

Fluent, Inc.
Form 10-K
March 18, 2019

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2018

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 001-37893

FLUENT, INC.
(Exact name of registrant as specified in its charter)

Delaware 77-0688094
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification No.)

300 Vesey Street, 9th Floor
New York, New York 10282
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (646) 669-7272
33 Whitehall Street, 15th Floor
New York, New York 10004

(Former address of principal executive offices) (Zip Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
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Common Stock, \$0.0005 par value per share	The NASDAQ Stock Market LLC
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Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data file required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for

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such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer

Non-accelerated filer Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act) Yes No

On June 30, 2018, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value (based on the closing per share sales price of its common stock on that date) of the voting stock held by non-affiliates of the registrant was approximately \$82.0 million.

The number of shares outstanding of the registrant's common stock, as of March 13, 2019, was 75,726,342.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement relating to its 2019 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2018 are incorporated herein by reference in Part III of this Annual Report on Form 10-K.

FLUENT, INC.
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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K for the fiscal year ended December 31, 2018 contains “forward-looking statements” within the meaning of the Securities Act of 1933, as amended (the “Securities Act”), and the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These forward-looking statements contain information about our expectations, beliefs or intentions regarding our product development and commercialization efforts, business, financial condition, results of operations, strategies or prospects, and other similar matters. These forward-looking statements are based on management's current expectations and assumptions about future events, which are inherently subject to uncertainties, risks and changes in circumstances that are difficult to predict. These statements may be identified by words such as "expects," "plans," "projects," "will," "may," "anticipates," "believes," "should," "intends," "estimates," and other words of similar meaning.

Actual results could differ materially from those contained in forward-looking statements. Many factors could cause actual results to differ materially from those in forward-looking statements, including those matters discussed below, as well as those listed in Item 1A. Risk Factors.

Other unknown or unpredictable factors that could also adversely affect our business, financial condition and results of operations may arise from time to time. Given these risks and uncertainties, the forward-looking statements discussed in this report may not prove to be accurate. Accordingly, you should not place undue reliance on these forward-looking statements, which only reflect the views of Fluent’s management as of the date of this report. We undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or changes to future operating results or expectations, except as required by law.

PART I

Item 1. Business.

This business description should be read in conjunction with our audited consolidated financial statements and accompanying notes thereto appearing elsewhere in this Annual Report on Form 10-K for the year ended December 31, 2018 (the “2018 Form 10-K”), which are incorporated herein by this reference.

Company Overview

Fluent, Inc. (“we,” “us,” “our,” “Fluent,” or the “Company”), a Delaware corporation formerly known as Cogint, Inc., is an industry leader in data-driven digital marketing services. We primarily perform customer acquisition services by operating highly-scalable digital marketing campaigns, through which we connect our advertiser clients with consumers they are seeking to reach. We deliver data and performance-based marketing executions to our clients, which in 2018 included over 500 consumer brands, direct marketers and agencies across a wide range of industries, including Financial Services, Retail & Consumer, Media & Entertainment, Staffing & Recruitment and Marketing Services.

We attract consumers at scale to our owned digital media properties primarily through promotional offerings and employment opportunities. On average, our websites receive over 900,000 first-party user registrations daily, which include users’ names, contact information and opt-in permission to present them with offers on behalf of our clients. According to comScore, we reach 12% of the U.S. digital population on a monthly basis through our owned media properties. Approximately 90% of these users engage with our media on their mobile devices or tablets. Our always-on, real-time capabilities enable users to access our media whenever and wherever they choose. Once users have registered with our sites, we integrate proprietary direct marketing technologies to engage them with surveys, polls and other experiences, through which we learn about their lifestyles, preferences and purchasing histories. Based on these insights, we serve targeted, relevant offers to them on behalf of our clients. As new users register and engage with our sites and existing registrants re-engage, we believe the enrichment of our database enables expansion of our addressable client base and improves the effectiveness of our performance-based campaigns. Since our inception, we have amassed a large, proprietary database of first-party, self-declared user information and preferences. We have permission to contact the majority of users in our database through multiple channels, such as email, home address, telephone, push notifications and SMS text messaging. We leverage our data primarily to serve advertisements that we believe will be relevant to users based on the information they have provided. We have also begun to leverage our existing database into new revenue streams, including utilization-based models, such as programmatic advertising and identity resolution, as well as services-based models, such as marketing research and insights.

