

**Burst.com, Inc. Annual Report**

For the Fiscal Year ended: December 31, 2008

Delaware	84-1141967
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(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification Number)

1275 Fourth Street, #191  
Santa Rosa, California, 95404

(707) 541-3870

Note that our securities are not registered under Section 12(b) or under  
Section 12(g) of the Exchange Act

Common Stock \$.00001 Par Value

As of December 31, 2008, there were 40,900,480 shares of the Company's Common Stock outstanding. The closing price of the Common Stock as reported on the NASDAQ Over-the-Counter Bulletin Board on April 24, 2009 was \$.13.

The Company's transfer agent is ComputerShare, Inc. Its address is P.O. Box  
1596, Denver, CO 80201.

BURST.COM, INC.

2008 ANNUAL REPORT

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Instant Video(R), Burstware(R), Faster-Than-Real-Time(R), Burstware Conductor(R), Burstware Player(R), and Burstware Server(R) are registered trademarks of Burst.com, Inc. All other corporate or product names may be trademarks and/or registered trademarks of their respective owners.	

### SPECIAL NOTICE REGARDING FORWARD-LOOKING STATEMENTS

Some of the matters discussed under the captions "Business," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere in this report include forward-looking statements. We have based these forward-looking statements on our current expectations and projections about future events, including, among other things, the following:

- \* Implementing our business strategy;
- \* Maintaining sufficient cash balances to continue in operation;
- \* Rapid technological changes in our industry and relevant markets and
- \* Competition in our market.

In some cases, you can identify forward-looking statements by terminology such as "may," "will," "potential," "continue," "expects," "anticipates," "future," "intends," "plans," "believes" and similar expressions. These statements are based on our current beliefs, expectations and assumptions and are subject to a number of risks and uncertainties. Actual results, levels of activity, performance, achievements and events may vary significantly from those implied by the forward-looking statements. These forward-looking statements are made as of the date of this report and we assume no obligation to update them or to explain the reasons why actual results may differ.

## THE COMPANY

We are a company in transition. Primarily between 1997 and 2001, we developed client/server network software and intellectual property for the delivery of video and audio information over networks. Although certain of our patents have now expired, we still hold a number of patents related to network media delivery technology. For most of the past decade, our business has been the enforcement of the intellectual property rights, relating to our own inventions described below; more recently, we have accelerated our efforts at monetizing those rights, and we continue to pursue those efforts.

Separate from the monetization of our intellectual property, in April 2009, our Board of Directors authorized development and market testing of a new Web 2.0 software platform as a potential new business direction and source of revenue for the company. We do not know whether the new software platform can be developed as anticipated, and, even if it is, we do not know that there will be a sufficient market for the products that can be created from that platform.

Our office is located in Santa Rosa, California.

Our patent portfolio presently covers three basic patent families related to network media delivery, the Allen, Polish and Lang/Walters patents. The more recent patents relate more specifically to different aspects of network optimization.

A complete list of our issued and pending patents can be found on our website: [www.burst.com](http://www.burst.com).

In 2000, we changed our name from "Instant Video Technologies, Inc." to "Burst.com, Inc." Since 2003, our stock has traded on the over-the-counter market "Pink Sheets" under the symbol "BRST" (or BRST.PK).

Prior to 2001 we had a growing software business with just over 100 employees. As a result of unanticipated technological incompatibilities imposed upon us and beyond our control, our business model at that time could not be sustained, and in 2001 we reduced our headcount dramatically to two full-time employees. For the past five years, we have operated with three full-time employees and have used outside vendors as needed.

Unfortunately, litigation has been necessary to enforce our intellectual property rights. However, since 2005 we have received more than \$70 million in aggregate settlements and license fees from Microsoft, Apple, and others.

In January, 2008, Real Networks filed suit against our company in an attempt to have the same patents which were litigated against Apple ruled either invalid and/or not infringed. Real Networks amended its complaint in February 2008 to include 3 other Burst patents that were not litigated against Apple. On March 25, 2008, Burst filed a counter claim against Real Networks, alleging Real's infringement of various Burst patents. The case was settled in May, 2008.

Throughout 2008, we continued our licensing efforts, utilizing the services of our outside attorneys to represent us in discussions with potential licensees regarding different patents in our portfolio. On December 27, 2008, the four oldest U.S. patents in our portfolio expired (after a 20 year life). These expired patents had been the basis of our licensing efforts in our litigation with Microsoft and Apple. Both prior and subsequent to the expiration of these patents, we have continued in our efforts to license the other patents in our portfolio. We also have certain patent applications pending.

In March, 2009, we announced that, in exchange for a one-time payment of \$300,000, we had non-exclusively licensed a US technology company to use one of our network optimization patents (U.S. patent #5,963,202) and agreed not to sue that company on Burst's other patents, the technology company having warranted that to its knowledge it was not currently infringing any of those patents. The licensee's name was withheld under the terms of the license agreement.

