

# MIVA, INC.

## FORM 10-K/A (Amended Annual Report)

Filed 04/07/09 for the Period Ending 12/31/08

Address	5220 SUMMERLIN COMMONS BLVD N/A FORT MYERS, FL 33907
Telephone	(239) 561-7229
CIK	0001094808
Symbol	MIVA
SIC Code	7389 - Business Services, Not Elsewhere Classified
Industry	Computer Services
Sector	Technology
Fiscal Year	12/31

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form 10-K/A**

(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, 2008**

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: 0-30428**

**MIVA, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**88-0348835**

(I.R.S. Employer  
Identification No.)

**5220 Summerlin Commons Blvd  
Fort Myers, Florida 33907**

(Address of principal executive offices,

including zip code)

**(239) 561-7229**

(Registrant's telephone number,  
including area code)

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

Title of Each Class:  
Common Stock, par value \$0.001 per share

Name of Each Exchange on which Registered:  
The NASDAQ Stock Market LLC

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 the filing requirements for at least the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and no disclosure will 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, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller reporting company)

Smaller reporting company

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

The aggregate market value of the Registrant's common equity held by non-affiliates of the Registrant was approximately \$35.2 million on June 30, 2008.

There were 35,069,239 shares of the Registrant's Common Stock outstanding on February 28, 2009.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Registrant's Definitive Proxy Statement for the 2009 Annual Meeting of Stockholders are incorporated by reference in Part III.

---

---

---

### **Explanatory Note**

MIVA, Inc. is amending its Annual Report on Form 10-K (the "Report") for its fiscal year ended December 31, 2008 filed with the Securities and Exchange Commission on March 31, 2009. This amendment is being made to correct a typographical error, which inadvertently omitted brackets on the net cash (used in) operating activities of \$(24,857) for the year ended December 31, 2008, on our Consolidated Statements of Cash Flows within Item 8, which is being re-filed herein. The Certifications of the Chief Executive Officer and Chief Financial Officer, which were previously filed as Exhibits 31.1, 31.2, 32.1 and 32.2, respectively, with the Report are being re-filed herewith pursuant to Regulation Section 240.12b-15 of the Securities and Exchange Commission. Additionally, the Power of Attorney, which was previously filed as Exhibit 24.1 with the Report is being re-filed herewith. All such exhibits are filed as part of and incorporated by reference into the Report.

---

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.**

See index to Consolidated Financial Statements table of contents located on page 55.

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.****Exhibits**

The following exhibits are filed as part of and incorporated by reference into this report:

<b>Exhibit No.</b>	<b>Footnote</b>	<b>Description</b>
24.1		Power of Attorney.
31.1		Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2		Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1		Certification of Chief Executive Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.
32.2		Certification of Chief Financial Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### MIVA, INC.

Date: April 7, 2009

By:           /s/ PETER A. CORRAO

*President and Chief Executive Officer*

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the registrant and in the capacities indicated on the 7<sup>th</sup> day of April 2009.

Signature

Title

          /s/ PETER A. CORRAO

Peter A. Corrao

President, Chief Executive Officer, and Director  
(principal executive officer)

          /s/ MICHAEL CUTLER

Michael Cutler

Chief Financial Officer  
(principal financial and accounting officer)

          \*/s/ LAWRENCE WEBER\*

Lawrence Weber

Chairman of the Board of Directors

          \*/s/ GERALD W. HEPP\*

Gerald W. Hepp

Director

          \*/s/ JOSEPH P. DURRETT\*

Joseph P. Durrett

Director

          \*/s/ ADELE GOLDBERG\*

Adele Goldberg

Director

          \*/s/ LEE S. SIMONSON\*

Lee S. Simonson

Director

          \*/By: /s/ PETER A. CORRAO

Attorney-in-Fact

## Index of Exhibits

The following exhibits are filed as part of and incorporated by reference into this report:

<b>Exhibit No.</b>	<b>Footnote</b>	<b>Description</b>
24.1		Power of Attorney.
31.1		Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2		Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1		Certification of Chief Executive Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.
32.2		Certification of Chief Financial Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.

## INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

	<u>Page</u>
Consolidated Financial Statements:	
Report of Independent Registered Public Accounting Firm	56
Consolidated Balance Sheets as of December 31, 2008 and 2007	57
Consolidated Statements of Operations for each of the two years in the period ended December 31, 2008	58
Consolidated Statements of Stockholders' Equity for each of the two years in the period ended December 31, 2008	59
Consolidated Statements of Cash Flows for each of the two years in the period ended December 31, 2008	60
Notes to Consolidated Financial Statements	61
Financial Statement Schedules:	
Valuation and Qualifying Accounts for each of the two years in the period ended December 31, 2008	89
All other schedules are omitted because they are not applicable or the required information is shown in the Consolidated Financial Statements or Notes thereto	

## Report of Independent Registered Public Accounting Firm

Board of Directors and Stockholders  
MIVA, Inc.  
Fort Myers, Florida

We have audited the accompanying consolidated balance sheets of MIVA, Inc. (the "Company") as of December 31, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity and comprehensive income (loss), and cash flows for each of the two years in the period ended December 31, 2008. In connection with the audits of the consolidated financial statements, we have also audited the financial statement schedule listed in the accompanying index. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements and schedule are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements and schedule. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of MIVA, Inc. at December 31, 2008 and 2007, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2008, in conformity with accounting principles generally accepted in the United States of America.

Also, in our opinion, the schedule, when considered in relation to the consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

Miami, Florida  
March 31, 2009

/s/ BDO Seidman, LLP  
Certified Public Accountants

MIVA, Inc.

CONSOLIDATED BALANCE SHEETS

(in thousands, except par values)

	December 31, 2008	December 31, 2007
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 6,699	\$ 29,905
Accounts receivable, less allowances of \$1,242 and \$723 at December 31, 2008 and 2007	11,204	14,421
Deferred tax assets	167	751
Income tax receivable	247	—
Prepaid expenses and other current assets	1,584	2,027
<b>TOTAL CURRENT ASSETS</b>	<u>19,901</u>	<u>47,104</u>
Property and equipment, net	4,975	2,745
Restricted cash	2,000	—
<b>Intangible assets</b>		
Goodwill	—	14,743
Vendor agreements, net	—	1,318
Other intangible assets, net	—	4,038
<b>Other assets</b>	<u>703</u>	<u>1,109</u>
<b>TOTAL ASSETS</b>	<u>\$ 27,579</u>	<u>\$ 71,057</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 6,609	\$ 11,957
Accrued expenses	9,620	14,844
Current portion of long-term debt	783	—
Deferred revenue	1,914	3,427
<b>TOTAL CURRENT LIABILITIES</b>	<u>18,926</u>	<u>30,228</u>
Deferred tax liabilities long-term	167	751
Long-term debt	4,595	—
Other long-term liabilities	1,305	1,237
<b>TOTAL LIABILITIES</b>	<u>24,993</u>	<u>32,216</u>
<b>STOCKHOLDERS' EQUITY</b>		
Preferred stock, \$.001 par value; authorized, 500 shares; none issued and outstanding	—	—
Common stock, \$.001 par value; authorized, 200,000 shares; issued 34,480 and 33,934, respectively; outstanding 32,731 and 32,204, respectively	34	34
Additional paid-in capital	268,841	265,721
Treasury stock; 1,749 and 1,730 shares at cost, respectively	(6,719)	(6,694)
Accumulated other comprehensive income	12,393	6,294
Accumulated Deficit	(271,963)	(226,514)
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<u>2,586</u>	<u>38,841</u>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<u>\$ 27,579</u>	<u>\$ 71,057</u>

The accompanying notes are an integral part of these consolidated statements.

MIVA, Inc.

CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)

	For the Years Ended December 31,	
	2008	2007
Revenues	\$ 116,363	\$ 151,050
Cost of services	57,428	71,671
Gross profit	58,935	79,379
Operating expenses		
Marketing, sales, and service	37,090	47,798
General and administrative	30,331	33,691
Product development	4,921	5,914
Amortization	2,211	4,826
Impairment loss on goodwill and other assets	18,725	20,134
Restructuring Charges	4,165	2,820
Litigation settlements	1,683	1,312
Total operating expenses	99,126	116,495
Loss from operations	(40,191)	(37,116)
Interest income	293	640
Interest expense	(71)	(62)
Exchange rate gain (loss)	(5,433)	157
Loss before provision for income taxes	(45,402)	(36,381)
Income tax expense (benefit)	(343)	557
Net loss from continuing operations	(45,059)	(36,938)
Income (loss) from discontinued operations	(394)	403
Net loss	\$ (45,453)	\$ (36,535)
Basic Earnings (loss) per share		
Continuing operations	\$ (1.38)	\$ (1.15)
Discontinued operations	\$ (0.01)	\$ 0.01
Diluted Earnings (loss) per share		
Continuing operations	\$ (1.38)	\$ (1.15)
Discontinued operations	\$ (0.01)	\$ 0.01
Weighted-average number of common shares outstanding		
Basic	32,621	31,935
Diluted	32,621	31,935

The accompanying notes are an integral part of these consolidated statements.

MIVA, Inc.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND  
COMPREHENSIVE INCOME (LOSS)

(in thousands)

	For the Year Ended December 31,	
	2008	2007
<b>Common stock</b>		
Balance, beginning of year	\$ 34	\$ 33
Common stock issued related to stock option and warrant exercises	—	1
Balance, end of year	\$ 34	\$ 34
<b>Additional paid-in-capital</b>		
Balance, beginning of year	\$ 265,721	\$ 259,353
Common stock issued related to stock option and warrant exercises	—	2,275
Compensation charge related to restricted stock unit issuance and non-employee options	3,120	4,093
Balance, end of year	\$ 268,841	\$ 265,721
<b>Treasury stock</b>		
Balance, beginning of year	\$ (6,694)	\$ (4,744)
Treasury stock received to satisfy accrued liabilities	(25)	(1,950)
Balance, end of year	\$ (6,719)	\$ (6,694)
<b>Accumulated deficit</b>		
Balance, beginning of year	\$(226,514)	\$(189,281)
Equity Transition Adjustment	4	(698)
Net loss	(45,453)	(36,535)
Balance, end of year	\$(271,963)	\$(226,514)
<b>Accumulated other comprehensive income</b>		
Balance, beginning of year	\$ 6,294	\$ 5,548
Foreign currency translation adjustment	6,099	746
Balance, end of year	\$ 12,393	\$ 6,294
Stockholders' Equity	\$ 2,586	\$ 38,841
<b>Comprehensive loss</b>		
Net loss	\$ (45,453)	\$ (36,535)
Other comprehensive income foreign currency translation	6,099	746
Comprehensive loss	\$ (39,354)	\$ (35,789)

	Number of Shares	
<b>Common stock</b>		
Balance, beginning of year	33,934	32,805
Common stock issued related to stock option and restricted stock unit issuances	546	1,129
Balance, end of year	34,480	33,934

The accompanying notes are an integral part of these consolidated statements.