For the years ended December 31, 2018 and 2017, we recorded revenue of \$250.3 million and \$211.7 million, net income from continuing operations of \$3.2 million and net loss from continuing operations of \$31.7 million, and adjusted EBITDA of \$44.1 million and \$32.5 million, respectively. Adjusted EBITDA is a non-GAAP financial measure equal to net income (loss) from continuing operations, the most directly comparable financial measure based on US GAAP, adding back income taxes, interest expense, depreciation and amortization, share-based compensation expense, and other adjustments. See our audited consolidated financial statements and accompanying notes thereto appearing elsewhere in the 2018 Form 10-K, and for further discussion and analysis of our results of operations, including a reconciliation of adjusted EBITDA from net income (loss) from continuing operations, see Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

Market Opportunity

According to eMarketer, aggregate spending on digital media is expected to overtake aggregate spending on offline media in the U.S. for the first time in 2019. Industry spending on digital media is projected by eMarketer to exceed \$129 billion in 2019, representing approximately 54% of total media spend in the U.S. Of this total media spend, the largest component is expected to represent media spend on mobile platforms, which is also anticipated to represent the fastest growing segment of U.S. media spend over the five years from 2018 through 2022, according to eMarketer. Further, according to the Interactive Advertising Bureau (“IAB”), performance-based advertising is the predominant industry pricing model, accounting for 61% of total U.S. digital advertising spending in the first half of 2018.

According to the IAB, marketers spent over \$19 billion on data and related services and solutions in 2018 in the U.S., with the amount spent on digital data up approximately 37% over 2017 and exceeding, for the first time, amounts spent on traditional

terrestrial data. Further, marketers are increasing their focus and spend on recognizing consumer identities and tracking consumer behaviors across channels and devices, rather than simply targeting their advertising based on anonymized online behaviors.

Key Challenges Facing our Clients

While performance-based pricing models dominate digital media spend, we believe that a significant portion of such spend represents an intermediary step in an advertiser's process of securing new customers, such as a click on a banner advertisement. According to The Nielsen CMO Report, only one in four marketers reports a high level of confidence in their ability to measure the return on investment, or ROI, of their media spend. We believe advertisers are operating in an environment where greater accountability is being mandated and, therefore, are becoming increasingly focused on the ability to precisely measure return on their media spend.

In addition, many companies seeking to learn more about their existing customers or target new customers either gather data themselves or purchase data to inform their advertising and marketing strategies. However, the data they obtain is typically either not first-party, not sufficiently recent or not sufficiently complete. Moreover, these companies may not have the ability to capture real-time signals that are indicated by a consumer's behavior, even if it is observable. As a result, we believe many companies who offer products and services to consumers do not have ready access to accurate consumer data or timely alerts through which they could programmatically target their advertising, nor the ability to resolve data sets and thereby confirm consumer identities or enrich data profiles.

Our Offerings and Solutions

We often provide performance marketing solutions to our clients based on their desired outcomes, or specific actions in their marketing funnels, including submission of a registration form, app installation or a completed transaction. As such, we believe our solutions are well-aligned with the needs and objectives of our clients, providing measurability, scalability and flexibility. In addition, by using the data consumers provide about themselves when registering on our sites, our advertiser clients are able to reach the precise audiences they are targeting through the modes of contact these consumers prefer and at the times they are most receptive to being contacted.

Performance Campaigns

For clients who seek the completion of certain actions by consumers, such as the submission of a registration form, the installation of a mobile application or a trial subscription of a good or service, we provide performance campaigns that meet the criteria specified by the client.

We bear the cost and risk of paying various media sources to generate consumer traffic to our digital media properties or to media properties owned or operated by our clients, without the assurance of a subsequent revenue-generating event from such activity. By leveraging our scale and expertise in acquiring consumer traffic, we effectively and efficiently enable our clients to define billable events and pricing tolerances that meet their profitability objectives, which may be difficult for them to achieve themselves economically, if at all.

