FLUENT

Annual Meeting

2019

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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2019

OR

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

For the transition period from _________ to _________

Commission File Number: 001-37893

FLUENT, INC.

(Exact name of registrant as specified in its charter)

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

300 Vesey Street, 9th Floor
New York, New York 10282
(Address of principal executive offices) (Zip Code)
Registrant's telephone number, including area code: (646) 669-7272

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.0005 par value per share	FLNT	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 such filing requirements for the past 90 days. Yes ☒ No ☐
Indicate by check mark whether the registrant has submitted electronically every Interactive Data file required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☒
Emerging growth company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐
Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act) Yes ☐ No ☒
On June 28, 2019, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value (based on the closing per share sales price of its common stock on that date) of the voting stock held by non-affiliates of the registrant was approximately $228.6 million.
The number of shares outstanding of the registrant's common stock, as of March 10, 2020, was 75,901,582.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement relating to its 2020 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019 are incorporated herein by reference in Part III of this Annual Report on Form 10-K.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K for the fiscal year ended December 31, 2019 contains “forward-looking statements” within the meaning of the Securities Act of 1933, as amended (the “Securities Act”), and the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These forward-looking statements contain information about our expectations, beliefs or intentions regarding our product development and commercialization efforts, business, financial condition, results of operations, strategies or prospects, and other similar matters. These forward-looking statements are based on management's current expectations and assumptions about future events, which are inherently subject to uncertainties, risks and changes in circumstances that are difficult to predict. These statements may be identified by words such as "expects," "plans," "projects," "will," "may," "anticipates," "believes," "should," "intends," "estimates," and other words of similar meaning.

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

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

PART I

Item 1. Business.

This business description should be read in conjunction with our audited consolidated financial statements and accompanying notes thereto appearing elsewhere in this Annual Report on Form 10-K for the year ended December 31, 2019 (the "2019 Form 10-K"), which are incorporated herein by this reference.

Company Overview

Fluent, Inc. ("we," "us," "our," "Fluent," or the "Company"), a Delaware corporation, is an industry leader in data-driven digital marketing services. We primarily perform customer acquisition services by operating highly scalable digital marketing campaigns, through which we connect our advertiser clients with consumers they are seeking to reach. We deliver data and performance-based marketing executions to our clients, which in 2019 included over 500 consumer brands, direct marketers and agencies across a wide range of industries, including Financial Products & Services, Media & Entertainment, Health & Wellness, Staffing & Recruitment and Retail & Consumer.

We attract consumers at scale to our owned digital media properties primarily through promotional offerings and employment opportunities. On average, our websites receive over 900,000 first-party user registrations daily, which include users' names, contact information and opt-in permission to present them with offers on behalf of our clients. Approximately 90% of these users engage with our media on their mobile devices or tablets. Our always-on, real-time capabilities enable users to access our media whenever and wherever they choose.

Once users have registered with our sites, we integrate proprietary direct marketing technologies and analytics to engage them with surveys, polls and other experiences, through which we learn about their lifestyles, preferences and purchasing histories. Based on these insights, we serve targeted, relevant offers to them on behalf of our clients. As new users register and engage with our sites and existing registrants re-engage, we believe the enrichment of our database expands our addressable client base and improves the effectiveness of our performance-based campaigns.

Since our inception, we have amassed a large, proprietary database of first-party, self-declared user information and preferences. We have permission to contact the majority of users in our database through multiple channels, such as email, home address, telephone, push notifications and SMS text messaging. We leverage our data primarily to serve advertisements that we believe will be relevant to users based on the information they provide. We have also begun to leverage our existing database into new revenue streams, including utilization-based models, such as programmatic advertising.

For the years ended December 31, 2019 and 2018, we recognized revenue of $281.7 million and $250.3 million, net loss from continuing operations of $1.7 million and net income from continuing operations of $3.2 million, and adjusted EBITDA of $34.7 million and $44.1 million, respectively. Adjusted EBITDA is a non-GAAP financial measure equal to net (loss) income from continuing operations, the most directly comparable financial measure based on accounting principles generally accepted in the United States ("US GAAP"), adding back income taxes, interest expense, depreciation and amortization, share-based compensation expense, and other adjustments. See our audited consolidated financial statements and accompanying notes thereto appearing elsewhere in this 2019 Form 10-K, and for further discussion and analysis of our results of operations, including a reconciliation of adjusted EBITDA from net (loss) income from continuing operations, see Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Market Opportunity

According to eMarketer, aggregate spending on digital media is estimated to have overtaken aggregate spending on offline media in the U.S. for the first time in 2019. Industry spending on digital media is projected by eMarketer to have exceeded $129 billion in 2019, representing approximately 54% of total media spend in the U.S., and to grow at a compound annual rate of 13.2% through 2022. Of this total media spend, the predominant component is expected to represent media spend on mobile platforms, which is also anticipated to represent the fastest growing segment of U.S. media spend from 2019 through 2022, according to eMarketer. Further, according to the Interactive Advertising Bureau ("IAB"), performance-based advertising is the predominant industry pricing model, accounting for 62% of total U.S. digital advertising spending in the first half of 2019.

According to the Winterbury Group, marketers spent nearly $22 billion on data and related services and solutions in 2019 in the U.S., with the amount spent on digital data and services up approximately 14% over 2018 and exceeding amounts spent on traditional terrestrial data. Further, marketers are increasing their focus and spend on recognizing consumer identities and tracking consumer behaviors across channels and devices, rather than simply targeting their advertising based on anonymized online behaviors.

Key Challenges Facing our Clients

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

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

Our Offerings and Solutions

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

Performance Campaigns

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

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

Consumer Data

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

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

Emerging Data Offerings

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

Social Media Campaigns

Through our acquisition of substantially all of the assets of AdParlor Holdings, Inc., a provider of digital advertising solutions, including social media buying, on July 1, 2019 (the "AdParlor Acquisition"), we now offer clients a sophisticated suite of social media strategy, planning and buying, along with highly tailored creative services.

Our Competitive Strengths

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

Scale and Ingenuity in Purchasing Media - Our ability to effectively access, at scale, channels and sources of media that supply consumer traffic to our media properties and those of our clients has been critical to our growth. Since our inception, we have deployed approximately $1 billion in media spend. Our team has gained knowledge and experience that we believe enable us to generate higher levels of profitability from given media sources, thereby enabling us to acquire media more competitively than others. This capability allows us to run thousands of campaigns simultaneously and cost-effectively for our clients, at acceptable media costs and margins to us.

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

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

Sales and Marketing

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

Our Competition

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

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

Concentration

We have an extensive list of clients across a wide range of industries. For the years ended December 31, 2019 and 2018, there was no individual advertiser that accounted for more than 10% of the consolidated revenue or accounts receivable, net of the Company.

Additionally, as of December 31, 2019 and 2018, there was no individual third-party publisher through which we generated more than 10% of the Company's consolidated revenue.

Corporate History

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

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

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

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

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

Our Intellectual Property

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

Regulatory Matters

Our business is subject to a significant number of federal, state, local and international laws, rules and regulations applicable to online advertising, commercial email marketing, telemarketing and text messaging, including, the Federal Trade Commission Act (the "FTC Act"), the Telephone Consumer Protection Act ("TCPA"), the California Consumer Privacy Act (the "CCPA"), the General Data Privacy Regulation (the "GDPR"), the Do Not Call Implementation Act, the CAN SPAM Act of 2003 ("CAN-SPAM Act"), the Telemarketing Sales Rule ("TSR"), the California Business & Professions Code § 17529 (the "California Anti- Spam Act") and the Children's Online Privacy Protection Act ("COPPA"). We are also subject to laws, rules and regulations regarding data collection, privacy and data security, sweepstakes and promotions, intellectual property ownership and infringement, and taxation, among others. Some of our clients operate in regulated industries, such as financial services, credit repair, consumer and mortgage lending, healthcare and medical services and secondary education, and, to the extent applicable, we must comply with the laws, rules and regulations applicable to marketing activities in those industries.

These laws, rules and regulations, which generally are designed to prevent deceptive practices in advertising, online marketing and telemarketing, protect individual privacy rights and prevent the misuse and unauthorized disclosure of personal information, are complex, change frequently and have tended to become more stringent over time. In addition, the application and interpretation of these laws, rules and regulations are often uncertain, particularly in the rapidly evolving industry in which we operate.

Our Employees

As of December 31, 2019, we had 192 employees, of which 188 were full-time employees. None of our employees are represented by a labor organization, and none are party to any collective bargaining agreement with us. We have not experienced any work stoppages and we believe that we have an excellent relationship with our employees. Competition in the recruiting of personnel in our industry is intense. We believe that our future success will depend in part on our continued ability to hire, motivate and retain qualified sales and marketing, executive and administrative and technical personnel. To date, we have not experienced significant difficulties in attracting or retaining qualified employees.

Available Information

Fluent's principal executive offices are located at 300 Vesey Street, 9th Floor, New York, New York 10282, and our telephone number is (646) 669-7272. Our internet website is www.fluentco.com. The website address provided in this 2019 Form 10-K is not intended to function as a hyperlink and information obtained on the website is not and should not be considered part of this 2019 Form 10-K and is not incorporated by reference in this 2019 Form 10-K or any filing with the Securities and Exchange Commission (the "SEC"). Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, are available, free of charge, on our Investor Relations website at http://investors.fluentco.com/ as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The SEC maintains an internet website located at http://www.sec.gov that contains the information we file or furnish electronically with the SEC.

Item 1A. Risk Factors.

Our business, financial condition, results of operations, and cash flows may be impacted by a number of factors, many of which are beyond our control, including those set forth below and elsewhere in this 2019 Form 10-K, the occurrence of any one of which could have a material adverse effect on our actual results.

Risks Relating to Our Business

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

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

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

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

- amendment, enactment or interpretation of laws and regulations that restrict the collection, access and use of personal information or reduce the availability or effectiveness of our solutions or the supply of data available;
- changes in the regulatory environment on the interpretation and/or enforcement of laws and regulations that govern online advertising, promotional, telemarketing and text messaging marketing practices;
- changes in cultural and consumer attitudes in favor of further restrictions on information collection and sharing, which may lead to regulations that prevent full utilization of our solutions;
- our failure or the failure of our third-party publishers, service providers or clients to comply with laws or regulations, where mutual compliance is required;
- failure of our solutions to comply with current laws and regulations; and
- failure of our solutions to adapt to changes in the regulatory environment in an efficient, cost-effective manner.

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

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

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

Any negative outcomes from regulatory actions or litigation or claims, including monetary penalties or damages, could have a material adverse effect on our business, financial condition, results of operations and reputation.

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

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

The trend towards enhanced regulation and personal rights applicable to the collection, use, storage and sharing of personal information has accelerated. California enacted the CCPA, which took effect on January 1, 2020 and establishes requirements for businesses who collect and sell personal information ("PI") and grants individual rights with respect to their PI. The CCPA requires, among other things, notice of collection of PI before it is collected, notice of the right to opt-out from the sale of PI on the webpage where the PI is collected, the right to request the deletion of PI collected when a California consumer files a verifiable request, the right to know the PI a business has collected from a consumer and sold upon receipt of a verified request. California currently does not have a private right of action, other than for data breaches. There are many aspects of the CCPA that are unclear and in a state of flux. While we have taken remediation steps including engaging a third party to assist in tracking and processing consumer privacy requests, it is difficult to ensure that we are in compliance with the CCPA or whether the CCPA will be interpreted in a way that requires us to further change our current compliance efforts in this regard. Nevada has also adopted a law that permits its residents to request that their PI not be sold. Because of the volume of user registrations on our owned-and-operated websites, we may have a large number of users requesting to exercise their privacy rights. While we are working expeditiously to build out systems and processes to handle these requests, we have devoted significant resources to do so and expect to incur additional costs to respond to user privacy requests, which may adversely affect our results.

Currently, there are bills pending in at least a dozen states that deal with data privacy. Some of the laws impose rules relating to data privacy similar to the CCPA and/or the GDPR, while some are narrower in scope. Some of the proposed laws include a private right of action to enforce noncompliance, which, if enacted, would expose us to potential litigation and claims. If some or all of the proposed privacy laws are enacted, it will be extremely difficult and expensive to comply, and there can be no assurance that we will be able to do so or that the costs of compliance will not be prohibitively expensive, either of which could have a material adverse effect on our business and results of operations.

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

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

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

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

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

Further, the UK's departure from the EU on January 31, 2020 with a transition period through December 31, 2020 has created uncertainty with regard to data protection regulation in the UK. During this transition period, the GDPR will continue to apply to the UK. Our websites available to UK residents have been designed to comply with the GDPR. After the transition period, GDPR is intended to be incorporated into UK law, but those negotiations are evolving and ongoing. So while the impact to data protection laws and transfers during this transition period is minimal, we do not know for certain whether GDPR will in fact be converted to UK law after the transition or whether an adequacy decision will be made for the UK. Therefore, in the long-term, it is uncertain how the UK's withdrawal from the EU will impact UK data protection laws or regulations and how data transfers to and from the UK will be regulated. After the transition period, we may need to evaluate existing agreements and potentially update or renegotiate them. We may also need to review and update notices and appoint additional representatives. The fines for failing to comply with the GDPR are significant and the potential ways that the GDPR could be applied to a business such as ours are uncertain. There can be no assurance that we will be able to maintain these websites in compliance with the GDPR. Additionally, if we expand into additional international markets, we may be subject to additional data protection laws.

In addition, some of our advertiser clients have required that the personal information we deliver to them be collected and maintained in compliance with the GDPR for our U.S. operations. While we do not believe that the GDPR applies to our U.S. operations, if we are incorrect or we are contractually required to comply with the GDPR in the U.S., that could increase our costs and expenses associated with providing advertising services.

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

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

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

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

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

The outcome of litigation, inquiries, investigations, examinations or other legal proceedings in which we are involved, in which we may become involved, or in which our clients or competitors are involved could distract management, increase our expenses or subject us to significant monetary damages or restrictions on our ability to do business.

Due to the complex regulatory scheme in which we operate and the heightened scrutiny on our business, legal proceedings arise periodically in the normal course of our business. These may include individual consumer cases, class action lawsuits and inquiries, investigations, examinations, regulatory proceedings or other actions brought by federal (e.g., the Federal Trade Commission ("FTC")) or state (e.g., state attorneys general) authorities.

On January 28, 2020, we received a Civil Investigative Demand (“CID”) from the FTC regarding compliance with the FTC Act or the TSR, as they relate to the advertising, marketing, promotion, offering for sale, or sale of rewards and other products, the transmission of commercial text messages, and/or consumer privacy or data security. We have been fully cooperating with the FTC and we are responding to the CID. At this time, it is not possible to predict the ultimate outcome of this matter or the significance, if any, to our business, results of operations or financial position. See, Item 3. Legal Proceedings.

Regardless of whether any current or future claims in which we are involved have merit, or whether we are ultimately held liable or subject to payment of damages, such investigations and claims may be expensive to defend and may divert management’s time away from our operations.

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

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

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

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

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

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

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

Our success depends on our ability to attract users to our websites and generate revenues from their activities thereon in a cost-effective manner. A substantial majority of our revenue is attributable to visitor traffic originating from third-party publishers, including ad networks, social media platforms and search engines. Our ability to maintain the number of users who come to our and our third-party publishers’ websites is not entirely within our control. Third-party publishers can change the media inventory they make available to us at any time and/or place significant restrictions on our content offerings. Many of these publishers have their own guidelines on acceptable content, advertisements and the types of advertisers and websites that can advertise on their properties. These guidelines change frequently and can often be unpublished. If a third-party publisher decides not to make media inventory available to us, decides to demand higher pricing or a higher revenue share, or places significant restrictions on the use of such inventory, we may not be able to find media inventory from other websites that satisfy our requirements in a timely and cost-effective manner.

Moreover, there is substantial competition for web traffic among both established media buyers and smaller operators, and we expect this competition to continue to increase, given the limited barriers to entry into the market. Additionally, if we expand the scope of our services, we may compete with a greater number of websites, clients and traditional media companies across an increasing range of different media, including in vertical markets where competitors may have advantages in expertise, brand recognition and other areas. Major internet search engine operators, such as Google, Yahoo! and Microsoft, as well as social media platforms, such as Facebook, Snapchat and Instagram, have significant numbers of direct sales personnel and substantial proprietary advertising inventory and web traffic that provide them significant competitive advantages. Past and possible future consolidation of online advertising networks has led to and could lead to further concentration of desirable inventory on websites or networks owned by a small number of persons or entities, which could affect pricing and availability of media inventory and web traffic available to us. Furthermore, many of our current and potential competitors enjoy other competitive advantages over us, such as longer operating histories, larger client bases, greater access to media inventory on high-traffic websites, and greater financial, technical and marketing resources. We cannot provide any assurance that we will be able to compete effectively against these competitors in order to acquire media inventory that meets our performance, price and quality requirements. If we are not able to do so, our business and results of operations could be adversely affected.

Our business could be harmed if we or our third-party publishers are unable to contact users through specific channels.

We and our third-party publishers use email, text messages, push notifications, telephone calls and social media, among other channels, to reach users for marketing purposes. The laws, rules and regulations governing such usage continue to evolve, and changes in technology, the marketplace, or consumer preferences may lead to the adoption of additional laws, rules or regulations or changes in the interpretation of existing laws, rules or regulations. If new laws, rules or regulations are adopted or existing laws and regulations are interpreted or enforced to impose additional restrictions on our ability to use email, text messages, push notifications or social media to contact users, or engage in telemarketing, we may not be able to communicate with users in a cost-effective manner.

Additionally, if email providers or internet service providers ("ISPs") implement new or more restrictive email or content delivery or accessibility policies, including with respect to net neutrality, it may become more difficult to deliver emails to consumers or for consumers to access our websites and services. For example, certain email providers, including Google, may categorize our emails as “promotional,” and these emails may be directed to an alternate, and less readily accessible, section of a consumer’s inbox. If email providers materially limit or halt the delivery of emails advertising our websites, or if we fail to deliver emails to users in a manner compatible with email providers’ handling or authentication technologies, our ability to contact users through email could be significantly restricted. In addition, if we are placed on “spam” lists or lists of entities that have been involved in sending unwanted, unsolicited emails, our operating results and financial condition could be substantially harmed. Further, if ISPs prioritize or provide superior access to our competitors’ content, our business and results of operations may be adversely affected.

In addition, telephone carriers may block or put consumer warnings on calls originating from call centers. With a heightened aversion to robocalling, consumers increasingly screen their incoming emails and telephone calls, including by using such tools and warnings, and therefore it is possible that users may not reliably receive our emails or telephone messages. If we are unable to contact users effectively by email or telephone as a result of legislation, blockage, screening technologies or otherwise, our business, operating results and financial condition would be harmed.

Additionally, as we expand our usage of text messaging and push notifications to contact users, we become more dependent on third-party providers that control the dissemination and deliverability of such communications. These third-party providers may block text messages or shut down our text message service providers' ability to send text messages. These third parties may include mobile operating systems, internet service providers, wireless carriers and internet browsers, each of which may have its own guidelines on acceptable content. These guidelines are subject to change, which could restrict our ability to send text messages on behalf of our advertisers and/or re-engage mobile users, leading our results of operations to be adversely affected.

Third-party publishers or vendors may engage in unauthorized or unlawful acts that could subject us to significant liability or cause us to lose clients.

We generate a significant portion of our web visitors from online media that we purchase from third-party publishers. While we actively monitor our publishers’ activities, we cannot police all such behavior. Any activity by third-party publishers that clients view as potentially damaging to their brands, whether or not permitted by our contracts with our clients, could harm our relationships with such clients, in which instance they may refuse to pay or terminate their relationships with us, resulting in a loss of revenue. Additionally, when we cease working with third-party publishers who engage in inappropriate practices, we may be unable to quickly find alternative supply at an acceptable price.

We may also face liability for any failure of our third-party publishers or vendors to comply with legal and regulatory requirements. Users or clients may complain about the content of publisher ads or the methods by which ads are delivered by third-party publishers, which may expose us to lawsuits and regulatory scrutiny. Despite our efforts to monitor and deter unauthorized or unlawful actions by these third-party publishers, and to contractually limit our liability in such instances, it is possible that we could be seen as responsible for this behavior. As a result, we could experience significant reputational harm and/or become subject to costly litigation, which, if we are unsuccessful in defending, could lead us to incur damages for the unauthorized or unlawful acts of third-party publishers or vendors.

Limitations on our or our third-party publishers' ability to collect and use data derived from user activities, as well as new technologies that block our or our third-party publishers' ability to deliver internet-based advertising, could significantly diminish the value of our services and have an adverse effect on our ability to generate revenue.

When a user visits our websites, we use technologies to collect information and use registration data provided by users and user responses to our dynamically populated survey questions to create robust user profiles, which we use in our targeted ad serving and consumer data offerings. The use of personal information is the subject of litigation, regulatory scrutiny and industry self-regulatory activities, including the discussion of "do-not-track" technologies and guidelines.

Technologies, tools, software and applications (including new and enhanced web browsers) have been developed, and are likely to continue to be developed, that can block or allow users to opt out of display, search and internet-based advertising and content, or shift the location where advertising appears on pages so that our advertisements are presented in less favorable locations or are obscured. Certain of these technologies only allow ads that are deemed "acceptable," which could be defined in ways that place us at a disadvantage. Recently, app developers have developed ad blocking apps for smartphones and other mobile devices which may hinder marketing activities to smartphone users. As a result, the adoption of such technologies, tools, software, and applications could reduce the number of display and search advertisements that we or our third-party publishers are able to deliver and this, in turn, could adversely affect our business and results of operations.

Interruptions, failures or defects in our data collection systems, as well as privacy concerns and regulatory changes or enforcement actions affecting our ability to collect user data, could also limit our ability to analyze data from, and thereby optimize, our clients' marketing campaigns. If our access to data is limited in the future, we may be unable to provide effective services to clients and may lose clients and revenue.

An increasing number of people are accessing the internet primarily from their mobile devices, including smartphones, tablets and other devices. Our ability to remain competitive with the shift to mobile devices, including the increasing prevalence of mobile apps, is critical to maintaining our revenue and profitability.

Mobile devices are increasingly becoming the primary means by which people access the internet. While we design and build our websites with a "mobile first" approach, we will need to ensure our websites continue to attract and engage users as they continue to shift their online interactions from desktop computers to smartphones, tablets and other next-generation platforms and devices. Mobile users have a more finite experience with our websites than desktop or laptop users, and there is a greater chance of interruption, which means we have a shorter timeframe in which to engage them. Additionally, the functionality and user experience associated with some mobile devices, as a result of smaller screen sizes, may make the use of our websites through such devices more difficult than through a desktop or laptop computer. Moreover, the vast majority of consumers' time accessing content on mobile devices is through mobile applications, rather than internet browsers. At this time, mobile applications are not a primary driver of our business, which could place us at a disadvantage in the marketplace. If we fail to effectively engage these users, our business and results of operations may be adversely affected. In addition, if our technology systems do not function as designed, we may experience a loss of confidence, data security breaches or lost sales, which could adversely affect our reputation and results of operations.

As new mobile devices and products are released, it is difficult to predict the problems we may encounter in optimizing our websites for these alternative devices, and we may need to devote significant resources to the development, support and maintenance of such websites. If we experience difficulties optimizing our websites, including problems with our relationships with providers of mobile operating systems (e.g., Apple or Google) or social media platforms such as Facebook, our growth and consumer acquisition capabilities may be impaired. If we fail to maintain the monetization of the mobile versions of our websites effectively, our business and results of operations may be adversely affected.

We are dependent upon third-party service providers in our operations.

We utilize numerous third-party service providers in our operations, and a failure by a third-party service provider could expose us to an inability to operate our websites, connect our advertiser clients with users, provide online marketing and advertising services or track the performance and results of our online marketing activities. As with all software and web applications and systems, there may be, from time to time, technical malfunctions that arise with some of these third-party providers. It is possible that to remedy any such situation would require substantial time, resources and technical knowledge that we may not have or be able to acquire in a timely fashion. Additionally, some of these third-party service providers may face financial instability, which could lead to extended periods in which their platforms or applications are unavailable or fail to accurately track or account for online activity. If any of these platforms or applications goes down for an extended period of time, it is possible that we may lose clients and/or incur significant costs to either internalize some of these services or find suitable alternatives, which could have a material adverse effect on our business or results of operations.

Our operations have grown significantly over the past several years, which may make it difficult to effectively manage any future growth and scale our products quickly enough to meet our clients' needs while maintaining profitability.

We have historically experienced growth in our operations. This growth has placed, and any future growth will continue to place, significant demands on our management and our operational and financial infrastructure. Growth, if any, may make it more difficult for us to accomplish the following:

- successfully scale our technology to accommodate a larger business and integrate acquisitions;
- maintain our standing with key vendors, including third-party publishers and media platforms;
- maintain our client service standards;
- develop and improve our operational, financial and management controls and maintain adequate reporting systems and procedures; and
- hire, train and manage additional staff needed to manage future growth.

Our future success depends in part on the efficient performance of our ad serving and lead generation systems and technology infrastructure. As the number of websites and internet users and the amount of data collected increases, our technology infrastructure may not be able to meet the increased demand. Moreover, our database of consumer information may not be able to accommodate users' exercise of their privacy rights under new data privacy laws such as the CCPA and the GDPR in a way that is cost-effective for our business. Unexpected constraints on our technology infrastructure could lead to slower website response times or system failures and adversely affect the availability of websites and the level of user responses received, which could result in the loss of clients or revenue or have a material adverse effect on our business and/or results of operations.