MIVA, Inc.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

	Year ended December 31,	
	2008	2007
<b>Cash Flows from Operating Activities</b>		
Net loss	\$(45,453)	\$(36,535)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities		
Provision for (recovery of) doubtful accounts	804	(107)
Depreciation and amortization	4,069	9,414
Impairment loss on goodwill and other assets	18,725	20,134
Equity based compensation	3,120	4,093
Gain on disposal of discontinued operations	—	(160)
Gain on sale of assets	(75)	(45)
Changes in operating assets and liabilities		
Accounts receivable	1,764	6,920
Prepaid expenses and other current assets	1,226	(313)
Income taxes receivable	174	1,378
Deferred revenue	(1,221)	72
Accounts payable, accrued expenses and other liabilities	(7,990)	(3,756)
Net Cash (used in) provided by operating activities	<u>(24,857)</u>	<u>1,095</u>
<b>Cash Flows from Investing Activities</b>		
Proceeds from the sale of property and equipment	—	120
Proceeds from the sale of discontinued operations assets	—	200
Portion of secured line of credit—restricted	(2,000)	—
Purchase of capital items including internally developed software	(3,190)	(397)
Net Cash (used in) provided by investing activities	<u>(5,190)</u>	<u>(77)</u>
<b>Cash Flows from Financing Activities</b>		
Proceeds from secured line of credit	4,000	—
Payments to secure line of credit	(796)	—
Payments made on capital leases and notes payable	(476)	—
Payments made on software license obligation	—	(1,400)
Proceeds received from exercise of stock options and warrants	—	521
Net Cash (used in) provided by financing activities	<u>2,728</u>	<u>(879)</u>
Effect of Foreign Currency Exchange Rates	4,113	178
(Decrease) / Increase in Cash and Cash Equivalents	<u>(23,206)</u>	<u>317</u>
Cash and Cash Equivalents, Beginning of Year	29,905	29,588
Cash and Cash Equivalents, End of Year	<u>\$ 6,699</u>	<u>\$ 29,905</u>
<b>Supplemental Disclosures of Cash Flow Information:</b>		
Interest paid	<u>\$ 165</u>	<u>\$ 137</u>
Income taxes paid	<u>\$ 297</u>	<u>\$ 816</u>
<b>Supplemental Schedule of Noncash Investing and Financing Activities:</b>		
Treasury stock received to satisfy tax withholding liabilities	<u>\$ (25)</u>	<u>\$ (1,950)</u>
Purchase of capital items under capital lease obligation	<u>\$ 1,836</u>	<u>\$ —</u>

The accompanying notes are an integral part of these consolidated statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE A—NATURE OF BUSINESS

MIVA, Inc., together with its wholly-owned subsidiaries, collectively, the "Company", "we", "us" or "MIVA", is an online media and advertising network company.

In 2008 we offered a range of products and services through the following divisions:

*MIVA Direct*

MIVA Direct offers home page, desktop application and Internet browser toolbar products under the ALOT brand. Our customizable ALOT Home Page, ALOT Desktop and ALOT Toolbar are designed to make the Internet easy for consumers by providing direct access to affinity content and search results. These products generate over 2 million Internet searches per day.

*MIVA Media*

On March 12, 2009, we sold certain assets relating to our MIVA Media division. Following the sale, we no longer operate the MIVA Media business (see NOTE T—Subsequent Events). Our MIVA Media division was an auction based pay-per-click advertising and publishing network that operates across North America and Europe. MIVA Media connected millions of buyers and sellers online by displaying relevant and timely text ads in response to consumer search or browsing activity on select Internet properties. Such interactions between online buyers and sellers result in highly targeted, cost-effective leads for MIVA's advertisers and a source of recurring revenue for MIVA's publisher partners.

The majority of our revenue at MIVA Direct is generated through Internet search queries at our website. MIVA Direct products generate search queries to our website <http://search.alot.com>, where we provide algorithmic and sponsored search functionality to consumers through our contractual relationships with third-party providers.

For our MIVA Media division, which comprised a majority of our overall revenue in 2008, we derived our revenue primarily from online advertising by delivering relevant contextual and search ad listings to our third-party ad network and our consumer audiences on a performance basis. Marketers only paid for advertising when a predetermined action occurs, such as when an Internet user clicks on an ad.

NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Basis of Presentation**

These consolidated financial statements include the accounts and operations of MIVA, Inc. and our wholly-owned domestic and international operating subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation. Certain prior period amounts have been reclassified to conform to the current year presentation.

**Liquidity**

Despite the Company's negative operating performance in 2008 and 2007, we currently anticipate that our working capital of approximately \$8.3 million, including cash and cash equivalents of approximately \$12.4 million as of March 12, 2009, along with cash flows from operations will be sufficient, at a minimum, to meet our liquidity needs for working capital and capital expenditures over at least the next 12 months.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

In the future, we may seek additional capital through the issuance of debt or equity to fund working capital, expansion of our business and/or acquisitions, or to capitalize on market conditions. Our future liquidity and capital requirements will depend on numerous factors including the pace of expansion of our operations, competitive pressures, and acquisitions of complementary products, technologies or businesses. As we require additional capital resources, we may seek to sell additional equity or debt securities or look to enter into a new revolving loan agreement. The sale of additional equity or convertible debt securities could result in additional dilution to existing stockholders. There can be no assurance that any financing arrangements will be available in amounts or on terms acceptable to us, if at all. Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement that involves risks and uncertainties and actual results could vary materially as a result of the factors described above.

**Use of Estimates**

The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions in determining the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Significant estimates in these consolidated financial statements include estimates of: asset impairment; income taxes; tax valuation reserves; restructuring reserve; loss contingencies; allowances for doubtful accounts; share-based compensation; and useful lives for depreciation and amortization. Actual results could differ materially from these estimates.

**Revenue Recognition**

When a MIVA Direct user clicks on a sponsored advertisement on a partner's network, revenues are recognized in the amount of the partner's fee due to MIVA Direct. Non-click-through-related revenue from MIVA Direct is recognized when earned under the terms of the contractual arrangement with the advertiser or advertising agency, provided that collection is probable.

In our Media Division, revenue was generated primarily through click-throughs on our managed advertisers' paid listings. When an Internet user clicks on a keyword advertisement, revenue was recognized in the amount of the advertiser's bid price. Click-through revenue was recognized as the click-throughs were performed in accordance with the guidance of Emerging Issue Task Force No. 99-19, "Reporting Revenue Gross as a Principal Versus Net as an Agent." We recorded the MIVA Media Network click-through revenue gross, and private label revenue net.

**Cost of Services**

The Company's cost of services consists of revenue-sharing or other payments to our MIVA Media distribution partners and other directly related expenses associated with the production and usage of MIVA Media that includes our third party patent license royalty payments.

**Cash and Cash Equivalents**

Cash equivalents consist of highly liquid investments with original maturities of three months or less. We did not maintain a balance in short-term investments as of December 31, 2008 or 2007.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

**Allowance for Doubtful Accounts**

The Company records its allowance for doubtful accounts based on its assessment of various factors. The Company considers historical experience, the age of the accounts receivable balances, the credit quality of its customers, current economic conditions, and other factors that may affect our customers' ability to pay to determine the level of allowance required.

**Concentration of Credit Risk**

Financial instruments that potentially subject us to significant concentration of credit risk consist primarily of cash, cash equivalents, and accounts receivable. As of December 31, 2008, substantially all of our cash and cash equivalents were managed by a number of financial institutions. As of December 31, 2008 our cash and cash equivalents and restricted cash with certain of these financial institutions exceed FDIC insured limits. Accounts receivable are typically unsecured and are derived from revenue earned from customers primarily located in the United States and Europe. As of December 31, 2008, one customer (Google) accounted for approximately 21.8% of the accounts receivable balance and represented approximately 33.3% of consolidated revenues for 2008. This same customer, as of December 31, 2007, represented approximately 26.9% of the accounts receivable balance and approximately 28.4% of the consolidated revenues for 2007.

**Capitalized Software**

Product development costs for internal use software are expensed as incurred or capitalized into property and equipment in accordance with Statement of Position 98-1 "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use" ("SOP 98-1"). SOP 98-1 requires that costs incurred in the preliminary project and post-implementation stages of an internal use software project be expensed as incurred and that certain costs incurred in the application development stage of a project be capitalized. Capitalized costs are amortized over the estimated useful life of two to five years using the straight line method. During 2008 and 2007, the amortization of capitalized costs totaled approximately \$2.2 million and \$2.2 million, respectively.

**Fair Value of Financial Instruments**

At December 31, 2008, our financial instruments included cash and cash equivalents, accounts receivable, accounts payable, and other long-term debt, including approximately \$4.0 million under our credit facility with Bridge Bank that was entered into on November 7, 2008.

The fair values of these financial instruments approximated their carrying values based on either their short maturity or current terms for similar instruments.

**Advertising Costs**

Advertising costs are expensed as incurred, and are included in Marketing, Sales and Service expense. We incurred approximately \$27.8 million and \$34.1 million in advertising expense during 2008 and 2007, respectively. The majority of this was spent by MIVA Direct to promote its desktop consumer software product in 2008 and 2007.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

**Income Taxes**

Income taxes are accounted for in accordance with SFAS 109, *Accounting for Income Taxes*. Under SFAS 109, deferred income taxes are recognized for temporary differences between financial statement and income tax bases of assets and liabilities, loss carry-forwards, and tax credit carry-forwards for which income tax benefits are expected to be realized in future years. A valuation allowance is established to reduce deferred tax assets if it is more likely than not that all, or some portion, of such deferred tax assets will not be realized. See Note P—"Income Taxes" for additional information.

**Property and Equipment**

Equipment and furniture are stated at cost except in the case of items acquired as a part of business acquisitions, which are recorded at fair value on the date of acquisition. Equipment and furniture are depreciated using the straight-line method over the estimated useful lives for the respective assets, which range from two to five years. Depreciation expense consists of depreciation of computer equipment and furniture. Improvements to leased premises are capitalized and amortized over the shorter of the related lease term or the useful lives of the improvements, which periods range from three to ten years.

**Goodwill and Other Long-Lived Assets**

Our methodology for allocating the purchase price of acquisitions is based on established valuation techniques. Goodwill is measured as the excess of the cost of an acquired entity over the net of the amounts assigned to identifiable assets acquired and liabilities assumed. We account for goodwill and other indefinite lived intangible assets in accordance with SFAS No. 142, "*Goodwill and other Intangible Assets*." We perform goodwill and indefinite lived intangible asset impairment tests on an annual basis as of October 1st or more frequently in certain circumstances, if necessary. We compare the fair value of the reporting unit to its carrying amount including goodwill. If the carrying amount of a reporting unit exceeds the fair value, we perform an additional fair value measurement calculation to determine the impairment loss, which would be charged to operations.