Consumer Data

For clients who prefer to contact consumers through means such as direct mail, email, telephone and other channels by which they can operate or manage a campaign, we generally transmit contact information for consumers who meet certain qualifications dictated by the client. We generate revenue through the delivery of qualifying data and through certain performance-based triggers that may be met based upon the client's subsequent efforts to contact and market to such consumers.

The data records we provide contain varying depths of user profiles, ranging from basic contact information to in-depth self-declared preferences and behaviors. We believe the scale and depth of first-party, self-declared information captured in our database and reflected in our data profiles is a competitive advantage in the industry. Many other providers of consumer data offer data or information that is inferred from a consumer's behavior but not directly observed or stated by such a consumer. We believe our first-party data is more reliable and reflective of consumers' current interests and preferences.

Emerging Data Offerings

In 2018, we began to offer data sets pertaining to certain audience segments from our database in programmatic environments, thereby enabling advertisers, such as those in the healthcare industry, to leverage our data in an anonymized, privacy-minded manner to target high-intent prospects for their offerings. While this offering is still nascent, we believe the results achieved to date indicate the commercial viability of this incremental revenue stream for our existing database.

We have also begun to develop an offering through which clients that possess their own first-party databases can resolve them against our first-party data, in an effort to cleanse and enrich their data sets, as well as allow for the deployment of loyalty and retention programs, thereby enhancing and extending the lifetime value of their customer relationships.

Our Competitive Strengths

We believe our competitive strengths will continue to enable us to provide a compelling value proposition to our clients and drive differentiation of our offerings in the marketplace.

Scale and Ingenuity in Purchasing Media - Our ability to effectively access, at scale, channels and sources of media that supply consumer traffic to our media properties has been critical to our growth. Through hundreds of millions of dollars of media spend since our inception, we have gained knowledge and experience that we believe enable us to generate higher levels of profitability from given media sources, thereby enabling us to acquire media more competitively than others. This capability allows us to run thousands of campaigns simultaneously and cost-effectively for our clients at acceptable media costs and margins to us.

Proprietary and Innovative Technology Platform - We believe our internally-developed technology platform is unique in the industry, having been purpose-built for performance marketing and developed with a mobile-first user experience in mind since our founding in 2010. Our platform deploys proprietary machine-learning capabilities to build upon our experience with various promotional offers, consumer segments and advertisers, through which we continuously optimize our digital marketing campaigns.

Unique and Extensive Database of First-Party Consumer Information - We attract a substantial volume of consumers to our owned media properties on a daily basis and collect significant demographic, behavioral and other data as they engage with our direct marketing experiences. This data is utilized in real-time, as consumers respond to dynamically-populated survey questions, thereby enabling intelligently targeted ads to be served in response. This data is also stored and analyzed and can be further enhanced as consumers return to our sites and declare and exhibit additional preferences and behaviors through additional surveying, allowing for the development of deeper insights and additional monetization opportunities.

Sales and Marketing

We generate new sales primarily through our in-house sales team and we service established clients through our in-house account managers, who seek to optimize results for and expand our business with these clients.

Our Competition

Our traditional competitors have been digital marketing and database marketing services providers, online and traditional media companies, and advertising agencies. We believe the competitive landscape is changing and becoming more complex. We believe our data and our ad serving and customer acquisition technologies enable our clients to better target, engage, qualify and communicate with relevant consumers, in a more profitable manner, across web and in-app environments than our competitors.

Some of our competitors have substantially greater financial, technical, sales and marketing resources, better name recognition and a larger customer base.

Concentration

We have an extensive list of clients across a wide range of industries. For the years ended December 31, 2018 and 2017, there was no individual advertiser that accounted for more than 10% of the consolidated revenue or accounts receivable, net of the Company.

Additionally, as of December 31, 2018 and 2017, there was no individual third-party publisher through which we generated more than 10% of the Company's consolidated revenue.

Corporate History

On March 20, 2015, the entity now known as Fluent, Inc. was incorporated in Delaware under the name Tiger Media, Inc. On April 30, 2015, Tiger Media, Inc. changed its name to IDI, Inc.