In addition, our systems, procedures, processes and controls may be inadequate to support our future operations. The improvements required to manage growth may require us to make significant expenditures and reallocate valuable management resources. We may take on substantial costs to secure hosting and other technical services and data storage, upgrade our technology and network infrastructure to handle increased traffic on our owned-and-operated websites, and deploy new products and services. This expansion could be expensive and complex and could result in inefficiencies or operational failures. If we do not implement this expansion successfully, or if we experience inefficiencies and/or operational failures during our implementation, the quality of our products and services and our users' experiences could decline. This could damage our reputation and cause us to lose current and potential users and clients. The costs associated with these adjustments to our infrastructure could harm our operating results. Accordingly, if we fail to effectively manage growth, our operating performance may suffer, and we may lose clients, key vendors and key personnel.

We also will likely need to continue to expand our workforce to meet the growing needs of our business. We operate in a specialized niche of the digital marketing and data marketplace, and there is a limited pool of experienced, qualified candidates. We may not be able to hire experienced qualified candidates if they are subject to non-competition restrictions imposed by prior employers. Finding and training suitable candidates can prove challenging, as the skills required to effectively and efficiently use our proprietary systems are not necessarily transferable from other businesses. If we are unable to effectively hire, train and manage a sufficient number of new employees, we may not be able to capitalize on opportunities and/or may not be able to continue to grow our business at past levels.

Historically, our quarterly and annual results of operations have rapidly improved due to several favorable factors, some of which are beyond our control. As we continue to grow, we may not be able to increase our market share and/or sustain our recent growth. Our inability to sustain our growth could cause our performance and outlook to be below the expectations of securities analysts and investors.

As we continue to grow our business, we may acquire additional businesses or personnel, which could divert our management's attention, disrupt our operations or otherwise subject us to risks inherent in identifying, acquiring and operating newly acquired business units.

As we continue to grow our business, we may, in the future, determine to do so through the acquisition of additional business units and personnel that we believe could complement or expand our current business or offer growth opportunities. We may experience difficulties in identifying potential acquisition candidates that complement our current business at appropriate prices, or at all. We cannot assure you that our acquisition strategy will be successful. We may spend significant management time and resources in analyzing and negotiating acquisitions or investments that are not consummated or cannot be implemented successfully. Furthermore, the ongoing process of integrating an acquired business unit or personnel is distracting, time-consuming, expensive and requires continuous optimization and allocation of resources, which could disrupt our operations.

During the second half of 2018 and first half of 2019, we made significant investments in the growth of the Fluent business. We added personnel at all levels, including at experienced senior management positions, as we steered towards enabling growth into adjacent markets by leveraging our core more strategically. In order to maintain discipline around the resources invested, in the third quarter of 2019, we scaled back on certain ventures that were not achieving key performance milestones and made associated reductions in our work force.

On July 1, 2019, we completed the AdParlor Acquisition, in which we added approximately 45 employees in Toronto, Canada and Kansas City, Missouri. While we believe AdParlor's business has strategic and growth potential for Fluent, the integration of the AdParlor business and its employees has required, and will continue to require, a significant investment of the time and resources of Fluent's management team.

Additionally, if we use stock as consideration for an acquisition, this would dilute our existing shareholders, and if we use cash, this would reduce our liquidity and impact our financial flexibility. We may seek debt financing for particular acquisitions, which may not be available on commercially reasonable terms, or at all. If we cannot overcome these and other challenges associated with a business acquisition strategy, we may not consummate or realize tangible benefits from any future acquisitions, which could impair our overall business results.

We operate in an industry that is rapidly evolving, which makes it difficult to evaluate our business.

We derive substantially all of our revenue from digital marketing services, which is an industry that has undergone rapid and significant changes in its relatively short history, and which is characterized by rapidly-changing internet media and advertising technology, evolving industry standards, regulatory uncertainty, and changing user and client demands. Our future success depends on our ability to effectively respond to the rapidly changing needs of our clients, as well as competitive technological developments and industry changes by developing or introducing new and enhanced solutions on a timely basis. As a result of this continual evolution, we face risks and uncertainties such as:

- the rapidly evolving industry;
- changes in the economic condition, market dynamics, regulatory enforcement or legislative environment affecting our, our third-party publishers', and our clients' businesses;
- our dependence on the availability and affordability of quality media from third-party publishers;
- our ability to compete in our industry;
- our ability to manage cybersecurity risks and costs associated with maintaining a robust security infrastructure;
- our ability to maintain and expand existing client relationships;
- our ability to develop new services, enhancements and features to meet new demands from our clients;
- our ability to maintain user interaction with our owned-and-operated websites on mobile devices; and
- our ability to comply with and avoid regulatory scrutiny in a rapidly evolving legal and regulatory environment.

If we are unable to address these risks, our business, financial condition and results of operations may be adversely affected.

Our success depends in part upon our ability to enhance and adapt our products and services to address the evolving needs of our clients and keep pace with rapidly changing technologies.

The digital media and marketing industry is characterized by rapidly changing standards and technologies, frequent new product and service introductions, and changing user and client demands. As our clients' needs evolve, we will need to continue to enhance our services and solutions to address these needs in order to maintain these relationships. We have invested in developing new products, markets, services and technologies and expanded our work force to meet the needs of our clients and continue our revenue growth. However, based on our experience, new websites, products and services may be less predictable and have lower margins than more established websites, products and services. Further, we may not be able to develop and bring new products and services to market in a timely manner, or at all. The time, expense and effort associated with developing and offering new and enhanced products and services may be greater than anticipated. If we are unsuccessful in enhancing our websites, products and services, we may fail to maintain our profitability, attract new clients or grow our revenue. Moreover, if we are unable to develop and bring to market additional products and services, and enhancements thereto, in a timely manner, or at all, we could lose market share to competitors who are able to offer such new products and services, which could have a material adverse effect on our business, financial condition and results of operations.

Additionally, the introduction of new technologies and services, including voice assistance, artificial intelligence, internet-of-things and machine learning, and the emergence of new industry standards and practices related to these technological developments could render our existing technologies and services obsolete and unmarketable or require unanticipated investments in technology. In particular, as we continue to transition to cloud-based technology, we may face new and additional costs to operate our business.

While we continually make enhancements and other modifications to our proprietary technologies, such changes may contain design or performance defects that are not readily apparent. If our proprietary technologies fail to achieve their intended purpose or are less effective than technologies used by our competitors, our business could be harmed.

Our future success will depend in part on our ability to successfully adapt to our clients' needs and the rapidly changing digital media formats and other technologies. If we fail to adapt successfully or as quickly as our competitors, it could damage our reputation and our relationships with our clients, which could have a material adverse effect on our business and results of operations.

Unfavorable publicity and negative public perception about our industry may damage our reputation, which could harm our business, financial condition and results of operations.

With the growth of online advertising and e-commerce, there is increasing awareness and concern among the general public, privacy advocates, mainstream media, governmental bodies and others regarding online marketing, advertising, telecommunications and privacy matters, particularly as they relate to individual privacy interests. Certain other companies within our industry may engage in activities that others may view as unlawful or inappropriate. These activities by third parties, including our competitors, or even companies in other data-focused industries, may be seen as indicative of the behavior of our industry as a whole, which may thereby harm the reputation of all participants in our industry, including us. Additionally, as a large player in our niche of the industry, smaller competitors frequently design their websites to look like they are owned and operated by us. If these competitors engage in inappropriate activities, it can have a particularly damaging impact on our relationships with our users and/or clients.

Moreover, any such unfavorable publicity or negative public perception could lead to digital publishers and platforms such as Facebook and Google changing their business practices or additional regulatory scrutiny or lawmaking, which could adversely affect us or our industry. Heightened scrutiny on the part of the public or regulators may lead to general distrust of our industry, consumer reluctance to share and permit use of personal data and increased consumer opt-out rates, any of which could negatively influence, change or reduce our current and prospective clients' demand for our products and services and adversely affect our business, financial condition and results of operations.

Our business is dependent on attracting a large number of visitors to our websites and providing inquiries, clicks, calls, application installations and customers to our clients, which depends in part on our reputation within the industry, with our clients and with users. Our ability to attract potential users and, thereby, clients, also depends in part on users receiving incentives, job listings, prizes, samples and other content, as well as attractive offers from our clients. If our users are not satisfied with the content of our websites, the incentives or opportunities offered or our clients' offerings, our reputation and therefore our ability to attract additional clients and users could be harmed.

In addition, from time to time, we may be subject to investigations, inquiries or litigation by various regulators, which may harm our reputation, regardless of the outcome of any such action. Any damage to our reputation, including from publicity from legal proceedings against us or companies that work within our industry, governmental proceedings, class action litigation, or the disclosure of information security breaches or private information misuse, may adversely affect our business, financial condition and results of operations.

If we fail to compete effectively against other digital marketing and advertising companies or fail to meet performance metrics required by our clients, our business and results of operations may be harmed.

The market for digital marketing is intensely competitive, and we expect this competition to continue and to increase in the future, both from existing and new competitors. We compete for advertiser clients against other digital marketing companies on the basis of a number of factors, including return on investment of client's marketing spending, price and client service. We compete for a share of our advertiser clients' overall marketing budgets with online and traditional media companies, including:

- traditional and digital advertising agencies;
- major internet portals and search engine companies with advertising networks;
- other digital marketing service providers, including online affiliate advertising networks and industry-specific portals or email marketing companies;
- third-party publishers with their own sales forces that sell their online marketing services directly to clients;
- in-house marketing groups within current or potential clients;
- offline direct marketing agencies;
- mobile and social media; and
- television, radio, print and other traditional media format companies.

When our clients experience a reduction in their advertising budgets, newer media sources such as those we offer can often be the first expenditures to be cut. Our advertiser clients have expectations as to the quality and conversion rates of the leads that we generate and choose to do business with us based on the quality and convertibility of the leads we generate. The expectations of these clients may change over time, and the leads that we supply to our clients may not always meet these expectations. Conversion rates for leads can be impacted by factors other than the lead quality, many of which are outside our control. Such factors include the competition in our clients' industries and the sales practices of our clients. Lower conversion rates could be even more likely as we expand our services and relationships with our clients by moving our conversion point further "down the funnel," closer to where our clients are able to monetize the leads we provide. Our clients may curtail their advertising spend with us or stop using our services altogether if we fail to meet their expectations in terms of quality and convertibility of leads or otherwise fail to compete effectively against other online marketing and advertising companies.

Our top ten advertisers account for approximately 30% of our revenue, and the loss of one or more of our major clients could adversely affect our business, financial condition and results of operations.

Our clients' needs may fluctuate significantly from period to period, and such fluctuations could have a negative impact on our business and results of operations.

Because the majority of our contracts with our advertiser clients do not have fixed commitments, these clients have the ability to unilaterally terminate their agreements with us or materially reduce the amount of business they conduct with us at any time, with little or no prior notice. There is no guarantee that we will be able to retain or renew existing agreements with any of our clients on acceptable terms, or at all.

Moreover, while our websites receive an average of over 900,000 first-party user registrations daily, some of our advertiser clients seek specific sub-sets of these users and, despite the return they are able to achieve on the leads we provide, determine not to renew their agreements with us because we are unable to provide significant additional user profiles that meet their criteria.

Additionally, because of the nature of our performance-based agreements, we typically bear the costs of purchasing media without the guarantee of advertising spend by any particular advertiser client. In these contractual relationships, our advertiser clients pay us on a performance basis, whereby our right to receive payment is triggered when a user takes a particular action, such as signing up for an offer, downloading an app, or clicking on an ad and registering on an advertiser's site. We buy media largely when a user lands on one of our sites or on a per-registration basis, and we must be able to generate more revenue from our users than our cost to acquire such users in order to be profitable. Our ability to do so is dependent on many factors, including having the right media sources to drive engaged users to our sites, providing content and experiences that engage users and displaying relevant advertisements and other content to users. Other factors, some of which are outside of our control, such as competition, changing consumer tastes and general economic conditions, may inhibit our ability to operate our business profitably, which could adversely affect our results of operations.

Our results are also subject to fluctuation as a result of seasonality and cyclicality in our and our clients' businesses. For example, our fourth fiscal quarter ending December 31 is typically characterized by higher advertiser budgets, which can be somewhat offset by seasonal challenges of lower availability and/or higher pricing for some forms of media during the holiday period. Further, as reflected in data from the IAB, industry spending on internet advertising has generally declined sequentially in the first quarter of the calendar year from the fourth quarter. Similar to the industry overall, some of our clients have lower advertising budgets during our first fiscal quarter ending March 31; however, we believe that the breadth of industries in which our clients operate provides us with some insulation from these fluctuations.

In addition to variations in budgets from quarter to quarter, certain clients have budgets that start stronger at the beginning of quarterly or monthly periods, may reach limits during such periods and then may have needs to satisfy their performance objectives at the end of such periods. Beyond these budgetary constraints and buying patterns of clients, other factors affecting our business may include macroeconomic conditions affecting the digital media industry and the various market verticals we serve. Poor macroeconomic conditions could decrease our clients' advertising spending and, thereby, have a material adverse effect on our business, financial condition and results of operations.

We are exposed to credit risk from and occasionally have payment disputes with our clients, and we may not be able to collect on amounts owed to us.

We may extend payment terms to our clients, which exposes us to risk of bad debt. In addition, many of our clients are thinly capitalized and pose credit risks, and we may have difficulty collecting on amounts owed to us. Some of our clients may challenge the determination of amounts we believe they owe or may refuse to pay because of performance-related claims. In these circumstances, we may have difficulty collecting on amounts we believe are owed.

A portion of our client business is sourced through advertising agencies and brokers. In many cases, agencies are not required to pay us unless and until they are paid by the underlying client. In addition, many agencies and brokers are thinly capitalized and have or may develop high-risk credit profiles. If an agency or broker becomes insolvent, or if an underlying client does not pay the agency or broker, we may be required to write off accounts receivable as bad debt.

Additionally, while we do not have significant concentration in one industry vertical, we do have exposure with respect to clients in particular verticals where there is a risk of tightening regulations or restrictions on sourcing consumer traffic. For example, if new regulations affect our clients such that their businesses are no longer viable, our clients may become insolvent or otherwise unable to pay amounts owed to us. In such circumstances, we may be exposed to risks of significant bad debt, which could have a material adverse effect on our results of operations.

We could lose clients if we fail to detect click-through or other fraud on advertisements in a manner that is acceptable to our clients.

We are exposed to the risk of fraudulent clicks or actions on our websites or our third-party publishers' websites, which could lead our clients to become dissatisfied with our campaigns and, in turn, lead to a loss of clients and related revenue. Click-through fraud occurs when automated systems (sometimes called "bots") are used to create an individual click on an ad displayed on a website, with the intent of generating a revenue share payment to the publisher, rather than an individual user actually viewing the underlying content. Action fraud occurs when online lead forms are completed with false or fictitious information in an effort to increase a publisher's compensable actions. From time to time, we have experienced fraudulent clicks or actions, and the risk of fraud may increase as bots become more sophisticated and difficult to detect. We do not charge our clients for fraudulent clicks or actions when they are detected, and such fraudulent activities could negatively affect our profitability or harm our reputation. If fraudulent clicks or actions are not detected, the affected clients may experience a reduced return on their investment in our marketing programs, which could lead the clients to become dissatisfied with our campaigns, and in turn, lead to loss of clients and related revenue. Additionally, we have terminated and may, in the future, terminate our relationships with publishers who we believe to have engaged in fraud. Termination of such relationships entails a loss of revenue associated with the legitimate actions or clicks generated by such publishers.

As a creator and a distributor of digital media content, we face potential liability and expenses for legal claims based on the nature and content of the materials that we create or distribute, including materials provided by third parties. If we are required to pay damages or expenses in connection with these legal claims, our business and results of operations may be harmed.

We display original content and third-party content on our websites and in our marketing messages. As a result, we face potential liability based on a variety of theories, including deceptive advertising and copyright or trademark infringement. We believe that our use of any third-party brand names or marks falls within the "fair use" exception, but these third parties may disagree, and the laws governing the fair use of these third-party materials are imprecise and adjudicated on a case-by-case basis. We also create original content for our websites. While we do not believe that this content infringes on any third-party copyrights or other intellectual property rights, owners of competitive websites that present similar content may take the position that our content infringes on their intellectual property rights. We are also exposed to risk that content provided by third parties is inaccurate or misleading, and for material posted to our websites by users and other third parties. These claims could divert management time and attention away from our business and result in significant costs to investigate and defend, regardless of the merit of these claims. Although we maintain general liability and cyber/technology errors and omissions insurance, our insurance may not cover potential claims of this type or may not be adequate to indemnify us for all liability that may be imposed. Any imposition of liability that is not covered by insurance, or is in excess of insurance coverage, could materially adversely affect our business, financial condition and results of operations.

Our business and advertiser clients may be subject to sales and use tax and other taxes.

The application of sales and use tax, goods and services tax, business tax and gross receipt tax on our digital marketing/advertising services is complex and evolving. In general, sales of tangible personal property are subject to sales and use tax unless a specific exemption applies, while services generally are not subject to sales tax unless specifically enumerated. Advertising services are considered a service and are generally not subject to sales and use tax, except in a few states. Some states, including New York, impose a sales tax on "information services." In New York, the sales tax explicitly excludes "advertising" services from sales and use tax; however, the line between non-enumerated services, excluded advertising services and taxable information services may, in practice, be unclear. Further complicating the determination of the sales taxability of services is the need to determine where the revenues from the services are sourced (i.e., where the service is rendered, where the service is consumed or where the information is accessed). Either or both of the origin jurisdiction's or the destination jurisdiction's laws may apply to a single transaction that spans two or more states.

In addition, many state governments are increasingly looking for ways to increase revenues to offset sales tax revenues lost from online sales of merchandise where online merchants with no physical presence in a state have, in general, not been required to collect and remit sales taxes. Some jurisdictions have implemented laws that require remote sellers of goods and services to collect and remit sales taxes on sales to customers within the jurisdiction based on economic nexus (i.e., where the business exceeds a dollar volume or number of transactions in the jurisdiction), even when the seller has no physical presence within the jurisdiction. On June 21, 2018, the U.S. Supreme Court in *South Dakota v. Wayfair, Inc. et al*, overturned prior law which required physical presence for nexus and endorsed economic nexus as a basis for South Dakota to require online merchants to collect and remit sales taxes, even when the online merchant has no physical presence in the buyer's state.

Approximately half of the states have adopted economic nexus as a basis to require online merchants to collect sales tax. Most of such laws apply prospectively or have delayed effective dates. More states may be expected to follow suit. The impact of the *Wayfair* decision on our business is uncertain. In states that adopt economic nexus and also tax specified enumerated services, if our services are found to be subject to that state's sales tax on services, we may have to collect and remit sales tax, which adds complexity and compliance costs and, due to the increased overall cost of our service, could make our service offerings less attractive and adversely affect our business.

If we do not adequately protect our intellectual property rights, our competitive position and business may suffer.

Our ability to compete effectively depends upon our proprietary systems and technology. We rely on patent, trade secret, trademark and copyright law, confidentiality agreements, and technical measures to protect our proprietary rights. We enter into confidentiality agreements with our employees, consultants, advisers, client vendors and publishers. These agreements may not effectively prevent unauthorized disclosure of confidential information or unauthorized parties from copying aspects of our services or obtaining and using our proprietary information. Further, these agreements may not provide an adequate remedy in the event of unauthorized disclosures or uses, and we cannot assure you that our rights under such agreements will be enforceable. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our website features, software and functionality or obtain and use information that we consider proprietary.

Policing unauthorized use of our proprietary rights can be difficult and costly. Litigation, while it may be necessary to enforce or protect our intellectual property rights, could result in substantial costs and diversion of resources and management attention and could adversely affect our business, even if we are successful on the merits. In addition, others may independently discover trade secrets and proprietary information, and in such cases, we could not assert any trade secret rights against such parties.

Covenants in our Credit Agreement impose restrictions that may limit our operating and financial flexibility.

The Credit Agreement contains a number of significant restrictions and affirmative and negative covenants that may limit our ability to, among other things:

- incur additional indebtedness;
- make restricted payments, including dividends, distributions, stock repurchases or redemptions;
- prepay, redeem or repurchase specified indebtedness;
- create certain liens;
- sell, transfer or otherwise convey certain assets;
- make certain investments;
- create dividend or other payment restrictions affecting subsidiaries;
- enter into transactions with affiliates;
- create unrestricted subsidiaries;
- consolidate, merge or transfer all or substantially all of our assets or the assets of our subsidiaries;
- enter into agreements containing certain prohibitions affecting us or our subsidiaries; and
- enter into new lines of business.

In addition, the Credit Agreement contains financial covenants, which require us to maintain minimum EBITDA levels, total leverage ratios and fixed charge coverage ratios. The Credit Agreement also requires us to make scheduled mandatory principal repayments and requires that a portion of our “Excess Cash Flow,” as such term is defined in the Credit Agreement, be applied to prepay amounts borrowed under the Credit Agreement. These mandatory prepayments may reduce the amount of cash available to us to fund the growth of our business.

The Credit Agreement also includes significant penalties for prepayments other than the mandatory prepayments discussed above. The amount of these prepayment penalties is reduced annually over a three-year period. If we borrow additional amounts under the Credit Agreement, this three-year period restarts on the newly borrowed amounts. These prepayment penalties make it less attractive for us to make additional borrowings under the Credit Agreement and inhibit our ability to refinance our debt on terms that would be acceptable to us.

These covenants could materially adversely affect our ability to finance our future operations or capital needs. Furthermore, they may restrict our ability to expand and pursue our business strategies and otherwise conduct our business. Our ability to comply with these covenants may be affected by circumstances and events beyond our control, such as prevailing economic conditions and changes in regulations, and we cannot provide any assurance that we will be able to comply with such covenants. These restrictions also limit our ability to obtain future financings or to withstand a future downturn in our business or the economy in general. In addition, complying with these covenants may also cause us to take actions that may make it more difficult for us to successfully execute our business strategy and compete against companies that are not subject to such restrictions.

A breach of any covenant in the Credit Agreement or the agreements governing any other indebtedness that we may have outstanding from time to time would result in a default under that agreement after any applicable grace periods. A default, if not waived, could result in an acceleration of the debt outstanding under the agreement and in a default with respect to, and an acceleration of, the debt outstanding under other debt agreements. If that occurs, we may not be able to make all of the required payments or borrow sufficient funds to refinance such debt. Even if new financing were available at such time, it may not be on terms that are acceptable to us or terms as favorable as our current agreements. If our debt is in default for any reason, our business, financial condition and results of operations could be materially and adversely affected.

We may require additional capital in the future in order to pursue our business objectives and respond to business opportunities, challenges or unforeseen circumstances. If capital is not available to us, our business, financial condition and results of operations may be harmed.

We intend to continue to make investments to support our growth and may require additional capital to pursue our business objectives and respond to business opportunities, challenges or unforeseen circumstances. Accordingly, we may need to engage in equity or debt financings to secure additional funds. However, additional funds may not be available when we need them, on terms that are acceptable to us, or at all. Disruptions in the global equity and credit markets may limit our ability to access capital.

To the extent that we raise additional funds by issuing equity securities, our shareholders would experience dilution, which may be significant and could cause the market price of our common stock to decline. Any debt financing, if available, may restrict our operations. If we are unable to raise additional capital when required or on acceptable terms, we may have to significantly delay, scale back or discontinue certain operations. Any of these events could significantly harm our business and results of operations.

We are a "smaller reporting company" and avail ourselves of certain reduced disclosure requirements applicable to smaller reporting companies, which could make our common stock less attractive to investors.

We are a "smaller reporting company," as defined in the Securities Exchange Act of 1934, and we take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "smaller reporting companies," including reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile. We may take advantage of these reporting exemptions until we are no longer a "smaller reporting company." We will remain a "smaller reporting company" while (i) the aggregate market value of our outstanding common stock held by non-affiliates (our "public float") as of the last business day of our most recently completed second fiscal quarter is less than $250 million, or (ii) if our annual revenue as of our most recently completed fiscal year is less than $100 million and we have (A) no public float, or (B) less than $700 million of public float as of the last business day of our most recently completed second fiscal quarter.

Our management and independent auditors have identified a material weakness in our internal controls over financial reporting, and we may be unable to develop, implement and maintain appropriate controls in future periods, which may lead to errors or omissions in our financial statements.

The Sarbanes-Oxley Act and related rules and regulations require that management report annually on the effectiveness of our internal control over financial reporting and assess the effectiveness of our disclosure controls and procedures on a quarterly basis. Maintaining and adapting our internal controls is expensive and requires significant management attention. Moreover, as we continue to grow, our internal controls may become more complex and require additional resources to ensure they remain effective amid dynamic regulatory and other guidance.