We evaluate the recoverability of long-lived assets, including property and equipment, and certain identifiable intangible assets, whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Additionally, on an annual basis, we review the useful lives of these assets to ensure they remain appropriate. Factors considered important that could trigger an impairment review include significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the assets or the strategy for the overall business, significant decrease in the market value of the assets, an increase in competition or loss of affiliates, and significant negative industry or economic trends. For example, unexpected increases in customer or distribution partner churn could affect our assessment about the recoverability of our intangible assets. When we determine that the carrying amount of long-lived assets may not be recoverable based on the existence of one or more of the indicators, the assets are assessed for impairment based on the estimated future undiscounted cash flows expected to result from the use of the asset and its eventual disposition. If the carrying amount of a long-lived asset exceeds its estimated future undiscounted cash flows, an impairment loss is recorded for the excess of the asset's carrying amount over its fair value.

Goodwill, indefinite life, and long-lived asset impairment assessments are generally determined based on fair value techniques, including determining the estimated future discounted and undiscounted cash flows over the remaining useful life of the asset. Those models require estimates of future revenue, profits,

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

capital expenditures and working capital for each unit. We estimate these amounts by evaluating historical trends, current budgets, operating plans and industry data. Discounted cash flows are calculated using a discount rate determined by management to be commensurate with the risk inherent in the current business model. Determining the fair value of reporting units and goodwill includes significant judgment by management and different judgments could yield different results. If these estimates or their related assumptions change in the future, we might be required to record impairment charges for the assets.

**Share Based Compensation**

Effective January 1, 2006, we adopted the fair value recognition provisions SFAS 123(R), *Share-Based Payment*, using the modified-prospective-transition method. Under that transition method, compensation cost recognized in 2007 and 2008 includes: (a) compensation cost for all share-based payments granted prior to, but not yet vested as of January 1, 2006, based on the grant-date fair value estimated in accordance with the original provisions of SFAS 123(R); and (b) compensation cost for all share-based payments granted subsequent to January 1, 2006, based on the grant-date fair value estimated in accordance with the provisions of SFAS 123(R). In addition, in March 2005, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 107 ("SAB 107") relating to SFAS 123(R). We have applied the provisions of SAB 107 in our adoption of SFAS 123(R).

**Foreign Currency Translation**

MIVA Media Europe operated in several European countries and used the local currency of these international subsidiaries as the functional currency. The financial statements of these subsidiaries are translated into United States dollars using period-end rates of exchange for assets and liabilities and average rates of exchange for the period for revenues and expenses. Translation gains (losses) are recorded in other comprehensive income (loss) as a component of stockholders' equity.

**Operating Leases**

The Company leases office space and data centers under operating lease agreements with original lease periods up to 11 years. Certain of the lease agreements contain rent holidays and rent escalation provisions. Rent holidays and rent escalation provisions are considered in determining straight-line rent expense to be recorded over the lease term. The lease term begins on the date of initial possession of the lease property for purposes of recognizing lease expense on a straight-line basis over the term of the lease. Lease renewal periods are considered on a lease-by-lease basis and generally are not included in determining the initial lease term rent expense.

**New Accounting Pronouncements**

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "Business Combinations" ("SFAS 141(R)"). SFAS 141(R) establishes the principles and requirements for how an acquirer: (i) recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed and any noncontrolling interest in the acquiree; (ii) recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase; and (iii) determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS 141(R) is to be applied prospectively to business combinations consummated on or after the beginning of the first annual reporting period on or after December 15, 2008,

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

with early adoption prohibited. Previously any release of valuation allowances, for certain deferred tax assets would serve to reduce goodwill whereas under the new standard any release of the valuation allowance related to acquisitions currently or in prior periods will serve to reduce our income tax provision in the period in which the reserve is released. Additionally, under SFAS 141(R) transaction related expenses, which were previously capitalized as "deal cost", will be expensed as incurred. We have no capitalized deal costs or acquisitions pending at December 31, 2008, therefore, we do not expect to have any transition adjustments resulting from our adoption of SFAS 141(R) on January 1, 2009.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51" ("SFAS 160"). SFAS 160 establishes accounting and reporting standards that require (i) noncontrolling interests to be reported as a component of equity, (ii) changes in a parent's ownership interest while the parent retains its controlling interest to be accounted for as equity transactions, and (iii) any retained noncontrolling equity investment upon the deconsolidation of a subsidiary to be initially measured at fair value. SFAS 160 is effective for fiscal years and interim periods within those fiscal years, beginning on or after December 15, 2008, with early adoption prohibited. We do not expect the adoption of SFAS 160 to have a material effect on our financial position or results of operations.

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements," ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with accounting principles generally accepted in the United States, and expands disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007, with earlier application encouraged. In February 2008, the FASB deferred the effective date of SFAS 157 by one year for certain non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). On January 1, 2008, we adopted the provisions of SFAS 157, except as it applies to those nonfinancial assets and nonfinancial liabilities for which the effective date has been delayed by one year. The adoption of SFAS 157 did not have a material effect on our financial position or results of operations. The book values of cash and cash equivalents, accounts receivable and accounts payable approximate their respective fair values due to the short-term nature of these instruments.

NOTE C—DISCONTINUED OPERATIONS

*June 2008 MIVA Media—Italy*

On June 17, 2008, we initiated a restructuring plan in order to maximize efficiencies within the Company, eliminate certain unprofitable operations, and better position the Company for the future. In connection with this restructuring, the Company has closed the MIVA Media Italian operations and eliminated other redundant positions within the Company. As a result of this restructuring plan, we recorded in the quarter ended June 30, 2008, a total of \$0.2 million related to termination benefits and one-time charges in connection with winding down our Italian operations.

*August 2007—MIVA Small Business*

On August 1, 2007, we sold the assets, net of liabilities assumed, of our MIVA Small Business division for \$0.2 million. Our decision to divest our MIVA Small Business division was due primarily to inconsistencies between the division's products and services and the Company's current and future strategic plan. A gain of approximately \$0.16 million was recorded as a result of the sale.

**MIVA, Inc.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**NOTE C—DISCONTINUED OPERATIONS (Continued)**

In accordance with the provisions of SFAS No. 144 "Accounting for the Impairment or Disposal of Long-Lived Assets," ("SFAS 144") the financial data for our Italian and MIVA Small Business Operations have been accounted for as discontinued operations and, accordingly, these operating results are segregated and reported as discontinued operations in the accompanying consolidated statements of operations in all periods presented:

	<b>For the Year Ended December 31,</b>	
	<b>2008</b>	<b>2007</b>
Revenues	\$ 803	\$3,058
Gain on sale of discontinued operations	—	160
Income (loss) before provision for income taxes	(394)	403
Income tax expense	—	—
Income (loss) from discontinued operations	<u>\$(394)</u>	<u>\$ 403</u>

See NOTE T—Subsequent Events regarding the March 12, 2009 MIVA Media Sale.

**NOTE D—IMPAIRMENT OF GOODWILL, OTHER INTANGIBLES, AND LONG-LIVED ASSETS**

We have experienced significant impairment losses in 2008 and 2007.

During the fourth quarter of 2008, in connection with our annual impairment testing, we performed a step 1 impairment test of our two reporting units, Searchfeed and Miva Direct, with remaining recorded indefinite lived intangible assets and goodwill for potential impairment. The fair value estimates used in the initial impairment test were based on market approaches and the present value of future cash flows. As a result of this analysis, we determined that the estimated fair value of the reporting units exceeded their carrying values which could result in potential impairment. We then performed an assessment of the long-lived assets of our Searchfeed and MIVA Direct divisions and determined these assets were impaired under the provisions of SFAS No. 144. Accordingly, in the fourth quarter of 2008, we recorded approximately \$2.9 million in non-cash impairment charges to reduce the carrying value of the remaining long-lived tangible and intangible assets to their estimated fair values. We then performed a step 2 impairment test to determine if the remaining carrying values of recorded goodwill and other indefinite lived intangible assets in these divisions was impaired under the provisions of SFAS No. 142. The step 2 impairment test resulted in a non-cash impairment charge of \$14.7 million and \$1.1 million, respectively, to reduce the carrying value of goodwill and other indefinite lived intangible assets to their implied fair value. As a result of these impairment charges, the carrying value of all of the Company's goodwill and other indefinite lived intangible assets was reduced to zero as of December 31, 2008.

In the fourth quarter of 2007, as a result of continued operating losses related to our MIVA Media US business, we performed an impairment analysis to determine recoverability of the recorded long-lived assets of this division. As a result of this analysis, we determined that certain long-lived assets of our MIVA Media US division were impaired under the provisions of Financial Accounting Standards Board Statement No. 144 "Accounting for the Impairment or Disposal of Long-Lived Assets (SFAS 144)." Accordingly, during the fourth quarter of 2007 we recorded approximately \$4.7 million in non-cash impairment charges to reduce the carrying value of certain long-lived tangible and intangible assets to their estimated fair value.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**NOTE D—IMPAIRMENT OF GOODWILL, OTHER INTANGIBLES, AND LONG-LIVED ASSETS (Continued)**

In the second quarter of 2007 our revenue and earnings forecasts were updated for each of our divisions to reflect events that occurred during the quarter that changed our expected business prospects. Our MIVA Media Europe division's forecasts were particularly negatively affected by: the continuation of reduced traffic generated by our distribution partners; slower than anticipated deployment of new services; and other factors. As a result of these indicators, we performed a test to determine if the carrying amount of goodwill and other long-lived assets at MIVA Media Europe were impaired. The fair value estimates used in the initial impairment test were based on market approaches and the present value of future cash flows. These tests indicated that the carrying amount of MIVA Media Europe exceeded its fair value, and led us to conclude that goodwill could be impaired. We then performed a preliminary impairment test of long-lived assets, and a preliminary second step of the impairment analysis. As part of the two step analysis required, the implied fair value of goodwill was determined through the allocation of preliminary estimates of the fair value to the underlying assets and liabilities, and an estimated non-cash impairment charge of \$14.0 million was recorded to adjust the carrying value of goodwill to its preliminary estimated fair value. This non-cash charge was recorded at MIVA Media Europe and after this impairment charge, MIVA Media Europe has no remaining goodwill.

At the time of the filing of our 2007 second quarter Form 10-Q, the second step of the analysis had not been finalized, therefore, as discussed above, we recorded our best estimate of the impairment, at the time, \$14.0 million. The finalization of the impairment test of long-lived assets and the second step of the impairment analysis was completed in the third quarter of 2007, resulting in an additional impairment charge of \$1.4 million related to our long-lived assets in our MIVA Media Europe division. At December 31, 2007, the total remaining carrying value of the Company's goodwill and other intangible assets was \$20.1 million, representing those of our U.S. operations.

We will continue to assess the potential of impairment for other long-lived assets in future periods in accordance with SFAS 144. Should our business prospects change, and our expectations for acquired business be further reduced, or other circumstances that affect our business dictate, we may be required to recognize additional impairment charges.