During 2008, we tested a modification of our intellectual property monetization strategy by investigating the possibility of selling one or more of our issued patents to various potential buyers. Our efforts in this area in 2008 were focused on discussions with parties having a particular interest in our DVR patent portfolio, which consisted of one issued U.S. Patent (#7,272,298) and several related pending patent applications. These discussions culminated in February, 2009 with the sale of our DVR patent portfolio to an unaffiliated company for \$2.3 million. The purchaser was not publicly identified by mutual agreement of the parties to this transaction.

Our current patent portfolio contains a number of patents that have, for the most part, never been subject to litigation. The bulk of these patents have generally related to two areas of intellectual property: (a) Network Optimization (i.e. patents authored by Allen, Polish and Rebane), and (b) video delivery-related technology (i.e. patents authored by Lang, Walters and/or Mincer). With the sale of the DVR patent portfolio behind us, we believe that our remaining patents are timely to industry needs and have value; thus we plan to continue our efforts to monetize them. In that connection, we are working with a consulting firm and with counsel to develop an appropriate strategy for each of the patent families. For a variety of reasons, there is no single monetization strategy applicable to all of the patent families. These issues are quite complex and are also subject to the vagaries of the shifting interpretations of United States patent law. We generally prefer to avoid the litigation process and to negotiate mutually satisfactory business solutions, but our history has demonstrated that certain circumstances require a willingness to undertake the litigation process for proper vindication of our rights. It is, however, useful that a new industry model for patent monetization, “patent aggregation,” has emerged, comprised of entities whose sole business model is the acquisition of third party intellectual property. We believe that our intellectual property may have value to some of these entities.

For competitive reasons, we are not able to provide a great deal of information about our current new software initiative. In general, if deployed, it will be a Web 2.0 application platform, generally building on the concept of social networking, with primarily user-generated content. The platform could support a number of different products which we could introduce sequentially. We currently have more than \$8,000,000 in cash and cash equivalents, and it is our plan to spend five to ten percent of that amount in the development and test marketing of the new software platform. We cannot assure either that our development and test marketing cost and market response objectives will be met or that our preliminary business plans will be achieved.

## BUSINESS

### INDUSTRY BACKGROUND FOR EXISTING INTELLECTUAL PROPERTY

In recent years, several related technologies have converged to enable the distribution of video and audio content over electronic communications networks. As network bandwidth, data storage, processing power, and compression technologies have become increasingly available and affordable, the demand for high quality video and audio over the Internet, as well as over intranet and other networks, has expanded rapidly. The result of such developments has been the transition of the Internet from a static, text-oriented network to an interactive environment filled with graphic and audio-visual content. With the advent of high-definition TV, the demand for efficient ways to use available bandwidth has become increasingly important.

Distributing audio-visual, time-based content over the Internet, or within an intranet, offers certain advantages and capabilities not generally available through traditional media, including consumer targeting and interactive responsiveness.

## MARKET OPPORTUNITY FOR EXISTING INTELLECTUAL PROPERTY

We believe that our remaining intellectual property should be attractive to any company that wishes to deliver digital media over electronic networks at a quality level high enough to justify charging end-users, content providers or advertisers. However, we no longer provide any meaningful technical support for our legacy software product (“Burstware”), except through independent third parties familiar with our product. As a result, our business model now involves developing strategies that will enable us to successfully enforce and monetize our remaining intellectual property and receive what we hope will be meaningful licensing revenues from that activity, although there can be no assurance thereof. Alternatively, we may determine that the sale of one or more of our patents represents the greatest return for our shareholders. We are currently evaluating and implementing what we believe to be the best methods, on a time and risk-adjusted basis, of monetizing our assets.

In the past two years, the U.S. Supreme Court and appellate courts have handed down rulings which, in the view of some commentators, have redefined basic patent law principles that had stood since the inception of the U.S. patent system. The most recent of these significant changes was the holding of the U.S. Supreme Court in “KSR vs. Teleflex”, which was decided in April 2007. Many commentators believe that these changes will make it difficult for small entity inventors and patent holders to enforce their patent rights against larger industry competitors and large corporations in general. We believe that we are still in a position to continue to monetize our patents, and we believe that we have demonstrated this capability to some degree.

## INDUSTRY BACKGROUND FOR NEW SOFTWARE INITIATIVE

Following the creation and popping of the Internet “bubble” in 2000-2001, it was no longer a viable business model just to capture eyeballs. As the industry matured into a Web 2.0 universe, Internet applications had to have a purpose and a profit model—they had to demonstrate the path to being “real” businesses. Many Web 2.0 applications, which are rooted in active participation in these website applications by website visitors, have been developed and are growing productively.

## MARKET OPPORTUNITY FOR NEW SOFTWARE INITIATIVE

We believe that we may have isolated an unfilled market need in the general area of social networking with user generated content. For competitive reasons, we cannot be more

specific as to the nature of the market opportunity. Our initial research suggests (1) that the necessary software can be readily developed using existing tools, (2) that we are generally pointed in the right direction with our plan to interface with users, (3) that customers are willing to pay for the product and (4) that the market demand for the application is potentially both broad and deep. As with most Web 2.0 applications, there is a probably first-mover advantage, but probably not enormous barriers to entry; thus, it is imperative that we continue our development activities in private and then create a substantial concurrent public launch if the testing validates our assumptions.