As described in Item 9A, “Controls and Procedures” of this 2019 Form 10-K, we concluded that our disclosure controls and procedures were not effective as of December 31, 2019 and that we had, as of such date, a material weakness in our internal control over financial reporting related to internal control deficiencies over the revenue recognition process; specifically, the aggregation of control deficiencies related to inadequate segregation of duties, significant deficiencies within the Company’s information technology general controls, and ineffective manual preventative and detective controls. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements would not be prevented or detected on a timely basis. This material weakness identified in Item 9A did not result in any adjustments or restatements of our audited and unaudited consolidated financial statements or disclosures for any prior period previously reported by the Company. However, until the material weakness is remediated and our associated disclosure controls and procedures improved, or if additional material weaknesses or significant deficiencies in our internal control over financial reporting occur in the future, our future consolidated financial statements or other information filed with the SEC may contain material misstatements.

With the oversight of management and the audit committee of the Company's board of directors, we are actively taking the appropriate steps towards the remediation of the underlying causes of the material weakness described above. During the third quarter of 2019, we commenced configuration of our new enterprise resource planning ("ERP") system, NetSuite, with the first phase of our implementation completed on January 1, 2020. While the full integration of our internal revenue tracking platforms with NetSuite remains ongoing, we believe that once NetSuite is fully integrated, its automated processes will include controls that will render unnecessary the manual preventative and detective controls that were deemed inadequate at December 31, 2019. We will continue our implementation of NetSuite, including the design of appropriate automated processes and controls, and continue to monitor, evaluate and update, as necessary, our processes and controls during the post-implementation period for an appropriate period of time before concluding that the material weakness described above has been effectively remediated.

In addition, although we review and evaluate internal control systems to allow management to report on the sufficiency of our internal controls, we cannot assure you that we will not discover additional weaknesses in our internal control over financial reporting in the future. Any such additional weakness or failure to remediate the existing weakness could materially adversely affect our financial condition or ability to comply with applicable financial reporting requirements, which could result in violations of applicable securities laws and NASDAQ listing requirements, subject us to litigation and investigations, negatively affect investor confidence in our financial statements, and adversely impact our stock price and ability to access capital markets.

Unfavorable global economic conditions, including as a result of health and safety concerns, could adversely affect our business, financial condition or results of operations.

Our results of operations could be adversely affected by general conditions in the global economy, including conditions that are outside of our control, such as the impact of health and safety concerns from the current outbreak of the COVID-19 coronavirus. The most recent global financial crisis caused by the coronavirus resulted in extreme volatility and disruptions in the capital and credit markets. A severe or prolonged economic downturn could result in a variety of risks to our business, including weakened demand from our advertiser clients or delays in client payments. A weak or declining economy could also strain our media supply channels.

Additionally, our business relies heavily on people, and adverse events such as health-related concerns about working in our offices, the inability to travel and other matters affecting the general work environment could harm our business. While we do not anticipate any material impact to our business operations as a result of the coronavirus, in the event of a major disruption caused by the outbreak of pandemic diseases such as coronavirus, we may lose the services of a number of our employees or experience system interruptions, which could lead to diminishment of our regular business operations, inefficiencies and reputational harm. Any of the foregoing could harm our business and we cannot anticipate all the ways in which the current global health crisis and financial market conditions could adversely impact our business.

Risks Related to the Spin-off

Following the Spin-off, we face additional costs associated with being a standalone public company.

Prior to the Spin-off on March 26, 2018, Fluent and Red Violet shared certain elements of the corporate reporting structure, including many of the corporate governance and financial reporting functions. Because Fluent is now an independent company with a different management team, the corporate functions are no longer conducted or overseen at a separate corporate level. As a relatively new standalone public company, Fluent has developed its own policies, systems, processes and operations, which are well established, but will continue to require organizational changes and oversight in order to successfully complete our transition to a new standalone public company.

Additionally, as a standalone public company, we are subject to the reporting requirements of the Exchange Act and are required to implement specific corporate governance practices and adhere to a variety of reporting requirements under Sarbanes-Oxley and the related rules and regulations of the SEC, as well as the rules of NASDAQ. The Exchange Act requires us to file annual, quarterly and current reports with respect to our business and financial condition. Sarbanes-Oxley requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. Compliance with these requirements places additional demands on our legal, accounting, finance and investor relations staff and on our accounting, financial and information systems. We also may have additional legal and accounting compliance costs, including additional compensation expenses, as we may be required to hire additional legal, accounting, tax, finance and investor relations staff. These additional efforts may strain our resources and divert management's attention from other business concerns, which could have a material adverse effect on our business, financial condition or results of operations.

Prior to the Spin-off, the Company had a history of losses and negative cash flow from operations, and we may be unable to achieve some or all of the benefits that we expect to achieve as a stand-alone company.

Prior to the Spin-off, the Company incurred operating losses and had negative cash flow from operations, despite positive financial results from what was then the performance marketing segment of our business. Since the Spin-off, we have generated net loss from continuing operations of $1.7 million and net income from continuing operations of $3.2 million in the fiscal years ended 2019 and 2018, respectively, and positive cash flow from continuing operations in both years. We may not be able to achieve some or all of the benefits that we expect to achieve as a stand-alone operating company or such benefits may be delayed or may not occur at all, in which case, we may not be able to continue to generate positive cash flow from operations in the future.

Under the separation agreement we entered into in connection with the Spin-off, we agreed to indemnify Red Violet for certain liabilities.

Under the separation agreement we entered into in connection with the Spin-off, Fluent agreed to indemnify Red Violet for certain liabilities. Although no such liabilities are known or anticipated, we cannot assure you that liabilities will not arise. If we have to indemnify Red Violet for unanticipated liabilities, the cost of such indemnification obligations may have a material adverse effect on our financial performance.

Risks Related to Our Common Stock

Our stock price has been and may continue to be volatile and may be affected by market conditions beyond our control. As a result, the value of an investment in our common stock may decline.

The trading price of our common stock has been and is likely to continue to be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. The following factors, in addition to other factors described in this "Risk Factors" section and elsewhere in this Annual Report on Form 10-K, may have a significant impact on the trading price of our common stock:

- additions or departures of key personnel;
- changes in governmental regulations or in the status of our regulatory approvals;
- changes in earnings estimates or recommendations by securities analysts;
- the emergence of new competitors or new technologies;
- any major change in our board or management;
- commencement of, or involvement in, litigation;
- general economic conditions and slow or negative growth of our markets; and
- political instability, natural disasters, war and/or events of terrorism.

In addition, the stock market has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of publicly traded companies. Broad market and industry factors may seriously affect the market price of companies' stock, including ours, regardless of actual operating performance. These fluctuations may be even more pronounced in the trading market for our stock. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against such companies. Such litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

Future issuances of shares of our common stock in connection with acquisitions or pursuant to our stock incentive plans could have a dilutive effect on your investment in us.

During 2018 and 2019 we issued 17,160,505 shares of our common stock in connection with acquisitions, vesting of awards made under our 2015 and 2018 Stock Incentive Plans (together, the "Plans"), and for other business purposes. Also, as of December 31, 2019, an additional 7,913,146 shares underlying awards issued under the Plans, outstanding warrants and other compensatory arrangements might vest and be delivered through 2024. The benefits derived by us from any future acquisition might not exceed the dilutive effect of the acquisition. Pursuant to the Plans, our board of directors has granted and may continue to grant stock options, restricted stock units ("RSUs"), or other equity awards to our directors and employees. When these awards vest or are exercised, the issuance of shares of common stock underlying these awards may have a dilutive effect on our common stock, which could cause our stock price to decline.

The concentration of our stock ownership may limit individual stockholder ability to influence corporate matters.

As of December 31, 2019, our executive officers, directors and holders of 10% or more of our outstanding common stock beneficially owned and have the ability to exercise some voting control over, in the aggregate, approximately 49.2% of our outstanding shares of common stock on a fully diluted basis. As a result, these stockholders may be in a position to exert significant influence over all matters requiring stockholder approval, including the election of directors and determination of significant corporate actions. The interests of these stockholders may not always coincide with the interests of other stockholders, and these stockholders may act in a manner that advances their interests and not necessarily those of other stockholders, which might affect the market price of our common stock.

We do not intend to pay cash dividends for the foreseeable future.

We have never declared or paid cash dividends on our capital stock and we do not expect to declare or pay any cash dividends in the foreseeable future. Additionally, our Credit Agreement prohibits us from paying dividends on our equity securities, other than dividends on common stock which accrue (but are not paid in cash) or are paid in kind, or dividends on preferred stock which accrue (but are not paid in cash) or are paid in kind. As a result, you may only receive a return on your investment in our common stock if the trading price of your shares increases.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Our headquarters are located at 300 Vesey Street, 9th Floor, New York, NY 10282, where we lease 42,685 rentable square feet of office space under an 84-month lease, effective November 2018. The recently acquired AdParlor business has an office in Toronto located at 1209 King St. West, Toronto, Ontario M6K 1G2, with 8,127 rentable square feet under a 60-month lease, effective July 2017, which was assumed by Fluent in connection with the AdParlor Acquisition.

We believe our present facilities are suitable and adequate for our current operating needs.

Item 3. Legal Proceedings.

Other than as disclosed below under "Certain Legal Matters," the Company is not currently a party to any legal proceeding, investigation or claim which, in the opinion of the management, is likely to have a material adverse effect on our business, financial condition, results of operations or cash flows. Legal fees associated with such legal proceedings are expensed as incurred. We review legal proceedings and claims on an ongoing basis and follow appropriate accounting guidance, including ASC 450, when making accrual and disclosure decisions. We establish accruals for those contingencies where the incurrence of a loss is probable and can be reasonably estimated, and we disclose the amount accrued and the amount of a reasonably possible loss in excess of the amount accrued, if such disclosure is necessary for our financial statements to not be misleading. To estimate whether a loss contingency should be accrued by a charge to income, we evaluate, among other factors, the degree of probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of such loss. We do not accrue liabilities when the likelihood that the liability has been incurred is probable but the amount cannot be reasonably estimated.

In addition, we may be involved in litigation from time to time in the ordinary course of business. We do not believe that the ultimate resolution of any such matters currently pending will have a material adverse effect on our business, financial condition, results of operations or cash flows. However, the results of such matters cannot be predicted with certainty, and we cannot assure you that the ultimate resolution of any legal or administrative proceeding or dispute will not have a material adverse effect on our business, financial condition, results of operations and cash flows.

Certain Legal Matters

On October 26, 2018, the Company received a subpoena from the New York Attorney General’s Office (“NY AG”) regarding compliance with New York Executive Law § 63(12) and New York General Business Law § 349, as they relate to the collection, use, or disclosure of information from or about consumers or individuals submitted to the Federal Communication Commission (“FCC”) in connection with the FCC’s rulemaking proceeding captioned “Restoring Internet Freedom,” WC Docket No. 17-108. On December 13, 2018, the Company received a subpoena from the United States Department of Justice (“DOJ”) regarding the same issue. The Company has been fully cooperating with both the NY AG and the DOJ and is responding to the subpoenas. At this time, it is not possible to predict the ultimate outcome of either matter or the significance, if any, to our business, results of operations or financial position.

On June 27, 2019, as a part of two sales and use tax audits covering the period from December 1, 2010 to November 30, 2019, the New York State Department of Taxation and Finance (the “Tax Department”) issued a letter stating its position that revenue derived from certain of the Company’s customer acquisition and list management services are subject to sales tax as information services. The Company disputed the Tax Department's position on several grounds and responded to the Tax Department outlining its position. On January 14 and 15, 2020, the Tax Department issued Statements of Proposed Audit Adjustment totaling $8.2 million, including $2.0 million of interest. The Company formally disagreed with the amount of the Proposed Audit Adjustment and met with Tax Department on March 4, 2020. During that meeting, the Company informed the Tax Department that a majority of the Proposed Audit Adjustment was based on transfers which were exempt resales or sourced outside of New York and renewed its challenge as to the taxability of its customer acquisition revenue. Based on the foregoing, the Company believes that it is probable that a sales tax liability may result from this matter, and currently estimates the range of any such liability to be between $0.7 million and $3.7 million and has accrued a liability at the low end of this range.

On January 28, 2020, the Company received a CID from the FTC regarding compliance with the FTC Act or the TSR, as they relate to the advertising, marketing, promotion, offering for sale, or sale of rewards and other products, the transmission of commercial text messages, and/or consumer privacy or data security. The Company has been fully cooperating with the FTC and is responding to the CID. At this time, it is not possible to predict the ultimate outcome of this matter or the significance, if any, to our business, results of operations or financial position.

Item 4. Mine Safety Disclosures.

Not Applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Our common stock is listed on The NASDAQ Global Market ("NASDAQ") under the symbol "FLNT." Prior to March 26, 2018, our common stock was listed on NASDAQ under the symbol "COGT." As of March 10, 2020, there were 58 record holders of our common stock.

During our fiscal years ended December 31, 2019 and 2018, we paid no dividends and made no other distributions in respect of our common stock. We have no plans to pay any cash dividends or make any other cash distributions in the forseeable future. Our Credit Agreement prohibits us from paying dividends on our equity securities, other than dividends on common stock which accrue (but are not paid in cash) or are paid in kind, or dividends on preferred stock which accrue (but are not paid in cash) or are paid in kind.

Item 6. Selected Financial Data.

The following selected consolidated financial data should be read in conjunction with the consolidated financial statements and notes thereto and "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this 2019 Form 10-K. The fiscal year financial information included in the table below is derived from our audited consolidated financial statements. Historical results are not necessarily indicative of future results.

	Year Ended December 31,	
(In thousands, except share and per share data)	**2019**	**2018**
Consolidated Statements of Operations:		
Revenue	$ 281,684	$ 250,280
Income from operations	5,219	11,372
Net (loss) income from continuing operations	(1,747)	3,192
Net loss from discontinued operations	—	(21,124)
Net loss	$ (1,747)	$ (17,932)
Basic and diluted net (loss) income per share (1):		
Continuing operations	$ (0.02)	$ 0.04
Discontinued operations	$ —	(0.28)
Net loss	$ (0.02)	$ (0.23)
Weighted average number of shares outstanding:		
Basic and diluted	79,373,789	76,705,877
Consolidated Statements of Cash Flows:		
Net cash provided by operating activities from continuing operations	$ 26,018	$ 29,319
Net cash used in operating activities from discontinued operations	$ —	$ (5,835)
Net cash provided by operating activities	$ 26,018	$ 23,484

(1) Income (loss) per share tables may contain summation differences due to rounding.

(In thousands)	As of December 31, 2019	2018
Balance sheets:		
Total assets	$ 317,093	$ 293,269
Long-term debt, net	$ 44,098	$ 51,972
Total shareholders' equity	$ 210,937	$ 207,166

(In thousands)	Year Ended December 31, 2019	2018
Net (loss) income from continuing operations	$ (1,747)	$ 3,192
Income tax expense	74	46
Interest expense, net	6,892	8,134
Depreciation and amortization	13,940	13,174
Write-off of intangible assets	425	1,517
Share-based compensation	10,341	14,681
Acquisition-related costs	483	676
Restructuring and certain severance costs	1,956	2,591
Certain litigation and other related costs	2,135	46
One-time items	185	—
Adjusted EBITDA	$ 34,684	$ 44,057

See "Use and Reconciliation of Non-GAAP Financial Measures" set forth in Item 7, "Management's Discussion and Analysis of Financial Conditions and Results of Operations," for a discussion of our use of adjusted EBITDA.

Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes included in this Annual Report on Form 10-K (“2019 Form 10-K”). This 2019 Form 10-K contains certain forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from any future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to those differences include, but are not limited to, those discussed in the section titled "Cautionary Note Regarding Forward-Looking Statements" and in Part I, “Item 1A. Risk Factors” of this 2019 Form 10-K.

Overview

Fluent, Inc. is an industry leader in data-driven digital marketing services. We primarily perform customer acquisition services by operating highly scalable digital marketing campaigns, through which we connect our advertiser clients with consumers they are seeking to reach. We deliver data and performance-based marketing executions to our clients, which in 2019 included over 500 consumer brands, direct marketers and agencies across a wide range of industries, including Financial Products & Services, Media & Entertainment, Health & Wellness, Staffing & Recruitment, and Retail & Consumer.

We attract consumers at scale to our owned digital media properties primarily through promotional offerings and employment opportunities. On average, our websites receive over 900,000 first-party user registrations daily, which include users’ names, contact information and opt-in permission to present them with offers on behalf of our clients. Approximately 90% of these users engage with our media on their mobile devices or tablets. Our always-on, real-time capabilities enable users to access our media whenever and wherever they choose.

Once users have registered with our sites, we integrate proprietary direct marketing technologies and analytics to engage them with surveys, polls and other experiences, through which we learn about their lifestyles, preferences and purchasing histories. Based on these insights, we serve targeted, relevant offers to them on behalf of our clients. As new users register and engage with our sites and existing registrants re-engage, we believe the enrichment of our database expands our addressable client base and improves the effectiveness of our performance-based campaigns.

Since our inception, we have amassed a large, proprietary database of first-party, self-declared user information and preferences. We have permission to contact the majority of users in our database through multiple channels, such as email, home address, telephone, push notifications and SMS text messaging. We leverage our data primarily to serve advertisements that we believe will be relevant to users based on the information they provide. We have also begun to leverage our existing database into new revenue streams, including utilization-based models, such as programmatic advertising.

For the years ended December 31, 2019 and 2018, we recorded revenue of $281.7 million and $250.3 million, net loss from continuing operations of $1.7 million and net income from continuing operations of $3.2 million, and adjusted EBITDA of $34.7 million and $44.1 million, respectively. Adjusted EBITDA is a non-GAAP financial measure equal to net (loss) income from continuing operations, the most directly comparable financial measure based on US GAAP, adding back income taxes, interest expense, depreciation and amortization, share-based compensation expense, and other adjustments. See our audited consolidated financial statements and accompanying notes thereto appearing elsewhere in this 2019 Form 10-K, and for further discussion and analysis of our results of operations, including a reconciliation of adjusted EBITDA from net (loss) income from continuing operations, see "Non-US GAAP Financial Measures” and “Results of Operations” below.

Spin-off of Red Violet

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

Following the Spin-off, our common stock continues trading on The NASDAQ Stock Market ("NASDAQ"), and Red Violet became an independent public company, owning and operating all of the subsidiaries which previously operated our risk management business.

In accordance with Accounting Standards Codification ("ASC") 205-20, "*Discontinued Operations*," the results of Red Violet are reflected in our consolidated financial statements as discontinued operations and, therefore, are presented as assets and liabilities of discontinued operations on the consolidated balance sheet, loss from discontinued operations in the consolidated statements of operations and cash activity from discontinued operations in the consolidated statements of cash flows.

Trends Affecting our Business

Development, Acquisition and Retention of High Quality Targeted Media

A key challenge for our business is identifying and accessing media sources that are of high quality and able to attract targeted users for our advertiser clients, at scale and in a cost-effective manner. In order to grow our business, we seek to find, develop and retain quality targeted media sources that meet these needs. Consolidation of media sources, changes in search engine and email and text message blocking algorithms and increased competition for available media have, during some periods, including during the second and third quarter of 2019, limited and may in the future limit our ability to generate revenue at acceptable margins. To offset this impact, we have sourced and continue to source new media suppliers, including strategic partnerships with other marketing and media companies, as well as developing our own media properties. We have also focused on growing our revenue from social media, mobile and email traffic sources.

Seasonality and Cyclicality

Our results are subject to fluctuation as a result of seasonality and cyclicality in our and our clients' businesses. For example, our fourth fiscal quarter ending December 31 is typically characterized by higher advertiser budgets, which can be somewhat offset by seasonal challenges of lower availability and/or higher pricing for some forms of media during the holiday period. Further, as reflected in data from the IAB, industry spending on internet advertising has generally declined sequentially in the first quarter of the calendar year from the fourth quarter. Similar to the industry overall, some of our clients have lower advertising budgets during our first fiscal quarter ending March 31; however, we believe that the breadth of industries in which our clients operate provides us with some insulation from these fluctuations.

In addition to variations in budgets from quarter to quarter, certain clients have budgets that start stronger at the beginning of quarterly or monthly periods, may reach limits during such periods and then may have needs to satisfy their performance objectives at the end of such periods. Beyond these budgetary constraints and buying patterns of clients, other factors affecting our business may include macroeconomic conditions affecting the digital media industry and the various client verticals we serve.

Definitions, Use and Reconciliation of Non-US GAAP Financial Measures

We report the following non-US GAAP measures:

Media margin is defined as revenue minus cost of revenue (exclusive of depreciation and amortization) attributable to variable costs paid for media and related expenses. Media margin is also presented as percentage of revenue.

Adjusted EBITDA is defined as net (loss) income from continuing operations, excluding (1) income tax expense, (2) interest expense, net, (3) depreciation and amortization, (4) write-off of intangible assets, (5) share-based compensation expense, (6) acquisition-related costs, (7) restructuring and certain severance costs, (8) certain litigation and other related costs, and (9) one-time items.

Adjusted net income is defined as net (loss) income from continuing operations, excluding (1) write-off of intangible assets, (2) share-based compensation expense, (3) acquisition-related costs, (4) restructuring and certain severance costs, (5) certain litigation and other related costs, and (6) one-time items. Adjusted net income is also presented on a per share (basic and diluted) basis.

Below is a reconciliation of media margin from net (loss) income from continuing operations, which we believe is the most directly comparable US GAAP measure:

	Year Ended December 31, 2019	Year Ended December 31, 2018
Net (loss) income from continuing operations	$ (1,747)	$ 3,192
Income tax expense	74	46
Interest expense, net	6,892	8,134
Spin-off transaction costs	—	7,708
Write-off of intangible assets	425	1,517
Depreciation and amortization	13,940	13,174
General and administrative	48,065	36,007
Product development	8,055	5,279
Sales and marketing	11,545	13,663
Non-media cost of revenue (1)	6,341	3,473
Media margin	$ 93,590	$ 92,193
Revenue	$ 281,684	$ 250,280
Media margin % of revenue	33.2%	36.8%

(1) Represents the portion of cost of revenue (exclusive of depreciation and amortization) not attributable to variable costs paid for media and related expenses.

Below is a reconciliation of adjusted EBITDA from net (loss) income from continuing operations, which we believe is the most directly comparable US GAAP measure:

	Year Ended December 31, 2019	Year Ended December 31, 2018
Net (loss) income from continuing operations	$ (1,747)	$ 3,192
Income tax expense	74	46
Interest expense, net	6,892	8,134
Depreciation and amortization	13,940	13,174
Write-off of intangible assets	425	1,517
Share-based compensation	10,341	14,681
Acquisition-related costs	483	676
Restructuring and certain severance costs	1,956	2,591
Certain litigation and other related costs	2,135	46
One-time items	185	—
Adjusted EBITDA	$ 34,684	$ 44,057

Below is a reconciliation of adjusted net income and the related measure of adjusted net income per share from net (loss) income from continuing operations, which we believe is the most directly comparable US GAAP measure:

	Year Ended December 31,	
(In thousands, except share data)	**2019**	**2018**
Net (loss) income from continuing operations	$ (1,747)	$ 3,192
Write-off of intangible assets	425	1,517
Share-based compensation	10,341	14,681
Acquisition-related costs	483	676
Restructuring and certain severance costs	1,956	2,591
Certain litigation and other related costs	2,135	46
One-time items	185	—
Adjusted net income	13,778	22,703
Adjusted net income per share:		
Basic	$ 0.17	$ 0.30
Diluted	$ 0.17	$ 0.30
Adjusted weighted average number of shares outstanding:		
Basic	79,373,789	76,705,877
Diluted	80,280,293	76,705,877

We present media margin, adjusted EBITDA and adjusted net income as supplemental measures of our financial and operating performance because we believe they provide useful information to investors. More specifically:

Media margin, as defined above, is a measure of the efficiency of the Company's operating model. We use media margin and the related measure of media margin as a percentage of revenue as primary metrics to measure the financial return on our media and related costs, specifically to measure the degree by which the revenue generated from our digital marketing services exceeds the cost to attract the consumers to whom offers are made through our services. Media margin is used extensively by our management to manage our operating performance, including evaluating operational performance against budgeted media margin and understanding the efficiency of our media and related expenditures. We also use media margin for performance evaluations and compensation decisions regarding certain personnel.

Adjusted EBITDA, as defined above, is another primary metric by which we evaluate the operating performance of our business, on which certain operating expenditures and internal budgets are based and by which, in addition to media margin and other factors, our senior management is compensated. The first three adjustments represent the conventional definition of EBITDA, and the remaining adjustments are items recognized and recorded under US GAAP in particular periods but might be viewed as not necessarily coinciding with the underlying business operations for the periods in which they are so recognized and recorded. These adjustments include certain severance costs associated with department-specific reorganizations and certain litigation and other related costs associated with legal matters outside the ordinary course of business, including an accrual for a New York State sales and use tax dispute in the fourth quarter of 2019. Items are considered one-time in nature if they are non-recurring, infrequent or unusual and have not occurred in the past two years or are not expected to recur in the next two years, in accordance with SEC rules. Adjusted EBITDA for the year ended December 31, 2019 excluded as one-time items $0.2 million of costs associated with the move of our corporate headquarters. There were no other material adjustments for one-time items in the periods presented.

Adjusted net income, as defined above, and the related measure of adjusted net income per share exclude certain items that are recognized and recorded under US GAAP in particular periods but might be viewed as not necessarily coinciding with the underlying business operations for the periods in which they are so recognized and recorded. Adjusted net income for the year ended December 31, 2019 excluded as one-time items $0.2 million of costs associated with the move of our corporate headquarters. There were no other material adjustments for one-time items in the periods presented. We believe adjusted net income affords investors a different view of the overall financial performance of the Company than adjusted EBITDA and the US GAAP measure of net (loss) income from continuing operations.