On December 9, 2015, IDI, Inc. completed the acquisition of Fluent, Inc., which merged into a wholly-owned subsidiary of IDI, Inc. and continued as the surviving company under the name Fluent, LLC. IDI, Inc. changed its name to Cogint, Inc. on September 26, 2016.

On March 26, 2018, Cogint, Inc. completed a spin-off (the "Spin-off") of its risk management business by way of a pro rata distribution of all the shares of common stock of its wholly-owned subsidiary, Red Violet, Inc. ("Red Violet"), to its stockholders of record as of March 19, 2018 (the "Record Date") and certain warrant holders.

Following the Spin-off, Cogint, Inc.'s common stock continued trading on The NASDAQ Stock Market ("NASDAQ"), and Red Violet became an independent public company, which owns all of the subsidiaries that previously operated Cogint Inc.'s risk management business.

On April 16, 2018, Cogint, Inc. changed its name to Fluent, Inc., and its common stock continued trading on NASDAQ under the ticker symbol "FLNT."

Our Intellectual Property

We rely on patent, trade secret, trademark and copyright law, confidentiality agreements, and technical measures to protect our intellectual property rights. We have filed a patent application on our ad serving and lead generation system and also avail ourselves of applicable trade secret and unfair competition laws to protect our proprietary technology. With respect to our trademarks, we maintain a portfolio of perpetual common law and federally-registered trademark rights across several brands and domains relating to our business units, products, services and solutions. We claim copyright protection in our original content that is published on our websites and included in our marketing materials.

Regulatory Matters

Our business is subject to a significant number of federal, state, local and international laws, rules and regulations applicable to online advertising, commercial email marketing, telemarketing and text messaging, including, the Federal Trade Commission Act (the "FTC Act"), the Telephone Consumer Protection Act ("TCPA"), the General Data Privacy Regulation (the "GDPR"), the Do Not Call Implementation Act, the CAN SPAM Act of 2003 ("CAN-SPAM Act"), the Telemarketing Sales Rule ("TSR"), the California Business & Professions Code § 17529 (the "California Anti-Spam Act") and the Children's Online Privacy Protection Act ("COPPA"). We are also subject to laws, rules and regulations regarding data collection, privacy and data security, sweepstakes and promotions, intellectual property ownership and infringement, and taxation, among others. Some of our clients operate in regulated industries, such as financial services, credit repair, healthcare and medical services and secondary education, and, to the extent applicable, we must comply with the laws, rules and regulations applicable to marketing activities in those industries. These laws, rules and regulations, which generally are designed to prevent deceptive practices in advertising, online marketing and telemarketing, protect individual privacy rights and prevent the misuse and unauthorized disclosure of personal information, are complex, change frequently and have tended to become more stringent over time. In addition, the application and interpretation of these laws, rules and regulations are often uncertain, particularly in the new and rapidly evolving industry in which we operate.

Our Employees

We had 174 employees as of December 31, 2018, of which 170 were full-time employees. None of our employees are represented by a labor organization, and none are party to any collective bargaining agreement. We have not experienced any work stoppages and we believe we have an excellent relationship with our employees. Competition in the recruiting of personnel in our industry is intense. We believe that our future success will depend in part on our continued ability to hire, motivate and retain qualified sales and marketing, executive and administrative and technical personnel. To date, we have not experienced significant difficulties in attracting or retaining qualified employees.

Available Information

Fluent's principal executive offices are located at 300 Vesey Street, 9th Floor, New York, New York 10282, and our telephone number is (646) 669-7272. Our internet website is www.fluentco.com. The website address provided in this 2018 Form 10-K is not intended to function as a hyperlink and information obtained on the website is not and should not be considered part of this 2018 Form 10-K and is not incorporated by reference in this 2018 Form 10-K or any filing with the Securities and Exchange Commission (the "SEC"). Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, are available, free of charge, on our Investor Relations website at <http://investors.fluentco.com/> as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The SEC maintains an internet website located at <http://www.sec.gov> that contains the information we file or furnish electronically with the SEC.