## COMPETITION IN PATENTED TECHNOLOGY

We believe that our technological approaches to media delivery and network optimization are important solutions to important industry issues. However, there are other technological approaches that are currently being utilized. One such competitive approach is “peer-to-peer” multimedia distribution. While we believe that our solutions are superior in most applications, we depend primarily on pure intellectual property licensing to derive our revenues, while some of our competitors offer software products that they also support in the marketplace. We believe that our patented technological approach has been or is being incorporated into the products of various companies in our industry. We are currently studying the best methods to approach potential infringers, and those methods may differ from patent to patent and from infringer to infringer; there is not likely to be a single “best” methodology. There can be no assurance that we will be successful in licensing our technology to any companies without litigation, or that we will be successful in any litigation.

## Sales and Marketing - IP Related

We are not actively engaged in sales or marketing of our existing software products (Burstware). Our target market for licensing of our intellectual property is comprised of content providers, platform providers, network providers, content aggregators, computer manufacturer and consumer device manufacturers that are involved in the delivery of video and audio content to end users. There are also potential purchasers of one or more of our patents, including both industry participants and the new patent aggregation entities. We are currently focusing our marketing efforts on studying differential tactics for licensing different elements of our patent portfolio to these prospective customers. The internal sales organization consists of our CEO and our VP of Operations. We are assisted by a team of outside attorneys specializing in the enforcement of intellectual property rights, as well as specialized consulting resources.

Our goal is to continue to monetize our intellectual property. Since 2005, we have licensed our patents to Microsoft and Apple for a total of \$70,000,000, following litigation, along with subsequent non-exclusive licenses of one of our network optimization patents to two other companies for an additional \$833,000. Additionally, we have sold our DVR patent portfolio for \$2.3 million. We believe that the previous litigation efforts have established a value range for other potential licensees and we will seek to continue to license our intellectual property, using

appropriate methods to enforce our rights. We will proceed with our efforts to monetize our entire portfolio in the most efficient and beneficial manner possible, including the sale of individual patents when that is deemed the most profitable course of action for our company.

Our intellectual property falls into the two categories previously discussed, and each category represents a different range of possible revenues. In the two categories where we believe there are additional licensing revenues available, the amounts of these revenues are likely to be a function of the following factors:

1. Which patents, and more specifically, which claims do we believe should be licensed to a given company?
2. Of the claims we believe should be licensed, have any been upheld as valid in a court challenge?
3. Of the claims we believe should be licensed, which products belonging to a prospective licensee appear to infringe those claims?
4. Of the products that we believe should be subject to licensing royalties on the applicable patent claims, what sales revenues are associated with those products?
5. Of the revenues that we believe apply to the licensable products, what would a likely “reasonable royalty rate” be?
6. If we decide jointly with a potential licensee to either avoid litigation or to end litigation in the form of a settlement, what level of adjustment, if any, is appropriate for either party to the probable licensing fees to reflect litigation (and the related costs, in both money and opportunity cost)?
7. What other risk factors exist, if any, including (in the event of litigation) the likelihood of prevailing upon appeal and the delays inherent in the appellate process?

The specific answers to the questions above will likely determine whether we are able to license our technology without litigation and also what settlement range, if any, may be appropriate.

Because we have not yet developed the proposed new software platform, we have not created a definitive sales and marketing plan. However, at this time we believe that we will be using a combination of internal and external resources to market the software to a broad range of potential customers.

We do not believe that there is any significant seasonality that would affect the licensing of our intellectual property or the sales of our products or services. As of December 31, 2008, there was no backlog of unfilled orders for our products.

## PATENTS & TRADEMARKS

Our current business of monetizing our intellectual property is presently very dependent on our patent portfolio. We have nine active issued U.S. patents (subsequent to the sale in 2009 of our issued DVR patent portfolio) as well four pending related applications. Our earliest patents, which described a broad class of systems that allow a user to view, edit, store video

and/or audio information and send and receive the data associated with that video and/or audio information over networks in less time than is normally required to view or listen to the content, have expired. The remaining patents describe derivative inventions, including the use of burst mode delivery as a means of achieving network optimization.

Fourteen patents were issued to Burst.com in the United States since 1990, with four additional patent applications pending before the United States Patent Office. Burst.com holds twelve European patents that remain in force in Germany, France, and the United Kingdom. Burst.com also has two pending European patent applications. Burst.com has two patents granted and in force in South Korea and one patent in Japan.

We believe that our patents have application in various markets, particularly in the network optimization segment. Two patents issued in 2007 relate directly to network optimization and optimal use of bandwidth via specialized algorithms. There can be no assurance either that any patent applications will be granted or that if they are granted they will result in added value that we can license or sell.