**NOTE E—RESTRUCTURING AND MASTER SERVICES AGREEMENT**

**Restructuring—August 2008 United Kingdom, Germany, France, and Spain Operations**

On August 21, 2008, the Company initiated a restructuring plan that further consolidated the MIVA Media EU operations primarily in one office. The restructuring plan evolved to include a workforce reduction of approximately 40 employees, which involved cash payments totaling approximately \$2.1 million that is expected to be completed by April 2009. The restructuring plan resulted in the closure of our offices in Germany, reductions in headcount in our offices in Paris, Madrid and London, and exiting certain contractual relationships with third party contracts. In the quarter ended September 30, 2008 we recorded a restructuring charge of approximately \$2.7 million related to this restructuring program, which includes severance and related costs, legal fees, and other costs specific to the execution of this program. During the fourth quarter of 2008, we recorded additional charges of approximately \$0.5 million. These charges are consistent with this restructuring plan and primarily included severance and related costs, legal fees, and other costs specific to the execution of this program.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE E—RESTRUCTURING AND MASTER SERVICES AGREEMENT (Continued)

**Restructuring—June 2008**

On June 17, 2008, the Company initiated a restructuring plan in order to maximize efficiencies within the Company, eliminate certain unprofitable operations, and better position the Company for the future. The Company recorded a total of \$0.8 million in restructuring charges related to this action, excluding the approximate \$0.2 million included in the discontinued operations category related to the closure of our Italian operations. We have closed our MIVA Media Italian operations and eliminated other redundant positions within the Company. Management developed a formal plan that included the identification of a workforce reduction totaling 30 employees, which is expected to involve cash payments totaling approximately \$1.0 million, that was completed in February 2009.

**Restructuring—February 2008**

On February 19, 2008, the Company announced a restructuring plan aimed at continued reduction of the overall cost structure of the Company. The Company recorded \$0.1 million in restructuring charges related to this action, which was designed to align the cost structures of our U.S. and U.K. operations with the operational needs of these businesses. Management developed a formal plan that included the identification of a workforce reduction totaling 8 employees, all of which involved cash payments of approximately \$0.1 million made in the quarter ended June 30, 2008.

**Master Services Agreement and Transformation Project**

On May 11, 2007, the Company entered into a master services agreement (the "Master Services Agreement") with Perot Systems Corporation ("Perot Systems"), pursuant to which the Company outsourced certain of its information technology infrastructure services, application development and maintenance, MIVA Media US support services, and transactional accounting functions.

The Master Services Agreement had a term of 84 calendar months commencing June 1, 2007, unless earlier terminated or extended pursuant to its terms. Aggregate fees payable by the Company to Perot Systems under the Master Services Agreement were expected to be approximately \$41.8 million, but as a result of the August 2008 amendment to the Master Services Agreement described below, the total was reduced to approximately \$37.9 million. As of December 31, 2008, the Company incurred approximately \$12.6 million of operating expenses for services received under the agreement since the agreement's inception.

As a result of the Master Services Agreement, the Company's active employee base declined by approximately 50 employees and the full workforce reduction was completed in September 2007. Approximately 29 Company employees transitioned to become employees of Perot Systems as a result of this agreement.

With respect to the workforce reductions, the Company incurred total restructuring charges related to one-time employee severance (\$0.2 million) and related costs (\$0.3 million) of approximately \$0.5 million in the quarter ended June 30, 2007. These related costs were attributed to legal fees incurred as part of both the February 2007 and May 2007 restructuring plans.

On April 10, 2008, we entered into an approximate \$2.4 million software development statement of work with Perot Systems, pursuant to which the Company will pay Perot Systems to develop a new global advertiser and distribution partner application called the "Transformation Project". The Transformation Project involves the development and implementation of one enhanced consolidated global system to

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE E—RESTRUCTURING AND MASTER SERVICES AGREEMENT (Continued)

replace MIVA Media's existing Internet advertising management and distribution partner management systems. As of December 31, 2008, in connection with the Transformation Project, we have incurred approximately \$2.4 million of costs, including \$1.9 million of cost with Perot Systems, and \$0.5 million of internal development costs, all of which has been capitalized and will be amortized over the five year estimated useful life of the software once it is placed in service. This Transformation Project was sold in March 2009 as part of the MIVA Media Sale.

On August 26, 2008, we entered into an amendment to the Master Services Agreement with Perot, which, among other things, allowed us to "in-source" certain functions (MIVA EU Information Technology functionality and administration and finance and accounting support). These changes took effect immediately and eliminated the related charges for those services without termination fees as called for in the original contract. In return, we agreed to a reduction in certain service level agreement ("SLA") requirements, the elimination of benchmarking pricing, a modified termination payment schedule, and a 10 day payment cycle for invoices.

The Company accounted for the services received under the Master Services Agreement using the guidance in AICPA Statement of Position 98-1 "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use" and EITF No. 97-13 "Accounting for Costs Incurred in Connection with a Consulting Contract or an Internal Project That Combines Business Process Reengineering and Information Technology Transformation".

See NOTE T—Subsequent Events regarding amendment of the Master Services Agreement.

**Restructuring—February 2007**

On February 8, 2007, the Company announced a restructuring plan aimed at reducing the overall cost structure of the Company. The Company initially recorded \$3.1 million (adjusted to \$2.8 million in the quarter ended June 30, 2007) in restructuring charges related to this action, which was designed to align the cost structures of our U.S. and U.K. operations with the operational needs of these businesses. Management developed a formal plan that included the identification of a workforce reduction totaling 56 employees, all of which involved cash payments of approximately \$0.5 million made in April 2007 and approximately \$0.5 million made by the end of April 2008.

The following reserve for restructuring is included in accrued expenses in the accompanying consolidated balance sheet as of December 31, 2008 and 2007 (in thousands):

	Employee		Total
	Severance	Other Charges	
Balance as of January 1, 2007	—	—	—
Restructuring charges in 2007	\$ 2.4	\$ 0.4	\$ 2.8
Adjustments in 2007	(0.3)	—	(0.3)
Cash payments in 2007	(2.0)	(0.4)	(2.4)
Balance as of December 31, 2007	<u>\$ 0.1</u>	<u>\$ —</u>	<u>\$ 0.1</u>
Restructuring charges in 2008	\$ 3.0	\$ 1.1	\$ 4.1
Adjustments in 2008	(0.1)	(0.2)	(0.3)
Cash payments in 2008	(1.9)	(0.4)	(2.3)
Balance as of December 31, 2008	<u>\$ 1.1</u>	<u>\$ 0.5</u>	<u>\$ 1.6</u>

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**NOTE E—RESTRUCTURING AND MASTER SERVICES AGREEMENT (Continued)**

All actions under the February 8, 2007, restructuring plan, other than cash payments, were completed by May 31, 2007. All cash payments with respect to the May 11, 2007, restructuring plan were completed by April 30, 2008. All actions under the February 19, 2008, restructuring plan were completed by March 31, 2008. All actions under the June 17, 2008, restructuring plan were completed by January 31, 2009. All actions under the August 21, 2008, restructuring plan are expected to be completed by April 2009.

The Company accounted for and reported our restructuring plans using the guidance in the following: (i) SFAS No. 144, (ii) EITF 03-13, " *Applying the conditions in Paragraph 42 of FASB Statement No. 144 in Determining Whether to Report Discontinued Operations* ", (iii) SFAS No 112, " *Employer's Accounting for Postemployment Benefits* ", and (iv) SFAS 146, " *Accounting for Costs Associated with Exit or Disposal Activities* " .

**NOTE F—ACCOUNTING FOR SHARE-BASED COMPENSATION**

In 2008 and 2007, the Company granted share-based compensation in the form of restricted stock units ("RSUs") to selected individuals within the management team. For the twelve months ended December 31, 2008, our total share-based employee compensation expense consisted of stock option expense of \$0.7 million and \$2.4 million in restricted stock unit expense. The RSU expense total includes approximately \$0.6 million in accelerated stock-based compensation expense resulting from the vesting of certain RSUs related to a former officer's resignation in August 2008. For the comparable period in 2007, the total share-based employee compensation expense was \$4.1 million. Of this amount \$1.6 million consisted of stock option expense and \$2.5 million related to restricted stock unit expense. Included within this 2007 total stock option expense is a net \$0.3 million in stock option expense that is recorded in restructuring expense as it relates to a terminated employee.

In June 1999, the Board of Directors adopted the 1999 Stock Incentive Plan and in June 2004 the Board of Directors adopted the 2004 Stock Incentive Plan and the EMI Replacement Option Plan. Awards permitted under the 1999 Plan and 2004 Plans consist of stock options (both qualified and non-qualified options), restricted stock awards, deferred stock awards, and stock appreciation rights. Under these plans, there were 9.2 million shares approved for issuance and, as of August 16, 2006, prior to consolidation with the 2006 Plan, there were 1.3 million shares available for equity awards under these prior plans.

At the Company's 2006 annual stockholders meeting, stockholders of the Company approved the 2006 Stock Award and Incentive Plan ("Plan"). The Plan, among other things, increased by 2.0 million the number of shares of common stock available for equity awards. Under the Plan, no further awards are to be granted under the 1999 Stock Incentive Plan and the 2004 Stock Incentive Plan, although any outstanding awards under those plans continue in accordance with their terms.

Collectively, as of December 31, 2008, there are approximately 1.5 million shares available for new equity awards after combining the shares of the 2006 Plan with the remaining shares of the superseded plans. Options issued to employees generally vest in a range of immediate vesting to up to four years vesting, and expire ten years following the grant date.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE F—ACCOUNTING FOR SHARE-BASED COMPENSATION (Continued)

Stock option activity under the plans during the years ended December 31, 2008 and 2007, are summarized below (in thousands, except per share amounts):

	Options	Weighted-Average Exercise Price
Options outstanding at December 31, 2006	3,969	7.36
Granted	—	—
Exercised	(909)	2.50
Forfeited	(528)	4.91
Expired	(593)	8.86
Options outstanding at December 31, 2007	<u>1,939</u>	<u>\$ 9.85</u>
Granted	—	—
Exercised	—	—
Forfeited	(310)	14.17
Expired	(53)	11.44
Options outstanding at December 31, 2008	<u>1,576</u>	<u>\$ 8.94</u>

The following table summarizes information as of December 31, 2008, concerning outstanding and exercisable stock options under the plans (in thousands, except per share amounts):

Range of Exercise Prices	Number Outstanding	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$ 1.00 - \$ 3.00	116	6.8	\$ 2.75	66	\$ 2.62
\$ 3.01 - \$ 6.00	1,029	6.4	4.87	808	4.87
\$ 6.01 - \$14.00	44	5.7	11.07	41	11.01
\$14.01 - \$23.14	387	5.4	21.38	387	21.39
	<u>1,576</u>	<u>6.2</u>	<u>\$ 8.94</u>	<u>1,302</u>	<u>\$ 9.86</u>

As of December 31, 2008, unrecognized compensation expense related to stock options totaled approximately \$0.2 million, which will be recognized over a weighted average period of approximately one year. The fair value of the stock options is estimated at the date of the grant using the Black-Scholes option-pricing model. No stock options were granted during the years ended December 31, 2008 or 2007.