Item 1A. Risk Factors.

Our business, financial condition, results of operations, and cash flows may be impacted by a number of factors, many of which are beyond our control, including those set forth below and elsewhere in this 2018 Form 10-K, the occurrence of any one of which could have a material adverse effect on our actual results.

Risks Relating to Our Business

Our business is subject to a significant number of governmental laws and regulations. Compliance with these laws and regulations may cause us to incur significant expenses or reduce the availability or effectiveness of our solutions, and failure to comply with them could subject us to civil or criminal penalties or other liabilities.

Our businesses are subject to regulation under the FTC Act, TCPA, Do Not Call Implementation Act, CAN-SPAM Act, TSR, the California Anti-Spam Act, COPPA, and other federal, state and local laws and regulations. These laws and regulations, which generally are designed to prevent deceptive practices in advertising, online marketing and telemarketing; protect the privacy of the public; and prevent the misuse of personal information available in the marketplace are complex, change frequently and have tended to become more stringent over time. We incur significant expenses in our attempt to ensure compliance with these laws and successfully defend ourselves in litigation.

These U.S. federal and state and foreign laws and regulations, which can be enforced by government entities or, in some cases, private parties, are constantly evolving and can be subject to significant change. Keeping or bringing our business in compliance with new laws may be costly and may adversely affect our revenue or results of operations. In addition, the application, interpretation, and enforcement of these laws and regulations are often uncertain, particularly in the rapidly evolving industry in which we operate, and they may be interpreted and applied inconsistently across jurisdictions or with our current policies and practices. Parts of our business, which rely on third-party publishers to drive users to our sites, could be adversely impacted if we or any of our third-party publishers or clients violate applicable laws. In addition, new laws or regulations or changes in enforcement of existing laws or regulations applicable to our clients could affect the activities or strategies of such clients and, therefore, lead to reductions in their levels of business with us.

The following legal and regulatory developments could also have a material adverse effect on our business, financial condition or results of operations:

- amendment, enactment or interpretation of laws and regulations that restrict the collection, access and use of personal information or reduce the availability or effectiveness of our solutions or the supply of data available;
- changes in cultural and consumer attitudes in favor of further restrictions on information collection and sharing, which may lead to regulations that prevent full utilization of our solutions;
- our failure or the failure of our third-party publishers, service providers or clients to comply with laws or regulations, where mutual compliance is required;
- failure of our solutions to comply with current laws and regulations;
- and

• failure of our solutions to adapt to changes in the regulatory environment in an efficient, cost-effective manner.

Changes in applicable legislation or regulations that restrict or dictate how we collect, maintain, combine and disseminate information could adversely affect our business, financial condition or results of operations. In the future, we may be subject to significant additional expenses to ensure continued compliance with applicable laws and regulations and to investigate, defend or remedy actual or alleged violations.

We supply data to call center clients for telemarketing campaigns and manage text messaging campaigns, both of which may subject us or our clients to claims under the TCPA. In recent years, the TCPA has become a fertile source for both individual and class action lawsuits and regulatory actions. We have expended considerable resources to comply with the TCPA and defend ourselves against legal claims, in addition to costs to insure against TCPA-related claims, though we have not experienced material losses from TCPA claims to this point. Our failure to adhere to or successfully implement appropriate processes and procedures in response to and to defend against TCPA-related claims could result in legal and monetary liability, significant fines and penalties, or damage to our reputation in the marketplace, any of which could have a material adverse effect on our business, financial condition and results of operations.

In connection with our third-party publishers' email campaigns to generate traffic for our websites, we are subject to various state and federal laws regulating commercial email communications, including the CAN-SPAM Act and the California Anti-Spam Act. If we or any of our third-party publishers fail to comply with any provisions of these laws or regulations, we could

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be subject to regulatory investigation, enforcement actions, litigation or claims. Any negative outcomes from such regulatory actions or litigation or claims, including monetary penalties or damages, could have a material adverse effect on our business, financial condition, results of operation and reputation.

We collect, process, store, share, disclose and use personal information and other data, and our actual or perceived failure to safeguard such data and user privacy could damage our reputation and brand and harm our business and results of operations.