Potential licensees include companies such as server and client manufacturers, bandwidth, network and platform providers, content aggregators, copyright owners, as well as personal computer, consumer device and other hardware manufacturers.

Our plan is to continue to monetize our patent portfolio through licensing and enforcement of our patent portfolio and to seek licensing revenues from any companies who seek to utilize our patented technology in their products or services. We will also consider selling any of our patents when we determine that proceeds from a sale are likely to exceed revenues from licensing, over time, with a time and risk-weighted adjustment. We maintain a database of potential licensing candidates whose goods and/or services we believe may require them to license our technology in order to avoid being in violation of our patents.

Although we have registered the trademarks "INSTANT VIDEO®, BURSTWARE®, FASTER-THAN-REAL-TIME®, BURSTWACORE CONDUCTOR®, BURSTWARE PLAYER® and BURSTWARE SERVER®", "FASTER THAN REAL TIME®, "BURST.COM®", "WHY STREAM WHEN YOU CAN BURST®", in the United States, as well as in certain countries in Europe and Asia, we offer no assurance of the ongoing value attributable thereto.

Because the software for the new software initiative has not yet been developed, we do not know if there will be any protectable components. It is generally believed that Internet software is not entitled to substantial software protection, though there are exceptions to that rule. There can be no assurance that our software will, or will not, be entitled to intellectual property protections.

## RISK FACTORS

Because of our unusual business model - primarily relying on the monetization of intellectual property which we developed ourselves and our concurrent attempt to develop and market a new software platform - our business is subject to some risk factors common to most businesses (dependence on key employees, for instance), not subject to risk factors faced by many businesses (we have no dependence on additional funding and little dependence on general economic conditions), but subject to certain unusual risk factors (vulnerability to additional court rulings or legislation weakening the rights of patent owners).

Among the risk factors we face are the following:

1. Key Personnel. We are dependent on the continued services of Richard Lang, the inventor of many of the patents we own and the person who has guided the company for almost 19 years. While we do have others who can perform some of his services in the event of his unavailability, we would be adversely affected if Mr. Lang was unable to perform his duties for any extended period of time.

2. Intellectual Property. We are dependent upon the validity and enforceability of our intellectual property. If our intellectual property were found not to be valid and enforceable, we would be adversely affected.

3. Availability of Counsel. We are dependent on the availability of qualified legal counsel. If we were unable to obtain appropriate counsel, we would be adversely affected.

4. Technological Change. We believe our patents cover important elements of the computer networking and media delivery process. If technology trends were to change in a way which renders our technology obsolete, our patents would have little value.

5. New Software Initiative. We have undertaken a new software initiative which is vulnerable to the risks inherent in any startup enterprise—dependence on key personnel; at risk of market shifts; possibility of infringing the intellectual property of others; subject to the risk of intense competition or misjudging the market, etc. We are taking prudent steps to minimize those risks, but they are inevitable.

#### PROPERTY.

We presently occupy approximately 1,100 square feet of office space in Santa Rosa, California, under a lease that expires at the end of February 2010, which we may extend for an additional term. The current lease provides for rent of approximately \$3,000 per month. We believe that our current facility is suitable and sufficient to accommodate our operating needs for the foreseeable future.

#### PATENT LICENSING & LEGAL PROCEEDINGS.

During a 13 month period from January 2008 through March 2009, we granted non-exclusive licenses to two major U.S. companies for a total of \$833,000 in licensing revenues. These were licenses to one of the patents in our network optimization portfolio of patents. Both licenses also included covenants not to sue the licensees for infringement of any other patents in our portfolio of patents, based on the representations by these licensees that to their knowledge, they were not infringing any other Burst patents.

We are not aware of any material legal proceedings pending or threatened against us.

#### SUBMISSION OF MATTERS TO A VOTE OF SECURITY

We will hold an Annual Meeting of Stockholders on June 17, 2009, for the purpose of electing a Board of Directors – See the Proxy Statement which is made available concurrently with this Annual Report.

#### MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

##### MARKET INFORMATION

Since December 31, 2001 our common stock has been traded on the NASDAQ OTC:BB (Over the Counter Bulletin Board) under the symbol “BRST” (or “BRST.PK”).

In January 2002, we elected to deregister our stock under S.E.C. Rule 12g. The company’s common stock continues to trade on the “Pink Sheets” in accordance with the provisions of Rule 15c2-11.

The following table sets forth the closing high and low bid prices of the Common Stock for the periods indicated. These prices are believed to be representative inter-dealer quotations, without retail markup, markdown or commissions, and may not represent prices at which actual transactions occurred.