In January 2008, we issued restricted stock units with service based vesting provisions (4 year vesting in equal increments), and market condition performance based restricted stock units that vest upon the Company's common stock reaching, and closing, at a share price at or exceeding \$4.00 per share, for ten consecutive trading days.

In January 2007, we issued restricted stock units with service based vesting provisions (4 year vesting in equal increments), and market condition performance based restricted stock units that: vest in equal tranches upon the Company's common stock reaching, and closing, at share prices at or exceeding \$6.00, \$8.00, \$10.00, and \$12.00, respectively, for ten consecutive trading days. In June 2007, all criteria was

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE F—ACCOUNTING FOR SHARE-BASED COMPENSATION (Continued)

satisfied for the \$6.00 tranche of restricted stock units and accordingly 86,412 shares attributable to the achievement of the \$6.00 performance criteria were issued.

The fair value of our service based restricted stock units is the quoted market price of the Company's common stock on the date of grant. Further, we utilize a Monte Carlo simulation model to estimate the fair value and compensation expense related to our market condition performance based restricted stock units. The Company recognizes stock compensation expense for options or restricted stock units that have graded vesting on the graded vesting attribution method.

New stock options granted and new restricted stock units granted, each with the related expenses for the years ended December 31, 2008 and 2007, are summarized below (in thousands):

	For the Year Ended December 31,	
	2008	2007
Stock options granted—new	—	—
Stock option expense—new	\$ —	\$ —
Restricted stock units—new	1,963	1,992
Restricted stock unit expense—new	\$1,081	\$1,481

For the years ended December 31, 2008 and 2007, the following assumptions were used in our performance based restricted stock units with market based conditions:

	For the Year Ended December 31,	
	2008	2007
Volatility	70.5%	69.3%
Expected life	10 yrs	10 yrs
Risk-free rate	4.03%	4.41% - 5.16%

The restricted stock unit ("RSU") activity for the years ended December 31, 2008 and 2007 are summarized below (in thousands):

	Total RSUs	Service Based RSUs	Performance based RSUs with Market based conditions				
			\$4.00	\$6.00	\$8.00	\$10.00	\$12.00
Balance, December 31, 2006	424	368	—	14	14	14	14
Granted	1,992	1,611	—	87	98	98	98
Vested	(379)	(292)	—	(87)	—	—	—
Forfeited	(448)	(362)	—	(14)	(24)	(24)	(24)
Expired	—	—	—	—	—	—	—
Balance, December 31, 2007	1,589	1,325	—	—	88	88	88
Granted	1,963	1,600	363	—	—	—	—
Vested	(729)	(729)	—	—	—	—	—
Forfeited	(567)	(397)	(110)	—	(20)	(20)	(20)
Expired	—	—	—	—	—	—	—
Balance, December 31, 2008	2,256	1,799	253	—	68	68	68

MIVA, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE G—PROPERTY AND EQUIPMENT

Property and equipment at December 31, 2008 and 2007 consisted of the following (in thousands):

	2008	2007	Estimated Useful Life
Technical equipment	\$ 17,864	\$ 18,851	3 years
Furniture	1,488	1,947	5 years
Leasehold improvements	826	1,112	10 years
Capitalized software	12,833	10,364	1 to 5 years
Subtotal	33,011	32,274	
Accumulated Depreciation & Amortization	(28,036)	(29,529)	
	<u>\$ 4,975</u>	<u>\$ 2,745</u>	

Depreciation expense was \$1.9 million and \$4.6 million for the years ended December 31, 2008 and 2007, respectively.

NOTE H—INTANGIBLE ASSETS

The balance in intangible assets at December 31, 2008, consists of the following (in thousands, except years):

	Gross Carrying Amount	Accumulated Amortization and Impairment	Net Carrying Amount	Weighted Average Useful Economic Life (Years)
Vendor agreements	\$ 2,707	\$ (2,707)	\$ —	3
Developed technology	8,776	(8,776)	—	4
Customer relationships	100	(100)	—	—
Other definite-lived intangibles	857	(857)	—	4
Indefinite-lived intellectual property	1,134	(1,134)	—	Indefinite
Goodwill	14,743	(14,743)	—	Indefinite
	<u>\$28,317</u>	<u>\$ (28,317)</u>	<u>\$ —</u>	

The balance in intangible assets as of December 31, 2007, consisted of the following (in thousands, except years):

	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Economic Life (Years)
Vendor agreements	\$ 2,707	\$ (1,389)	\$ 1,318	3
Developed technology	8,776	(6,245)	2,531	4
Customer relationships	100	(100)	—	—
Other definite-lived intangibles	961	(588)	373	4
Indefinite-lived intellectual property	1,134	—	1,134	Indefinite
Goodwill	14,743	—	14,743	Indefinite
	<u>\$28,421</u>	<u>\$ (8,322)</u>	<u>\$20,099</u>	

**MIVA, Inc.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**NOTE H—INTANGIBLE ASSETS (Continued)**

Amortization expense related to intangible assets was \$2.2 million and \$2.5 million for the years ended December 31, 2008 and 2007, respectively.

The carrying amount of goodwill at December 31, 2008 and 2007 consisted of the following (in thousands):

Balance as of January 1, 2007	\$ 28,566
Goodwill impairment	(14,006)
Foreign currency translation adjustments	183
Balance as of December 31, 2007	<u>\$ 14,743</u>
Goodwill impairment	(14,743)
Balance as of December 31, 2008	<u><u>\$ —</u></u>

At December 31, 2008, we have no intangible assets that are not subject to amortization.

All of the intangible assets were acquired in 2004 in connection with the acquisition or merger of MIVA Small Business, MIVA Direct, B&B Advertising and MIVA Media Europe. The weighted average useful economic life for all definite-lived intangibles is approximately four years. It is estimated that there will be no significant residual value for the intangible assets. The amortization associated with our intangible assets is not deductible for income tax purposes.

**NOTE I—ACCRUED EXPENSES**

Accrued expenses at December 31, 2008 and 2007 consisted of the following (in thousands):

	December 31,	
	2008	2007
Revenue-sharing agreements	\$4,146	\$ 5,493
Accrued compensation	1,777	1,843
Professional fees	1,198	1,960
Operating expenses	1,850	3,489
Value added tax payable	210	36
Other	439	2,023
	<u>\$9,620</u>	<u>\$14,844</u>

**NOTE J—PER SHARE DATA**

For the years ended December 31, 2008 and 2007, we incurred a net loss. Therefore, potentially dilutive shares (related to stock options and restricted stock units) are not included in the per share data, as they would have an anti-dilutive effect on net loss per share. Had we not recorded a net loss, the number of stock options excluded in the computation of diluted EPS and the range of exercise prices would have been: 2008—1.8 million shares at a price range of \$1.25 - \$23.14; and, 2007—1.6 million shares at a price range of \$4.37 - \$23.14.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE J—PER SHARE DATA (Continued)

The following is the number of shares used in the basic and diluted computation of loss per share (in thousands):

	For the Year Ended December 31,	
	2008	2007
Weighted-average number of common shares outstanding basic and diluted	32,621	31,935

## NOTE K—LITIGATION

## Shareholder Class Action Lawsuits

Beginning on May 6, 2005, five putative securities fraud class action lawsuits were filed against us and certain of our former officers and directors in the United States District Court for the Middle District of Florida. The complaints allege that we and the individual defendants violated Section 10(b) of the Securities Exchange Act of 1934 (the "Act") and that the individual defendants also violated Section 20(a) of the Act as 'control persons' of MIVA. Plaintiffs purport to bring these claims on behalf of a class of our investors who purchased our stock between September 3, 2003 and May 4, 2005.

Plaintiffs allege generally that, during the putative class period, we made certain misleading statements and omitted material information. Plaintiffs seek unspecified damages and other relief.

On July 27, 2005, the Court consolidated all of the outstanding lawsuits under the case style In re MIVA, Inc. Securities Litigation, selected lead plaintiff and lead counsel for the consolidated cases, and granted Plaintiffs leave to file a consolidated amended complaint, which was filed on August 16, 2005. We and the other defendants moved to dismiss the complaint on September 8, 2005.

On December 28, 2005, the Court granted Defendants' motion to dismiss. The Court granted Plaintiffs leave to submit a further amended complaint, which was filed on January 17, 2006. On February 9, 2006, Defendants filed a renewed motion to dismiss. On March 15, 2007, the Court granted in large part Defendants' motion to dismiss. On March 29, 2007, Defendants filed a motion for amendment to the March 15, 2007, order to include certification for interlocutory appeal or, in the alternative, for reconsideration of the motion to dismiss. On July 17, 2007, the Court (1) denied the motion for amendment to the March 15, 2007, order to include certification for interlocutory appeal and (2) granted the motion for reconsideration as to the issue of whether Plaintiffs pled a strong inference of scienter in light of intervening precedent. The Court requested additional briefing on the scienter issue, and on February 15, 2008, entered an Order dismissing one of the individual defendants from the lawsuit and limiting the claims that could be brought against another individual defendant. In addition, Plaintiffs previously had moved the Court to certify a putative class of investors, and Defendants had filed briefs in opposition thereto. On March 12, 2008, the Court entered an Order certifying a class of those investors who purchased the Company's common stock from February 23, 2005, to May 4, 2005. The Court also dismissed two of the proposed class representatives for lack of standing. Plaintiffs have served discovery requests on Defendants, and the discovery phase of the lawsuit is presently underway.

Regardless of the outcome, this litigation could have a material adverse impact on our results because of defense costs, including costs related to our indemnification obligations, diversion of management's attention and resources, and other factors.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**NOTE K—LITIGATION (Continued)**

**Derivative Stockholder Litigation**

On July 25, 2005, a shareholder, Bruce Verduyn, filed a putative derivative action purportedly on behalf of us in the United States District Court for the Middle District of Florida, against certain of our directors and officers. This action is based on substantially the same facts alleged in the securities class action litigation described above. The complaint is seeking to recover damages in an unspecified amount. By agreement of the parties and by Orders of the Court, the case was stayed pending the resolution of Defendants' motion to dismiss and renewed motion to dismiss in the securities class action. On July 10, 2007, the parties filed a stipulation to continue the stay of the litigation. On July 13, 2007, the Court granted the stipulation to continue the stay and administratively closed the case pending notification by plaintiff's counsel that the case is due to be reopened. Regardless of the outcome, this litigation could have a material adverse impact on our results because of defense costs, including costs related to our indemnification obligations, diversion of management's attention and resources, and other factors.