Media margin, adjusted EBITDA, adjusted net income and adjusted net income per share are not intended to be performance measures that should be regarded as an alternative to, or more meaningful than, net (loss) income from continuing operations as indicators of operating performance. None of these metrics are presented as measures of liquidity. The way we measure media margin, adjusted EBITDA and adjusted net income may not be comparable to similarly titled measures presented by other companies and may not be identical to corresponding measures used in our various agreements.

Results of Operations

Summary

Year ended December 31, 2019 compared to year ended December 31, 2018:

- Revenue increased 13% to $281.7 million, from $250.3 million.
- Net loss from continuing operations was $1.7 million, or $0.02 per share, compared to net income from continuing operations of $3.2 million, or $0.04 per share.
- Net loss from discontinued operations was $0.0 million, compared to $21.1 million.
- Media margin increased 2% to $93.6 million, from $92.2 million, representing 33.2% of revenue.
- Adjusted EBITDA decreased 21% to $34.7 million, based on a net loss from continuing operations of $1.7 million, from $44.1 million, based on net income from continuing operations of $3.2 million.
- Adjusted net income decreased $8.9 million to $13.8 million, or $ 0.17 per share, from $22.7 million, or $ 0.30 per share.

The following tables show our results of operations for the periods presented and express the relationship of certain line items as a percentage of revenue for those respective periods:

	Year Ended December 31,			
(in thousands)	2019		2018	
Revenue	$ 281,684	100%	$ 250,280	100%
Costs and expenses:				
Cost of revenue (exclusive of depreciation and amortization)	194,435	69.0	161,560	64.6
Sales and marketing	11,545	4.1	13,663	5.5
Product development	8,055	2.9	5,279	2.1
General and administrative	48,065	17.1	36,007	14.4
Depreciation and amortization	13,940	4.9	13,174	5.3
Write-off of intangible assets	425	0.2	1,517	0.6
Spin-off transaction costs	—	—	7,708	3.1
Total costs and expenses	276,465	98.1	238,908	95.5
Income from operations	5,219	1.9	11,372	4.5
Interest expense, net	(6,892)	(2.4)	(8,134)	(3.2)
(Loss) income before income taxes from continuing operations	(1,673)	(0.6)	3,238	1.3
Income tax expense	(74)	—	(46)	—
Net (loss) income from continuing operations	(1,747)	(0.6)	3,192	1.3
Discontinued operations:				
Loss from operations of discontinued operations, net of $0 income taxes	—	—	(2,084)	(0.8)
Loss on disposal of discontinued operations, net of $0 income taxes	—	—	(19,040)	(7.6)
Net loss from discontinued operations	—	—	(21,124)	(8.4)
Net loss	$ (1,747)	(0.6)%	$ (17,932)	(7.2)%

Year ended December 31, 2019 compared to year ended December 31, 2018

Revenue. For the year ended December 31, 2019, revenue increased $31.4 million, or 13%, to $281.7 million, from $250.3 million for the year ended December 31, 2018. The increase was primarily attributable to higher demand for our performance-based marketing services, particularly amongst our clients in the Media & Entertainment and Financial Products & Services industries.

Cost of revenue (exclusive of depreciation and amortization). For the year ended December 31, 2019, cost of revenue increased $32.9 million, or 20%, to $194.4 million, from $161.6 million for the year ended December 31, 2018. Our cost of revenue primarily consists of media and related costs associated with acquiring traffic from third-party publishers and digital media platforms, for our owned and operated websites and, historically, on behalf of third-party advertisers.

For the year ended December 31, 2019, cost of revenue as a percentage of revenue increased to 69.0%, compared to 64.6% for the year ended December 31, 2018, as we incurred relatively higher costs of media in order to satisfy incremental demand by clients for additional volume in the 2019 period. See "Trends Affecting Our Business —Development, Acquisition and Retention of High Quality Targeted Media" above.

Sales and marketing. For the year ended December 31, 2019, sales and marketing expenses decreased $2.1 million, or 16%, to $11.5 million, from $13.7 million for the year ended December 31, 2018. For the years ended December 31, 2019 and 2018, the amounts consisted mainly of employee salaries and benefits of $8.4 million and $8.6 million, advertising costs of $1.4 million and $1.5 million, and non-cash share-based compensation expense of $1.0 million and $2.9 million, respectively. The decrease in sales and marketing expense was primarily the result of lower share-based compensation expense of $1.9 million.

Product development. For the year ended December 31, 2019, product development expenses increased $2.8 million, or 53%, to $8.1 million, from $5.3 million for the year ended December 31, 2018. For the years ended December 31, 2019 and 2018, the amounts consisted primarily of employee salaries and benefits of $7.0 million and $4.1 million, respectively. The increase in product development costs was the result of increased workforce focused on development and innovation of our existing offerings to consumers and advertisers, and development of new product offerings and enhancements of our analytics capabilities, including the development and deployment of machine learning-based ad serving.

General and administrative. For the year ended December 31, 2019, general and administrative expenses increased $12.1 million, or 33%, to $48.1 million, from $36.0 million for the year ended December 31, 2018. For the years ended December 31, 2019 and 2018, the amounts consisted mainly of employee salaries and benefits of $18.4 million and $17.4 million, non-cash share-based compensation expense of $8.5 million and $5.7 million, professional fees of $5.6 million and $4.9 million, office overhead of $3.7 million and $2.7 million, provision for bad debt of $2.6 million and $0.5 million and acquisition and restructuring of $2.4 million and $1.0 million, respectively. The increase was mainly the result of higher share-based compensation expense from stock options granted to certain officers (as described in Note 13, *Share-based compensation*, in the Notes to Consolidated Financial Statements) of $2.8 million in addition to higher provision for bad debt of $2.1 million, acquisition and restructuring of $1.4 million, office overhead of $1.0 million, salaries and benefits of $1.0 million and professional fees of $0.7 million.

During the fourth quarter of 2019, the Company implemented two separate reductions in workforce that resulted in the termination of approximately forty-six employees in the aggregate. These reductions in workforce were implemented following management's determination to reduce headcount and decrease the Company's costs to more effectively align resources to the core business operations. In connection with these reductions in workforce, the Company incurred $1.4 million in exit-related restructuring costs, consisting primarily of one-time termination benefits and associated costs, to be settled in cash by June 30, 2020. Apart from these exit-related restructuring costs, these reductions in workforce are expected to result in corresponding reductions in future salary and benefit expenses primarily in Product development and General and administrative expense.

Depreciation and amortization. Depreciation and amortization expenses remained relatively flat year over year, at $13.9 million for the year ended December 31, 2019 and $13.2 million for the year ended December 31, 2018.

Write-off of intangible assets. During the third and fourth quarter of 2019 and fourth quarter of 2018, we recognized $0.4 million and $1.5 million, respectively, due to abandonment of certain internally developed software that had not yet been placed into service.

Spin-off transaction costs. During the first quarter of 2018, in connection with the Spin-off of Red Violet, we recognized $7.7 million in Spin-off transaction costs, which included non-cash share-based compensation expense of $5.4 million as a result of the Transaction Grants (as defined in Note 13, *Share-based compensation,* in the Notes to Consolidated Financial Statements), and employee cash compensation of $2.3 million. There were no such costs in the year ended December 31, 2019.

Interest expense, net. For the year ended December 31, 2019, interest expense, net, decreased $1.2 million, or 15%, to $6.9 million, from $8.1 million for the year ended December 31, 2018. The decrease was primarily attributable to a lower average debt balance outstanding under our Refinanced Term Loan, as described below under "Liquidity and Capital Resources".

(Loss) income before income taxes from continuing operations. For the year ended December 31, 2019, loss before income taxes from continuing operations was $1.7 million, compared to net income before income taxes from continuing operations of $3.2 million for the year ended December 31, 2018. This change was primarily due to increases in cost of revenue of $32.9 million, general and administrative expense of $12.1 million and product development expense of $2.8 million, partially offset by an increase in revenue of $31.4 million, the absence in 2019 of one-time Spin-off transaction costs of $7.7 million (including non-cash share-based compensation expenses of $5.4 million) incurred during the first quarter of 2018, and a decrease in sales and marketing expense of $2.1 million, as discussed above.

Income tax expense. For the year ended December 31, 2019, the provision for income taxes was $0.1 million, with an effective tax rate of 4.4%.

As of December 31, 2019 and 2018, the Company recorded full valuation allowances against its net deferred tax assets. The Company intends to maintain full valuation allowances against the net deferred tax assets until there is sufficient evidence to support the release of all or some portion of such allowances. Release of some or all of the valuation allowance would result in the recognition of certain deferred tax assets and an increase in deferred tax benefit for any period in which such a release may be recorded, however, the exact timing and amount of any valuation allowance release are subject to change, depending on the profitability that we are able to achieve and the net deferred tax assets available.

Net loss from discontinued operations. On March 26, 2018, we completed the Spin-off of Red Violet and the results of Red Violet through this date are reflected as discontinued operations. For the year ended December 31, 2018, we incurred net losses from discontinued operations of $21.1 million. This amount consists primarily of the one-time loss on disposal of discontinued operations of $19.0 million, which was primarily comprised of non-cash items of $16.0 million, including share-based compensation expense and write-off of unamortized debt costs in connection with the Spin-off, and cash items of $3.0 million, including spin-off related professional fees and employee compensation. For the year ended December 31, 2019, there were no comparable discontinued operations.

Net loss. For the years ended December 31, 2019 and 2018, net losses were $1.7 million and $17.9 million, respectively. The improvement in net loss was primarily due to the absence of losses from discontinued operations in 2019, partially offset by the loss before income taxes from continuing operations in 2019 compared to income before income taxes from continuing operations in 2018.

Effect of Inflation

The rates of inflation experienced in recent years have had no material impact on our financial statements. We attempt to recover increased costs by increasing prices for our services, to the extent permitted by contracts and the competitive environment within our industry.

Liquidity and Capital Resources

Cash flows provided by operating activities. For the years ended December 31, 2019 and 2018, net cash provided by operating activities from continuing operations was $26.0 million and $29.3 million, respectively, which were attributable primarily to a net loss from continuing operations of $1.7 million compared to net income from continuing operations of $3.2 million, adjusted for certain non-cash items, such as depreciation and amortization and share-based compensation expenses of an aggregate $28.7 million and $31.4 million, respectively. For the years ended December 31, 2019 and 2018, net working capital decreased by $1.8 million and $5.9, respectively.

For the years ended December 31, 2019 and 2018, net cash used in operating activities from discontinued operations was $0.0 million and $5.8 million, respectively.

As a result of the foregoing, for the years ended December 31, 2019 and 2018, net cash provided by operating activities was $26.0 million and $23.5 million, respectively.

Cash flows used in investing activities. For the years ended December 31, 2019 and 2018, net cash used in investing activities was $12.0 million and $22.6 million, respectively, comprised of net cash used in investing activities from continuing operations of $12.0 million and $21.2 million, and net cash used in investing activities from discontinued operations of $0.0 million and $1.4 million, respectively.

The decrease in net cash used in investing activities from continuing operations in 2019 was primarily attributable to the capital contributed to Red Violet of $19.7 million related to the Spin-off during the first quarter of 2018, with no comparable contribution in the current year, partially offset by cash paid for the AdParlor Acquisition in the amount of $7.3 million in the current year.

Cash flows (used in) provided by financing activities. For the year ended December 31, 2019, net cash used in financing activities of $13.2 million was primarily attributable to repayments related to the Refinanced Term Loan of $8.0 million, statutory taxes paid related to the net share settlement of vested restricted stock units of $3.1 million and repurchase of treasury stock as part of a stock repurchase program of $1.8 million. For the year ended December 31, 2018, net cash provided by financing activities of $1.8 was primarily attributable to the net proceeds from the Refinanced Term Loan of $67.2 million and the net proceeds of a registered direct offering in January 2018 of $13.4 million, which were largely offset by repayments of the principal balance of Term Loans and Promissory Notes of $76.8 million in connection with the Refinanced Term Loan described below, and taxes paid related to the net share settlement of vested restricted stock units of $2.0 million.

As of December 31, 2019, we had noncancelable operating lease commitments of $13.1 million and long-term debt which had a $54.8 million principal balance. For the year ended December 31, 2019, we funded our operations using available cash.

As of December 31, 2019, we had cash, cash equivalents and restricted cash of approximately $20.2 million, an increase of $1.0 million from $19.2 million as of December 31, 2018, primarily attributable to cash provided by operations. We believe that we will have sufficient cash resources to finance our operations and expected capital expenditures for the next twelve months and beyond.

In January 2020, holders of an aggregate of 300,000 shares of common stock obtained upon exercise of warrants issued in connection with our Credit Agreement exercised a put right to require us to purchase such shares for an aggregate of $1.15 million. We funded such purchase with cash on hand.

We may explore the possible acquisition of businesses, products and/or technologies that are complementary to our existing business. We continue to identify and prioritize additional technologies which we may wish to develop internally or through licensing or acquisition from third parties. While we may engage from time to time in discussions with respect to potential acquisitions, there can be no assurances that any such acquisitions will be made or that we will be able to successfully integrate any acquired business. In order to finance such acquisitions or working capital required for internal development projects, it may be necessary for us to raise additional funds through public or private financings. Any equity or debt financing, if available at all, may be on terms which are not favorable to us and, in the case of equity financing, may result in dilution to stockholders. On July 1, 2019, we acquired substantially all of the assets of AdParlor Holdings, Inc. and certain affiliates for $7.3 million in cash, using cash on hand, and issued a $2.4 million promissory note to the sellers. See Note 15, *Business acquisition,* in the Notes to Consolidated Financial Statements.

On March 26, 2018, in connection with the Spin-off of Red Violet, we refinanced and fully repaid the existing Term Loans and Promissory Notes with an aggregate amount of $67.1 million, with proceeds from the Refinanced Term Loan in the amount of $70.0 million. As of December 31, 2019, the Refinanced Term Loan has an outstanding principal balance of $52.3 million. The Credit Agreement, along with the related Amendment No.6 governing the Refinanced Term Loan and subsequent amendments, contain restrictive covenants which impose limitations on the way we conduct our business, including limitations on the amount of additional debt we are able to incur and our ability to make certain investments and other restricted payments. The restrictive covenants and prepayment penalties in the Credit Agreement, as amended, may limit our strategic and financing options and our ability to return capital to our shareholders through dividends or stock buybacks. Furthermore, we may need to incur additional debt to meet future financing needs.

The Refinanced Term Loan is guaranteed by us and our direct and indirect subsidiaries and is secured by substantially all of our assets and those of our direct and indirect subsidiaries, including Fluent, LLC, in each case, on an equal and ratable basis. The Refinanced Term Loan accrues interest at the rate of either, at Fluent's option, (a) LIBOR (subject to a floor of 0.50%) plus 7.00% per annum, or (b) base rate (generally equivalent to the U.S. prime rate) plus 6.0% per annum, payable in cash. Principal amortization of the Refinanced Term Loan is $0.9 million per quarter, commencing with the fiscal quarter ended June 30, 2018. The Refinanced Term Loan matures on March 26, 2023.

The Credit Agreement, as amended, requires us to maintain and comply with certain financial and other covenants, commencing with the fiscal quarter ended June 30, 2018. While we were in compliance with the financial and other covenants as of December 31, 2019, we cannot assure that we will be able to maintain compliance with such financial or other covenants. Our failure to comply with these covenants could result in an event of default which, if not cured or waived, could result in the acceleration of all of our indebtedness, which would materially adversely affect our financial health if we are unable to access sufficient funds to repay all the outstanding amounts. Moreover, if we are unable to meet our debt obligations as they come due, we could be forced to restructure or refinance such obligations, seek additional equity financing or sell assets, which we may not be able to do on satisfactory terms, or at all. In addition, the Credit Agreement includes certain prepayment provisions, including mandatory quarterly prepayments of the Refinanced Term Loan with a portion of our excess cash flow and prepayment penalties if we prepay the Refinanced Term Loan before the fourth anniversary of Amendment No. 6. As long as the Refinanced Term Loan remains outstanding, the restrictive covenants and mandatory quarterly prepayment provisions and prepayment penalties could impair our ability to expand or pursue our business strategies or obtain additional funding.

January 2018 Registered Direct Offering

On January 10, 2018, pursuant to a definitive securities purchase agreement with certain qualified institutional buyers, we issued an aggregate of 2,700,000 shares of common stock in a registered direct offering for gross proceeds of $13.5 million (the “January 2018 Registered Direct Offering”), at a purchase price of $5.00 per share, which was received in January 2018. Simultaneously, we issued to such buyers, for no additional consideration, warrants to purchase an aggregate of 1,350,000 shares of common stock. The warrants have an exercise price of $6.00 per share and are exercisable from the date of issuance and expire on July 11, 2020.

Off-Balance Sheet Arrangements

We do not have any outstanding off-balance sheet guarantees, interest rate swap transactions or foreign currency forward contracts. In addition, we do not engage in trading activities involving non-exchange traded contracts. In our ongoing business, we do not enter into transactions involving, or otherwise form relationships with, unconsolidated entities or financial partnerships that are established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Critical Accounting Policies and Estimates

Management’s discussion and analysis of financial condition and results of operations are based upon Fluent's consolidated financial statements, which have been prepared in accordance with US GAAP. The preparation of these consolidated financial statements requires Fluent to make certain estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. On an ongoing basis, Fluent evaluates its estimates, including those related to revenue recognition, recoverability of the carrying amounts of goodwill and intangible assets, share-based compensation and income taxes. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following critical accounting policies govern our more significant judgments and estimates used in the preparation of our consolidated financial statements. Further details of the Company's accounting policies are available in Item 8, Financial Statements and Supplementary Data, Note 2, *Summary of significant accounting policies*, in the Notes to Consolidated Financial Statements.

Revenue recognition

Effective January 1, 2018, we adopted Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers (ASC 606)*, using the modified retrospective method applied to all contracts that were not completed contracts at the date of initial application. There was no impact on the opening balance of accumulated deficit on the consolidated balance sheet and statement of changes in shareholders' equity as of January 1, 2018 due to the adoption of ASC 606.

Revenue is recognized when control of goods or services is transferred to customers, in amounts that reflect the consideration the Company expects to be entitled to in exchange for those goods or services. The Company's performance obligation is typically to (a) deliver data records, based on predefined qualifying characteristics specified by the customer or (b) generate conversions, based on predefined user actions (for example, a click, a registration or the installation of an app) and subject to certain qualifying characteristics specified by the customer.

The Company applies the practical expedient related to the review of a portfolio of contracts in reviewing the terms of customer contracts as one collective group, rather than by individual contract. Based on historical knowledge of the contracts contained in this portfolio and the similar nature and characteristics of the customers, the Company concluded that the financial statement effects are not materially different than accounting for revenue on a contract-by-contract basis.

Revenue is recognized upon satisfaction of associated performance obligations. The Company's customers simultaneously receive and consume the benefits provided, as the Company satisfies its performance obligations. Furthermore, the Company elected the "right to invoice" practical expedient available within ASC 606-10-55-18 as the measure of progress, since the Company has a right to payment from a customer in an amount that corresponds directly with the value of the performance completed to date. The Company's revenue arrangements do not contain significant financing components. The Company has further concluded that revenue does not require disaggregation.

For each identified performance obligation in a contract with a customer, the Company assesses whether it or the third-party supplier is the principal or agent. In arrangements where Fluent has substantive control of the specified goods and services, is primarily responsible for the integration of products and services into the final deliverable to the customer, has inventory risk and discretion in establishing pricing, Fluent is considered to have acted as the principal. For performance obligations in which Fluent so acts as principal, the Company records the gross amount billed to the customer within revenue and the related incremental direct costs incurred as cost of revenue. If the third-party supplier, rather than Fluent, is primarily responsible for the performance and deliverable to the customer, and Fluent solely arranges for the third-party supplier to provide services to the customer, Fluent is considered to have acted as the agent. For performance obligations for which Fluent so acts as the agent, the net fees on such transactions are recorded as revenue, with no associated costs of revenue for the Company.

When there is a delay between the period in which revenue is recognized and when a customer invoice is issued, revenue is recognized and the related amounts are recorded as unbilled revenue within accounts receivable on the consolidated balance sheets. In line with industry practice, the unbilled revenue balance is recorded based on the Company's internally tracked conversions, net of estimated variances between this amount and the amount tracked and subsequently confirmed by customers. Substantially all amounts included within the unbilled revenue balance are invoiced to customers within the month directly following the period of service. Historical estimates related to unbilled revenue have not been materially different from actual revenue billed.

Sales commissions are recorded at the time revenue is recognized and recorded in sales and marketing in the consolidated statements of operations. The Company has elected to utilize a practical expedient to expense incremental costs incurred related to obtaining a contract.

In addition, the Company elected the practical expedient to not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less and (ii) contracts for which revenue is recognized at the amount to which the Company has the right to invoice for services performed.

Business combinations

The Company records acquisitions pursuant to ASC 805, *Business Combinations,* by allocating the fair value of purchase consideration to the tangible assets acquired, liabilities assumed and estimated fair values of intangible assets acquired. The excess of the fair value of purchase consideration over the fair values of these identifiable assets and liabilities is recorded as goodwill. Such valuations require management to make significant estimates and assumptions with respect to intangible assets. Significant estimates in valuing certain intangible assets include, but are not limited to, future expected cash flows from acquired intangible assets, useful lives and discount rates. Management’s estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and unpredictable and, as a result, actual results may differ from estimates.

Operating leases

At the inception of a contract, the Company determines whether the contract is or contains a lease based on the facts and circumstances present. Lease obligations and their corresponding assets are recorded based on the present value of lease payments over the expected lease term. As the interest rate implicit in lease contracts is typically not readily determinable, the Company utilizes an appropriate incremental borrowing rate, which is the rate incurred to borrow an amount equal to the applicable lease payments on a collateralized basis, over a similar term, and in a similar economic environment.

Goodwill

In accordance with ASC 350, *Intangibles - Goodwill and Other*, goodwill is tested at least annually for impairment, or when events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable, by assessing qualitative factors or performing a quantitative analysis in determining whether it is more likely than not that its fair value exceeds the carrying value. Goodwill is tested for impairment at the reporting unit level and is conducted by estimating and comparing the fair value of each of the Company’s reporting units to its carrying value. If the carrying value of a reporting unit exceeds its fair value, the Company recognizes an impairment loss equal to the amount of the excess, limited to the amount of goodwill allocated to that reporting unit.

After the Spin-off in the first quarter of 2018, the Company determined that it had one reporting unit. As of October 1, 2018, we performed our annual goodwill impairment test and determined that the estimated fair value of the reporting unit substantially exceeded its’ carrying value.

As of July 1, 2019, due to the AdParlor Acquisition (as further discussed in Note 15, *Business acquisition,* in the Notes to Consolidated Financial Statements), the Company determined that it has two reporting units, “Fluent” which represents our core business and “All Other” which represents AdParlor.

During the third quarter of 2019, the Company determined that the declining operating results of the Fluent reporting unit, along with a decline in the market value of its publicly-traded stock, collectively constituted a triggering event. As of September 30, 2019, the Company conducted an interim test of the fair value of the Fluent reporting unit's goodwill for potential impairment. Based on the results of this interim impairment test, which used a combination of income and market approaches to determine the fair value of the Fluent reporting unit, the Company concluded that, as of September 30, 2019 testing date, no goodwill impairment existed. The results of the interim impairment testing indicated that the estimated fair value of the reporting unit exceeded its carrying value by approximately 12%. The Company believes that the assumptions utilized in its interim impairment testing, including the determination of 12.5% as an appropriate discount rate, long-term financial projections, and estimated future cash flows, are reasonable. The risk of future impairment of the Fluent reporting unit's goodwill balance of $159.8 million exists if actual results, such as lower-than-expected revenue and profitability, or valuation metrics such as market multiples, discount rates and control premiums, differ from the assumptions used in the Company's interim impairment test. In addition, a sustained decline in the market value of its publicly traded stock could impact the Company’s fair value assessment. Based on the results from our interim test as of September 30, 2019, the Company concluded no further triggering events existed as of October 1, 2019 that would indicate that it is more likely than not that the fair value was less than the carrying value for the Fluent reporting unit.

As of October 1, 2019, we performed a qualitative step zero assessment of the All Other reporting unit, from which the Company concluded no triggering events existed that would indicate that it is more likely than not that the fair value was less than the carrying value.

Intangible assets other than goodwill

Intangible assets are initially capitalized based on actual costs incurred, acquisition cost, or fair value if acquired as part of a business combination. These intangible assets are amortized on a straight-line basis over their respective estimated useful lives, which are the periods over which these assets are expected to contribute directly or indirectly to future cash flows. Intangible assets represent purchased intellectual property, software developed for internal use, acquired proprietary technology, customer relationships, trade names, domain names, databases and non-competition agreements, including those resulting from acquisitions. Intangible assets have estimated useful lives of 2-20 years.

In accordance with ASC 350-40, *Software - Internal-Use Software*, we capitalize eligible costs, including applicable salaries and benefits, share-based compensation expense, travel expenses and other direct costs of developing internal-use software that are incurred in the application development stage, when developing or obtaining software for internal use. Once the internal use software is ready for its intended use, it is amortized on a straight-line basis over its useful life.