2007	High	Low
-----	-----	-----
1st Quarter	\$ 1.58	\$ 1.16
2nd Quarter	\$ 2.50	\$ 1.42
3rd Quarter	\$ 2.05	\$ 1.40
4th Quarter	\$ 1.80	\$ .28

2008	High	Low
-----	-----	-----
1st Quarter	\$ .45	\$ .28
2nd Quarter	\$ .32	\$ .15
3rd Quarter	\$ .20	\$ .11
4th Quarter	\$ .14	\$ .07

The number of holders of record of the Company's \$.00001 par value Common Stock at December 31, 2008, was approximately 245. The closing bid price of our stock was \$ .09 on December 31, 2008.

## DIVIDENDS

No dividends were declared or paid during 2008.

## RECENT SALES OF UNREGISTERED SECURITIES

For a description of unregistered securities sold by the Company to certain directors in reliance on the exemption set forth in Section 4(2) of the Securities Act of 1933, see CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS—Non-lapse Restriction Stock Purchases in 2008, below.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATION

The following discussion of the financial condition and results of operations of Burst.com, Inc. should be read in conjunction with our Year-End Financial Statements for 2007, currently posted on our web site, [www.burst.com](http://www.burst.com). Please note that the 2007 and 2008 Financial Statements are audited, and Summary pages are included in this report. A complete copy of our audited financials for 2008 can be found on our website: [www.burst.com](http://www.burst.com).

We are engaged in the monetization of intellectual property related to the delivery of video and audio information over networks. Our principal executive offices are located in Santa Rosa, California

In 2008 we had \$533,500 of gross income derived from the licensing of our intellectual property to a single licensee. That was a substantial reduction from the \$10,000,000 of gross revenues in 2007 from a litigation settlement. We had no income or fees from other software licenses. We caution interested parties not to extrapolate trends from any two-year comparison. Our interest income was down by \$23,938 primarily because of lower prevailing interest rates on our Treasury Bills. Our gross income is not comparable from year to year, as it results from nonrecurring one-time license fees and from litigation settlements, which cannot be predicted or

extrapolated.

During 2008, our general and administrative operating expenses were \$1,656,981 including all legal fees. Our operating expenses increased \$ 433,453 over our operating expenses in 2007 primarily because of increases in executive compensation and payment of employment contract signing bonuses aggregating \$ 210,000 and payment, for the first time, of directors' fees aggregating \$90,000 to the three outside directors. Our current net operating expenses (after interest income but before any patent-related legal fees) are approximately \$ 75,000 per month.

As of December 31, 2008, we had approximately \$4,757,691 cash on hand, as well as Treasury Bills available for sale valued at \$1,179,053. Subsequently, we received \$2.3 million from the sale of our DVR patent portfolio plus \$300,000 from the non-exclusive licensing of one of our patents (including covenants not to sue on other patents in our portfolio). We believe that after payment of all 2008 taxes, our cash reserve will enable us to sustain our current operations for the foreseeable future. In addition to the proceeds from sale and licensing activities so far in 2009, we are pursuing additional licensing and other revenues; however, there can be no assurance our efforts will be successful. Our success will depend, in large part, on our continued ability to protect the intellectual property that we have developed through patents, trademarks, trade secrets, copyrights, licenses and other intellectual property rights. We are also engaged in development of a new software platform for Web 2.0 applications, as to which there can be no assurances.

We plan to aggressively enforce our intellectual property rights. We have contacted companies whom we believe should be licensing our technology in order to avoid infringing our patents. However, there can be no assurance that we will be successful in licensing other companies or that we will be able to do so without litigation.

## FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Attached

## CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

Our independent auditors for fiscal year 2008 were Smith, Lange & Phillips of San Francisco, CA. There were no disagreements with our auditors over any items.

## DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Our executive officers, key employees and Directors as of December 31, 2008 and their ages as of that date, are as follows:

Name	Age	Position
Richard A. Lang	55	Chairman, President, Chief Executive Officer and Chief Financial Officer

Eric H. Walters	52	Vice President, Operations
Brian Murphy	53	Director
Barry L. Ritholtz	47	Director
Barry Reder	64	Director

The following sets forth biographical information as to the business experience of each Executive Officer and Director of the Company as of December 31, 2008:

Richard A. Lang has been Chairman of the Board, President, Chief Executive Officer and Chief Financial Officer since 2001. From September 1997 through the end of May 2000 he served as President and from September 1997 through September 2000 he served as Chief Executive Officer. From January 31, 1997 through August 1997, Mr. Lang served as one of our directors. Mr. Lang served as our Chairman of the Board and Treasurer until January 31, 1997. He had served as Chairman of the Board, Chief Executive Officer and Treasurer from December 1993 to September 1995 and as a Director since August 1992. He has been a Director of our subsidiary, Explore Technology, Inc., since February 1990, and served as its President from February 1990 to August 1992. Mr. Lang has presided over the development of our patent portfolio. He is the inventor of record for the bulk of our Intellectual Property. Mr. Lang was also a co-founder of Go-Video, Inc., Scottsdale, Arizona and co-inventor of Go-Video's patented dual-deck VCRs. Mr. Lang received his A.A. degree in Communications with a Foreign Language minor from Scottsdale Community College in 1973.

