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# LATHAM & WATKINS<sup>LLP</sup>

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February 28, 2007

Brian V. Breheny, Esq., Chief  
Office of Mergers and Acquisitions

Nicholas P. Panos, Esq., Special Counsel  
Office of Mergers and Acquisitions

Division of Corporation Finance  
Securities and Exchange Commission  
Division of Corporation Finance  
100 F Street, NE  
Washington, DC 20549

Re: CNET Networks, Inc.—Request for Exemptive Relief

Dear Messrs. Breheny and Panos:

On behalf of our client, CNET Networks, Inc. (the “Company” or “CNET”), we request that the Staff grant the Company exemptive relief from compliance with Rules 13e-4(f)(5) and 14e-1(c) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) with respect to the cash payment contemplated to be paid by the Company pursuant to the tender offer to existing employees who hold options subject to potential adverse tax consequences under Section 409A (“Section 409A”) of the Internal Revenue Code of 1986, as amended (the “Code”).

As more fully described below, the Company proposes to commence an offer (the “Offer”) to all eligible employees to amend discount options (defined below). The “eligible employees” will be all holders of discount options who are also employees of the Company or one of its subsidiaries on the expiration date of the Offer who hold discount options. The “discount options” are the employee stock options granted under four of the Company’s equity incentive plans which (a) have an exercise price per share that is less than the fair market value per share of the underlying CNET common stock on the option’s deemed measurement date under Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees” (“APB No. 25”), (b) were unvested as of December 31, 2004, (c) are outstanding on the last date the Offer is open for acceptance and (d) are held by individuals subject to United States federal income taxes.<sup>1</sup> The Company intends to make the Offer so that eligible employees

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<sup>1</sup> The Offer will not be open to foreign employees of the Company or any of its subsidiaries not subject to taxation under Section 409A because making the Offer open to such employees would not further the

can avoid potential adverse tax consequences associated with their discount options under regulations proposed under Section 409A<sup>2</sup> as well as guidance promulgated by the Internal Revenue Service and the Department of the Treasury.<sup>3</sup>

Eligible employees who participate in the Offer will receive amended options (“amended options”), each with an exercise price per share equal to the fair market value per share of the underlying CNET common stock on the option’s deemed measurement date under APB No. 25. Eligible employees who participate in the Offer will also receive the right to receive an amount of cash (the “Cash Amount”) equal to the difference between the exercise price of the discount option and the exercise price of the amended option (the “intrinsic value” of the discount option) multiplied by the number of shares subject to each discount option, less applicable withholding tax. The Cash Amount will be payable at the first payroll date after January 1, 2008, which is expected to be January 10, 2008. The timing of the payment of the Cash Amount is being established to comply with the Section 409A prohibition against paying cash compensation during the same calendar year that an option is amended to increase its exercise price.

## **Background**

### *The Company*

CNET is a Section 12(b) reporting company under the Exchange Act and as of January 25, 2007, had approximately 149.8 million shares of common stock outstanding, which are principally traded on the Nasdaq Global Market of The NASDAQ Stock Market LLC. CNET had approximately 882 shareholders of record as of January 25, 2007.

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Company’s compensatory objectives for the Offer. The Offer will also not be open to former employees of the Company who hold options subject to the potentially adverse tax consequences under Section 409A because the Company believes that paying the Cash Amount to former employees would be inconsistent with the Company’s compensatory objectives for the Offer. The Company is excluding foreign employees and former employees from the Offer in reliance on the exemptive relief granted by the Commission under Rule 13a-4(f)(8) pursuant to Repricings, Exchange Act Exemptive Order 2001 SEC Lexis 2752 (May 25, 2001) (the “Exemptive Order”) because the Company meets the following conditions for relief set forth in the Exemptive Order:

- the Company is eligible to use Form S-8, the eligible options were issued under employee benefit plans as defined in Rule 405 under the Act and the amended options will be subject to the same plans;
- as described herein the offer is being conducted for compensatory purposes (which purposes would not be furthered by the inclusion of either former employees or foreign employees not subject to Section 409A);
- the Company will disclose in the documentation related to the offer to purchase the essential features and significance of the offer, including risks that option holders should consider in deciding whether to accept the offer; and
- except for the relief requested in this letter, the offer will otherwise comply with Rule 13e-4.

<sup>2</sup> See Prop. Treas. Reg. §§ 1.409A-1 to 1.409A-6, 70 Fed. Reg. 57,930 (Oct. 4, 2005).

<sup>3</sup> See I.R.S. Notice 2005-1, 2005-2 I.R.B. 274; and I.R.S. Notice 2006-79, 2006-43 I.R.B. 763.

As of January 24, 2007, there were approximately 1,109,564 discount options held by approximately 388 eligible employees which the Company expects will be subject to the Offer.