**Comet Systems, Inc.**

The agent for the former shareholders of Comet Systems, Inc., a company that merged with and into one of our subsidiaries in March 2004, filed a lawsuit against us in Delaware Chancery Court on March 13, 2007. In the suit the shareholders' agent contended that our calculation and payment of contingent amounts payable under the merger agreement were not correct and we contended that we calculated and paid the contingent amounts correctly. On October 22, 2008, the Court granted summary judgment to the plaintiff in the amount of \$1.7 million, pre-judgment interest in the amount of \$0.6 million, and reimbursement of attorney fees of \$0.1 million. After receiving summary judgment we entered into negotiations with the plaintiffs and reached a binding settlement agreement to pay a lesser amount. We agreed to pay \$1.875 million to resolve this dispute and made payment, in full, in December 2008.

**Bid For Position, LLC**

On December 13, 2007, a patent infringement case was filed in the United States District Court for the Eastern District of Virginia against AOL, Google, Microsoft, and us by Bid For Position, LLC. The complaint alleged that Bid For Position, LLC is the owner of U.S. Patent No. 7,225,151, which was issued on May 29, 2007, entitled "Online Auction Bid Management System and Method," ("the '151 patent") and further alleged that we infringed this patent. We settled the case in June 2008 without admitting any liability, and the case was dismissed on July 15, 2008.

**Lane's Gifts and Collectibles Litigation**

As previously disclosed we entered into an agreement with the plaintiffs to settle this case in January 2008 and received court approval in April 2008. Under the settlement agreement, all claims against us, including our indemnification obligations to a co-defendant, were dismissed without presumption or admission of any liability or wrongdoing. Pursuant to the agreement, we established a settlement fund of \$3,936,812, of which \$1,312,270 was accrued as litigation settlement expense as of December 31, 2007 and paid, in June 2008, for plaintiffs' attorneys' fees and class representative incentive awards, and the balance is in advertising credits relating to the class members' advertising spending with us during the class period. Advertising credits will be recorded as reductions to revenues in the periods they are redeemed. For the year ended December 31, 2008, approximately \$26,674 in advertising credits were redeemed.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**NOTE K—LITIGATION (Continued)**

**Other Litigation**

We are a defendant in various other legal proceedings from time to time, regarded as normal to our business and, in the opinion of management, the ultimate outcome of such proceedings are not expected to have a material adverse effect on our financial position or our results of operations.

No accruals for potential losses for litigation are recorded as of December 31, 2008, and although losses are possible in connection with the above litigation, we are unable to estimate an amount or range of possible loss, in accordance with SFAS 5, but if circumstances develop that necessitate a loss contingency being disclosed or recorded, we will do so. We expense all legal fees for litigation as incurred.

**NOTE L—DEBT**

On November 7, 2008, we entered into a Loan and Security Agreement with Bridge Bank. The Loan Agreement provides a revolving credit facility to the Company of up to \$10.0 million ("Facility"). Subject to the terms of the Loan Agreement, the borrowing base used to determine loan availability under the Facility is equal to 80% of the our eligible U.S. accounts receivable plus the lesser of \$3.5 million or 65% of eligible U.K. accounts receivable, with account eligibility measured in accordance with standard determinations. All amounts borrowed under the Facility are secured by a general security interest on the assets of the Company, including the Company's intellectual property, and a pledge of 65% of the outstanding shares of the Company's UK subsidiary, MIVA (UK) Limited. In addition, MIVA (UK) Limited and certain of the Company's domestic subsidiaries are guarantying the Company's obligations under the Facility, to be secured by general security interests in the assets of such companies. Except as otherwise set forth in the Loan Agreement, borrowings made pursuant to the Loan Agreement will bear interest at a rate equal to the greater of (i) 6.5% or (ii) the Prime Rate (as announced by Bridge Bank) plus 1.5%. The Facility expires on November 7, 2010, at which time all outstanding loan advances become due and payable. As of December 31, 2008, the effective interest rate was 6.5% and we had drawn approximately \$4.0 million, which is included in long-term debt within the consolidated balance sheet. Under the terms of the Loan Agreement, we are required to maintain in our account at Bridge Bank an amount equal to or greater than 50% of the funded loan balance.

The Loan Agreement contains certain covenants, including the following financial covenants: (i) minimum cash ratio, (ii) asset coverage ratio, (iii) Adjusted Earnings Before: Interest, Taxes, Depreciation, and Amortization ("AEBITDA"). At December 31, 2008, we believe we are in compliance with all covenants under the Loan Agreement. However, if we breach any of our covenants or are unable to comply with the required financial ratios under our Loan Agreement, the bank could elect to declare all borrowings outstanding under the Loan Agreement, together with any accrued interest and other fees, to be due and payable, as well as require us to apply all available cash to repay the amounts outstanding.

See Note T—Subsequent Events for information on a Consent and Amendment to The Loan and Security Agreement entered into on March 12, 2009.

**NOTE M—COMMITMENTS AND CONTINGENCIES**

In July 2005, we received payment of approximately \$1.3 million following our receipt of a favorable court judgment in a dispute with a Media EU distribution partner. The amount received, net of legal fees, was recorded as a deferred liability pending the appeal process. On May 22, 2008, we received notification

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE M—COMMITMENTS AND CONTINGENCIES (Continued)

the original court's decision was reversed. This decision called for MIVA to refund the \$1.3 million payment to the MIVA Media EU distribution partner. During the quarter ended December 31, 2008, we negotiated and settled this dispute for approximately \$0.7 million that was paid in this same period.

We have ongoing contractual cash payment obligations to our distribution partners. These payments are funded by payments from our advertisers for the paid click-through (visitors), delivered to them via our distribution partners. Agreements with certain distribution partners contain guaranteed minimum payments through November 2010.

We have minimum contractual payments as part of our royalty bearing non-exclusive license to certain Yahoo! patents payable quarterly through August 2010. In addition, we have ongoing royalty payments based on our use of those patents.

We have minimum contractual payments as part of the Perot Master Services Agreement and the Transformation Project as described in Note E—Restructuring and Master Services Agreement (See NOTE T—Subsequent Events regarding the amendment of the Master Services Agreement on February 1, 2009.)

*Operating Leases*

On September 30, 2008, we provided notice of termination for the operating lease agreements for both the Munich and Hamburg office locations. The Munich lease ends on December 31, 2009 and the Hamburg office lease expires on March 31, 2009. Additionally, on October 3, 2008, we provided notice to terminate the office lease for our Spain office, which is expected to expire on March 31, 2009.

On September 10, 2008, we entered into an operating lease agreement with an unrelated third party to lease work space for our London office for the term of 12 months commencing on December 1, 2008. The agreement includes a right to three month renewals. Base rent is approximately \$0.3 million per year.

On February 26, 2008, we entered into an agreement (the "Lease Amendment") amending the April 15, 2005 operating lease agreement for our London office. The Lease Amendment, among other items, provided each party with an early termination right to terminate the underlying Lease Agreement on or before December 31, 2008. We exercised this termination right and in accordance with the agreement received a one-time surrender premium of approximately \$0.4 million in the fourth quarter of 2008.

For the years ended December 31, 2008 and 2007, we recorded approximately \$0.8 million and \$2.8 million, respectively, as rent expense under operating leasing arrangements. Included in the 2008 total is approximately \$0.07 million of rent expense recorded in restructuring expense as it relates to lease agreements associated with the various restructuring plans, and approximately \$0.05 million included in discontinued operations as it relates to the Italian operations closure.

*Sublease Income*

During the fourth quarter of 2008, we entered into two separate and non-cancelable sublease agreements covering the remaining lease obligations periods in both Germany (Munich) and France (Paris) leases with unrelated third parties. The sublease payments are expected to be received ratably over the next 12 months.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE M—COMMITMENTS AND CONTINGENCIES (Continued)

In August 2007, we entered into a real estate sublease agreement with an unrelated party to sublease 20,171 square feet (approximately 50% of our space) in our office located in Fort Myers, Florida. The term of the sublease agreement commenced on August 17, 2007 and ends on November 30, 2012, unless certain conditions (as defined) are met for earlier termination.

*Capital Leases*

In September 2008, we entered into non-cancelable leases with unrelated third parties for software and related maintenance, and hardware, for our new Transformation Project. The total fair market value of this software was approximately \$1.0 million with a lease term of nineteen months. The software lease has an imputed interest rate of 9% with quarterly cash outlays of approximately \$0.2 million. The total fair market value of the hardware was approximately \$1.1 million with a lease term of three years. The hardware lease has an imputed interest rate of 12.0%. These leases were classified as capital lease obligations, are reported as long-term debt in our December 31, 2008, consolidated balance sheet, and represent non-cash investing and financing activities in our consolidated statement of cash flows for the year ended December 31, 2008. During 2008, we made cash payments, including interest, of approximately \$0.9 million on these lease obligations.

The following table summarizes our capital lease obligations as of December 31, 2008 and 2007 (in thousands):

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Software Lease Payments	728	—
Hardware Lease Payments	825	—
Less—Interest	(175)	—
Total debt	<u>\$1,378</u>	<u>\$—</u>
Current portion	783	—
Long-term debt	<u>\$ 595</u>	<u>\$—</u>

Interest expense related to these leases was approximately \$0.04 million in 2008.

As of December 31, 2008 our minimum contractual payment obligations for the commitments described herein are as follows (in thousands):

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>beyond</u>	<u>Total</u>
Perot Master Services Agreement	5,382	4,900	4,880	4,839	4,837	2,025	26,863
Operating Leases	1,989	1,557	1,464	1,411	517	1,130	8,068
Sublease Income	(652)	(565)	(480)	(442)	—	—	(2,139)
Capital Leases	899	428	226	—	—	—	1,553
Guaranteed Royalty Payments	800	400	—	—	—	—	1,200
Transformation Project	1,100	—	—	—	—	—	1,100
Distribution Partner Payments	252	26	—	—	—	—	278

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE M—COMMITMENTS AND CONTINGENCIES (Continued)

*Indemnification Agreements*

In the ordinary course of business, we may provide indemnification of varying scope and terms to advertisers, agencies, distribution partners, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of our breach of such agreements, services to be provided by us, or from intellectual property infringement claims made by third parties. In addition, we have entered into indemnification agreements with our directors and certain of our officers that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers. We have also agreed to indemnify certain former officers, directors and employees of acquired companies in connection with the acquisition of such companies. We maintain director and officer insurance, which may cover certain liabilities arising from our obligation to indemnify our directors, and officers and former directors, officers and employees of acquired companies, in certain circumstances. Generally, it is not possible to determine the maximum potential amount under these indemnification agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. Such indemnification agreements may not be subject to maximum loss clauses. Historically, we have not incurred material costs as a result of obligations under these agreements and we have not accrued any liabilities related to such indemnification obligations in our financial statements, except, however, in the fourth quarter of 2007 we accrued plaintiffs' attorney fees and class representative incentive awards of \$1,312,270 regarding the Lane's Gifts and Collectibles class action litigation, a portion of which expense was related to our indemnification obligation to a private label partner.