Brian Murphy has been one of our directors since January 1997. Brian is a consultant with Mazars O.J. Kilkenny in Dublin. The firm provides a wide range of services to their clients, consisting of major international entertainment artists, covering all areas of financial management and audit and accountancy advice. Mr. Murphy is also involved with a number of companies in the property and entertainment business. Mr. Murphy received a Bachelors Degree in Commerce from Dublin University and became a fellow of the Institute of Chartered Accountants in Ireland, England and Wales. Mr. Murphy is also an accredited mediator with CEDR (Centre for Effective Dispute Resolution).

Barry L. Ritholtz has been one of our directors since March 8, 2002. Mr. Ritholtz performed his graduate studies at Yeshiva University's *Benjamin N. Cardozo School of Law* in New York, graduating Cum Laude. Mr. Ritholtz is presently Chief Investment Officer at Ritholtz Capital Partners, a New York hedge fund. Mr. Ritholtz is CEO and Director of Equity Research at *Fusion IQ*, an online quantitative research firm. For the first time, the company is making its institutional grade research product available to individual traders and investors. Most recently, Mr. Ritholtz was Chief Market Strategist for Maxim Group, a New York Investment bank, managing over \$5 Billion in client assets. Mr. Ritholtz is a frequent guest on CNBC, Bloomberg, CNN, Fox, and PBS. His perspectives on the markets are quoted regularly in the Wall Street Journal, New York Times, Barron's, Forbes, and other print media. Beyond weekly commentary and published articles, for the past several years Mr. Ritholtz has been writing *The Big*

*Picture* (<http://www.ritholtz.com>), an informal economics weblog covering diverse topics, including investing, digital media, geopolitics, film and music industries, and more.

Eric H. Walters, a key employee, has served as our Vice-President of Operations since October 2001. He is responsible for our administrative operations as well as intellectual property management. From March 2000 to October 2001, Mr. Walters served as the Manager of our Intellectual Property Department. From March 1999 to March 2000, he was our Manager of Inside Sales. Mr. Walters has been associated with us since our formation in 1990. He held the position of Director of Corporate Communications during 1991 and 1992. Prior to joining us in 1990 and again in 1999, Mr. Walters worked at Intel Corporation in Press Relations for the Digital Imaging and Video Division. Mr. Walters is the co-inventor of record for several of our patents and pending patent applications

On January 8, 2008 Barry Reder was elected to Burst Board of Directors. Mr. Reder, 64, a retired San Francisco lawyer, was elected to the Board of Directors of the Company, filling the vacancy created when Gordon Rock resigned on December 28, 2007. Formerly a partner in the San Francisco law firms of Coblenz, Patch, Duffy and Bass (1993-2006) and Dinkelspiel, Donovan and Reder (1976-1993), Mr. Reder, practiced corporate and securities law for 37 years before retiring in 2006. Mr. Reder has been a Burst stockholder for a number of years and became a consultant to the Company late in 2007. He previously served on the Boards of HS Resources, Inc (NYSE) and Real Goods Trading Corporation (OTC/PSE) before those companies were sold.

## EXECUTIVE COMPENSATION AND OTHER MATTERS.

Summary of Compensation. The following table sets forth all compensation earned or paid for services rendered to us in all capacities by our Chief Executive Officer and Vice President of Operations for the fiscal year ended December 31, 2008. No other executive officer earned more than \$100,000 in salary and bonus for the fiscal year ended December 31, 2008.

### Summary Compensation Table

Name and Principal Position	Annual Compensation			Long-Term Compensation
	Year	Salary	Bonus Underlying Options (#)	Securities All Other Compensation(\$)
Richard A. Lang, Chairman of the Board President and Chief Executive Officer	2008	\$270,000		\$ 7,589 (1)
	2007	\$240,000		\$ 7,589 (1)
Eric H. Walters	2008	\$ 84,000		\$ 0

Vice-President of Operations	2007	\$ 78,000	\$ 0
Barry Reder Director	2008		\$ 67,000 (2)

- (1) Represents monthly auto allowance payments made to Mr. Lang totaling \$7,589 and \$7,589 for the years, respectively.
- (2) Represents payment for consulting services with respect to certain operational and day-to-day matters billed at Mr. Reder's usual and customary hourly rate. Mr. Reder provides these services as a consultant on matters which are not within the customary purview of a member of the Board of Directors. Also see "CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS (below)" for information regarding the fees which Mr. Reder received as a member of the Board of Directors.

#### SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information, as of December 31, 2008, with respect to beneficial ownership of our common stock by each person who beneficially owns more than 5% of our common stock; each of our executive officers; each of our Directors; and all executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and includes voting and investment power with respect to shares. To our knowledge, except under applicable community property laws or as otherwise indicated, the persons named in the table have sole voting and sole investment control with respect to all shares beneficially owned. The applicable percentage of ownership for each stockholder is based on 40,900,480 shares of common stock outstanding on December 31, 2008 together with applicable options and warrants for that stockholder. Shares of common stock issuable upon exercise of options and other rights beneficially owned are deemed outstanding for the purpose of computing the percentage ownership of the person holding those options and other rights, but are not deemed outstanding for computing the percentage ownership of any other person.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Outstanding
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Executive Officers and Directors

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Richard A. Lang	5,055,745 (1)	12.84%
Brian Murphy	1,092,645 (2)	2.66%
Barry L. Ritholtz	800,000 (3)	1.95%
Barry Reder	751,633 (4)	1.84%
All executive officers and directors as a group (4 persons):	7,925,023	19.13%
5% Stockholders		
Gordon Rock	9,129,838 (5)	21.46%

(1) Includes 3,503,346 shares of our common stock in the name of the Lisa Walters and Richard Lang Revocable Trust, plus 875,000 shares purchased by the Trust from former Board Member Gordon Rock in December 2007, as well as warrants, which expire on May 24, 2012, to purchase 225,000 shares of common stock at \$1.56 per share. Also includes 100,000 shares transferred to the family's irrevocable trust fund in 2002, an additional 28,000 shares transferred in 2005, and an additional 20,000 shares transferred in 2006.

(2) Includes a warrant, which expires on May 24, 2012, to purchase 150,000 shares of our common stock at \$1.56 per share.

(3) Includes a warrant, which expires on May 24, 2012, to purchase 150,000 shares of our common stock at \$1.56 per share.

(4) Excludes shares beneficially owned by his adult children, as to which he has disclaimed beneficial interest.

(5) Includes 3,877,350 shares owned by Mercer Management and 5,252,488 owned by Gordon Rock

#### CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

##### Payment of Promissory Notes

On December 20, 2007, Richard Lang, the Company's CEO and Eric Walters, the VP of Operations, tendered 1,651,761 and 48,392 shares of common stock, respectively, to the Company at \$.28 a share (the closing price of the Company's Stock at the close of business on December 20, 2007) in return for the reduction of \$462,293.08 and \$13,549.76 of the amount of indebtedness on the Promissory Notes they issued to the Company on October 20, 2003. The two transactions, which were approved by the Board of Directors, reduced the Company's total number of outstanding common shares by 1,700,153 shares.

Since January 1, 2008, there has not been, nor is there currently proposed, any transaction or series of similar transactions to which we were or are to be a party in which the amount involved exceeds \$60,000 and in which any director, executive officer or holder of more than 5%

of our common stock, or an immediate family member of any of the foregoing, had or will have a direct or indirect interest other than compensation arrangements that are described in Executive Compensation and Other Matters, above, and the transactions described below.

#### Non-lapse restriction stock purchases in 2008

On January 8, 2008 the Board of Directors authorized the execution of new two-year employment agreements with Richard Lang and Eric Walters, the Company's Chairman/CEO and VP of Operations, respectively, effective January 1, 2008. In reaching that decision, the Board considered their importance to the execution of the Company's strategic plan and the need to avoid any diminution in their energies and focus over the near and intermediate terms. In that connection, each of them agreed to participate in the sale by the Company of an aggregate of 4,700,000 newly issued shares of the Company's common stock to officers and directors of the Company. At the time of the Board's action, the stock was trading at \$.37 per share. The shares sold are burdened with a perpetual right of first refusal pursuant to which the purchasers are required to first offer the shares to the Company for a period of five business days at a discount of \$.34 from whatever price a third party offers before they can be sold to that third party. The purchase price for the stock burdened with that right of first refusal was \$.07, payable 20% in cash and 80% by execution and delivery of a non-recourse promissory note due in eight years and eleven months. The notes bear interest at the Applicable Federal Rate fixed at the date of execution of the notes. Richard Lang agreed to purchase 3,000,000 of those shares; of such number, 1,400,000 were purchased in January 2008, and the purchase of the balance was subject to his tender of 1,750,000 other shares which he currently owns to the Company, in cancellation of indebtedness. Eric Walters purchased 50,000 shares in January 2008 and the balance of 400,000 shares was subject to his tender of 400,000 shares currently owned, in cancellation of indebtedness. Colt Briner can purchase 50,000 shares upon his tender of 50,000 currently owned shares in cancellation of indebtedness. In January, 2008, each of the Company's outside directors each purchased 400,000 shares, on the same terms as described above. Before Richard Lang's and Eric Walters' tenders of shares to the Company in December, 2007 (a total of 1,700,153 shares tendered) there were 39,950,633 shares of the Company's common stock outstanding; after the various tenders and issuances described herein, there will be 41,500,480 shares of the Company's stock outstanding.

Also, in conjunction with the execution of new two-year employment agreements with CEO Richard Lang and V.P of Operations Eric Walters in January 2008, each executive received a cost-of living increase in monthly salary (covering the previous three years in which no increases were given) and a signing bonus. Mr. Lang received a \$2,500/mo. salary increase and a \$200,000 signing bonus. Mr. Walters received a \$500/mo. salary increase and a \$10,000 signing bonus.