The user profiles in our database contain user information such as name, age, personal address, phone number and email address. Our ability to provide services using that information is critical, and a breach of the security measures on our systems or on those of our third-party vendors could result in the misappropriation of either our proprietary information or the personal information of users that we collect, or the interruption or breakdown of our operations. Although we have physical and cyber security controls and associated procedures, we cannot guarantee that our websites, database and information technology systems, and those of our third-party service providers, will be free of security breaches, computer malware or viruses, phishing impersonation attacks, misplaced or lost data, programming and/or human errors, ransomware and similar incidents or disruptions from unauthorized use of our database and systems. Any failure or perceived failure to maintain the security of personal and other data that is provided to us by users, or any interruptions, delays or website shutdowns, could harm our reputation and brand and expose us to a risk of litigation and possible liability, any of which could harm our business, financial condition and results of operations.

Our business is largely dependent on consumer-facing websites, which could become inaccessible due to service interruptions or subject to hacking or computer attacks. If our or our third-party publishers' websites are unavailable when users attempt to access them, or if they do not load as quickly as expected, users may not return as often in the future, or at all. As we grow and obtain more visibility, we may become more vulnerable to these types of attacks. Despite our implementation of security measures, techniques used to obtain unauthorized access, disable or degrade service, or sabotage networks continue to evolve in sophistication and volume and may not be recognized until launched against a target. As a result, we may be unable to anticipate these techniques or implement adequate preventative measures. Because our websites, database and systems are critical to our success, if an actual or perceived breach were to occur or if our websites or systems were to otherwise cease to function properly, our operations could be adversely affected, our advertiser clients and users could lose confidence and trust in us, and we could lose revenue or proprietary information, any of which could materially adversely affect our business.

We expend significant capital and other resources to protect against such threats or to remediate problems that could be caused by security breaches. Additionally, any server interruptions, breakdowns or system failures, including failures which may be attributable to events within our control, could increase our future operating costs and cause us to lose business. We maintain insurance policies covering losses relating to our network systems, business continuities or other cybersecurity liabilities. However, these policies may not cover the cost of any claims. Any disruptions in our systems, whether caused by hacking or otherwise, could have a material adverse effect on our future results.

In the event of unauthorized access or cyber-attacks, the integrity of our data may be affected. Security and privacy concerns, any actual or perceived unauthorized release of user information or any of the other issues described above could adversely affect our ability to maintain engagement of existing users or attract new users, cause users to resist providing the personal information necessary to our business, cause existing advertiser clients to cease doing business with us or subject us to governmental or third-party lawsuits, investigations, regulatory fines or other actions or liability, thereby harming our business, financial condition and results of operations.

Laws and regulations regarding privacy, data protection and the handling of personal information are complex and evolving. While we strive to comply with all legal and contractual obligations regarding these matters, any failure or perceived failure to do so could have a material adverse effect on our business, financial condition and results of operations.

Because we store, process and use data, some of which contains personal information, we are subject to complex and evolving federal, state and foreign laws and regulations, as well as contractual requirements, regarding privacy, data protection and the collection, maintenance, protection, use, transmission, disclosure and disposal of personal information. These laws and regulations involve matters central to our business, including user privacy, data protection, content, intellectual property, electronic contracts and other communications, e-commerce, sweepstakes, rewards and other promotional marketing campaigns, competition, protection of minors, consumer protection, taxation, libel, defamation, internet or data usage, and online payment services. Both in the United States and abroad, these laws and regulations continuously evolve and remain subject to significant change. In addition, the application and interpretation of these laws and regulations are often uncertain, particularly in the rapidly evolving industry in which we operate.

We strive to comply with all applicable laws, policies, legal obligations and industry codes of conduct relating to privacy and data protection, to the extent possible. However, it is possible that these obligations may be interpreted and applied in new ways or in a manner that is inconsistent across jurisdictions and may conflict with other rules or our practices, or that new regulations could be enacted. Any failure or perceived failure by us to comply with our privacy policies, privacy-related obligations to users or other third parties, or privacy-related legal obligations, or any compromise of security that results in the unauthorized release or transfer of sensitive information, which may include personally identifiable information or other user data, may result in investigations, claims, changes to our business practices, increased cost of operations, and declines in user growth, retention, or engagement, any of which could seriously harm our business. Moreover, if third parties that we work with violate applicable laws or our policies, such violations also may put user information at risk and could, in turn, harm our reputation, business and results of operations.