### *The Stock Option Investigation*

On May 16, 2006, the Center for Financial Research and Analysis issued an analysis of the stock option exercise prices relative to stock price ranges for certain companies during the period 1997 to 2002. The report identified the Company as having granted stock options between 1998 and 2001 with exercise prices that matched or were close to a forty-day low for CNET's stock price. On May 22, 2006, the Company announced that its Board of Directors appointed a Special Committee comprised of independent directors to conduct, with the assistance of legal counsel and outside accounting experts, an internal investigation relating to past option grants, the timing of such grants and related accounting matters.

Based on the results of the Special Committee investigation and a separate review by the Company's management of approximately 97% of option grants to all of the Company's employees, directors and consultants for all grant dates during the period from the Company's initial public offering in July 1996 through May 2006, the Company identified instances where the grant date used by the Company as the measurement date for accounting purposes, differed from the measurement date as defined in APB No. 25 and related interpretations. As a result, the Company corrected the accounting treatment by adjusting the measurement date for approximately 40.8 million options out of a total of 73.8 million options granted from July 1996 through December 2005, with substantially all these corrections relating to options granted prior to December 31, 2003.<sup>4</sup> On January 29, 2007, the Company filed restated financial statements for affected periods in an amended Annual Report on Form 10-K/A for the year ended December 31, 2005 and an amended Quarterly Report on Form 10-Q/A for the quarter ended March 31, 2006, which filings were made in compliance with the Staff's illustrative letter for issuers preparing reports to be filed with the Securities and Exchange Commission (the "Commission") to correct errors in accounting for stock option grants.<sup>5</sup> With these amended filings, together with the concurrent filings of the Company's quarterly reports on Form 10-Q for the quarters ended June 30, 2007 and September 30, 2007, the Company became current in its reporting obligations under Section 13(a) of the Exchange Act.

### *Section 409A of the Internal Revenue Code*

Section 409A and regulations proposed thereunder<sup>6</sup> (the "proposed regulations") provide that stock options issued with an exercise price less than the fair market value of the underlying stock on the date of grant (i.e., stock options granted at a discount) that were unvested as of

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<sup>4</sup> The Company is currently subject to investigations by the Commission and the United States Attorney for the Northern District of California in connection with its stock option grants. The Company is cooperating fully, and intends to continue to cooperate fully, with the Commission and the United States Attorney for the Northern District of California in connection with these investigations.

<sup>5</sup> Sample Letter Sent in Response to Inquiries Related to Filing Restated Financial Statements for Errors in Accounting for Stock Option Grants <<http://www.sec.gov/divisions/corpfin/guidance/oilgasltr012007.htm>>

<sup>6</sup> See Prop. Treas. Reg. §§ 1.409A-1 to 1.409A-6, 70 Fed. Reg. 57,930 (Oct. 4, 2005).

December 31, 2004 may subject the holder to adverse tax consequences under Section 409A. While not entirely clear under Section 409A and the proposed regulations, holders of options subject to Section 409A will likely be subject to federal income taxation in the year in which such stock options vest, as opposed to the year when they are exercised, in an amount equal to the difference between the fair market value of the shares and the exercise price and be subject to an additional twenty percent (20%) penalty tax on such amount, plus interest penalties. Holders of discount options may also be subject to similar taxation under state law.

Under guidance promulgated by the Internal Revenue Service and the Department of the Treasury,<sup>7</sup> it is possible to amend stock options subject to Section 409A so that they do not result in the adverse tax consequences described above. Specifically, if stock options subject to Section 409A are amended prior to December 31, 2007<sup>8</sup> either to (1) increase the exercise price of such options to fair market value of the underlying stock on the date of grant or (2) specify that the options may only be exercised at fixed times specified in advance and subject to restrictions on acceleration and deferral under Section 409A and the proposed regulations, then the holders of such stock options will generally not be subject to adverse taxation under Section 409A in respect of such stock options.

Guidance promulgated by the Internal Revenue Service and Department of the Treasury provide that in the event an option subject to Section 409A is repriced in accordance with clause (1) of the preceding paragraph, it is permissible to compensate with cash the holder of such option for the aggregate difference in the option's intrinsic value before and after such amendment, provided that any such cash compensation be payable in the calendar year following the year in which the amendment is made. If such cash compensation is paid within the same calendar year as the option repricing, the repricing will not be effective to avoid adverse taxation under Section 409A.

### *The Offer*

Under the terms of the Offer, eligible employees who participate in the Offer will receive amended options effective upon the expiration date of the Offer, each with an exercise price per share equal to the fair market value per share of the underlying CNET common stock on the option's deemed measurement date under APB No. 25 (as determined by the Company in connection with the stock option investigation and restatement described above).<sup>9</sup> Each

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<sup>7</sup> See I.R.S. Notice 2005-1, 2005-2 I.R.B. 274; and I.R.S. Notice 2006-79, 2006-43 I.R.B. 763.