Finite-lived intangible assets are evaluated for impairment periodically, or whenever events or changes in circumstances indicate that their related carrying amounts may not be recoverable, in accordance with ASC 360-10-15, *Impairment or Disposal of Long-Lived Assets*. In evaluating intangible assets for recoverability, we use the best estimate of future cash flows expected to result from the use of the asset and eventual disposition in accordance with ASC 360-10-15. To the extent that estimated future undiscounted cash inflows attributable to the asset, less estimated future undiscounted cash outflows, is less than the carrying amount, an impairment loss is recognized in an amount equal to the difference between the carrying value of such asset and its fair value.

Asset recoverability is an area involving management judgment, requiring assessment as to whether the carrying values of assets are supported by their undiscounted future cash flows. In estimating the future cash flows, certain assumptions are required to be made in respect of highly uncertain matters such as revenue growth rates, operating expenses and terminal growth rates.

During the third quarter of 2019, the Company determined that its declining operating results constituted a triggering event. As such, the Company conducted an interim test of the recoverability of its long-lived assets. Based on the results of this recoverability test, which measured the Company's projected undiscounted cash flows as compared to the carrying value of the asset group, the Company determined that, as of September 30, 2019, its long-lived assets were not impaired. The Company believes that the assumptions utilized in this interim impairment testing, including the estimation of future cash flows, were reasonable. Future tests may indicate impairment if actual future cash flows or other factors differ from the assumptions used in the Company's interim impairment test at September 30, 2019. As of December 31, 2019, we assessed whether there were any triggering events that would indicate a potential impairment of its long-lived intangible assets and did not identify any such triggering events or impairment indicators.

Share-based Compensation

We account for share-based compensation in accordance with ASC 718, *Compensation - Stock Compensation*. Under ASC 718, for awards with time-based conditions, we measure the cost of services received in exchange for an award of equity instruments based on the grant-date fair value of the award and recognize such costs on a straight-line basis over the period the recipient is required to provide service in exchange for the award, which is the vesting period. For awards with market conditions, the Company recognizes costs on a straight-line basis, regardless of whether the market conditions are achieved and the awards ultimately vest. For awards with performance conditions, we begin recording share-based compensation when achievement of the performance criteria is deemed probable. We recognize forfeitures as they occur.

Income taxes

We account for income taxes in accordance with ASC 740, *Income Taxes*, which requires the use of the asset and liability method of accounting for income taxes. Deferred tax assets and liabilities are recorded for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The effect on deferred tax assets and liabilities of a change in tax rates or laws is recognized in income in the period that the change in tax rates or laws is enacted. Valuation allowances are provided to reduce the amount of deferred tax assets if it is considered more likely than not that some portion or all of the deferred tax assets will not be realized, based on management's review of historical results and forecasts.

ASC 740 clarifies the accounting for uncertain tax positions. This interpretation requires that an entity recognize in its financial statements the impact of a tax position, if that position is more likely than not of being sustained upon examination, based on the technical merits of the position. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. Our accounting policy is to accrue interest and penalties related to uncertain tax positions, if and when required, as interest expense and a component of other expenses, respectively, in the consolidated statements of operations.

Recently Issued Accounting Standards

See Note 2, *Summary of significant accounting policies,* under the caption *"(r) Recently issued and adopted accounting standards"* in the Notes to Consolidated Financial Statements for further information on certain accounting standards that have been adopted during 2019 or that have not yet been required to be implemented and may be applicable to our future operations.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Not applicable.

Item 8. Financial Statements and Supplementary Data.

Our Consolidated Financial Statements and the Notes thereto, together with the report thereon of our independent registered public accounting firm are filed as part of this report, beginning on page F-1.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

The Company’s management, with the participation of the Company’s Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the Company’s disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d–15(e)) as of the end of the period covered by this 2019 Form 10-K. Based upon that evaluation, the Company’s Chief Executive Officer and Chief Financial Officer concluded that the Company’s disclosure controls and procedures were not effective as of the end of the period covered by this annual report, as a result of a material weakness in our internal control over financial reporting, which is discussed further below.

Management’s Annual Report on Internal Control over Financial Reporting

The Company’s management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed 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.

A company’s internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management, under the supervision of and with the participation of the Company’s Chief Executive Officer and Chief Financial Officer, conducted an assessment of the effectiveness of the Company’s internal control over financial reporting as of December 31, 2019 based on the criteria set forth by the Committee of Sponsoring Organizations (COSO) of the Treadway Commission in *Internal Control-Integrated Framework (2013)*.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company’s annual or interim financial statements will not be prevented or detected on a timely basis. In connection with management’s evaluation of the effectiveness of our internal control over financial reporting described above, as of December 31, 2018, management identified a material weakness related to internal control deficiencies over the revenue recognition process; specifically, aggregation of control deficiencies related to inadequate segregation of duties, significant deficiencies within our information technology general controls, and ineffective manual preventative and detective controls. The material weakness was not remediated and therefore remains as of December 31, 2019. Because of this material weakness, management concluded that the Company did not maintain effective internal control over financial reporting as of December 31, 2019, based on criteria set forth by the Committee of Sponsoring Organizations (COSO) of the Treadway Commission in *Internal Control-Integrated Framework (2013)*. The material weakness described above did not result in a material misstatement to the Company’s consolidated financial statements for any period in the two-year period ended December 31, 2019. Notwithstanding the identified material weakness, management, including our Chief Executive Officer and Chief Financial Officer, believes the consolidated financial statements included in this Form 10-K fairly represent in all material respects our financial condition, results of operations and cash flows as of and for the periods presented in accordance with US. GAAP.

On July 1, 2019, we acquired substantially all of the assets of AdParlor Holdings, LLC and certain of its affiliates, as described in Note 15, *Business acquisition* in the Notes to Consolidated Financial Statements. As permitted by the SEC Staff interpretive guidance for newly acquired businesses, management's assessment of our internal control over financial reporting as of December 31, 2019 did not include an assessment of those disclosure controls and procedures that are subsumed by internal control over financial reporting as it relates to the acquired AdParlor business. We will continue the process of implementing internal controls over financial reporting for the AdParlor business. As of December 31, 2019, assets and revenues excluded from management's assessment totaled 6.4% and 1.4%, respectively, of our consolidated financial statements for the year ended December 31, 2019.

The effectiveness of our internal control over financial reporting as of December 31, 2019 has been audited by Grant Thornton, LLP, as stated in their report on management’s internal control over financial reporting, which is also included in Item 8, “Financial Statements and Supplementary Data,” of this 2019 Form 10-K.

Remediation Efforts to Address Material Weakness

With the oversight of management and the audit committee of the Company’s board of directors, we are actively taking the appropriate steps towards the remediation of the underlying causes of the material weakness described above. During the third quarter of 2019, we commenced configuration of our new ERP system, NetSuite, with the first phase of our implementation completed on January 1, 2020. While the full integration of our internal revenue tracking platforms with NetSuite remains ongoing, we believe that once NetSuite is fully integrated, its automated processes will include controls that will render unnecessary the manual preventative and detective controls that were deemed inadequate at December 31, 2019. We will continue our implementation of NetSuite, including the design of appropriate automated processes and controls, and continue to monitor, evaluate and update, as necessary, our processes and controls during the post-implementation period for an appropriate period of time before concluding that the material weakness described above has been effectively remediated.

Changes in Internal Control Over Financial Reporting

Except as discussed above, there were no changes in the Company’s internal control over financial reporting that occurred during the quarter ended December 31, 2019 that have materially affected, or are reasonably likely to materially affect, its internal control over financial reporting.

Inherent Limitations of Internal Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Item 9B. Other Information.

On March 11, 2020, the Compensation Committee of the Company’s Board of Directors approved an increase in the annual base salaries of each of Ryan Schulke, Chief Executive Officer, Matthew Conlin, President, Donald Patrick, Chief Operating Officer, and Alexander Mandel, Chief Financial Officer from $300,000 to $350,000.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The information required by this item is incorporated by reference to the definitive proxy statement for our 2020 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2019.

Item 11. Executive Compensation.

The information required by this item is incorporated by reference to the definitive proxy statement for our 2020 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2019.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by this item is incorporated by reference to the definitive proxy statement for our 2020 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2019.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by this item is incorporated by reference to the definitive proxy statement for our 2020 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2019.

Item 14. Principal Accounting Fees and Services.

The information required by this item is incorporated by reference to the definitive proxy statement for our 2020 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2019.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) List of documents filed as part of this report:

1. Financial Statements: The information required by this item is contained in Item 8 of this Form 10-K.

2. Financial Statement Schedules: The information required by this item is included in the consolidated financial statements contained in Item 8 of this Form 10-K.

3. Exhibits: The following exhibits are filed as part of, or incorporated by reference into, this Form 10-K.

Exhibit No.	Description
2.1	Agreement and Plan of Merger dated as of November 16, 2015, by and among IDI, Inc., Fluent, Inc., the existing stockholders of Fluent, Inc., Fluent Acquisition I, Inc., Fluent Acquisition II, LLC and Ryan Schulke, solely in his capacity as representative of Sellers. (incorporated by reference to Exhibit 2.1 to the Company’s Current Report on Form 8-K filed November 19, 2015).
2.2	Amendment No. 1 to Agreement and Plan of Merger dated December 8, 2015, by and among IDI, Inc., Fluent, Inc., the existing stockholders of Fluent, Inc., Fluent Acquisition I, Inc., Fluent Acquisition II, LLC and Ryan Schulke, solely in his capacity as representative of Sellers (incorporated by reference to Exhibit 2.2 to the Company’s Current Report on Form 8-K filed December 10, 2015).
2.3	Membership Interest Purchase Agreement (incorporated by reference to Exhibit 2.1 to the Company’s Current Report on Form 8-K filed on June 8, 2016).
2.4	Business Combination Agreement dated September 6, 2017, by and among Cogint, Inc., and BlueFocus International Limited (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed September 7, 2017).
2.5	Asset Purchase Agreement, dated as of June 17, 2019, by and among AdParlor Acquisition, LLC, Fluent Media Canada, Inc., AdParlor Holdings, Inc., AdParlor International, Inc., AdParlor Media, Inc., AdParlor Media ULC, and V2 Ventures Group LLC (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed June 19, 2019).
3.1	Certificate of Domestication (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed March 26, 2015).
3.2	Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to the Company’s Current Report on Form 8-K filed March 26, 2015).
3.3	Certificate of Designation of Series A Non-Voting Convertible Preferred Stock (incorporated by reference to Exhibit 3.4 to the Company’s Current Report on Form 8-K filed March 26, 2015).
3.4	Certificate of Ownership and Merger Merging IDI, Inc., a Delaware corporation, with and into Tiger Media, Inc., a Delaware Corporation (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed May 1, 2015).
3.5	Certificate of Designation of Series B Non-Voting Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed November 19, 2015).
3.6	Amendment to Certificate of Designation of Series A Non-Voting Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed on March 17, 2016).
3.7	Certificate of Amendment to the Certificate of Incorporation of IDI, Inc. (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed on September 26, 2016).
3.8	Certificate of Amendment to the Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on April 16, 2018).
3.9	Amended and Restated Bylaws of Fluent, Inc. (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on February 19, 2019).
4.1	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 of the Company’s Current Report on Form 8-K filed April 16, 2018).
4.2	Warrant issued to Intracoastal Capital, LLC, as amended, dated July 23, 2015 (incorporated by reference to Exhibit 4.2 to the Company’s Quarterly Report on Form 10-Q filed November 16, 2015).
4.3	Warrant issued to Frost Gamma Investments Trust, dated as of November 16, 2015 (incorporated by reference to Exhibit 4.2 to the Company’s Current Report on Form 8-K filed November 19, 2015).

4.4	Stock Purchase Agreement dated as of November 16, 2015, by and between IDI, Inc. and Frost Gamma Investments Trust (incorporated by reference to Exhibit 4.3 to the Company’s Current Report on Form 8-K filed November 19, 2015).
4.5	Warrant issued to Whitehorse Finance, Inc., dated as of December 8, 2015 (incorporated by reference to Exhibit 4.1 to the Company’s Current Report on Form 8-K filed December 10, 2015).
4.6	Warrant issued to H.I.G. Whitehorse SMA ABF, Inc., dated as of December 8, 2015 (incorporated by reference to Exhibit 4.2 to the Company’s Current Report on Form 8-K filed December 10, 2015).
4.7	Warrant issued to Whitehorse Holdings II, LLC, dated as of December 8, 2015 (incorporated by reference to Exhibit 4.3 to the Company’s Current Report on Form 8-K filed December 10, 2015).
4.8	First Amendment to Common Stock Purchase Warrant and Notice of Exercise with Intracoastal Capital, LLC - $3.75 Warrants (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed October 17, 2017).
4.9	First Amendment to Common Stock Purchase Warrant and Notice of Exercise with Intracoastal Capital, LLC - $8.00 Warrants (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed October 17, 2017).
4.10	First Amendment to Common Stock Purchase Warrant and Notice of Exercise with Intracoastal Capital, LLC - $10.00 Warrants (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K filed October 17, 2017).
4.11	First Amendment to Common Stock Purchase Warrant and Notice of Exercise with Anson Investment Master Fund LP - $8.00 Warrants (incorporated by reference to Exhibit 4.4 to the Company's Current Report on Form 8-K filed October 17, 2017).
4.12	Form of Additional Warrants (incorporated by reference to Exhibit 4.5 to the Company's Current Report on Form 8-K filed October 17, 2017).

4.13	Amendment to Warrants and Agreement to Exercise with H.I.G. Whitehorse SMA ABF, L.P. dated November 3, 2017 (incorporated by reference to Exhibit 4.6 to the Company's Quarterly Report on Form 10-Q filed on November 8, 2017).
4.14	Amendment to Warrants and Agreement to Exercise with H.I.G. Whitehorse SMA Holdings I, LLC dated November 3, 2017 (incorporated by reference to Exhibit 4.7 to the Company's Quarterly Report on Form 10-Q filed on November 8, 2017).
4.15	Amendment to Warrants and Agreement to Exercise with Whitehorse Finance, Inc. dated November 3, 2017 (incorporated by reference to Exhibit 4.8 to the Company's Quarterly Report on Form 10-Q filed on November 8, 2017).
4.16	First Amendment to Amendment to Warrants and Agreement to Exercise with H.I.G. Whitehorse SMA ABF, L.P. dated July 9, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on July 13, 2018).
4.17	First Amendment to Amendment to Warrants and Agreement to Exercise with H.I.G. Whitehorse SMA Holdings I, LLC, dated July 9, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on July 13, 2018).
4.18	First Amendment to Amendment to Warrants and Agreement to Exercise with Whitehorse Finance, Inc., dated July 9, 2018 (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K filed on July 13, 2018).
4.19	Second Amendment to Amendment to Warrants and Agreement to Exercise with H.I.G. Whitehorse SMA ABF, L.P., dated December 6, 2019 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on December 11, 2019).
4.20	Second Amendment to Amendment to Warrants and Agreement to Exercise with H.I.G. Whitehorse SMA Holdings I, LLC, dated December 6, 2019 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on December 11, 2019).
4.21	Second Amendment to Amendment to Warrants and Agreement to Exercise with Whitehorse Finance, Inc., dated December 6, 2019 (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K filed on December 11, 2019).
4.22	Description of Securities.*
10.1	Form of Indemnification Agreement (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed August 14, 2015).
10.2	Form of Restricted Stock Unit Agreement with three year vesting, under IDI Inc.'s 2015 Stock Incentive Plan (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q filed August 14, 2015).+
10.3	Form of Restricted Stock Unit Agreement with four year vesting, under IDI Inc.'s 2015 Stock Incentive Plan (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q filed August 14, 2015).+
10.4	Form of Non-qualified Stock Option Agreement under IDI Inc.'s 2015 Stock Incentive Plan (incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q filed August 14, 2015).+
10.5	Form of Non-Plan Restricted Stock Unit Agreement dated as of September 30, 2014 (incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-8 filed on August 14, 2015).

10.6	Form of Non-Plan Restricted Stock Unit Agreement dated as of October 2, 2014 (incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-8 filed on August 14, 2015).
10.7	2015 Stock Incentive Plan (incorporated by reference to the Company's Definitive Proxy Statement on Schedule 14A filed on April 30, 2015).
10.8	Credit Agreement dated December 8, 2015, by and among the Company, Fluent Acquisition I, Inc., Fluent, Inc., and Fluent Acquisition II, LLC (now known as Fluent, LLC), the persons party thereto from time to time as guarantors, the financial institutions party thereto from time to time as lenders, and Whitehorse Finance, Inc., as the administrative agent (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed December 10, 2015).
10.9	Limited Consent and Amendment to Credit Agreement (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on June 8, 2016).
10.10	Limited Consent and Amendment No. 2 to Credit Agreement, dated September 30, 2016, by and among Cogint, Inc., Fluent, LLC, the other borrowers party thereto, Whitehorse Finance, Inc., as administrative agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed November 3, 2016).
10.11	Amendment to IDI, Inc. 2015 Stock Incentive Plan effective June 1, 2016 (incorporated by reference to Exhibit 10.2 to the Company's Registration Statement Form S-8 filed on June 3, 2016).+
10.12	Amendment No. 3 to Credit Agreement, dated as of January 19, 2017, by and among Cogint, Inc., Fluent, LLC, the other borrowers party thereto, Whitehorse Finance, Inc., as administrative agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.39 to the Company's Annual Report on Form 10-K filed on March 14, 2017).
10.13	Amendment No. 4 to Credit Agreement, dated as of August 7, 2017, by and among Cogint, Inc., Fluent, LLC, the other borrowers party thereto, Whitehorse Finance, Inc., as administrative agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.8 to the Company's Quarterly Report on Form 10-Q filed on November 8, 2017).
10.14	Amendment No. 5 to Credit Agreement, dated as of November 3, 2017, by and among Cogint, Inc., Fluent, LLC, the other borrowers party thereto, Whitehorse Finance, Inc., as administrative agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.9 to the Company's Quarterly Report on Form 10-Q filed on November 8, 2017).

10.15	Separation and Distribution Agreement dated February 27, 2018, by and among Cogint, Inc. and Red Violet, Inc. (incorporated by reference to Exhibit 10.1 to the Company’s Current Report on Form 8-K filed on February 28, 2018).
10.16	Amended and Restated Tax Matters Agreement dated February 27, 2018, by and among Cogint, Inc. and Red Violet, Inc. (incorporated by reference to Exhibit 10.2 to the Company’s Current Report on Form 8-K filed on February 28, 2018).
10.17	Employee Matters Agreement dated February 27, 2018, by and among Cogint, Inc. and Red Violet, Inc. (incorporated by reference to Exhibit 10.3 to the Company’s Current Report on Form 8-K filed on February 28, 2018).
10.18	Transition Services Agreement dated February 27, 2018, by and among Cogint, Inc. and Red Violet, Inc. (incorporated by reference to Exhibit 10.4 to the Company’s Current Report on Form 8-K filed on February 28, 2018).
10.19	Limited Consent and Amendment No. 6 to Credit Agreement, dated as of March 26, 2018, by and among Cogint, Inc., Fluent, LLC, the other borrowers party thereto, Whitehorse Finance, Inc., as administrative agent and the other lenders party thereto (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on March 27, 2018).
10.20	Employment Agreement, by and between Fluent, LLC and Ryan Perfit, dated January 16, 2012 (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed on March 27, 2018). +
10.21	Amendment to Employment Agreement, by and between Fluent, Inc. and Ryan Perfit, dated October 2, 2014 (incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K filed on March 27, 2018). +
10.22	Amended and Restated Employment Agreement, by and between Fluent, Inc. and Ryan Perfit, dated May 7, 2018 (incorporated by reference to Exhibit 10.12 to the Company's Quarterly Report on Form 10-Q filed on May 9, 2018). +
10.23	Employment Agreement, by and between Fluent, LLC and Donald Patrick, effective as of January 8, 2018 (incorporated by reference to Exhibit 10.7 to the Company's Current Report on Form 8-K filed on March 27, 2018). +
10.24	Amendment to IDI, Inc. 2015 Stock Incentive Plan, effective January 8, 2018 (incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-8 filed on April 6, 2018).
10.25	Fluent, Inc. 2018 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on June 8, 2018).
10.26	Amendment No. 7 to Credit Agreement, dated as of September 10, 2018, by and among Fluent, Inc., Fluent, LLC as borrower, the other borrower parties thereto, WhiteHorse Finance, Inc., as administrative agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 12, 2018).
10.27	Employment Agreement, by and between Fluent, Inc. and Ryan Schulke, dated September 11, 2018 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed on September 12, 2018). +
10.28	Employment Agreement, by and between Fluent, Inc. and Matthew Conlin, dated September 11, 2018 (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K, filed on September 12, 2018).+
10.29	Amendment No. 8 to Credit Agreement, dated as of October 12, 2018, by and among Fluent, Inc., Fluent, LLC as borrower, the other borrower parties thereto, WhiteHorse Finance, Inc., as administrative agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 17, 2018).
10.30	Employment Agreement, by and between the Company and Alex Mandel, dated February 1, 2019 (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on May 10, 2019). +
10.31	Amendment No. 9 to Credit Agreement, dated as of November 8, 2019, by and among Fluent, Inc., Fluent, LLC as borrower, the other borrower parties thereto, WhiteHorse Finance, Inc., as administrative agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on November 12, 2019).
10.32	Amendment No. 10 to Credit Agreement, dated as of November 19, 2019, by and among Fluent, Inc., Fluent, LLC as borrower, the other borrower parties thereto, WhiteHorse Finance, Inc., as administrative agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 19, 2019).
14.1	Code of Ethics.*
21.1	Subsidiaries of Fluent, Inc.*
23.1	Consent of Grant Thornton LLP.*
31.1	Certification of Chief Executive Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
31.2	Certification of Chief Financial Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
32.1	Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.**

32.2	Certification by Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.**
101.INS	XBRL Instance Document*
101.SCH	XBRL Taxonomy Extension Schema Document*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document*

+	Management contract or compensatory plan or arrangement
*	Filed herewith
**	Furnished herewith

Item 16. Form 10-K Summary.

Not applicable.

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.

March 13, 2020

FLUENT, INC.

By: /s/ Ryan Schulke
Ryan Schulke
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Ryan Schulke Ryan Schulke	Chairman and Chief Executive Officer (Principal Executive Officer)	March 13, 2020
/s/ Alexander Mandel Alexander Mandel	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 13, 2020
/s/ Matthew Conlin Matthew Conlin	President and Director	March 13, 2020
/s/ Peter Benz Peter Benz	Director	March 13, 2020
/s/ Andrew Frawley Andrew Frawley	Director	March 13, 2020
/s/ Donald Mathis Donald Mathis	Director	March 13, 2020
/s/ Barbara Shattuck Kohn Barbara Shattuck Kohn	Director	March 13, 2020

Item 8. Financial Statements and Supplementary Data.

Index to Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
Fluent, Inc.

Opinion on the financial statements
We have audited the accompanying consolidated balance sheets of Fluent, Inc. (a Delaware corporation) and subsidiaries (the "Company") as of December 31, 2019 and 2018, the related consolidated statements of operations, changes in shareholders' equity, and cash flows for each of the two years in the period ended December 31, 2019, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2019, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the Company's internal control over financial reporting as of December 31, 2019, based on criteria established in the 2013 Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"), and our report dated March 13, 2020 expressed an adverse opinion.

Change in accounting principle
As discussed in Note 2 to the consolidated financial statements, the Company has changed its method of accounting for leases as of January 1, 2019 due to the adoption of Accounting Standards Codification (ASC) Topic 842, *Leases*.

Basis for opinion
These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2015.

New York, New York
March 13, 2020

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
Fluent, Inc.

Opinion on internal control over financial reporting
We have audited the internal control over financial reporting of Fluent, Inc. (a Delaware corporation) and subsidiaries (the “Company”) as of December 31, 2019, based on criteria established in the 2013 Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). In our opinion, because of the effect of the material weakness described in the following paragraphs on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2019, based on criteria established in the 2013 Internal Control-Integrated Framework issued by COSO.

A material weakness is a deficiency, or combination of control deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company’s annual or interim financial statements will not be prevented or detected on a timely basis. The following material weakness has been identified and included in management’s assessment.

As of December 31, 2019, management disclosed a material weakness around the design and effectiveness of its controls over revenue recognition.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the consolidated financial statements of the Company as of and for the year ended December 31, 2019. The material weakness identified above was considered in determining the nature, timing and extent of audit tests applied in our audit of the 2019 consolidated financial statements, and this report does not affect our report dated March 13, 2020 which expressed an unqualified opinion on those financial statements.

Basis for opinion
The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Annual Report on Internal Control over Financial Reporting ("Management's Report"). Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Our audit of, and opinion on, the Company’s internal control over financial reporting does not include the internal control over financial reporting of AdParlor Holdings, LLC and certain of its affiliates (collectively “AdParlor”), wholly-owned subsidiaries of the Company, whose financial statements reflect total assets and revenues constituting 6.4 and 1.4 percent, respectively, of the related consolidated financial statement amounts as of and for the year ended December 31, 2019. As indicated in Management’s Report, AdParlor was acquired during 2019. Management’s assertion on the effectiveness of the Company’s internal control over financial reporting excluded internal control over financial reporting of AdParlor.