See NOTE T—Subsequent Events regarding some of the matters discussed above.

## NOTE N—SEGMENT INFORMATION

Historically, our merchant services segment did not meet the quantitative thresholds that required separate information to be reported. However, we have previously reported our operating results in two operating segments, performance marketing and merchant services. Further, as described in Note C—Discontinued Operations, on August 1, 2007, we divested our merchant services division, resulting in performance marketing becoming our one remaining operating segment. Our two remaining operating segments as of December 31, 2008, MIVA Media and MIVA Direct, aggregate into our one remaining reportable segment, performance marketing. Therefore no separate segment disclosures are presented as of and for the years ended December 31, 2008 and 2007.

Summarized information by geographical locations is as follows (in thousands):

	Revenues	Long-Lived assets
Year ended December 31, 2008		
United States	\$ 89,708	\$ 5,306
United Kingdom	12,307	205
Other International	14,348	167
Total	<u>\$116,363</u>	<u>\$ 5,678</u>

MIVA, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE N—SEGMENT INFORMATION (Continued)

	<u>Revenues</u>	<u>Long-Lived assets</u>
Year ended December 31, 2007		
United States	\$106,676	\$ 22,598
United Kingdom	17,329	1,154
Other International	27,045	201
Total	<u>\$151,050</u>	<u>\$ 23,953</u>

Amounts are attributed to the country of the legal entity that recognized the sale or holds the asset. Other international activity as reported in the table above relates to one of several European entities, including France that is a subsidiary of MIVA Media (UK) Ltd. In addition, activity from Sweden, Denmark, Norway and Finland is included to the extent of the private label agreement with Eniro AB. This private label agreement, originally signed in 2005, and renewed in 2008 is in conjunction with the sale of substantially all of the assets of our indirect, wholly owned subsidiary Espotting Scandinavia AB to Eniro AB.

NOTE O—RELATED PARTY TRANSACTIONS

On December 31, 2008, Seb Bishop, who resigned his position of Chief Marketing Officer and President of MIVA, Inc. on August 5, 2008, resigned from the Board of Directors. Mr. Bishop is a Director of Steakmedia Limited and also owns a 2.5% interest in Steakmedia. Steakmedia is an advertising agency owned predominately by Oliver Bishop, Mr. Bishop's brother. We used this agency to generate advertisers onto our MIVA Media Networks and invoice them for all revenue generated on our networks through their advertisers. Amounts invoiced to Steakmedia during the years ended December 31, 2008 and 2007, were \$210,447 and \$397,171, respectively.

In addition to Steakmedia, Mr. Bishop is a Director of Adjug, a company that entered into a non-cancelable sublease obligation with our MIVA Media EU division to sublet office space in Munich, Germany during the fourth quarter of 2008. This agreement has a term beginning December 1, 2008 through December 31, 2009 with annual sublease payments totaling approximately \$54,900.

Lawrence Weber, who joined our Board of Directors in June 2005, and was subsequently elected Chairman of the Board of Directors in April 2006, is the Chairman and Founder of W2 Group Inc., which owns Racepoint Group, Inc. The Company entered into an agreement in November 2005 with Racepoint for public relations professional services. For the years ended December 31, 2008 and 2007, we incurred fees from Racepoint of \$15,000 and \$84,141, respectively.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE P—INCOME TAXES

The provision (benefit) for income taxes consists of the following (in thousands):

	For the Year Ended December 31,	
	2008	2007
Current:		
United States federal	\$ 160	\$ —
State	112	344
Foreign	(615)	153
	<u>(343)</u>	<u>497</u>
Deferred:		
United States federal and state	—	—
Foreign	—	60
	<u>—</u>	<u>60</u>
	<u><u>\$(343)</u></u>	<u><u>\$557</u></u>

The components of loss from continuing operations before income taxes are as follows (in thousands):

	For the Year Ended December 31,	
	2008	2007
United States	\$(28,951)	\$(10,605)
Foreign	(16,451)	(25,776)
	<u><u>\$(45,402)</u></u>	<u><u>\$(36,381)</u></u>

A reconciliation of the difference between the expected provision for income taxes using the statutory United States Federal tax rate and our actual provision is as follows (in thousands):

	For the Year Ended December 31,	
	2008	2007
Tax benefit using statutory United States federal tax rate	\$(15,891)	\$(12,683)
Effect of state income taxes	(32)	169
Write-down of non-deductible costs in excess of net assets of acquired companies	2,056	4,922
Non-U.S. exchange difference on intercompany loan	1,521	—
Non-U.S. tax rate differential	679	1,938
Deferred tax asset valuation allowances	9,799	5,124
Other	1,525	1,087
	<u><u>\$ (343)</u></u>	<u><u>\$ 557</u></u>

Our current tax provision (benefit) excludes the effect of stock option compensation deductible for tax purposes in the United States and overseas as these amounts were credited to additional paid-in-capital.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE P—INCOME TAXES (Continued)

Due to our losses, there was no tax benefit recorded in 2008 and 2007. The net benefit for 2008 includes the release of an estimated US tax liability of approximately \$0.7 million, resulting from certain prior year acquisitions for which no goodwill remains, which was determined during 2008 to no longer be payable, offset by state income tax expense. The deferred tax assets were subject to corresponding valuation allowances.

Deferred taxes arise due to temporary differences in reporting of certain income and expense items for book purposes and income tax purposes. We anticipate that our taxable temporary differences will reverse over the same period as the deductible temporary differences, therefore assuring the realization of the non-reserved portion of our deferred tax assets. Details of the significant components of deferred tax assets and liabilities in the accompanying consolidated balance sheet before netting within tax jurisdictions are as follows (in thousands):

	December 31,	
	2008	2007
Deferred tax assets, short-term		
Accounts receivable allowances	\$ 92	\$ 151
Accruals	60	549
Other	15	51
Total	\$ 167	\$ 751
Fixed Assets	1,585	1,765
Intangibles	4,242	—
Accruals	2,220	1,825
Net operating losses	16,868	20,835
Valuation allowance	(24,579)	(23,989)
Total	\$ 336	\$ 436
Capitalized software	(298)	(101)
Intangibles	—	(1,086)
Other	(205)	—
Total	\$ (503)	\$ (1,187)
Net deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

Undistributed earnings in international subsidiaries are permanently invested abroad and will not be repatriated to the United States in the foreseeable future. In accordance with APB 23, because those earnings are considered to be indefinitely reinvested, no U.S. federal or state deferred income taxes have been provided thereon. Upon distribution of those earnings, in the form of dividends or otherwise, we would be subject to both U.S. income taxes (subject to an adjustment for foreign tax credits) and withholding taxes payable to the various international countries. Because of the availability of U.S. foreign tax credits, it is not practicable to determine the U.S. federal income tax liability that would be payable if such earnings were not reinvested indefinitely.

As of December 31, 2008, we had United States and non-U.S. net operating loss ("NOL") carry-forwards for tax purposes of approximately \$40.0 million and \$9.0 million, respectively. These U.S. NOL carry-forwards will expire at various dates beginning in 2019. The NOLs carry forward indefinitely in the non-U.S. entities. As of December 31, 2008, the deferred tax assets related to NOLs in the United States

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE P—INCOME TAXES (Continued)

and international jurisdictions are fully offset by valuation allowances. We have foreign carry-forwards of \$39.0 million, however, due to the closing of offices in Germany, Italy, Spain, and Sweden, and the migration of those operations to the United Kingdom, \$30.0 million of the \$39.0 million of such NOLs have been written off by valuation allowances or deferred tax liabilities. Upon adoption of SFAS 141(R) on January 1, 2009, subsequent releases, if any, of valuation allowances established at the time of acquisition for deferred tax assets resulting from NOLs will be recorded as reductions to the income tax provision.

Utilization of the acquired United States NOLs is subject to annual limitation due to the ownership change provisions of the Internal Revenue Code. At December 31, 2008, the annual limitation is \$3.5 million, with any unused amounts eligible to be carried forward to future years. This annual limitation may result in the expiration of a portion of the affected NOLs before they are utilized.

We record liabilities for probable assessments in income taxes payable. These liabilities would relate to uncertain tax positions in a variety of taxing jurisdictions and are based on what we believe will be the ultimate resolution of these positions. The liabilities may be affected by changing interpretations of laws, rulings by tax authorities, or the expiration of the statute of limitations.

**FIN48**

In June 2006, the FASB issued Interpretation No. 48 ("FIN 48"), "Accounting for Uncertainty in Income Taxes—an interpretation of FASB Statement No. 109." FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition.

The Company adopted FIN 48 as of January 1, 2007. This standard modified the previous guidance provided by SFAS 5, "Accounting for Contingencies," and SFAS 109, "Accounting for Income Taxes" for uncertainties related to the Company's global income tax liabilities. In connection with this adoption of FIN 48, the Company recorded a net decrease to retained earnings of approximately \$0.7 million related to the measurement of a position previously taken with respect to certain transfer pricing adjustments reported on our foreign tax returns. This amount of unrecognized tax benefit did not materially change as of December 31, 2008.

A condensed summary of the Company's unrecognized tax benefits is presented as follows (in \$ millions):

	Balance	Adjustments	Balance	Adjustments	Balance
	Jan-07	in 2007	Dec-07	in 2008	Dec-08
Unrecognized tax benefits that affect effective tax rate upon recognition	\$ 0.6	\$ —	\$ 0.6	\$ —	\$ 0.6
Interest / Penalties	\$ 0.1	\$ —	\$ 0.1	\$ 0.1	\$ 0.2
<b>Total Unrecognized Tax Benefits</b>	<b>\$ 0.7</b>	<b>\$ —</b>	<b>\$ 0.7</b>	<b>\$ 0.1</b>	<b>\$ 0.8</b>

The Company recognized accrued interest and penalties related to these unrecognized tax benefits in income tax expense. As of January 1, 2008, the Company had recorded a liability of approximately \$0.1 million for interest and penalties.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE P—INCOME TAXES (Continued)

As of January 1, 2008, open tax years in major jurisdictions date back to 2002 due to the taxing authorities' ability to adjust operating loss carry-forwards.

It is expected that the amount of unrecognized tax benefits will change in the next twelve months. However, the Company does not expect the change to have a material impact on the results of operations or the financial position of the Company.

