

1844(A)(5)

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44-1844 (5)

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
(602) 542-4242

October 22, 1990

Debra L. Osborn, Esq.  
Freeborn & Peters  
11 South LaSalle Street  
Chicago, Illinois 60603

RE: Information Resources, Inc.

Dear Ms. Osborn:

We are unable to concur with your conclusion that the stock distribution planned by Information Resources Inc. is not an "offer to sell" or a "sale" as defined in Section 44-1801(10) and (16). The Division's position remains that such a distribution is "for value" and would require registration.

However, on the basis of the facts set forth in your letter of July 30, 1990, regarding an exemption from registration under Section 44-1844(5) and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have enclosed a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS  
Director of Securities

DRH:KR:ww

Enclosure

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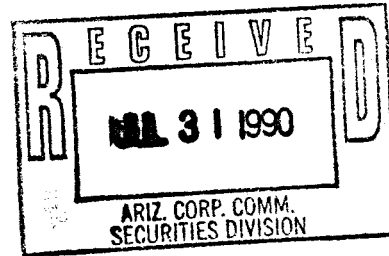
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July 30, 1990

## BY FEDERAL EXPRESS

Ms. Dee R. Harris, Director  
Securities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007



Re: Request for Interpretive Opinion and/or No Action Letter

Dear Ms. Harris:

We are acting as counsel to Information Resources, Inc. ("IRI") in connection with the proposed distribution by it (the "Distribution") of all of the issued and outstanding shares of common stock of VideOcart, Inc. ("VideOcart"), a newly formed Delaware corporation, to each of IRI's stockholders holding shares of IRI common stock (the "IRI Stock") on the record date for the Distribution (the "Distribution Record Date").

VideOcart is currently a wholly-owned subsidiary of IRI, which at the time of the Distribution will hold and operate IRI's business activities relating to the VideOcart Business (as defined below) and the businesses of IRI's wholly-owned Australian subsidiaries, IRAUS Pty. Limited ("IRAUS") and Appollo Information Resources Pty. Limited ("AIR") (collectively the "Australian Business"). The VideOcart Business consists of the development of VideOcart<sup>TM</sup> which is a computerized display and information device attached to grocery store shopping carts and the sale of advertising and promotional messages on VideOcart<sup>TM</sup> (the "VideOcart Business"). The Australian Business involves the sale of decision support services software and supermarket shelf space management software, in addition to the performance of related consulting and information services. The IRI Stock is currently registered under the Securities Exchange Act of 1934, as amended (the "1934 Act") pursuant to Section 12(g) thereof. IRI has been a reporting company under the 1934 Act and has been filing the required periodic and other reports required thereby with the Securities and Exchange Commission ("SEC") since 1983. The IRI Stock is currently included in and traded on the National Market System of the National Association of Securities Dealers Automated Quotation System ("NASDAQ").

On behalf of our client, we respectfully request that the Securities Division of the Arizona Corporation Commission (the "Division") concur in our conclusion that (i) the proposed distribution of all of the outstanding shares of VideOcart common stock, \$.01 par value per share (the "VideOcart Stock"), will not constitute an "offer to sell" or "sale" of securities as such terms are defined in Sections 44-1801(10) and (16) of the Securities Act of Arizona (the "Act"), and therefore does not require registration under the Act; or (ii) the transaction contemplated by the Distribution and the distribution of the VideOcart Stock are exempt from registration under the Act pursuant to Section 44-1844(5) of the Act, which section exempts from registration "a distribution by a corporation of capital stock or other securities to its stockholders . . . as a stock dividend or other distribution out of retained earnings".

The Proposed Transaction. VideOcart was incorporated under the laws of the State of Delaware on December 8, 1989, and has been formed in connection with and for the purposes of consummating the Distribution. It is presently a wholly-owned subsidiary of IRI. IRI intends to distribute to its stockholders all of the issued and outstanding shares of the VideOcart Stock in a tax-free distribution under Section 355 of the Internal Revenue Code of 1986, as amended. The Distribution will be treated for accounting purposes as being paid out of IRI's retained earnings or surplus.