Definition and limitations of internal control over financial reporting
A company’s internal control over financial reporting is a process designed 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. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ GRANT THORNTON LLP

New York, New York
March 13, 2020

FLUENT, INC.
CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except share data)

	December 31, 2019	December 31, 2018
ASSETS:		
Cash and cash equivalents	$ 18,679	$ 17,769
Accounts receivable, net of allowance for doubtful accounts of $1,967 and $1,751, respectively	60,915	48,652
Prepaid expenses and other current assets	1,921	1,971
Total current assets	81,515	68,392
Restricted cash	1,480	1,480
Property and equipment, net	2,863	1,380
Operating lease right-of-use assets	9,865	—
Intangible assets, net	55,603	61,812
Goodwill	164,774	159,791
Other non-current assets	993	414
Total assets	$ 317,093	$ 293,269
LIABILITIES AND SHAREHOLDERS' EQUITY:		
Accounts payable	$ 21,574	$ 7,855
Accrued expenses and other current liabilities	20,358	21,566
Deferred revenue	1,140	444
Current portion of long-term debt	6,873	3,500
Current portion of operating lease liability	2,282	—
Total current liabilities	52,227	33,365
Long-term debt, net	44,098	51,972
Operating lease liability, net	9,056	—
Other non-current liabilities	775	766
Total liabilities	106,156	86,103
Contingencies (Note 17)		
Shareholders' equity:		
Preferred stock — $0.0001 par value, 10,000,000 Shares authorized; Shares outstanding — 0 shares for both periods	—	—
Common stock — $0.0005 par value, 200,000,000 Shares authorized; Shares issued — 78,642,078 and 76,525,581, respectively; and Shares outstanding — 75,873,679 and 75,292,383, respectively	39	38
Treasury stock, at cost — 2,768,399 and 1,233,198 shares, respectively	(8,184)	(3,272)
Additional paid-in capital	406,198	395,769
Accumulated deficit	(187,116)	(185,369)
Total shareholders' equity	210,937	207,166
Total liabilities and shareholders' equity	$ 317,093	$ 293,269

See notes to consolidated financial statements

FLUENT, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands, except share data)

	Year Ended December 31, 2019	Year Ended December 31, 2018
Revenue	$ 281,684	$ 250,280
Costs and expenses:		
Cost of revenue (exclusive of depreciation and amortization)	194,435	161,560
Sales and marketing	11,545	13,663
Product development	8,055	5,279
General and administrative	48,065	36,007
Depreciation and amortization	13,940	13,174
Write-off of intangible assets	425	1,517
Spin-off transaction costs	—	7,708
Total costs and expenses	276,465	238,908
Income from operations	5,219	11,372
Interest expense, net	(6,892)	(8,134)
(Loss) income before income taxes from continuing operations	(1,673)	3,238
Income tax expense	(74)	(46)
Net (loss) income from continuing operations	(1,747)	3,192
Discontinued operations:		
Loss from operations of discontinued operations, net of $0 income taxes	—	(2,084)
Loss on disposal of discontinued operations, net of $0 income taxes	—	(19,040)
Net loss from discontinued operations	—	(21,124)
Net loss	$ (1,747)	$ (17,932)
Basic and diluted net (loss) income per share:		
Continuing operations	$ (0.02)	$ 0.04
Discontinued operations	$ —	$ (0.28)
Net loss	$ (0.02)	$ (0.23)
Weighted average number of shares outstanding:		
Basic and diluted	79,373,789	76,705,877

See notes to consolidated financial statements

FLUENT, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
(Amounts in thousands, except share data)

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total Shareholders' equity
	Shares	Amount	Shares	Amount			
Balance as at December 31, 2017	61,631,573	$ 31	352,523	$ (1,274)	$ 392,687	$ (167,437)	$ 224,007
Issuance of common stock upon a direct offering to certain investors, net of issuance costs of $108	2,700,000	1	—	—	13,391	—	13,392
Vesting of restricted stock units and issuance of restricted stock	12,194,008	6	—	—	(6)	—	—
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	875,675	(1,989)	—	—	(1,989)
Reduction in value of puttable option classified as liability	—	—	—	—	200	—	200
Repurchase of shares into treasury stock	—	—	5,000	(9)	—	—	(9)
Share-based compensation	—	—	—	—	30,997	—	30,997
Net loss	—	—	—	—	—	(17,932)	(17,932)
Spin-off of Red Violet	—	—	—	—	(41,500)	—	(41,500)
Balance as at December 31, 2018	76,525,581	$ 38	1,233,198	$ (3,272)	$ 395,769	$ (185,369)	$ 207,166
Vesting of restricted stock units and issuance of restricted stock	2,116,497	1	—	—	(1)	—	—
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	567,447	(3,120)	—	—	(3,120)
Repurchase of shares into treasury stock	—	—	967,754	(1,792)	—	—	(1,792)
Share-based compensation	—	—	—	—	10,430	—	10,430
Net loss	—	—	—	—	—	(1,747)	(1,747)
Balance as at December 31, 2019	78,642,078	$ 39	2,768,399	$ (8,184)	$ 406,198	$ (187,116)	$ 210,937

See notes to consolidated financial statements

FLUENT, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands)

	Year Ended December 31, 2019	Year Ended December 31, 2018
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (1,747)	$ (17,932)
Net loss from discontinued operations	—	21,124
Adjustments to reconcile net loss from continuing operations to net cash provided by operating activities:		
Depreciation and amortization	13,940	13,174
Non-cash interest expense	1,387	1,830
Share-based compensation	10,341	14,681
Provision for bad debts	2,550	462
Write-off of intangible assets	425	1,517
Deferred income taxes	35	46
Allocation of expenses to Red Violet	—	(325)
Changes in assets and liabilities:		
Accounts receivable	(6,978)	(12,836)
Prepaid expenses and other current assets	104	(304)
Other non-current assets	(551)	683
Operating lease assets and liabilities, net	1,473	—
Accounts payable	6,028	249
Accrued expenses and other current liabilities	(1,626)	6,771
Deferred revenue	663	179
Other	(26)	—
Net cash provided by operating activities from continuing operations	26,018	29,319
Net cash used in operating activities from discontinued operations	—	(5,835)
Net cash provided by operating activities	26,018	23,484
CASH FLOWS FROM INVESTING ACTIVITIES:		
Acquisition of property and equipment	(2,088)	(238)
Business acquisition, net of cash acquired	(7,246)	—
Capitalized costs included in intangible assets	(2,624)	(1,236)
Capital contributed to Red Violet	—	(19,728)
Net cash used in investing activities from continuing operations	(11,958)	(21,202)
Net cash used in investing activities from discontinued operations	—	(1,386)
Net cash used in investing activities	(11,958)	(22,588)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of shares, net of issuance costs	—	13,392
Proceeds from debt obligations, net of debt costs	—	67,182
Repayments of long-term debt	(8,034)	(76,787)
Taxes paid related to net share settlement of vesting of restricted stock units	(3,120)	(1,989)
Repurchase of treasury stock	(1,792)	(9)
Debt financing costs	(204)	—
Net cash (used in) provided by financing activities	(13,150)	1,789
Net increase in cash, cash equivalents and restricted cash	910	2,685
Cash, cash equivalents and restricted cash at beginning of period	19,249	16,564
Cash, cash equivalents and restricted cash at end of period	$ 20,159	$ 19,249

SUPPLEMENTAL DISCLOSURE INFORMATION		
Cash paid for interest	$ 5,387	$ 6,429
Cash paid for income taxes	$ 135	$ —
Share-based compensation capitalized in intangible assets	$ 89	$ 423
Non-cash additions to property and equipment	$ —	$ 198
Furniture, fixtures and office equipment obtained under capital lease obligations	$ —	$ 747
Change in value of puttable option classified as liability	$ —	$ (200)

See notes to consolidated financial statements

1. Principal activities and organization

(a) Principal activities

Fluent, Inc. (“Fluent,” or the “Company”), a Delaware corporation, is an industry leader in data-driven digital marketing services. The Company primarily performs customer acquisition services by operating highly scalable digital marketing campaigns, through which the Company connects its advertiser clients with consumers they are seeking to reach. The Company delivers data and performance-based marketing executions to its clients, which in 2019 included over 500 consumer brands, direct marketers and agencies across a wide range of industries, including Financial Products & Services, Media & Entertainment, Health & Wellness, Staffing & Recruitment and Retail & Consumer.

(b) Organization

<u>*Spin-off of Red Violet*</u>

On March 26, 2018, the Company completed the spin-off (the "Spin-off") of its risk management business from its digital marketing business by way of a distribution of all the shares of common stock of the Company's wholly-owned subsidiary, Red Violet, Inc. ("Red Violet"), to the Company's stockholders of record as of March 19, 2018 (the "Record Date") and certain warrant holders. The distribution occurred by way of a pro-rata distribution to such common stock and warrant holders, each of whom received one share of Red Violet's common stock for every 7.5 shares of the Company's common stock held on the Record Date, or to which they were entitled under their warrants.

Following the Spin-off of Red Violet, the Company's common stock continued trading on The NASDAQ Stock Market ("NASDAQ"), and Red Violet became an independent public company. All of the Company's former subsidiaries that operated the risk management business are owned by Red Violet.

In accordance with Accounting Standards Codification ("ASC") 205-20, *Discontinued Operations*, issued by the Financial Accounting Standards Board ("FASB"), the financial results of Red Violet are reflected in the Company's consolidated financial statements as discontinued operations and, therefore, are presented as assets and liabilities of discontinued operations on the consolidated balance sheets, loss from discontinued operations on the consolidated statements of operations and cash activity from discontinued operations on the consolidated statements of cash flows. See Note 5, *Discontinued operations*.

2. Summary of significant accounting policies

(a) Basis of preparation

The accompanying consolidated financial statements of the Company and its wholly owned subsidiaries have been prepared in accordance with accounting principles generally accepted in the United States (“US GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (the "SEC").

<u>*Principles of consolidation*</u>

All significant transactions among the Company and its subsidiaries have been eliminated upon consolidation.

(b) Use of estimates

The preparation of consolidated financial statements in accordance with US GAAP requires the Company's management to make estimates and assumptions relating to the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenue and expenses during the reporting periods. Significant items subject to such estimates and assumptions include the allowance for doubtful accounts, useful lives of intangible assets, recoverability of the carrying amounts of goodwill and intangible assets, the portion of revenue subject to estimates for variances between internally-tracked conversions and those confirmed by the customer, purchase accounting and income tax provision. These estimates are often based on complex judgments and assumptions that management believes to be reasonable, but are inherently uncertain and unpredictable. Actual results could differ from these estimates.

(c) Cash, cash equivalents and restricted cash

Cash and cash equivalents consist of cash on hand and bank deposits with original maturities of three months or less, which are unrestricted as to withdrawal and use. Restricted cash includes a separately maintained cash account, as required under the terms of a lease agreement the Company entered into on October 10, 2018 for office space in New York City.

The Company's cash, cash equivalents and restricted cash are held in major financial institutions located in the United States, which have high credit ratings. As of December 31, 2019 and 2018, cash and cash equivalents were available for use in servicing the Company's debt obligations and general operating purposes.

Financial instruments and related items, which potentially subject the Company to concentrations of credit risk, consist principally of cash investments. The Company places its temporary cash instruments with highly rated financial institutions within the United States, and, at times, may maintain balances in such institutions in excess of the $250 thousand dollar U.S. Federal Deposit Insurance Corporation insurance limit. The Company monitors the credit ratings of its financial institutions to mitigate this risk.

(d) Accounts receivable and allowance for doubtful accounts

Accounts receivable are due from customers, which are generally unsecured, and consist of amounts earned but not yet collected. None of the Company's accounts receivable bear interest.

The allowance for doubtful accounts is management's best estimate of the amount of probable credit losses in the Company's existing accounts receivable. Management determines this allowance based on reviews of customer-specific facts and circumstances. Account balances are charged off against the allowance for doubtful accounts after all customary means of collection have been exhausted and the potential for recovery is considered remote. The Company does not have off-balance sheet credit exposure related to its customers. As of December 31, 2019 and 2018, the Company's allowance for doubtful accounts was $1,967 and $1,751, respectively.

Movements within the allowance for doubtful accounts consist of the following:

(In thousands)	Year Ended December 31, 2019	2018
Beginning balance	$ 1,751	$ 1,624
Charges to expenses	2,550	462
Write-offs	(2,334)	(335)
Ending balance	$ 1,967	$ 1,751

(e) Property and equipment

Property and equipment are stated at cost, net of accumulated depreciation or amortization. Expenditures for maintenance, repairs and minor renewals are charged to expense in the period incurred. Betterments and additions are capitalized. Property and equipment are depreciated on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are depreciated over the shorter of their estimated useful lives or lease terms that are reasonably assured. The estimated useful lives of property and equipment are as follows:

	Years
Computer and network equipment	5
Furniture, fixtures and office equipment	7
Leasehold improvements	6-7

Assets to be disposed of, and for which there is a committed plan of disposal, whether through sale or abandonment, are reported at the lower of carrying value or fair value less costs to sell. When items of property and equipment are retired or otherwise disposed of, loss or income on disposal is recorded for the difference between the net book value and proceeds received therefrom.

(f) Business combination

The Company records acquisitions pursuant to ASC 805, *Business Combinations,* by allocating the fair value of purchase consideration to the tangible assets acquired, liabilities assumed and estimated fair values of intangible assets acquired. The excess of the fair value of purchase consideration over the fair values of these identifiable assets and liabilities is recorded as goodwill. Such valuations require management to make significant estimates and assumptions with respect to intangible assets. Significant estimates in valuing certain intangible assets include, but are not limited to, future expected cash flows from acquired intangible assets, useful lives and discount rates. Management's estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and unpredictable and, as a result, actual results may differ from estimates. During the measurement period, the Company may record adjustments to acquired assets and assumed liabilities, with corresponding offsets to goodwill. Upon the conclusion of a measurement period, any subsequent adjustments are recorded to earnings.

(g) Intangible assets other than goodwill

The Company's intangible assets are initially capitalized based on actual costs incurred, acquisition cost, or fair value if acquired as part of a business combination. These intangible assets are amortized on a straight-line basis over their respective estimated useful lives, which are the periods over which these assets are expected to contribute directly or indirectly to the future cash flows of the Company. The Company's intangible assets represent purchased intellectual property, software developed for internal use, acquired proprietary technology, customer relationships, trade names, domain names, databases and non-competition agreements, including those resulting from acquisitions. Intangible assets have estimated useful lives of 2-20 years.

In accordance with ASC 350-40, *Software - Internal-Use Software,* the Company capitalizes eligible costs, including applicable salaries and benefits, share-based compensation, travel, and other direct costs of developing internal-use software that are incurred in the application development stage. Once the internal-use software is ready for its intended use, it is amortized on a straight-line basis over its useful life.

Finite-lived intangible assets are evaluated for impairment periodically, or whenever events or changes in circumstances indicate that their related carrying amounts may not be recoverable in accordance with ASC 360-10-15, *Impairment or Disposal of Long-Lived Assets.* In evaluating intangible assets for recoverability, the Company uses its best estimate of future cash flows expected to result from the use of the asset and eventual disposition in accordance with ASC 360-10-15. To the extent that estimated future undiscounted net cash flows are less than the carrying amount, an impairment loss is recognized in an amount equal to the difference between the carrying value of such asset and its fair value.

Asset recoverability is an area involving management judgment, requiring assessment as to whether the carrying values of assets are supported by their undiscounted future cash flows. In estimating future cash flows, certain assumptions are required to be made in respect of highly uncertain matters such as revenue growth rates, operating expenses and terminal growth rates.

For the year ended December 31, 2019, the Company determined the value of intangible assets was recoverable except for certain internally developed software costs, as discussed in Note 8, *Intangible assets, net*. As of December 31, 2018, the Company assessed whether there were any triggering events that would indicate a potential impairment of its long-lived intangible assets and did not identify any such triggering events or impairment indicators. During the third quarter of 2019, the Company determined that its declining operating results constituted a triggering event. As such, the Company conducted an interim test of the recoverability of its long-lived assets. Based on the results of the recoverability test, the Company determined that, as of September 30, 2019, its long-lived assts were not impaired. As of December 31, 2019, the Company assessed whether there were any triggering events that would indicate a potential impairment of its long-lived intangible assets and did not identify any such triggering events or impairment indicators.

(h) Goodwill

Goodwill represents the difference between the purchase price and the estimated fair value of net assets acquired, when accounted for by the acquisition method of accounting. As of December 31, 2019 and 2018, the goodwill balance relates to the acquisition of Interactive Data, LLC, the Fluent Acquisition (as defined in Note 8, *Intangible assets, net*), the Q Interactive Acquisition (as defined in Note 8, *Intangible assets, net*) and the AdParlor Acquisition (as defined in Note 15, *Business acquisition*).

In accordance with ASC 350, *Intangibles - Goodwill and Other*, goodwill is tested at least annually for impairment, or when events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable, by assessing qualitative factors or performing a quantitative analysis in determining whether it is more likely than not that its fair value exceeds the carrying value. For purposes of reviewing impairment and the recoverability of goodwill, we make certain assumptions regarding estimated future cash flows and other factors in determining the fair values, including market multiples and discount rates, among others. Goodwill is tested for impairment at the reporting unit level and is conducted by estimating and comparing the fair value of each of the Company's reporting units to its carrying value. If the carrying value of a reporting unit exceeds its fair value, the Company recognizes an impairment loss equal to the amount of the excess, limited to the amount of goodwill allocated to that reporting unit.

(i) Fair value of financial instruments

ASC 820, *Fair Value Measurements and Disclosures,* establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value based on the extent to which inputs used in measuring fair value are observable in the market. These tiers include:

- Level 1 – defined as observable inputs, such as quoted prices in active markets;

- Level 2 – defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and

- Level 3 – defined as unobservable inputs, for which little or no market data exists, therefore requiring an entity to develop its own assumptions.

The fair value of the Company’s cash, cash equivalents, restricted cash, accounts receivable, accounts payable and accrued liabilities approximate their carrying values because of the short-term nature of these instruments. As of December 31, 2019, the Company regards the fair value of its long-term debt to approximate its carrying value. This fair value assessment represents a Level 2 measurement. See Note 10, *Long-term debt, net.*

(j) Revenue recognition

Effective January 1, 2018, we adopted Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers* ("ASC 606"), using the modified retrospective method applied to all contracts that were not completed contracts at the date of initial application. There was no impact on the opening balance of accumulated deficit on the consolidated balance sheet and statement of changes in shareholders' equity as of January 1, 2018 due to the adoption of ASC 606.

Revenue is recognized when control of goods or services is transferred to customers, in amounts that reflect the consideration the Company expects to be entitled to in exchange for those goods or services. The Company's performance obligation is typically to (a) deliver data records, based on predefined qualifying characteristics specified by the customer or (b) generate conversions, based on predefined user actions (for example, a click, a registration or the installation of an app) and subject to certain qualifying characteristics specified by the customer.

The Company applies the practical expedient related to the review of a portfolio of contracts in reviewing the terms of customer contracts as one collective group, rather than by individual contract. Based on historical knowledge of the contracts contained in this portfolio and the similar nature and characteristics of the customers, the Company concluded that the financial statement effects are not materially different than accounting for revenue on a contract-by-contract basis.

Revenue is recognized upon satisfaction of associated performance obligations. The Company's customers simultaneously receive and consume the benefits provided, as the Company satisfies its performance obligations. Furthermore, the Company elected the "right to invoice" practical expedient available within ASC 606-10-55-18 as the measure of progress, since the Company has a right to payment from a customer in an amount that corresponds directly with the value of the performance completed to date. The Company's revenue arrangements do not contain significant financing components. The Company has further concluded that revenue does not require disaggregation.

For each identified performance obligation in a contract with a customer, the Company assesses whether it or the third-party supplier is the principal or agent. In arrangements where Fluent has substantive control of the specified goods and services, is primarily responsible for the integration of products and services into the final deliverable to the customer, has inventory risk and discretion in establishing pricing, Fluent is considered to have acted as the principal. For performance obligations in which Fluent so acts as principal, the Company records the gross amount billed to the customer within revenue and the related incremental direct costs incurred as cost of revenue. If the third-party supplier, rather than Fluent, is primarily responsible for the performance and deliverable to the customer, and Fluent solely arranges for the third-party supplier to provide services to the customer, Fluent is considered to have acted as the agent. For performance obligations for which Fluent so acts as the agent, the net fees on such transactions are recorded as revenue, with no associated costs of revenue for the Company.

If a customer pays consideration before the Company's performance obligations are satisfied, such amounts are classified as deferred revenue on the consolidated balance sheets. As of December 31, 2019 and 2018, the balance of deferred revenue was $1,140 and $444, respectively. The majority of the deferred revenue balance as of December 31, 2019 will be recognized into revenue during the first quarter of 2020.

When there is a delay between the period in which revenue is recognized and when a customer invoice is issued, revenue is recognized and the related amounts are recorded as unbilled revenue within accounts receivable on the consolidated balance sheets. As of December 31, 2019 and 2018, unbilled revenue included in accounts receivable was $29,061 and $25,545, respectively. In line with industry practice, the unbilled revenue balance is recorded based on the Company's internally tracked conversions, net of estimated variances between this amount and the amount tracked and subsequently confirmed by customers. Substantially all amounts included within the unbilled revenue balance are invoiced to customers within the month directly following the period of service. Historical estimates related to unbilled revenue have not been materially different from actual revenue billed.

Sales commissions are recorded at the time revenue is recognized and recorded in sales and marketing in the consolidated statements of operations. The Company has elected to utilize a practical expedient to expense incremental costs incurred related to obtaining a contract.

In addition, the Company elected the practical expedient to not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less and (ii) contracts for which revenue is recognized at the amount to which the Company has the right to invoice for services performed.

(k) Cost of revenue (exclusive of depreciation and amortization)

Cost of revenue primarily includes media and related costs, which consist of the cost to acquire traffic through the purchase of impressions, clicks or actions from publishers or third-party intermediaries, such as advertising exchanges, and technology costs that enable media acquisition. These media costs are used primarily to drive user traffic to the Company's and its clients' media properties. Cost of revenue additionally consists of indirect costs such as data verification, hosting and fulfillment costs. Cost of revenue is presented exclusive of depreciation and amortization expenses.

(l) Advertising costs

Advertising costs are charged to operations as incurred. For the years ended December 31, 2019 and 2018, advertising costs, included in sales and marketing expenses, were $1,354 and $1,471, respectively.

(m) Share-based compensation

The Company accounts for share-based compensation in accordance with ASC 718, *Compensation - Stock Compensation* ("ASC 718"). Under ASC 718, for awards with time-based conditions, the Company measures the cost of services received in exchange for an award of equity instruments based on the grant-date fair value of the award and generally recognizes such costs on a straight-line basis over the period the recipient is required to provide service in exchange for the award, which generally is the vesting period. For awards with market conditions, the Company recognizes costs on a straight-line basis, regardless of whether the market conditions are achieved and the awards ultimately vest. For awards with performance conditions, the Company begins recording share-based compensation when achievement of the performance criteria is probable. The company recognizes forfeitures as they occur.

(n) Income taxes

The Company accounts for income taxes in accordance with ASC 740, *Income Taxes*, which requires the use of the asset and liability method of accounting for income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The effect on deferred tax assets and liabilities of a change in tax rates or laws is recognized in income in the period that the change in tax rates or laws is enacted. A valuation allowance is provided to reduce the amount of deferred tax assets if it is considered more likely than not that some portion or all of the deferred tax assets will not be realized based on management's review of historical results and forecasts.

ASC 740 clarifies the accounting for uncertain tax positions. This interpretation requires that an entity recognizes in its financial statements the impact of a tax position, if that position is more likely than not of being sustained upon examination, based on the technical merits of the position. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company's accounting policy is to accrue interest and penalties related to uncertain tax positions, if and when required, as interest expense and a component of other expenses, respectively, in the consolidated statements of operations.

(o) Loss (income) per share

Basic loss (income) per share is computed by dividing net loss by the weighted average number of common shares outstanding during the periods, in addition to restricted stock units ("RSUs") and restricted common stock that are vested not delivered. Diluted loss (income) per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock and is calculated using the treasury stock method for stock options and unvested shares. Common equivalent shares are excluded from the calculation in loss periods, as their effects would be anti-dilutive.

(p) Segment data

The Company identifies operating segments as components of an entity for which discrete financial information is available and is regularly reviewed by the chief operating decision maker in making decisions regarding resource allocation and performance assessment. The Company defines the term "chief operating decision maker" to be its chief executive officer. The Company has determined it has two operating segments and two corresponding reporting units, "Fluent" and "All Other," and one reportable segment. "All Other" represents the operating results of AdParlor, LLC, a digital advertising solution for social media buying (see Note 15, *Business acquisition*) and is included in segment reporting for purposes of reconciliation of the respective balances below to the consolidated financial statements. "Fluent," for the purposes of segment reporting, represents the consolidated operating results of the Company excluding "All Other."

(q) Contingencies

In the ordinary course of business, the Company is subject to loss contingencies that cover a range of matters. An estimated loss from a loss contingency, such as a legal proceeding or claim, is accrued if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In determining whether a loss should be accrued, the Company evaluates, among other factors, the degree of probability and the ability to reasonably estimate the amount of any such loss.

(r) Recently issued and adopted accounting standards

Accounting pronouncements not listed below were assessed and determined to be not applicable or are expected to have minimal impact on our Consolidated Financial Statements.