Additionally, compliance with privacy and security laws, requirements and regulations may result in cost increases due to new constraints on our business, the development of new processes, the effects of potential non-compliance by us or third-party service providers, and enforcement actions.

Privacy concerns relating to our data collection practices and any perceived or actual unauthorized disclosure of personally identifiable information, whether through breach of our network by an unauthorized party, employee theft, misuse, or error, could harm our reputation, impair our ability to attract website visitors or to attract and retain clients, result in a loss of confidence in the security of our products and services, or subject us to claims or litigation arising from damages suffered by users, and thereby harm our business and results of operations. In addition, we could incur significant costs which our insurance policies may not cover and could cause us to expend significant resources in protecting against security breaches and complying with the multitude of state, federal and foreign regulations regarding data privacy and data breach notification obligations.

The GDPR adopted by the European Union (“EU”), which took effect on May 25, 2018, as well as other regulatory and legal developments, are imposing new requirements and restrictions on entities involved in the collection, use and storage of personal information. These changes could increase our costs or impact our ability to collect personal information and generate revenue therefrom.

The GDPR imposes new requirements on entities and grants individuals new rights in connection with the collection, use and storage of the personal information of EU residents. Many of these new requirements are more restrictive than those under existing U.S. law, and the individual rights granted by the GDPR are more expansive than the rights typically granted to U.S. residents. For example, under the GDPR, an EU resident must affirmatively opt-in to receive email marketing (unless there is another basis to send the individual email marketing, as expressly permitted under the GDPR), while U.S. residents can be sent commercial email unless and until they opt-out. The GDPR also grants EU residents the rights: (a) to be forgotten, which entails the right to have their personal data removed from an entity’s database (as well as the databases of all third parties that received the personal data from that entity); (b) to modify their collected personal data; (c) to restrict use of their collected personal data; and (d) to “data portability,” which entails the right to request that personal data collected be provided to the individual in a machine-readable, usable format.

Our websites that are available to UK residents are subject to the GDPR for as long as the UK remains an EU member state, and it is likely that these websites will be subject to data protection laws substantially similar to the GDPR following any exit by the UK from the EU (“Successor Legislation”). Our websites available to UK residents have been designed, and are operated, in compliance with the GDPR. The fines for failing to comply with the GDPR are significant and the potential ways that the GDPR, or any Successor Legislation, could be applied to a business such as ours are uncertain. There can be no assurance that we will be able to maintain these websites in compliance with the GDPR or any Successor Legislation. Additionally, if we expand into additional international markets, we may be subject to additional data protection laws.

In addition, some of our advertiser clients have required that the personal information we deliver to them be collected and maintained in compliance with the GDPR for our U.S. operations. While we do not believe that the GDPR applies

to our U.S. operations, if we are contractually required to comply with the GDPR in the U.S., that could increase our costs and expenses associated with providing advertising services.

We expect the trend towards enhanced regulation and personal rights applicable to the collection, use, storage and sharing of personal information to continue. For example, California recently enacted the California Consumer Privacy Act (“CCPA”), which establishes requirements for businesses and grants individual rights similar to those contained in the GDPR. The CCPA, which takes effect in 2020, includes a right to be forgotten, a right for individuals to object to having their data shared with third parties and a right to be informed of what data is being shared. While significantly less restrictive than the GDPR, the

CCPA will, nevertheless, require changes to our operations which may have a material adverse effect on our business, financial condition and results of operations.

