# EXHIBIT D

1    attached as Exhibit 24).

2        77.  Cyberheat received eleven complaints regarding spam sent by affiliate 36828

3    from August 5, 2004, to December 5, 2004.  (Response No. 8 to Document Request -

4    spam@seekioemail, attached as Exhibit 14).

5        78.  The evidence provided by Microsoft shows that Cyberheat affiliate 26377 sent

6    one unsolicited commercial email message to Microsoft's trap accounts on March 11, 2005.

7    The message bore hyperlinks that, when pressed, directed the viewer to the underlying

8    Cyberheat site being advertised.  The email message contains sexually explicit material and

9    promotes the Cyberheat website bestmovies.com. The email message fails to include the

10   required label in the subject line or initially-viewable area of the message, contains

11   sexually-explicit material within the initially-viewable area of the message, and fails to

12   include a valid physical address for Cyberheat within the initially-viewable area of the

13   message.  In addition, the message contains an opt-out mechanism that appears *after* the

14   sexually-explicit material rather than within the initially-viewable area.  (Himelfarb

15   Declaration at Cyberheat affiliate 26377 section, attached as Exhibit 1).

16       79.  Affiliate account 26377 is an active Cyberheat affiliate account.  In responding

17   to discovery requests, Cyberheat produced records for all terminated affiliates and

18   Cyberheat did not produce a record for affiliate 26377.

19       80.  The evidence provided by Microsoft shows that Cyberheat affiliate 38485 sent

20   four unsolicited commercial email message to Microsoft's trap accounts on May 18, 2006.

21   The email messages contain sexually explicit material and promote five Cyberheat

22   websites: gayasianxxx.com, gayblinddatesex.com, twinksforcash.com, gayebonyxxx.com,

23   and gayinteracialxxx.com.  The messages bore hyperlinks that, when pressed, directed the

24   viewer to the underlying Cyberheat site being advertised.  The email messages fail to

25   include the required label in the subject line or initially-viewable area of the message,

26   contain sexually-explicit material within the initially-viewable area of the message, and fail

27   to include a valid physical address for Cyberheat within the initially-viewable area of the

28   message.  In addition, the messages contain an opt-out mechanism that appears *after* the