<sup>8</sup> For individuals subject to Section 16 of the Exchange Act ("Section 16 Persons"), the cutoff date was December 31, 2006. Because of this, on December 20, 2006 the nine Section 16 Persons at the Company who held options subject to Section 409A agreed to amend the exercise prices of such options to be equal to, and not less than, the fair market value on the date of grant of each option. These directors and executive officers did not, directly or indirectly, receive any cash payments or rights to receive cash payments in the future in connection with agreeing to these amendments. Because no Section 16 Persons (including persons who are subject to Section 16 now, but who were not when the discount options were granted) hold discount options, no Section 16 Persons will be eligible to participate in the Offer.

<sup>9</sup> The Company will not seek waivers for any claims for potential liability related to stock option backdating issues in connection with the Offer.

amended option will be subject to the terms and conditions of the Company equity compensation plan under which the discount option was granted and as amended in accordance with the Offer. Any amended option will continue to be subject to the same vesting schedule as the discount option that was tendered for amendment.

Each eligible employee who participates in the Offer will also receive the right to receive the Cash Amount.<sup>10</sup> The Cash Amount will be payable promptly after January 1, 2008 in order to comply with Section 409A. If not prohibited by Section 409A, the Company would have planned to deliver the Cash Amount promptly following the expiration of the Offer. The Cash Amount will not be subject to any vesting conditions or otherwise subject to forfeiture. The right to receive the Cash Amount will be evidenced by a nontransferable written agreement executed by the Company and delivered to each eligible employee who participates in the Offer promptly following expiration of the Offer. Except with respect to the relief requested in this letter, the Company expects to conduct the Offer in compliance with Rule 13e-4, subject to the relief from Rule 13e-4 granted by the Commission in Issuer Exchange Offers Conducted for Compensatory Purposes, SEC Exemptive Order (Mar. 21, 2001). The Offer will be fully described in a Schedule TO to be filed with the Commission prior to commencement of the Offer.<sup>11</sup>

The Company is conducting the Offer for compensatory purposes in order to provide eligible employees with the economic benefit of the discount options without the adverse tax consequences of Section 409A. The Company believes that amending the discount options and paying the Cash Amount pursuant to the Offer will foster retention of the Company's valuable employees, will better align the interests of the Company's employees and stockholders to maximize shareholder value, and will encourage high levels of performance by individuals who contribute to the Company's success. The Company has determined that the Offer is an appropriate remedy for eligible employees who hold discount options who would otherwise

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<sup>10</sup> The Company elected cash consideration in lieu of granting additional equity compensation awards (in the form of new stock options, restricted stock or restricted stock units) because the Company has adequate available cash to make the maximum payment (approximately \$2,500,000) and did not want the Offer to have an unnecessarily dilutive impact on non-participating shareholders. Of equal importance, the Company's employees have uniformly expressed the desire to receive cash rather than additional equity awards because existing employee compensation packages provide adequate equity-based awards that are dependent on future stock price growth. As an employee morale matter, the Company is concerned that its employees will be disappointed with or confused by the increased exercise prices resulting from the proposed repricings. Moreover, if the Company granted new stock options instead of cash to the eligible employees participating in the Offer, the Company estimates that it would need to grant additional stock options to purchase an aggregate of approximately 500,000 shares. This amount of shares would not only increase stockholder dilution but would also consume a significant portion of the Company's unused equity award pool.

<sup>11</sup> The Company intends to account for the amendment of eligible options and payment of the Cash Amount as a modification of the original eligible options under Statement of Financial Accounting Standards No. 123(R)—Share-Based Payment ("SFAS No. 123(R)"). In accordance with SFAS 123(R), the Company intends to record as incremental compensation expense the excess of the fair value of the amended eligible option and corresponding Cash Amount over the fair value of the original eligible option. This incremental compensation expense will be recognized immediately for eligible options which are vested as of the expiration date of the Offer and will be amortized over the remaining vesting period for eligible options not yet vested as of the expiration date of the Offer.

suffer unexpected and adverse tax consequences in connection with the discount options, the terms of which they did not control. The Cash Amount is an essential element of the Offer. Without payment of the Cash Amount, eligible employees who participate in the Offer would have to forfeit the intrinsic value of their discount options. The Company believes that the loss of the intrinsic value of the discount options without payment of the Cash Amount would have a negative impact on employee morale, given that equity compensation makes up a significant portion of overall employee compensation, and would defeat the Company's compensatory objectives for the Offer.