In February 2016, the FASB issued ASU No. 2016-02 ("ASU 2016-02"), *Leases (ASC 842)*, and additional changes, modifications, clarifications or interpretations thereafter, which generally require companies to recognize operating and financing lease liabilities and corresponding right-of-use assets on the balance sheet. Effective January 1, 2019, the Company adopted ASU 2016-02 using a modified retrospective approach and elected the 'package of practical expedients' introduced in ASU 2018-11, *Leases: Targeted Improvements,* which permitted the Company not to reassess prior conclusions about lease identification, classification and initial direct costs.

As of January 1, 2019, the adoption of ASU 2016-02 resulted in the recording of right-of-use assets and operating lease liabilities of $10,866 and $11,138, respectively, on the consolidated balance sheets. The difference between the right-of-use assets and operating lease liabilities was recorded as a write-off of the previously recognized deferred rent liability, which was included in accrued expenses and other current liabilities on the consolidated balance sheets. ASU 2016-02 did not impact the Company's consolidated statements of operations or consolidated statements of cash flows. The accounting for financing leases, previously referred to as capital leases, was unchanged as a result of the adoption of ASU 2016-02.

Subsequent to the adoption of ASC 842, *Leases,* the Company will continue to recognize, on a discounted basis, its minimum commitments under noncancelable operating leases on its consolidated balance sheets. ASC 842 also provides practical expedients for an entity's ongoing accounting. The Company elected the short-term lease recognition exemption for all leases that qualify. Accordingly, the Company did not recognize right-of-use assets or lease liabilities for qualifying leases, including existing short-term leases in effect at the transition date. The Company will recognize those payments on the consolidated statements of operations on a straight-line basis over the lease term. Additionally, the Company elected the practical expedient to not separate lease and non-lease components for all of its leases. See Note 6, *Lease commitments*, for additional disclosures.

In January 2016, FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses,* and additional changes, modifications, clarifications or interpretations thereafter, which require a reporting entity to estimate credit losses on certain types of financial instruments, and present assets held at amortized cost and available-for-sale debt securities at the amount expected to be collected. The new guidance is effective for annual and interim periods beginning after December 15, 2022, and early adoption is permitted. We are currently evaluating the impact of the new guidance on our consolidated financial statements.

3. Loss (income) per share

For the years ended December 31, 2019 and 2018 basic and diluted (loss) income per share was as follows:

	Year Ended December 31,	
(In thousands, except share data)	**2019**	**2018**
Numerator:		
Net (loss) income from continuing operations	$ (1,747)	$ 3,192
Net loss from discontinued operations	—	(21,124)
Net loss	$ (1,747)	$ (17,932)
Denominator:		
Weighted average shares outstanding	76,357,393	73,470,197
Weighted average restricted shares vested not delivered	3,016,396	3,235,680
Total basic and diluted weighted average shares outstanding	79,373,789	76,705,877
Basic and diluted (loss) income per share: (1)		
Continuing operations	$ (0.02)	$ 0.04
Discontinued operations	$ —	$ (0.28)
Net loss	$ (0.02)	$ (0.23)

(1) (Loss) income per share amounts may contain summation differences due to rounding.

Based on exercise prices compared to the average stock prices for the years ended December 31, 2019 and 2018, certain stock equivalents, including stock options and warrants, have been excluded from the diluted weighted average share calculations due to their anti-dilutive nature.

	Year Ended December 31,	
	2019	**2018**
Restricted stock units	3,394,370	3,831,965
Stock options	2,120,000	112,000
Warrants	2,398,776	2,498,776
Total anti-dilutive securities	7,913,146	6,442,741

4. Spin-off of Red Violet

On February 12, 2018, the Company's Board of Directors approved a plan to spin off Red Violet, which was governed by a Separation and Distribution Agreement, as well as other related agreements between the Company and Red Violet, each entered into on February 27, 2018 (collectively, the "Spin-off Agreements"). The Company contributed $19.7 million in cash to Red Violet upon completion of the Spin-off. On February 28, 2018, a Registration Statement on Form 10 was filed by Red Violet with the SEC, which registered the shares of Red Violet that were distributed in the Spin-off.

On March 7, 2018, the Company announced that the Board of Directors established March 19, 2018 as the record date ("Record Date") and March 26, 2018 as the distribution date (the "Distribution Date") for the Spin-off. On March 9, 2018, in order to meet the NASDAQ initial listing requirement of a minimum $4.00 per share bid price, the Company adjusted the Spin-off ratio so that on the Distribution Date, stockholders of the Company received, by way of a dividend, one share of Red Violet common stock for each 7.5 shares of the Company's common stock held as of the Record Date.

On March 8, 2018, the Compensation Committee of the Company's Board of Directors approved the acceleration (the "Acceleration") of an aggregate of 5,157,998 stock options, restricted stock units ("RSUs") and shares of restricted stock held by certain employees, consultants, and directors, including only those employees who would continue with Red Violet upon completion of the Spin-off, subject to such employees still being employed or providing services on the acceleration date, which was subsequently determined to be March 12, 2018 (the "Acceleration Date"). Accordingly, share-based compensation expense of $15.5 million resulting from the Acceleration was recognized in discontinued operations during the first quarter of 2018.

5. Discontinued operations

In accordance with ASC 205-20, *Discontinued Operations,* the financial results of Red Violet are reflected in the Company's consolidated financial statements as discontinued operations and, therefore, are presented as assets and liabilities of discontinued operations on the consolidated balance sheets, loss from discontinued operations on the consolidated statements of operations, and cash activity from discontinued operations on the consolidated statements of cash flows. As of the Spin-off date, the Company's additional paid-in capital decreased by the carrying value of the net assets of Red Violet of $41,500.

For the year ended December 31, 2018, the financial results of operations of Red Violet were as follows:

(In thousands)		**Year Ended 2018**
Major classes of line items constituting loss from discontinued operations:		
Revenue	$	3,325
Cost of revenue (exclusive of depreciation and amortization)		2,017
Sales and marketing		1,089
General and administrative		1,852
Depreciation and amortization		451
Loss from operations of discontinued operations, net of $0 income taxes		(2,084)
Loss on disposal of discontinued operations, net of $0 income taxes		(19,040)
Net loss from discontinued operations	$	(21,124)

For the year ended December 31, 2018, included in the net loss from discontinued operations is a loss on disposal of discontinued operations of $19,040, of which an aggregate of $16,030 represents non-cash charges. The loss on disposal of discontinued operations consisted of the following:

(In thousands)		**Year Ended 2018**
Share-based compensation expense (1)	$	15,548
Write-off of unamortized debt costs (2)		284
Write-off of certain prepaid expenses		198
Spin-off related professional fees		2,012
Spin-off related employee compensation		998
Loss on disposal of discontinued operations	$	19,040

(1) As discussed and defined in Note 4, *Spin-off of Red Violet*, share-based compensation expense represents non-cash expense in connection with the Acceleration.
(2) As discussed in Note 10, *Long-term debt, net*, in connection with the Spin-off, the Company repaid the Promissory Notes to certain shareholders, which resulted in a write-off of unamortized debt costs of $284.

During the first quarter of 2018, in connection with the Spin-off of Red Violet, an aggregate of $7,708 was recognized in costs and expenses from continuing operations as Spin-off transaction costs, and included non-cash share-based compensation expense of $5,409, as a result of 2,041,000 shares of Transaction Grants (as defined in Note 13, *Share-based compensation*) and employee cash compensation of $2,299.

6. Lease commitments

At the inception of a contract, the Company determines whether the contract is or contains a lease based on the facts and circumstances present. Operating leases with terms greater than one year are recognized on the consolidated balance sheets as Operating lease right-of-use assets, Current portion of operating lease liability, and Operating lease liability, net. Financing leases with terms greater than one year are recognized on the consolidated balance sheets as Property and equipment, net, Accrued expenses and other current liabilities, and Other non-current liabilities. The Company has elected not to recognize leases with terms of one year or less on the consolidated balance sheets.

Lease obligations and their corresponding assets are recorded based on the present value of lease payments over the expected lease term. As the interest rate implicit in lease contracts is typically not readily determinable, the Company utilizes an appropriate incremental borrowing rate, which is the rate incurred to borrow an amount equal to the applicable lease payments on a collateralized basis, over a similar term, and in a similar economic environment. Certain adjustments to the right-of-use asset may be required for items such as initial direct costs paid or incentives received. The components of a lease are split into three categories: lease components, non-lease components and non-components; however, the Company has elected to combine lease and non-lease components into a single component. Rent expense associated with operating leases is recognized over the expected term on a straight-line basis. In connection with financing leases, depreciation of the underlying asset is recognized over the expected term on a straight-line basis and interest expense is recognized as incurred.

The Company is party to a number of noncancelable operating and financing lease agreements that have original lease periods expiring between 2022 and 2025. Although certain leases include options to renew, the Company does not assume renewals in the determination of the lease term unless the renewals are deemed to be reasonably assured at lease commencement. The Company's lease agreements do not contain any material residual value guarantees, nor material restrictive covenants. Effective October 10, 2018, the Company entered into a seven-year operating lease agreement for approximately 42,685 square feet of office space in New York City. In connection with this lease agreement, the Company was required to establish and maintain a $1,480 cash collateral account, which is recorded in restricted cash on the consolidated balance sheets. Additionally, the Company obtained the right to use certain furniture, fixtures and office equipment already installed in the new office space, which the Company has treated as a capital lease.

For the year ended December 31, 2019, the components of lease costs are as follows:

(In thousands)	**Year Ended December 31, 2019**
Operating leases:	
Rent expense	$ 2,070
Financing lease:	
Leased furniture, fixtures and office equipment depreciation expense	243
Interest expense	43
Short-term leases:	
Rent expense	418
Total lease costs	$ 2,774

As of December 31, 2019, the weighted average lease-term and discount rate of the Company's leases are as follows:

	December 31, 2019	
	Operating Leases	**Financing Lease**
Weighted average remaining lease-term (in years)	5.8	5.9
Weighted average discount rate	5.0%	5.0%

As of December 31, 2019, scheduled future maturities of the Company's lease liabilities are as follows:

(In thousands)	**December 31, 2019**	
Year	**Operating Leases**	**Financing Lease**
2020	$ 2,282	$ 157
2021	2,287	157
2022	2,157	158
2023	2,222	169
2024	2,222	169
Thereafter	1,888	141
Total undiscounted cash flows	13,058	951
Less: imputed interest	(1,720)	(128)
Present value of lease liabilities	$ 11,338	$ 823

For the year ended December 31, 2019, supplemental cash flow information related to leases is as follows:

(In thousands)		Year Ended December 31, 2019
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows used for operating leases (1)	$	867
Operating cash flows used for financing lease	$	50
Lease liabilities related to the acquisition of right-of-use assets:		
Operating leases	$	568

(1) For the year ended December 31, 2019, the Company received a cash reimbursement of $640 for tenant improvements made to its New York City corporate headquarters.

7. Property and equipment, net

Property and equipment, net consists of the following:

(In thousands)		December 31, 2019		December 31, 2018
Computer and network equipment	$	453	$	276
Furniture, fixtures and office equipment		940		564
Leased furniture, fixtures and office equipment		875		747
Leasehold improvements		1,290		1,023
Total cost of property and equipment		3,558		2,610
Less: accumulated depreciation and amortization		(695)		(1,230)
Property and equipment, net	$	2,863	$	1,380

For the years ended December 31, 2019 and 2018, depreciation of property and equipment was $743 and $490, respectively.

8. Intangible assets, net

Intangible assets, net, other than goodwill, consist of the following:

(In thousands)	Amortization period (years)	December 31, 2019	December 31, 2018
Gross amount:			
Software developed for internal use	3	$ 4,866	$ 3,037
Acquired proprietary technology	4-5	13,661	11,459
Customer relationships	6-10	37,286	34,986
Trade names	4-20	16,657	16,357
Domain names	20	191	191
Databases	5-10	31,292	31,292
Non-competition agreements	2-5	1,768	1,768
		105,721	99,090
Accumulated amortization:			
Software developed for internal use		(1,995)	(1,282)
Acquired proprietary technology		(9,516)	(6,987)
Customer relationships		(19,396)	(14,417)
Trade names		(3,359)	(2,504)
Domain names		(39)	(29)
Databases		(14,182)	(10,573)
Non-competition agreements		(1,631)	(1,486)
		(50,118)	(37,278)
Net intangible assets:			
Software developed for internal use		2,871	1,755
Acquired proprietary technology		4,145	4,472
Customer relationships		17,890	20,569
Trade names		13,298	13,853
Domain names		152	162
Databases		17,110	20,719
Non-competition agreements		137	282
		$ 55,603	$ 61,812

The gross amounts associated with software developed for internal use primarily represent capitalized costs of internally developed software. The amounts relating to acquired proprietary technology, customer relationships, trade names, domain names, databases and non-competition agreements primarily represent the fair values of intangible assets acquired as a result of the acquisition of Fluent, LLC, effective December 8, 2015 (the "Fluent Acquisition"), the acquisition of Q Interactive, LLC, effective June 8, 2016 (the "Q Interactive Acquisition") and the acquisition of substantially all the assets of AdParlor Holdings, Inc. and certain of its affiliates, effective July 1, 2019 (as further discussed in Note 15, *Business acquisition*).

For the years ended December 31, 2019 and 2018, amortization expenses related to intangible assets, and included in depreciation and amortization expenses in the Company's consolidated statements of operations, were $13,197 and $12,684, respectively.

For the years ended December 31, 2019 and 2018, the Company capitalized $2,713 and $1,659, respectively, most of which was related to internally developed software, and wrote off $425 and $1,517, respectively, due to abandonment of certain internally developed software whose net carrying values were not recoverable. In addition, the Company recorded 4,700 for the year ended December 31, 2019 related to the AdParlor Acquisition.

As of December 31, 2019, estimated amortization expenses related to the Company's intangible assets for 2020 through 2025 and thereafter are as follows:

(In thousands) **Year**	**December 31, 2019**
2020	$ 13,698
2021	10,885
2022	9,521
2023	4,718
2024	4,350
2025 and thereafter	12,431
Total	$ 55,603

9. Goodwill

Goodwill represents the difference between the purchase price and the estimated fair value of net assets acquired, when accounted for by the acquisition method of accounting. As of December 31, 2019, the goodwill balance relates to the Interactive Data Acquisition, the Fluent Acquisition, the Q Interactive Acquisition and the AdParlor Acquisition (as further discussed in Note 15, *Business acquisition*). As of December 31, 2019 and 2018, the change in the carrying value of goodwill for our operating segments (as defined in Note 14, *Segment information*), are listed below:

(In thousands)	**Fluent**	**All Other**	**Total**
Balance as at December 31, 2018	$ 159,791	$ —	$ 159,791
AdParlor Acquisition	—	4,983	4,983
Balance as at December 31, 2019	$ 159,791	$ 4,983	$ 164,774

10. Long-term debt, net

Long-term debt, net, related to the Refinanced Term Loan and Note Payable (as defined below) consisted of the following:

(In thousands)	**December 31, 2019**	**December 31, 2018**
Refinanced Term Loan due 2023 (less unamortized discount of $3,715)	$ 48,571	$ 55,472
Note Payable due 2021 (less unamortized discount of $100)	2,400	—
Long-term debt, net	50,971	55,472
Less: Current portion of long-term debt	(6,873)	(3,500)
Long-term debt, net (non-current)	$ 44,098	$ 51,972

Refinanced Term Loan

In connection with the Spin-off of Red Violet, Fluent, LLC refinanced and fully repaid the existing term loans (the "Term Loans") and certain promissory notes (the "Promissory Notes"), which had been entered into on December 8, 2015, with a new term loan in the amount of $70.0 million ("Refinanced Term Loan"), pursuant to a Limited Consent and Amendment No. 6 ("Amendment No. 6") to its Credit Agreement (the "Credit Agreement"), effective on March 26, 2018 (the "Refinancing"). As of December 31, 2019, the Refinanced Term Loan had a principal balance of $52.3.

The Refinanced Term Loan is guaranteed by the Company and its direct and indirect subsidiaries, and is secured by substantially all of the assets of the Company and its direct and indirect subsidiaries, including Fluent, LLC, in each case, on an equal and ratable basis. The Refinanced Term Loan accrues interest at the rate of either, at Fluent's option, (a) LIBOR (subject to a floor of 0.50%) plus 7.00% per annum, or (b) the base rate (generally equivalent to the U.S. prime rate) plus 6.0% per annum, payable in cash. Interest under the Refinanced Term Loan is payable monthly. Scheduled principal amortization of the Refinanced Term Loan is $875 per quarter, commencing with the fiscal quarter ended June 30, 2018. The Refinanced Term Loan matures on March 26, 2023.

On March 26, 2018, proceeds from the Refinanced Term Loan were utilized to repay, in full, the outstanding principal amount plus accrued PIK interest of the Term Loans and Promissory Notes of $55,586 and $11,425, respectively. Prepayment premiums and unamortized debt costs associated with the Term Loans of $2,818 and $3,136, respectively, were capitalized in the balance of the Refinanced Term Loan and are being amortized over the remaining period of the Refinanced Term Loan. In addition, refinancing costs paid to third parties of $193 were recognized in loss on disposal of discontinued operations. See Note 5, *Discontinued operations*.

The Credit Agreement, as amended, requires the Company to maintain and comply with certain financial and other covenants, commencing with the fiscal quarter ended June 30, 2018. In addition, the Credit Agreement, as amended, includes certain prepayment provisions, including mandatory quarterly principal prepayments of the Refinanced Term Loan with a portion of the Company's excess cash flow, as defined in the Credit Agreement. For the fourth quarter ended December 31, 2019, the quarterly prepayment resulting from excess cash flow is $2,123. As of December 31, 2019, this amount was reclassified to the current portion of long-term debt and will be paid during the fourth quarter. At December 31, 2019, the Company was in compliance with all of the financial and other covenants under the Credit Agreement.

Note Payable

On July 1, 2019, in connection with the AdParlor Acquisition (as further discussed in Note 15, *Business acquisition),* the Company issued a promissory note (the "Note Payable") in the principal amount of $2,350, net of discount of $150 from imputing interest on the non-interest bearing note using a 4.28% rate. The promissory note is guaranteed by the Company's subsidiary, Fluent, LLC, will not accrue interest except in the case of default, is payable in two equal installments on the first and second anniversaries of the date of closing of the acquisition and is subject to setoff in respect of certain indemnity and other matters. As of December 31, 2019, the Note Payable had a principal balance of $2.5.

Maturities

As of December 31, 2019, scheduled future maturities of the Refinanced Term Loan and Note Payable, including the required principal prepayment based on a portion of the Company's quarterly excess cash flow and excluding potential future additional principal prepayments, are as follows:

(In thousands) **Year**		
2020	$	6,873
2021		4,750
2022		3,500
2023		39,663
Total maturities	$	54,786

Fair value

As of December 31, 2019, the fair value of long-term debt is considered to approximate its carrying value. The fair value assessment represents a Level 2 measurement.

11. Income taxes

The Company is subject to federal and state income taxes in the United States. For the years ended December 31, 2019 and 2018, the expense for income taxes on loss (income) from continuing operations consisted of the following:

	Year Ended December 31	
(In thousands)	**2019**	**2018**
Current:		
Federal	$ —	$ —
State	—	—
Foreign	39	—
Total current	39	—
Deferred:		
Federal	439	3,726
State	(20)	81
Foreign	(18)	
Less: valuation allowance	(366)	(3,761)
Total deferred	35	46
Income tax expense	$ 74	$ 46

For the years ended December 31, 2019 and 2018, reconciliation of the Company's effective income tax rate to the U.S. corporate statutory income tax rate is as follows:

	Year Ended December 31,			
(In thousands)	**2019**		**2018**	
Income tax expense at federal statutory rate	$ (351)	21.0%	$ 680	21.0%
Share-based compensation shortfall (windfall)	(425)	25.4	7,080	218.7
Effect of state taxes, net of federal tax benefit	(16)	1.0	64	2.0
Non-deductible items	934	(55.8)	585	18.1
Return to provision adjustment	224	(13.4)	(4)	(0.1)
Foreign rate difference	3	—	—	—
Other	71	(4.2)	27	0.8
Change in valuation allowance	(366)	21.9	(8,386)	(259.0)
Income tax expense	$ 74	(4.4)%	$ 46	1.4%

As of December 31, 2019 and 2018, the components of deferred tax assets and liabilities consist of the following:

(In thousands)	**December 31, 2019**	**December 31, 2018**
Deferred tax assets:		
Net operating loss carryforwards	$ 5,073	$ 8,908
Share-based compensation	6,322	5,753
Interest expense limitation	1,951	2,171
Accounts receivable, net	504	451
Accrued expenses and other current liabilities	—	74
Property and equipment, net	—	73
Acquisition costs	229	—
Operating lease liability	2,910	
Other	216	145
	17,205	17,575
Valuation allowance	(4,872)	(5,238)
	12,333	12,337
Deferred tax liabilities:		
Intangible assets	(9,767)	(12,383)
Operating lease right-of-use asset	(2,532)	
Deferred revenue	(4)	—
Property and equipment, net	(111)	—
	(12,414)	(12,383)
Net deferred tax liability	$ (81)	$ (46)

As of December 31, 2019, the Company has federal net operating losses of $21,661, of which $12,054 begin to expire in 2035, and $9,607 which can be carried forward indefinitely. As of December 31, 2019, the Company has state net operating loss carryforwards of $31,170, which begin to expire in 2035. Certain net operating losses generated by the Company in 2014 and 2015 are subject to annual limitation under IRC Section 382 due to ownership changes.

For the year ended December 31, 2018, the Spin-off of Red Violet contributed to a $1,500 decrease to the net deferred tax assets of the Company, which was fully offset by a corresponding reduction to the valuation allowance. The aforementioned decrease represents the net deferred tax assets attributable to Red Violet on the date of the Spin-off.

As of December 31, 2019 and 2018, the Company recorded a full valuation allowance against its net deferred tax assets of $4,872 and $5,238, respectively. For the year ended December 31, 2019, the decrease in the valuation allowance is primarily a result of the movement in the net deferred tax asset in the current year. The Company intends to continue maintaining a full valuation allowance on these net deferred tax assets until there is sufficient evidence to support the release of all or some portion of these allowances. Release of some or all of the valuation allowance would result in the recognition of certain deferred tax assets and an increase in deferred tax benefit for any period in which such a release may be recorded, however, the exact timing and amount of any valuation allowance release are subject to change, depending upon the level of profitability that the Company is able to achieve and the net deferred tax assets available.

The Company continually evaluates expiring statutes of limitations, audits, proposed settlements, changes in tax law and new authoritative rulings. The Company files tax returns in federal and certain state and local jurisdictions. The 2015 tax year is the earliest tax year that remains subject to examination by the following taxing authorities in major jurisdictions: Federal, California, New York and New York City. Since inception, the Company has generated net operating losses, and thus the 2014 tax year remains open to examination by taxing authorities to the extent the net operating losses generated in such year are utilized in subsequent periods with open statutes.

For the years ended December 31, 2019 and 2018, reconciliation of the gross amounts of unrecognized tax benefits, excluding accrued interest and penalties, consists of the following:

	Year Ended December 31,	
(In thousands)	**2019**	**2018**
Unrecognized tax benefits, opening balance	$ 1,480	$ 1,134
Increase in unrecognized tax benefits	—	346
Unrecognized tax benefits, ending balance	$ 1,480	$ 1,480

The unrecognized tax benefits, if recognized, would result in an increase to net operating losses that would be subject to a valuation allowance and, accordingly, result in no impact to the Company's annual effective tax rate. As of December 31, 2019, the Company has not accrued any interest or penalties with respect to its uncertain tax positions.

The Company does not anticipate a significant increase or reduction in unrecognized tax benefits within the next twelve months.

12. Common stock, treasury stock and warrants

Common stock

As of December 31, 2019, 2018 and 2017, the number of issued shares of common stock was 78,642,078, 76,525,581 and 61,631,573, respectively, which included shares of treasury stock of 2,768,399, 1,233,198 and 352,523, respectively.

For the year ended December 31, 2019, the change in the number of issued shares of common stock comprised the following issuances:

- An aggregate of 2,116,497 shares of common stock were issued as a result of the vesting of RSUs and included 567,447 shares of common stock withheld to cover withholding taxes upon such vesting, which are reflected as additions to treasury stock in the consolidated statements of changes in shareholders' equity.

For the year ended December 31, 2018, the change in the number of issued shares of common stock comprised the following issuances:

- An aggregate of 12,194,008 shares of common stock were issued as a result of the vesting of RSUs and included 875,675 shares of common stock withheld to cover withholding taxes upon such vesting, which are reflected as additions to treasury stock in the consolidated statements of changes in shareholders' equity.

- An aggregate of 2,700,000 shares of common stock were issued in a registered direct offering ("Registered Direct Offering") to certain institutional investors with a purchase price of $5.00 per share, pursuant to a definitive securities purchase agreement entered into on January 10, 2018, for proceeds of $13,392, net of issuance costs of $108.

- Concurrent with the Registered Direct Offering, the Company issued to these institutional buyers, for no additional consideration, warrants to purchase an aggregate of 1,350,000 shares of common stock. These warrants have an exercise price of $6.00 per share and are exercisable until July 11, 2020.

