situated, §

Plaintiffs, §

CIVIL ACTION NO. 2:08-cv-00155

v. §

BLOCKBUSTER INC. §

Defendant. §

**ORDER GRANTING BLOCKBUSTER'S MOTION
TO COMPEL INDIVIDUAL ARBITRATION**

Before the Court is Defendant Blockbuster Inc.'s ("Blockbuster's") Motion to Compel Individual Arbitration together with the supporting affidavits and documentation. Having reviewed the Motion, the responses, and all of the attached materials, pleadings, and papers, and the arguments of counsel, the Court finds that the Motion is well taken and should be GRANTED. It is therefore ORDERED, ADJUDGED, AND DECREED:

1. Blockbuster's Motion to Compel Individual Arbitration is hereby GRANTED.