The Company believes that delaying the Offer so that it would be completed shortly before January 1, 2008 (thereby minimizing the time between the completion of the Offer and the delivery of the Cash Payment) would not satisfy the Company's compensatory objectives and would not be in the best interests of its eligible employees or its shareholders. An eligible employee who exercises a discount option before the exercise price is amended pursuant to the Offer will be subject to adverse taxation under Section 409A. Therefore, until the Offer is completed, the value of the discount options to both eligible employees and the Company is significantly diminished. Completing the Offer as promptly as practicable will allow eligible employees who participate in the Offer to exercise amended options during 2007 following completion of the Offer and in accordance with the options' current terms without adverse tax consequences under Section 409A, which they would not be able to do if the Offer was delayed until the end of the year.

### **Discussion**

We believe that the contractual right to receive the Cash Amount promptly after January 1, 2008 adequately protects eligible employees.<sup>12</sup> Receipt of the Cash Amount will not be subject to any vesting or other conditions and will be made promptly after January 1, 2008 solely to allow eligible employees who participate in the Offer to avoid potential tax liability under Section 409A. Simply put, the delay in the delivery of the Cash Amount benefits eligible employees who participate in the Offer by minimizing their Section 409A tax liability.

The Staff has historically granted relief from the provisions of Rule 13e-4 to issuers engaging in tender offers where requiring otherwise would defeat the valid compensatory purpose for undertaking the offer. See, e.g., Lante Corporation, SEC No-Action Letter (avail. Feb. 9, 2001); Amazon.com, Inc., Ltd., SEC No-Action Letter (avail. Feb. 28, 2001); Digimarc Corporation, SEC No-Action Letter (avail. Mar. 16, 2001); and Look Smart, Ltd., SEC No-Action Letter (avail. Mar. 20, 2001) (collectively, the "Option Repricing Letters"). See also Repricings, Exchange Act Exemptive Order 2001 SEC Lexis 2752 (May 25, 2001). In each of the Option Repricing Letters, the Staff, without specifically addressing the "prompt payment" rules, permitted option exchange offers in which the new options issued to employees were not issued for more than 180 days following the expiration of the offers in order to avoid triggering

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<sup>12</sup> The Company does not believe that the contractual right to receive the Cash Amount is a "security" within the meaning of Section 2(a)(1) of the Securities Act of 1933, as amended (the "Securities Act"), because the contractual right is nontransferable.

variable accounting treatment and were generally subject to revised and extended vesting schedules.

The Staff has specifically granted relief from the “prompt payment” requirements of Rule 13e-4(f)(5) and Rule 14e-1(c) in the context of issuer tender offers for compensatory purposes. For example, in Martha Stewart Living Omnimedia, Inc., SEC No-Action Letter (avail. Nov. 7, 2003), the Staff granted no-action relief from the requirements of Rule 13e-4(f)(5) and Rule 14e-1(c) in connection with a tender offer for certain out-of-the-money options where the consideration was a contingent cash payment to be made approximately one year from the completion of the tender offer, subject to continued employment. See also Microsoft Corporation, SEC No-Action Letter (avail. Oct. 15, 2003), in which the Staff granted no-action relief from the requirements of Rule 13e-4(f)(5) and Rule 14e-1(c) in connection with Microsoft’s stock option transfer program, which, among other things, provided that a portion of the consideration in the offer would not be paid for approximately two to three years, subject to continued employment.

The Company believes that the Cash Amount feature of the Offer presents an even more compelling case than the contingent payment features of the Martha Stewart Living Omnimedia and Microsoft offers. The Offer is designed to give eligible employees the opportunity to avoid tax liability under Section 409A. The purpose of the Cash Amount is to compensate eligible employees who participate in the Offer for the loss in the intrinsic value of their amended options as a result of the increased exercise price. The delayed receipt of the Cash Amount is structured, consistent with the overall design of the Offer, to avoid tax liability under Section 409A. Immediate payment of the Cash Amount would not satisfy the Company’s compensatory objectives for the Offer because it would defeat the purpose of the Offer, which is to remedy the adverse tax consequences under Section 409A for eligible employees holding discount options.

The Schedule TO which the Company will file with the Commission will contain full disclosure of the Section 409A tax implications and timing of the payment of the Cash Amount. Accordingly, the Company believes that payment Cash Amount as currently contemplated does not constitute a fraudulent, deceptive or manipulative act or practice and is being made for a valid compensatory purpose.

Based upon the foregoing, we respectfully request, with regard to payment of the Cash Amount as currently contemplated, that the Staff grant the Company exemptive relief from compliance with Rules 13e-4(f)(5) and 14e-1(c).

LATHAM & WATKINS<sup>LLP</sup>

Please contact me at (202) 637-2242 with any questions, comments or requests for additional information.

Sincerely,

/s/

John J. Huber  
of LATHAM & WATKINS LLP

Enclosures

cc: George E. Mazzotta, CNET Networks, Inc.  
Ora T. Fisher, Latham & Watkins LLP  
Keith Benson, Latham & Watkins LLP