The outcome of litigation, inquiries, investigations, examinations or other legal proceedings in which we are involved, in which we may become involved, or in which our clients or competitors are involved could distract management, increase our expenses or subject us to significant monetary damages or restrictions on our ability to do business. Although we are not currently a party to any material legal proceedings, legal proceedings arise frequently in the normal course of our business. These may include individual consumer cases, class action lawsuits and inquiries, investigations, examinations, regulatory proceedings or other actions brought by federal (e.g., the FTC) or state (e.g., state attorneys general) authorities. Regardless of whether any claims in which we are involved have merit, or whether we are ultimately held liable or subject to payment of damages, claims may be expensive to defend and may divert management's time away from our operations.

The scope and outcome of these proceedings is often difficult to assess or quantify. Plaintiffs in lawsuits may seek recovery of large amounts, and the cost to defend such litigation may be significant. There may also be adverse publicity and uncertainty associated with investigations, litigation and orders (whether pertaining to us, our clients or our competitors) that could diminish consumers' view of our services and/or result in material discovery expenses. In addition, a court-ordered injunction or an administrative cease-and-desist order or settlement may require us to modify our business practices or prohibit conduct that would otherwise be legal and in which our competitors may engage. Many of the complex and technical statutes to which we are subject, including state and federal financial privacy requirements, may provide for civil and criminal penalties and may permit consumers to bring individual or class action lawsuits against us and obtain statutorily prescribed damages. Additionally, our clients might face similar proceedings, actions or inquiries which could affect their businesses and, in turn, our ability to do business with those clients.

While we do not believe that the outcome of any pending or threatened legal proceeding, investigation, examination or supervisory activity will have a material adverse effect on our financial position, such events are inherently uncertain and adverse outcomes could result in significant monetary damages, penalties or injunctive relief against us.

If we lose the services of any of our key personnel, it could adversely affect our business.

Our future success depends, in part, on our ability to attract and retain key personnel, including Ryan Schulke, our Chief Executive Officer, Matthew Conlin, our President, and other key employees in all areas of our organization, each of whom is important to the management of certain aspects of our business and operations and the development of our strategic direction, and each of whom may be difficult to replace. We carry "key man" life insurance policies on Mr. Schulke and Mr. Conlin in the amounts of \$10.0 million and \$15.0 million, respectively, the beneficiary of which is HIG Whitehorse, the holder of our \$70.0 million term loans pursuant to the Credit Agreement dated December 8, 2015, (as amended, the "Credit Agreement"). The loss of the services of these key individuals and the process to replace these individuals could involve significant time and expense and could significantly delay or prevent the achievement of our business objectives.

Additionally, given the number of employees we have relative to our revenue, we rely heavily upon certain key employees to support different operational functions, with limited redundancy in capacity. The loss of any of these key employees could adversely affect our operations until a qualified replacement is hired and trained.

We also believe that, as our business continues to grow, our future success depends, in large part, upon our ability to hire and retain highly skilled managerial, technical and operational personnel. Competition for such personnel is considerable, and we cannot assure you that we will be successful in attracting and retaining such skilled personnel.

We attract a substantial majority of visitors to our websites through media purchases from third-party publishers, internet search providers and social media platforms. There is substantial competition for this web traffic, and any decline in the supply of media available through these third parties or increase in the price of this media could increase the cost to attract visitors to our websites and reduce our profitability.

Our success depends on our ability to attract users to our websites and generate revenues from their activities thereon in a cost-effective manner. A substantial majority of our revenue is attributable to visitor traffic originating from third-party publishers, including ad networks, social media platforms and search engines. Our ability to maintain the number of users who come to our and our third-party publishers' websites is not entirely within our control.

Third-party publishers can change the media inventory they make available to us at any time and/or place significant restrictions on our content offerings. Many of these publishers have their own guidelines on acceptable content, advertisements and the types of advertisers and websites that can advertise on their properties. These guidelines change frequently and can often be unpublished. If a third-party publisher

decides not to make media inventory available to us, decides to demand higher pricing or a higher revenue share, or places significant restrictions on the use of such inventory, we may not be able to find media inventory from other websites that satisfy our requirements in a timely and cost-effective manner.

Moreover, there is substantial competition for web traffic among both established media buyers and smaller operators, and we expect this competition to continue to increase, given the limited barriers to entry into the market.

Additionally, if we expand the scope of our services, we may compete with a greater number of webs