## NOTE Q—QUARTERLY FINANCIAL SUMMARY (unaudited)

2008	Three Months Ended			
	March 31	June 30	September 30	December 31(d)
	(in thousands, except per share data)			
Statements of operations				
Revenues	\$32,671	\$30,163	\$ 28,167	\$ 25,362
Gross profit	17,000	15,194	14,288	12,453
Net loss	(5,127)	(6,465)	(10,526)	(23,335)
Net loss per share				
Basic	\$ (0.16)	\$ (0.20)	\$ (0.32)	\$ (0.70)
Diluted	(0.16)	(0.20)	(0.32)	(0.70)

2007	Three Months Ended			
	March 31	June 30(a)	September 30(b)	December 31(c)
	(in thousands, except per share data)			
Statements of operations				
Revenues	\$42,244	\$ 38,716	\$ 35,942	\$ 34,148
Gross profit	22,200	20,198	19,022	17,889
Net loss	(5,322)	(16,437)	(3,316)	(11,460)
Net loss per share				
Basic	\$ (0.17)	\$ (0.52)	\$ (0.10)	\$ (0.36)
Diluted	(0.17)	(0.52)	(0.10)	(0.36)

- (a) Includes impairment charge related to goodwill at MIVA Media Europe of \$14.0 million.
- (b) Includes impairment charge related to long-lived assets at MIVA Media Europe of \$1.4 million.
- (c) Includes impairment charge related to other tangible assets at MIVA Media US of \$4.7 million.
- (d) Includes impairment charges related to goodwill and other assets at MIVA Direct and Searchfeed of \$18.7 million.

## NOTE R—EMPLOYEE BENEFIT PLAN

We provide retirement benefits to our employees through the MIVA, Inc. 401(k) Plan, pursuant to which employees may elect a number of investment options. As allowed under Section 401(k) of the Internal Revenue Code, the plan provides tax deferred salary deductions for eligible employees. The 401(k) Plan permits substantially all United States employees to contribute up to 92% of their base compensation (as defined) to the 401(k) Plan, limited to a maximum amount as set by the Internal Revenue Service. We may, at the discretion of the Board of Directors, make a matching contribution to the

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**NOTE R—EMPLOYEE BENEFIT PLAN (Continued)**

401(k) Plan. Costs charged to operations for matching contributions were \$0.06 million in 2008 and \$0.03 million in 2007.

**NOTE S—TREASURY STOCK**

For the year ended December 31, 2008, the Company's shares held in treasury increased by 23,340 shares or approximately \$0.03 million. This increase in treasury shares resulted from shares withheld to pay the withholding taxes upon the vesting of restricted stock units during the year.

For the year ended December 31, 2007, the Company's shares held in treasury increased by 433,178 shares or approximately \$1.9 million. This increase in treasury shares resulted from shares withheld to pay taxes in connection with the net issuances of stock options that were exercised by former executive officers. In addition, shares were withheld to pay withholding taxes upon the vesting of certain restricted stock units during the year.

**NOTE T—SUBSEQUENT EVENTS**

*Amendment of Perot Master Services Agreement*

On February 1, 2009, the Company entered into an amendment to the Perot Master Services Agreement with Perot Systems. Under the terms of the amendment, the Master Services Agreement will expire on April 30, 2009, and certain other provisions of the Master Services Agreement have either been modified or terminated. In connection with the Amendment, the Company has issued a letter of credit to Perot Systems for approximately \$1.0 million for a portion of the remaining application development costs related to the Company's new technology platform. Additionally, the Company expects to incur approximately \$0.6 million in fees for transition services under the Amendment. It is expected that these fees will be incurred over February, March and April 2009 as the transition services are received. As a result of the February 1, 2009 amendment, payments due to Perot Systems after December 31, 2008 were reduced from 26.9 million in the table in Note M—Commitments and Contingencies to \$2.1 million due in 2009 above to \$2.1 million due in 2009.

*Sale of MIVA Media Division*

On March 12, 2009, we and certain of our subsidiaries entered into and consummated an Asset Purchase Agreement with Adknowledge, Inc. and certain of its subsidiaries pursuant to which we sold to Adknowledge certain assets relating to our MIVA Media Division, including the MIVA name, for cash consideration of approximately \$11.6 million, plus assumption of certain balance sheet liabilities, and subject to certain retained assets and liabilities, including assets and liabilities of the MIVA Media division in France, and post-closing adjustments (the "MIVA Media Sale").

The Company and Adknowledge made customary representations, warranties and covenants in the Asset Purchase Agreement and each party has certain indemnification obligations under the Asset Purchase Agreement. Further, the Asset Purchase Agreement prohibits the Company from competing in the business of owning and operating a pay-per-click network connecting advertisers and third party publishers for five years, and prohibits the Company from diverting or soliciting past, existing or prospective clients, customers or sources of financing of Adknowledge or from employing or soliciting for employment Adknowledge's employees (including the Company's employees that transferred to Adknowledge pursuant to the terms of the Asset Purchase Agreement) for two years. In addition, the

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE T—SUBSEQUENT EVENTS (Continued)

Asset Purchase Agreement prohibits Adknowledge from employing or soliciting for employment the Company's employees who did not transfer to Adknowledge pursuant to the terms of the Asset Purchase Agreement for two years.

As of December 31, 2008 the MIVA Media Sale was not yet considered to be probable, therefore, the assets and liabilities of the division are classified as held and used, and the operations are included in continuing operating in the accompanying consolidated financial statements. The approximate amount of major classes of assets and liabilities included as part of the disposal group in the consolidated balance sheet at December 31, 2008 are as follows:

Current Assets	\$4,119
Property and equipment, net	\$4,737
Current liabilities	\$5,150
Long-term debt	\$1,378

*Amendment of Bank Loan Agreement*

On March 12, 2009, we entered into a Consent and Amendment to Loan and Security Agreement (the "Amendment") with Bridge Bank, which amends certain terms and conditions of the Loan Agreement. Pursuant to the Amendment, MIVA Direct became a borrower under the Loan Agreement and granted a general security interest in its assets to Bridge Bank. The Amendment further provides Bridge Bank's consent to the MIVA Media Sale, provided that the Company was required to repay immediately, out of the proceeds of the MIVA Media Sale, all outstanding advances plus any accrued interest under the Loan Agreement in the amount of approximately \$4.4 million. In addition, no further advances under the Loan Agreement will be made until the parties have agreed upon new terms and conditions for borrowing. The Amendment also provides that the letter of credit for the benefit of Perot Systems, Ltd. in the amount of \$693,628 issued by Bridge Bank be secured by a cash deposit.

[QuickLinks](#)

[Explanatory Note](#)

[ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.](#)  
[ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.](#)

[SIGNATURES](#)

[Index of Exhibits](#)

[INDEX TO CONSOLIDATED FINANCIAL STATEMENTS](#)

[Report of Independent Registered Public Accounting Firm](#)

[MIVA, Inc. CONSOLIDATED BALANCE SHEETS \(in thousands, except par values\)](#)

[MIVA, Inc. CONSOLIDATED STATEMENTS OF OPERATIONS \(in thousands, except per share amounts\)](#)

[MIVA, Inc. CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND COMPREHENSIVE INCOME \(LOSS\) \(in thousands\)](#)

[MIVA, Inc. CONSOLIDATED STATEMENTS OF CASH FLOWS \(in thousands\)](#)

[MIVA, Inc. NOTES TO CONSOLIDATED FINANCIAL STATEMENTS](#)

**POWER OF ATTORNEY**

Each director of MIVA, Inc. (the "Corporation") whose signature appears below hereby constitutes and appoints Peter A. Corrao and Michael Cutler as the undersigned's attorneys-in-fact, or any of them individually as the undersigned's attorney-in-fact, each with full power of substitution and revocation, to sign, in the undersigned's name and on his behalf and in any and all capacities stated below, and to cause to be filed with the Securities and Exchange Commission (the "Commission"), the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 2008 (the "Form 10-K"), and likewise to sign and file with the Commission any and all amendments to the Form 10-K, hereby ratifying and confirming all that the said attorney-in-fact, or their substitutes, may do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, we have hereunto set our hands as dated below.

<u>Date</u>	<u>Signature</u>	<u>Title</u>
March 31, 2009	<u>/s/ LAWRENCE WEBER</u> Lawrence Weber	Chairman of the Board of Directors
March 30, 2009	<u>/s/ GERALD W. HEPP</u> Gerald W. Hepp	Director
March 31, 2009	<u>/s/ JOSEPH P. DURRETT</u> Joseph P. Durrett	Director
March 31, 2009	<u>/s/ ADELE GOLDBERG</u> Adele Goldberg	Director
March 31, 2009	<u>/s/ LEE S. SIMONSON</u> Lee S. Simonson	Director

QuickLinks

Exhibit 24.1

POWER OF ATTORNEY

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Peter A. Corrao, certify that:

1. I have reviewed this annual report on Form 10-K and Form 10-K/A of MIVA, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material aspects the financial condition, results of operations and cash flows of the registrant as of, and for, the period presented in this annual report.
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal year that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 7, 2009

/s/ PETER A. CORRAO

---

*President and Chief Executive Officer*, MIVA, Inc.

QuickLinks

Exhibit 31.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-  
OXLEY ACT OF 2002

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael Cutler, certify that:

1. I have reviewed this annual report on Form 10-K and Form 10-K/A of MIVA, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material aspects the financial condition, results of operations and cash flows of the registrant as of, and for, the period presented in this annual report.
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal year that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 7, 2009

/s/ MICHAEL CUTLER

---

Chief Financial Officer , MIVA, Inc.

QuickLinks

Exhibit 31.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-  
OXLEY ACT OF 2002

**Certification Pursuant to Section 1350 of Chapter 63  
Of Title 18 of the United States Code**

In connection with the periodic report of MIVA, Inc. (the "Company") on Form 10-K and Form 10-K/A for the period ended December 31, 2008 as filed with the Securities and Exchange Commission (collectively, the "Report"), I, Peter A. Corrao, Chief Executive Officer of the Company, hereby certify as of the date hereof, solely for purposes of Title 18, Chapter 63, Section 1350 of the United States Code, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This Certification has not been, and shall not be deemed, "filed" with the Securities and Exchange Commission.

/s/ PETER A. CORRAO

---

*President and Chief Executive Officer*, MIVA, Inc.

Date: April 7, 2009

QuickLinks

[Exhibit 32.1](#)

Certification Pursuant to Section 1350 of Chapter 63 Of Title 18 of the United States Code

**Certification Pursuant to Section 1350 of Chapter 63  
Of Title 18 of the United States Code**

In connection with the periodic report of MIVA, Inc. (the "Company") on Form 10-K and Form 10-K/A for the period ended December 31, 2008 as filed with the Securities and Exchange Commission (collectively, the "Report"), I, Michael Cutler, Chief Financial Officer of the Company, hereby certify as of the date hereof, solely for purposes of Title 18, Chapter 63, Section 1350 of the United States Code, that:

- 1) the Report fully complies with the requirements of Section 13(a) or 15(d), of the Securities Exchange Act of 1934, and
- 2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This Certification has not been, and shall not be deemed, "filed" with the Securities and Exchange Commission.

/s/ MICHAEL CUTLER

---

*Chief Financial Officer*, MIVA, Inc.

Date: April 7, 2009

QuickLinks

[Exhibit 32.2](#)

Certification Pursuant to Section 1350 of Chapter 63 Of Title 18 of the United States Code