Treasury stock

As of December 31, 2019, 2018 and 2017, the Company held 2,768,399, 1,233,198 and 352,523 shares in treasury, with a cost of $8,184, $3,272 and $1,274, respectively. The Company's share-based incentive plans allow employees the option to either make cash payment or forfeit shares of common stock upon vesting to satisfy federal and state statutory tax withholding obligations associated with equity awards. The forfeited shares of common stock may be taken into treasury stock by the Company or sold on the open market.

For the year ended December 31, 2019, 567,447 shares were withheld to cover withholding taxes owed by certain employees, all of which were taken into treasury stock. During the fourth quarter of 2019, the Company repurchased 967,754 of its own shares as part of a stock repurchase program authorized by the Company's Board of Directors on November 19, 2019.

For the year ended December 31, 2018, 875,675 shares were withheld to cover withholding taxes owed by certain employees, all of which were taken into treasury stock, 729,167 of which represented accelerated vesting from Red Violet employees who received shares on April 9, 2018 in connection with the Spin-off. On October 17, 2018, the Company repurchased 5,000 shares from an outside investor.

Warrants

As of December 31, 2019, 2018 and 2017, warrants to purchase an aggregate of 2,398,776, 2,498,776 and 1,273,776 shares of common stock were outstanding, respectively. The current exercise prices for outstanding issuances range from 3.75 to 6.00 per share.

On July 9, 2018 the Company entered into First Amendments (the "First Amendments") to the Amendments to Warrants and Agreements to Exercise ("Amended Whitehorse Warrants") with (i) H.I.G. Whitehorse SMA ABF, L.P. regarding 46,667 warrants to purchase common stock of the Company, par value $0.0005 per share, at an exercise price of $3.00 per share; (ii) H.I.G. Whitehorse SMA Holdings I, LLC regarding 66,666 warrants to purchase common stock of the Company at an exercise price of $3.00 per share; and (iii) Whitehorse Finance, Inc. regarding 186,667 warrants to purchase common stock of the Company at an exercise price of $3.00 per share. In November 2017, the Amended Whitehorse Warrants were exercised and the Company issued an aggregate of 300,000 shares of common stock of the Company (the "Warrant Shares") to the warrant holders. Pursuant to the First Amendments, the warrant holders have the right, but not the obligation, to require the Company to purchase from these warrant holders the 300,000 Warrant Shares at $3.8334 per share (the "Put Right"), which could be exercised during the period commencing January 1, 2019 and ending December 15, 2019. On December 6, 2019, the Company entered into the Second Amendments to the Amended Whitehorse Warrants, pursuant to which the expiration of the Put Right was extended from December 15, 2019 to January 31, 2020. See Note 18, *Subsequent events*.

In accordance with ASC 480, *Distinguishing Liabilities from Equity*, the Put Right should be classified within other current liabilities on the consolidated balance sheets when the market price of the Company's common stock is lower than the exercise price of $3.8334 per share. As of December 31, 2019, the last reported sale price of the Company's common stock was lower than the exercise price, and as such the Put Right is classified in other current liabilities on the consolidated balance sheet.

For the year ended December 31, 2018, the increase in warrants resulted from the issuance of warrants to purchase an aggregate of 1,350,000 shares of common stock, with an exercise price of $6.00 per share. These issuances occurred concurrent with the Registered Direct Offering. Pursuant to the First Amendments to the Amended Whitehorse Warrants, the parties agreed to reduce the price per share at which the warrant holders have the right, but not the obligation, to require the Company to purchase from the warrant holders the Warrant Shares to $3.8334 per share, to modify the period during which the Put Right could be exercised to the period commencing January 1, 2019 and ending December 15, 2019 and to modify the minimum price that the warrant holders can transfer any of the Warrant Shares to no less than $3.8334 per share.

Preferred stock

As of December 31, 2019 and 2018, the Company had 10 million shares of blank-check preferred stock with par value of $0.0001 per share authorized. No shares of preferred stock have been issued or are outstanding.

13. Share-based compensation

As of December 31, 2019, the Company maintains two share-based incentive plans: the Cogint, Inc. 2015 Stock Incentive Plan (the "2015 Plan") and the Fluent, Inc. 2018 Stock Incentive Plan (the "2018 Plan") which, combined, authorize the issuance of 21,087,368 shares of common stock. As of December 31, 2019, there were 3,623,502 shares of common stock reserved for issuance under the 2018 Plan. The primary purpose of the plans is to attract, retain, reward and motivate certain individuals by providing them with opportunities to acquire or increase their ownership interests in the Company.

Spin-off of Red Violet

On March 8, 2018, the Company's Compensation Committee approved the acceleration (the "Acceleration") of stock options, RSUs and restricted stock held by certain employees, consultants and directors, including only those employees who were to continue with Red Violet upon completion of the Spin-off, subject to such employees still being employed or providing services on March 12, 2018 (the "Acceleration Date"). An aggregate of 5,157,998 shares were accelerated, including 47,500 stock options, 4,960,498 RSUs (inclusive of 500,000 shares to Marlin Capital and 2,500,000 to Michael Brauser), and 150,000 shares of restricted stock. Share-based compensation expense of $14,667 resulting from the Acceleration was recognized in loss on disposal of discontinued operations during the first quarter of 2018.

In connection with the Spin-off of Red Violet, common stock awards comprised of an aggregate of 304,000 shares were granted to certain employees of Red Violet ("Spin-off Grants") during the first quarter of 2018, and related share-based compensation expense of $881 was recognized in loss on disposal of discontinued operations. Additionally, an aggregate of 2,041,000 shares of common stock, subject to deferred delivery over a three-year period, were granted to certain Fluent employees as a result of the Spin-off ("Transaction Grants"), and related share-based compensation expense of $5,409 was recognized in costs and expenses as part of the Spin-off transaction costs during the first quarter of 2018.

In total, share-based compensation expense of $15,548, resulting from the Acceleration and Spin-off Grants in connection with the Spin-off was recognized in loss on disposal of discontinued operations during the first quarter of 2018. See Note 5, *Discontinued operations*.

Stock options

On January 31, 2019, the Compensation Committee of the Company's Board of Directors approved the grant of stock options to certain Company officers, which were issued on February 1, 2019 from the shares available for issuance under the 2018 Plan. Subject to continuing service, 50% of the shares subject to these stock options will vest if the Company's stock price remains above 125% of the exercise price for twenty consecutive trading days, and the remaining 50% of the shares subject to these stock options will vest if the Company's stock price remains above 156.25% of the exercise price for twenty consecutive trading days; provided, that no shares will vest prior to the first anniversary of the grant date. As of December 31, 2019, the first condition had been met; therefore, subject to continuing service, 50% of the shares subject to these stock options will vest on February 1, 2020. Any shares that remain unvested as of the fifth anniversary of the grant date will vest in full on such date. The fair value of the stock options granted was estimated at the trading day before the date of grant using a Monte Carlo simulation model. The range of the fair value of the stock options that were awarded is $2.81 to $2.86 per share. The key assumptions utilized to calculate the grant-date fair values for these awards are summarized below:

Key Assumptions	
Exercise price	$ 4.72
Expected term (in years)	1.0 - 1.3
Expected volatility	65%
Dividend yield	—%
Risk-free rate	2.61%

For the years ended December 31, 2019 and 2018, the activity related to stock options consisted of the following:

	Number of options	**Weighted average exercise price per share**	**Weighted average remaining contractual term (years)**	**Aggregate intrinsic value**
Outstanding as of December 31, 2017	222,000	$ 12.59	5.4	—
Expired	(110,000)	11.17		
Outstanding as of December 31, 2018	112,000	13.98	2.8	—
Granted	2,064,000	4.72	9.1	
Forfeited	(56,000)	4.72		
Outstanding as of December 31, 2019	2,120,000	5.21	8.7	—
Options exercisable as of December 31, 2019	112,000	$ 13.98	1.8	—

The aggregate intrinsic value amounts in the table above represent the difference between the closing price of the Company’s common stock at the end of the reporting period and the corresponding exercise prices, multiplied by the number of in-the-money stock options as of the same date.

For the year ended December 31, 2019, compensation expense recognized for stock options of $4,611 was recognized in sales and marketing, product development and general and administrative expenses in the consolidated statement of operations. For the year ended December 31, 2018, compensation expense recognized for stock options of $243 was recognized in discontinued operations in the consolidated statements of operations. As of December 31, 2019, there was $1,082 of unrecognized share-based compensation with respect to outstanding stock options.

Restricted stock units and restricted stock

For the years ended December 31, 2019 and 2018, details of unvested restricted stock units ("RSUs") and restricted stock activity were as follows:

	Number of units	Weighted average grant date fair value
Unvested as of December 31, 2017	8,150,905	$ 9.27
Granted (1)	4,598,125	2.63
Vested and delivered	(11,468,333)	7.63
Withheld as treasury stock (2)	(875,675)	6.05
Vested not delivered (3)	3,766,068	9.85
Forfeited	(339,125)	4.68
Unvested as of December 31, 2018	3,831,965	7.95
Granted	2,275,094	4.82
Vested and delivered	(1,549,050)	3.97
Withheld as treasury stock (2)	(567,447)	4.13
Vested not delivered (3)	122,582	4.76
Forfeited	(718,774)	4.13
Unvested as of December 31, 2019	3,394,370	$ 8.03

(1) As discussed in "Spin-off of Red Violet" above, included in the RSUs granted during the year ended December 31, 2018 were an aggregate of 304,000 shares of Spin-off Grants that vested and were delivered in the first quarter of 2018, and an aggregate of 2,041,000 shares of Transaction Grants that vested but were subject to deferred delivery over a three-year period.

(2) As discussed in Note 12, *Common stock, treasury stock and warrants*, the increase in treasury stock was primarily attributable to shares withheld to cover statutory withholding taxes upon the vesting of RSUs. As of December 31, 2019 and 2018, there were 2,768,399 and 1,233,198 outstanding shares of treasury stock, respectively.

(3) Vested not delivered represents vested RSUs with delivery deferred to a future time. During the year ended December 31, 2019, there was a net decrease of 122,582 shares included in vested not delivered balance as a result of the delivery of 740,334 shares of Transaction Grants, partially offset by the vesting of 617,752 shares with deferred delivery election. During the year ended December 31, 2018, there was a net decrease of 3,766,068 shares included in vested not delivered balance, as a result of the delivery of 5,807,068 RSUs, partially offset by the vesting of the 2,041,000 shares of Transaction Grants subject to deferred delivery. As of December 31, 2019 and 2018, there were 2,787,335 and 2,909,917 outstanding RSUs included in vested not delivered, respectively.

For the years ended December 31, 2019 and 2018, the Company recognized compensation (included in sales and marketing, product development, general and administrative and discontinued operations in the consolidated statements of operations, and intangible assets in the consolidated balance sheets) for RSUs and restricted stock of $5,819 and $15,104, respectively. As of December 31, 2019, there was $9,583 of unrecognized share-based compensation with respect to outstanding RSUs and restricted stock. The fair value of the RSUs and restricted stock was estimated using the closing prices of the Company's common stock on the dates of grant.

As of December 31, 2019, unrecognized share-based compensation expense associated with the granted RSUs, restricted stock and stock options is $10,665, which is expected to be recognized over a weighted average period of 2.6 years. For the years ended December 31, 2019 and 2018, share-based compensation for the Company's equity awards were allocated to the following lines in the consolidated financial statements:

	Year Ended December 31,	
(In thousands)	**2019**	**2018**
Sales and marketing	$ 971	$ 2,856
Product development	889	676
General and administrative	8,481	5,740
Spin-off transaction costs	—	5,409
Discontinued operations	—	15,712
	10,341	30,393
Capitalized in intangible assets of continuing operations	89	423
Capitalized in intangible assets of discontinued operations	—	181
Total	$ 10,430	$ 30,997

14. Segment information

The Company identifies operating segments as components of an entity for which discrete financial information is available and is regularly reviewed by the chief operating decision maker ("CODM") in making decisions regarding resource allocation and performance assessment. The profitability measure employed by CODM is segment income (loss) from operations. As of December 31, 2019, the Company has two operating segments and two corresponding reporting units, "Fluent" and "All Other," and one reportable segment. "All Other" represents operating results of AdParlor, LLC (see Note 15, *Business acquisition*) and is included for purposes of reconciliation of the respective balances below to the consolidated financial statements. "Fluent," for the purposes of segment reporting, represents the consolidated operating results of the Company excluding "All Other."

Summarized financial information concerning the Company's segments is shown in the following tables below:

	Year Ended December 31,	
(In thousands)	**2019**	**2018**
Fluent segment revenue:		
United States	$ 246,697	$ 227,269
International	31,138	23,011
Fluent segment revenue	$ 277,835	$ 250,280
All Other segment revenue:		
United States	$ 3,304	$ —
International	545	—
All Other segment revenue	$ 3,849	$ —
Segment income (loss) from operations:		
Fluent	$ 5,093	$ 11,372
All Other	126	—
Total income from operations	5,219	11,372
Interest expense, net	(6,892)	(8,134)
(Loss) income before income taxes from continuing operations	$ (1,673)	$ 3,238

(In thousands)	**December 31, 2019**	**December 31, 2018**
Total assets:		
Fluent	$ 296,714	$ 293,269
All Other	20,379	—
Total assets	$ 317,093	$ 293,269

15. Business acquisition

On July 1, 2019, two wholly owned subsidiaries of the Company, AdParlor, LLC (formerly known as AdParlor Acquisition, LLC), a Delaware limited liability company, and Fluent Media Canada, Inc., a British Columbia company (together with AdParlor, LLC, each a "Buyer" and collectively "Buyers"), completed the acquisition of substantially all of the assets of AdParlor Holdings, Inc., a Delaware corporation ("AdParlor Holdings"), AdParlor International, Inc., a Delaware corporation ("AdParlor International"), AdParlor Media, Inc., a Delaware corporation ("AdParlor Media US"), and AdParlor Media ULC, a British Columbia unlimited liability company (together with AdParlor Holdings, AdParlor International and AdParlor Media US, each a "Seller" and collectively "Sellers") pursuant to an Asset Purchase Agreement (the "Purchase Agreement") dated June 17, 2019, by and among Buyers, Sellers and the parent of the Sellers, v2 Ventures Group LLC, a Delaware limited liability company (the "AdParlor Acquisition"). The purpose of the acquisition was to expand the Company's performance-based marketing capabilities. In accordance with ASU 2017-01, *Business Combinations (ASC 805): Clarifying the Definition of a Business*, the Company determined that the AdParlor Acquisition constituted the purchase of a business.

At closing, the Buyers paid to Sellers cash consideration of $7,302, net of adjustments for working capital and indebtedness, and issued a promissory note to Sellers with a present value of $2,350 in exchange for substantially all of the assets of Sellers. This promissory note is guaranteed by Fluent, LLC, and will not accrue interest except in the case of default, is payable in two equal installments on the first and second anniversaries of the date of closing and is subject to setoff in respect of certain indemnity and other matters. See Note 10, *Long-term debt, net* for further detail. For the twelve months ended December 31, 2019, the Company incurred transaction-related expenses of $483 in connection with the AdParlor Acquisition, which it recorded in general and administrative expenses in the consolidated statements of operations.

The following table summarizes the preliminary fair values of the assets acquired and the liabilities assumed at the closing date:

(In thousands)		July 1, 2019
Cash and cash equivalents	$	56
Accounts receivable		7,835
Prepaid expenses and other current assets		54
Property and equipment		138
Intangible assets		4,700
Goodwill		4,983
Other non-current assets		28
Accounts payable		(7,691)
Accrued expenses and other current liabilities		(418)
Deferred revenue		(33)
Total net assets acquired	$	9,652

The preliminary fair values of the identifiable intangible assets and goodwill acquired at the closing date are as follows:

		Fair Value (in thousands)	Weighted Average Amortization Period (Years)
Trade name & trademarks	$	300	4
Developed technology		2,100	4
Customer relationships		2,300	6
Goodwill		4,983	
Total intangible assets, net	$	9,683	

With the assistance of a third-party valuation firm, the fair value of the acquired customer relationships was determined using the excess earnings method, a variation of the income approach, while the fair value of the acquired developed technology, trade names and trademarks were determined using the relief from royalty method of the income approach. The amount of the purchase price in excess of the fair value of the net assets acquired was recorded as goodwill and primarily relates to intangible assets that do not qualify for separate recognition, including assembled workforce and synergies. For tax purposes, the goodwill is deductible over 15 years. As of December 31, 2019, the purchase accounting process has been finalized.

16. Related party transactions

For the years ended December 31, 2019 and 2018, material related party transactions were as follows:

Business Consulting Agreement

Pursuant to a Business Consulting Agreement, Marlin Capital Investments, LLC, an affiliate of Michael Brauser, the Company's Executive Chairman prior to the Spin-off, held RSUs representing the right to receive 2,000,000 shares of the Company's common stock, for consulting services provided by Marlin Capital. These RSUs were to vest annually beginning from October 13, 2015 only if certain performance goals of the Company were met. The shares underlying such RSUs would not have been delivered until October 13, 2018, unless there was a change of control of the Company, termination of the agreement by the Company without cause, or termination of the agreement by Marlin Capital for good reason. The Company determined the performance goals were met as of December 31, 2016. For the twelve months ended December 31, 2018, share-based compensation expense of negative $1,792, as a result of the revaluation of the fair value of RSUs granted, was recognized in general and administrative expenses in association with shares under the Marlin Capital agreement. On March 12, 2018, the Company terminated the Business Consulting Agreement. The unvested 500,000 shares were accelerated and the related share-based compensation expense of $906 was recognized fully in loss on disposal of discontinued operations during the first quarter of 2018.

Promissory Notes

On December 8, 2015, the Company entered into the Promissory Notes, with an interest rate of 10% per annum, with certain investors, for aggregate financing of $10.0 million, consisting of $5.0 million from Frost Gamma, $4.0 million from Michael Brauser and $1.0 million from another investor. During the twelve months ended December 31, 2018, the Company repaid $533, $426 and $107 to Frost Gamma, Michael Brauser and another investor, respectively. On March 26, 2018, as part of the Refinancing associated with the Spin-off of Red Violet, the principal amounts plus accrued PIK interest of the Promissory Notes owing to Frost Gamma, Michael Brauser and such other investor, of $5,713, $4,570 and $1,143, respectively, were fully repaid.

Consulting Agreement

On September 6, 2017, the Company entered into a Consulting Agreement with Michael Brauser, effective as of June 23, 2017, for a term of four years, under which Mr. Brauser served as a strategic advisor to the Company but received no salary for such services. In consideration for Mr. Brauser's services, the Consulting Agreement provided for continued vesting of all outstanding RSUs granted to Mr. Brauser under the Brauser Employment Agreement. For the twelve months ended December 31, 2018, share-based compensation expense of $302 associated with the Consulting Agreement was recognized in general and administrative expenses. In addition, upon the Acceleration, the remaining unvested 2,500,000 shares were accelerated and related share-based compensation expense of $6,468 was recognized in loss on disposal of discontinued operations during the first quarter of 2018. The Consulting Agreement was terminated upon the Spin-off of Red Violet.

17. Contingencies

Except as disclosed below, the Company is not currently a party to any legal proceeding, investigation or claim which, in the opinion of management, is likely to have a material adverse effect on the business, financial condition, results of operations or cash flows. Legal fees associated with such legal proceedings are expensed as incurred. The Company reviews legal proceedings and claims on an ongoing basis and follows the appropriate accounting guidance, including ASC 450, when making accrual and disclosure decisions. The Company establishes accruals for those contingencies where the incurrence of a loss is probable and can be reasonably estimated, and the Company discloses the amount accrued and the amount of a reasonably possible loss in excess of the amount accrued, if such disclosure is necessary for the consolidated financial statements to not be misleading. To estimate whether a loss contingency should be accrued by a charge to income, the Company evaluates, among other factors, the probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of the loss. The Company does not accrue liabilities when the likelihood that the liability has been incurred is probable, but the amount cannot be reasonably estimated.

In addition, the Company may be involved in litigation from time to time in the ordinary course of business. It is the opinion of the Company's management that the ultimate resolution of any such matters currently pending will not have a material adverse effect on the Company's business, financial condition, results of operations or cash flows. However, the results of such matters cannot be predicted with certainty and there can be no assurance that the ultimate resolution of any legal or administrative proceeding or dispute will not have a material adverse effect on the Company's business, financial condition, results of operations and cash flows.

In the ordinary course of business, the Company is subject to loss contingencies that cover a range of matters. An estimated loss from a loss contingency, such as a legal proceeding or claim, is accrued if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In determining whether a loss should be accrued, the Company evaluates, among other factors, the degree of probability and the ability to reasonably estimate the amount of any such loss.

On October 26, 2018, the Company received a subpoena from the New York Attorney General's Office ("NY AG") regarding compliance with New York Executive Law § 63(12) and New York General Business Law § 349, as they relate to the collection, use, or disclosure of information from or about consumers or individuals submitted to the Federal Communication Commission ("FCC") in connection with the FCC's rulemaking proceeding captioned "Restoring Internet Freedom," WC Docket No. 17-108. On December 13, 2018, the Company received a subpoena from the United States Department of Justice ("DOJ") regarding the same issue. The Company has been fully cooperating with both the NY AG and the DOJ and is responding to the subpoenas. At this time, it is not possible to predict the ultimate outcome of either matter or the significance, if any, to the Company's business, results of operations or financial position. As such, the Company is unable to make a meaningful estimate of the amount or range of loss, if any, that could result from an unfavorable outcome.

On June 27, 2019, as a part of two sales and use tax audits covering the period from December 1, 2010 to November 30, 2019, the New York State Department of Taxation and Finance (the "Tax Department") issued a letter stating its position that revenue derived from certain of the Company's customer acquisition and list management services are subject to sales tax as information services. The Company disputed the Tax Department's position on several grounds and responded to the Tax Department outlining its position. On January 14 and 15, 2020, the Tax Department issued Statements of Proposed Audit Adjustment totaling $8.2 million, including $2.0 million of interest. The Company formally disagreed with the amount of the Proposed Audit Adjustment and met with Tax Department on March 4, 2020. During that meeting, the Company informed the Tax Department that a majority of the Proposed Audit Adjustment was based on transfers which were exempt resales or sourced outside of New York and renewed its challenge as to the taxability of its customer acquisition revenue. Based on the foregoing, the Company believes that it is probable that a sales tax liability may result from this matter, and currently estimates the range of any such liability to be between $0.7 million and $3.7 million and has accrued a liability at the low end of this range.

On January 28, 2020, the Company received a Civil Investigative Demand ("CID") from the Federal Trade Commission ("FTC") regarding compliance with the Federal Trade Commission Act, 15 U.S.C. §45 or the Telemarketing Sales Rule, 16 C.F.R. Part 310, as they relate to the advertising, marketing, promotion, offering for sale, or sale of rewards and other products, the transmission of commercial text messages, and/or consumer privacy or data security. The Company has been fully cooperating with the FTC and is responding to the CID. At this time, it is not possible to predict the ultimate outcome of this matter or the significance, if any, to the Company's business, results of operations or financial position.

18. Subsequent events

On January 31, 2020, the holders of the Amended Whitehorse Warrants, described above in Note 12, *Common stock, treasury stock and warrants*, exercised the Put Right to require the Company to purchase from the warrant holders the 300,000 Warrant Shares for an aggregate of $1,150. The Company funded such purchase with cash on hand.

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Fluent, Inc. Board of Directors As of April 29, 2020

Ryan Schulke
Chief Executive Officer and Director

Matthew Conlin
President and Director

Barbara Shattuck Kohn (1)(2*)(3)
Director

Andrew Frawley (1*)(2)(3)
Director

Donald Mathis (1)(2)(3*)
Director

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(1) Member of Corporate Governance and Nominating Committee
(2) Member of Audit Committee
(3) Member of Compensation Committee
* Indicates Chair of that Committee

Fluent, Inc. Executive Officers – As of April 29, 2020

Ryan Schulke
Chief Executive Officer

Matthew Conlin
President

Alex Mandel
Chief Financial Officer

Don Patrick
Chief Operating Officer

STOCK AND INVESTOR INFORMATION

Corporate Offices -
300 Vesey Street, 9th Floor,
New York, NY 10282
646-699-7272

Independent Auditors -
Grant Thornton LLP
757 Third Ave, 9th Floor,
New York, NY 10017

Common Stock -
Fluent, Inc. Common Stock, par value $0.0005,
is traded on The Nasdaq Stock Market LLC
under the symbol "FLNT"

Transfer Agent -
Continental Stock Transfer & Trust Company
1 State Street, 30th Floor,
New York, NY 10004

At the written request of each record owner or beneficial owner of our securities, we will provide, without charge, a copy of the Fluent, Inc. Annual Report on Form 10-K for the year ended December 31, 2019, or any exhibit thereto not included herein. Requests should be sent to Secretary, Fluent, Inc., 300 Vesey Street, 9th Floor, New York, NY 10282.

Except for the historical matters contained herein, statements made in this report are forward looking and are made pursuant to the safe harbor provisions of the Securities Litigation Reform Act of 1995. Investors are cautioned that forward looking statements involve risks and uncertainties that may affect our business and prospects, including economic, competitive, governmental, technological, and other factors discussed in this report and in our filings with the Securities and Exchange Commission, including without limitation, the Annual Report on Form 10-K for the year ended December 31, 2019, filed with the SEC on March 13, 2020.