The Distribution will be made pursuant to the terms and conditions of a Reorganization Agreement and Plan of Distribution (the "Distribution Agreement"). The Distribution Agreement will provide for, among other things, the contribution by IRI to VideOcart (and the corresponding assumption by VideOcart) of the VideOcart Business and the Australian Business. In exchange for the contribution by IRI, VideOcart will issue to IRI additional shares of VideOcart Stock sufficient in number to consummate the Distribution as contemplated by the Distribution Agreement. In addition to describing the reorganization steps involving IRI and VideOcart, the Distribution Agreement will provide for other agreements of IRI and VideOcart relating to their ongoing relationship after the Distribution. The effect of the reorganization and the resulting Distribution will be the creation of two publicly-held companies rather than one.

The Distribution will be made to stockholders of record of IRI on the Distribution Record Date (other than stockholders who waive their right to the dividend; in that regard, one IRI stockholder holding approximately 4.9% of the outstanding IRI stock has elected not to participate in the Distribution and has, accordingly, waived its right to receive shares of VideOcart Stock in the Distribution). On the date of the Distribution (the "Distribution Date"), all shares of VideOcart Stock owned by IRI (representing 100% of the outstanding VideOcart Stock) will be delivered to the Distribution agent (the "Distribution Agent") for distribution to the IRI stockholders. Each share of VideOcart Stock will also represent one Preferred Stock Purchase Right of VideOcart. The Distribution will be on a basis of one share of VideOcart Stock for every two shares of

IRI Stock held on the Distribution Record Date. All shares of the VideOcart Stock will be fully paid and non-assessable. No holder of IRI Stock will be required to pay any cash or other consideration for shares of VideOcart Stock received in the Distribution or surrender or exchange shares of IRI Stock in order to receive shares of the VideOcart Stock. The Distribution will not effect the number of outstanding shares of IRI Stock or the rights attaching to such shares.

No certificates or scrip representing fractional shares of the VideOcart Stock will be issued to IRI stockholders as part of the Distribution. In lieu of receiving fractional shares, each holder of IRI Stock who would otherwise be entitled to receive a fractional share of the VideOcart Stock will receive cash for such fractional interest. The Distribution Agent will, as soon as practicable after the Distribution Date, aggregate and sell all fractional interests of the VideOcart Stock on NASDAQ at the then prevailing market prices and distribute the net proceeds (after deduction of brokerage fees) to stockholders entitled thereto.

The plan of Distribution is not required to be submitted to the stockholders of IRI for their approval under either the laws of Delaware, where IRI is incorporated, or under its Certificate of Incorporation. Consequently, IRI stockholders will not have the right to approve or disapprove the plan of Distribution.

The Distribution is subject to the receipt and continuing effectiveness of either (i) a private letter ruling from the Internal Revenue Service or (ii) a legal opinion from IRI's tax counsel, relating to the federal tax consequences of the Distribution. In addition, the Distribution is subject to the effectiveness of the VideOcart Form 10 Registration Statement (the "Registration Statement"), to be filed with the SEC with respect to the registration of the VideOcart Stock under the 1934 Act. This precondition cannot be waived by IRI's Board of Directors. The Distribution is also subject to various other conditions the fulfillment of which may be waived by IRI's Board of Directors.

IRI believes that the Distribution would accomplish a number of business objectives. The principal business of IRI has historically been focused on one discrete line of services, while the principal business to be operated by VideOcart has only recently been developed and raises potential conflicts of interest among IRI, VideOcart and their customers. Further, the full scale introduction of the products to be developed by VideOcart will require substantial additional capital which, if raised through IRI, could have a substantial dilutive effect on IRI's stockholders.

IRI's Board of Directors has concluded that other factors favor the division of the operations of IRI and VideOcart into separate corporations. The Distribution is intended to increase the long-term value of IRI stockholders' investment through the realization by IRI and VideOcart of a number of important benefits. The Distribution will allow management of each of IRI and VideOcart to more completely focus their

time and effort on their respective businesses and make strategic planning and financial decisions based on factors which are more clearly relevant to their respective businesses. In addition, the separation of VideOcart from IRI will provide securities analysts, investors and lenders with a clearer basis on which to analyze the respective operations of each of the two ongoing companies, and will enhance the ability of capital markets to better assess the value of different technological developments reflected in the companies' respective products. The Distribution will leave IRI's current stockholders with investments in two separate businesses, which the IRI Board believes can be more accurately valued on the basis of their respective achievements and prospects. At the same time, the Distribution will let stockholders direct their investment to the areas of their primary interest.

In addition to the above described benefits, the Distribution will facilitate paying management of IRI and VideOcart compensation and incentives more directly related to their own performance. The Distribution is also expected to allow each company to more effectively recruit key personnel by offering top positions in a publicly held company rather than a position in a subsidiary or division of a corporate group dominated by a much larger company.