Also on January 8, 2008, the Directors noted that the non-employee Directors had been serving without compensation and that the demands of Board membership, the compensation otherwise earned by them in their other endeavors, the aggregate value of the shares involved and the

history of the Company suggested that it would be in order both to permit them to participate in the above-described sale and to establish a retainer for the non-employee Directors. Each of the three non-employee Directors agreed to purchase 400,000 of the 4,700,000 shares on the terms described above, and a \$30,000 annual retainer for each non-employee director was also approved. No compensation was paid to the Board in 2007 or in any previous years.

On January 21, 2008, the company changed accounting firms from Sterck, Kulik & O'Neil of San Francisco to Smith, Lange & Phillips, also of San Francisco. The 2007 and 2008 company audits were completed by the new accounting firm.

## SUBSEQUENT EVENTS

On March 11, 2009, the company announced the sale of its DVR patent (U.S. Patent no. 7,272,298), as well as several DVR-related pending U.S. patent applications, to a non-affiliated company for a total one-time payment of \$2.3 million. Also in March 2009, the company announced a non-exclusive license to one of the patents in its network optimization portfolio to an American company for a one-time license fee of \$300,000.

On April 16, 2009 the company announced that it was proceeding with the next phase of the proposed new software platform development initiative described herein, approved, along with the following items, at a meeting of its Board of Directors on April 11, 2009:

1. **Stock Cancellation.** In 2005, Messrs. Lang, Walters and Briner had purchased an aggregate of 1,550,000 shares (1,250,000, 250,000 and 50,000 shares, respectively) of the company's common stock from the company for non-recourse promissory notes aggregating \$775,000. The Board of Directors authorized the cancellation of both the shares and the notes, reducing the company's outstanding common shares by 1,550,000.

2. **Stock Issuance.** Using a structure comparable to the structure utilized approximately a year ago, to better align the interests of management and the directors with the interests of the shareholders and to provide a meaningful incentive to maximize shareholder values related to both the monetization of the Company's intellectual property assets and the new software initiative, the Board of Directors authorized the sale to management and the members of the Board of Directors of an aggregate of 3,150,000 shares of the company's common stock (250,000 for each nonemployee director, 2,000,000 for Richard Lang, 300,000 for Eric Walters and 100,000 for Colt Briner) at a price of \$.018 (payable half in cash and half by execution of a full recourse note) but subject to a permanent right of first refusal running to the company at a price which is \$.102 less than the price otherwise available, effectively providing a purchase price of \$.12. The last available public market price prior to the date of the April 11th Board Meeting was \$.085. The shares are further subject to an investment undertaking, restricting their marketability for at least a year. As a result of the stock cancellation referred to in item 4 above and the stock issuance referred to in this item, the company's outstanding shares will be increased by a net 1,600,000 shares, or approximately 4%.

3. Nonqualified Stock Option Plan. The Board of Directors adopted the Burst.com, Inc. 2009 Nonqualified Stock Option Plan, covering 4,000,000 shares of the company's common stock. No options have been granted under this plan as of the date of this Report, but it is anticipated that options would be granted in the immediate future, subject to certain milestone-based vesting requirements. It is the intent of the Board of Directors to grant options under the plan as a meaningful incentive to the persons whose contributions will be most critical to the success of the software initiative and to structure the options so that their value can most likely only be realized if, and to the extent that, the software initiative is successful. To implement this intent, the Board of Directors unanimously voted to grant options under the plan to purchase 3,300,000 shares that "cliff vest" at five years from the date of grant, with acceleration upon the achievement of stated milestones, so long as the optionee is, at the time of exercise, still providing services to the company, though that provision may be waived by the Board of Directors for good cause shown; the options are exercisable at \$.25 per share so that they do not benefit from the prior business activities of the company and will have value as a function of the success of the software initiative. The exercise price will be automatically reduced by the amount of any dividend paid prior to January 1, 2011.

4. Tax Refund. The company's new accountants identified a misclassification by the company's prior accounting firm. As a result, the company will be amending one or more prior California tax returns and claiming a tax refund in excess of \$720,000. Because of the size of the refund, the company expects that it may be anywhere from several months to a year before the refund is actually received. Although the amended return is being filed in accordance and compliance with applicable California law and the advice of the company's outside accounting firm, there can be no assurance that the State of California will not contest the company's amended return or that the refund will actually be received.

BURST.COM, INC.

Dated: April 27th, 2009

By /s/ Richard A. Lang

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Richard A. Lang  
Chairman, Chief Executive Officer and Chief Financial Officer

BURST.COM, INC.  
AND SUBSIDIARIES

Consolidated Financial Statements

December 31, 2008 and 2007

INDEPENDENT ACCOUNTANTS' REPORT

To the Stockholders of  
Burst.com, Inc. and Subsidiary  
Santa Rosa, California

SUMMARY FINANCIALS TO FOLLOW

Complete Audited Financials Can be found on our website: [www.burst.com](http://www.burst.com)