Proposed Disclosure Regarding the Distribution. In connection with the Distribution, IRI will prepare and distribute to its stockholders as of the Distribution Record Date an information statement (the "Information Statement") containing information about VideOcart, the Distribution and related matters, substantially similar to that which would be required in connection with the registration of the VideOcart Stock pursuant to the Securities Act of 1933, as amended (the "1933 Act"), on a Form S-1 Registration Statement. In addition, the VideOcart Stock will be registered by VideOcart under the 1934 Act on Form 10 which form requires a complete description of the proposed transaction, the business and management of VideOcart and detailed historical and pro forma financial statements and other financial information relating to VideOcart. The Registration Statement will have been filed and declared effective by the SEC prior to the Distribution Date.

Analysis. We believe there are several legal and policy reasons why the Division should either (i) concur that the Distribution would not constitute a "sale" or "offer to sell" the VideOcart Stock under the applicable provisions of the Act, and therefore that registration under the Act of such stock would not be required or (ii) that the Distribution qualifies for an exemption from the registration provisions of the Act pursuant to Section 44-1844(5) of the Act.

Sections 44-1801(10) and (16) of the Act define "sale" and "offer to sell" in relevant part, as every disposition or offer to dispose of a security for value. We believe, however, that a stock distribution of a security in the nature of the Distribution does not constitute the "sale" or "offer to sell" of a security because, among other reasons, there

would be no disposition of securities for value and no investment decision will be made by the stockholders of IRI. IRI stockholders will not provide any consideration to IRI in exchange for the shares of VideOcart Stock they would receive.

IRI stockholders will be receiving a security which represents certain assets of IRI which have been spun-off to VideOcart, and such stockholders will have had continuous access to information relating to the spun-off assets (i.e. IRI before, and IRI/VideOcart after, the Distribution), we believe, therefore, that the transaction does not fall within the definition of a "sale" or "offer to sell". Prior to the Distribution, IRI will have been subject to the 1934 Act and, as a result, will have provided the ongoing and periodic disclosures required of such a reporting company. Immediately following the Distribution, the stockholders will continue to receive the disclosures required by a 1934 Act company for both IRI and VideOcart. At all times, both before and after the Distribution, the stockholders will have available to them adequate public information regarding their investment in IRI and VideOcart.

As noted above, IRI intends to provide its stockholders with an Information Statement which will include required historical and proforma financial information and other information concerning VideOcart and its management, and the Distribution. The Information Statement will include information which is in substantial compliance with the requirements of Regulation 14C under the 1934 Act and the distributed VideOcart Stock will be registered under Section 12(g) of the 1934 Act. The disclosures required by the Information Statement and the Registration Statement are substantially similar to that which would be provided in a registration statement relating to VideOcart under the 1933 Act. Information provided to stockholders residing in Arizona in an offering registered under the Act would not meaningfully or materially increase the information already provided, or to be provided, by IRI's 1934 Act reports and filings and in the future by the reports and filings of IRI and VideOcart filed with the Commission and provided to their respective stockholders. Registration under the Act will therefore, provide no additional benefits to stockholders.

Finally, we believe that the distribution meets the requirements of an exempt transaction under Section 44-1844(5) of the Act. This exemption applies to transactions involving a "distribution by a corporation of capital stock or other securities to its stockholders . . . as a stock dividend or other distribution out of retained earnings." We have been informed by the accountants for IRI that the Distribution will be treated as a distribution from the retained earnings of IRI, and therefore, we believe that this exemption from registration should apply to the Distribution.

Conclusion. In conclusion, it is our view that (i) the Distribution will not constitute a "sale" under the Act and, therefore, would not require registration thereunder and (ii) that the distribution of the VideOcart Stock as described herein would be

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exempt from registration under Section 44-1844(5) of the Act. We urge the Division to concur in this view.

The distribution of VideOcart Stock to IRI stockholders has not commenced and it is anticipated that such distribution will not occur until August or September of 1990. We ask, however, that because of the time schedule, that the Division provide us with a response as soon as possible.

A firm check in the amount of \$200.00 has been enclosed as payment of the required fee. We would be pleased to provide any additional information necessary or to respond to any questions you might have. If you are unable to concur with the conclusion herein stated without additional discussion or information, please call me directly ((312) 750-9508) prior to any written response.

Very truly yours,



Debra L. Osborn

DLO/nks