

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
 Michael T. Zeller (Bar No. 196417)
 2 michaelzeller@quinnemanuel.com
 865 South Figueroa Street, 10th Floor
 3 Los Angeles, California 90017-2543
 Telephone: (213) 443-3000
 4 Facsimile: (213) 443-3100
 Charles K. Verhoeven (Bar No. 170151)
 5 charlesverhoeven@quinnemanuel.com
 50 California Street, 22nd Floor
 6 San Francisco, California 94111
 Rachel Herrick Kassabian (Bar No. 191060)
 7 rachelkassabian@quinnemanuel.com
 555 Twin Dolphin Drive, 5th Floor
 8 Redwood Shores, California 94065
 9 Attorneys for Defendant GOOGLE INC.

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

13 PERFECT 10, INC., a California
 corporation,
 14
 Plaintiff,
 15
 vs.
 16 GOOGLE INC., a corporation; and
 17 DOES 1 through 100, inclusive,
 18 Defendants.

CASE NO. CV 04-9484 AHM (SHx)
 [Consolidated with Case No. CV 05-
 4753 AHM (SHx)]

DISCOVERY MATTER

**GOOGLE INC.'S REQUEST FOR
 AN ORDER REQUIRING SERVICE
 OF THE UNDER SEAL VERSION
 OF THE AMAZON DEFENDANTS'
 MOTION TO COMPEL
 PRODUCTION OF THE
 MICROSOFT SETTLEMENT
 AGREEMENT (AND ALL
 SUPPORTING UNDER SEAL
 DOCUMENTS)**

19 AND COUNTERCLAIM

20 PERFECT 10, INC., a California
 corporation,
 21
 Plaintiff,
 22
 vs.
 23 AMAZON.COM, INC., a corporation;
 24 A9.COM, INC., a corporation; and
 25 DOES 1 through 100, inclusive,
 26 Defendants.

**[Declaration of Thomas Nolan and
 (Proposed) Order filed concurrently]**

Hon. Stephen J. Hillman

Date: None set
 Time: None set
 Crtrm.: 550

Discovery Cutoff: None Set
 Pretrial Conference Date: None Set
 Trial Date: None Set

1 On January 20, 2010, the Amazon Defendants filed a Motion to Compel
2 Perfect 10, Inc. (“P10”) to produce the settlement agreement that resolved the
3 *Microsoft* case (Dkt. No. 364 in the consolidated case) (the “Amazon Motion”). Both
4 the Amazon Defendants and P10 filed various documents in support of their positions
5 as well, including the Declaration of Mark Jansen (and exhibits thereto) and the
6 Declaration of Jeffrey Mausner (and exhibits thereto) (also at Dkt. No. 364 in the
7 consolidated case). Google received an ECF notice of this filing and obtained the
8 public redacted versions of these filings from the ECF system. However, neither the
9 Amazon Defendants or Perfect 10 served Google with the unredacted under-seal
10 versions of these filings (see Docket Nos. 368 and 369), as is the rule and practice in
11 these consolidated cases.

12 Accordingly, on January 22 and 25, 2010, respectively, Google requested that
13 Amazon and P10 serve Google with the complete and unredacted versions of these
14 filings. See Declaration of Thomas Nolan filed concurrently (“Nolan Decl.”) at ¶ 2
15 (describing request to Amazon); ¶ 3 (describing request to P10); and Exh. A (email
16 exchange with P10). Amazon and P10 declined to do so. Id. at ¶¶ 2-3 and Exh. A.
17 Amazon’s position is that it cannot give Google the unredacted documents because,
18 as a condition for receiving certain information about the settlement from Microsoft,
19 Microsoft required the Amazon Defendants to agree that they would not further
20 disclose that information to Google or its attorneys. Id. at ¶ 2. P10’s position is that
21 P10 (and Microsoft) have not consented to Google seeing the redacted material, and
22 that “[t]herefore, Google is not entitled to see the redacted material.” Id. at ¶ 3 and
23 Exh. A; see also Joint Stipulation (Dkt. No. 364 in the consolidated case) at 1
24 (describing agreement with Microsoft). Google now asks this Court to order Amazon
25 and P10 to serve Google with the unredacted papers that were filed under seal. See
26 Docket Nos. 368 and 369.

27 The Federal and Local Rules require service of all filed documents on all
28 parties. See Fed. R. Civ. P. 5(a) (requiring service of all pleadings on all parties

1 unless the Rules provide otherwise); Local Rules 6-1 and 7-5 (requiring service of
2 moving papers). The *Google* and *Amazon* cases have been consolidated for discovery
3 purposes. See Order dated September 19, 2005 (Dkt. No. 34) (“The Court
4 specifically ... grants the request to consolidate CV05-4753-AHM (SHx): *Perfect 10,*
5 *Inc. v. Amazon.Com, Inc., et al.* with CV04-9484-AHM (SHx): *Perfect 10, Inc. v.*
6 *Google, Inc., et al.*”). Indeed, Judge Matz affirmed in his December 22, 2008 Order
7 that the *Google* and *Amazon* cases are to be treated as consolidated. See Order dated
8 December 22, 2008 (Dkt. No. 400) (“The Court consolidates these three actions for
9 the purpose of ensuring that Google and Amazon (including A9 and Alexa) are
10 automatically included in the Court’s ECF system on all filings in Microsoft. The
11 Clerk’s Office is instructed to treat these cases as consolidated.”). Thus, Google, as a
12 party to these consolidated cases, is entitled to be served with all papers and exhibits
13 filed in the *Amazon* case.

14 P10 has identified no legal basis for declining to serve Google with any filed
15 document, nor is there one. If P10 wishes to designate certain portions of the
16 Amazon Motion as “Confidential” or “Highly Confidential – Attorney’s Eyes Only”
17 pursuant to the Protective Order (Dkt. No. 94), it may do so—but it may not simply
18 decline to serve Google with these filed documents. And as for the Amazon
19 Defendants, while Google appreciates that Microsoft has made certain demands,
20 Microsoft’s wishes do not trump (1) the Federal and Local Rules requiring service of
21 all filings on all parties, (2) the Court’s Consolidation Order, and (3) the Protective
22 Order. To the extent that certain of Microsoft’s confidential information is included
23 in the Amazon Motion, it is free to designate that information as “Confidential” or
24 “Highly Confidential – Attorney’s Eyes Only” pursuant to the Protective Order. See
25 Protective Order (Dkt. No. 94) at ¶ 3 (nonparties may designate information
26 Confidential). However, Microsoft may not dictate what court filings are or are not
27 served upon the parties in this case.

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1 Moreover, this filing directly implicates issues relevant to the *Google* case. For
2 example, the Amazon Defendants argued that the settlement agreement is relevant to
3 liability and damages issues. Joint Stipulation (Dkt. No. 364 in the consolidated case)
4 at 7 and 12. Although portions of the Amazon Defendants' argument on this point
5 are redacted, the Amazon Defendants did make clear that P10's settlement agreement
6 with Microsoft reveals relevant information concerning the copyrighted works P10
7 purports to own, and the alleged value of those works. *Id.* These arguments apply
8 with equal force in the *Google* case, making the Microsoft settlement agreement
9 relevant for Google as well. In fact, Google has served P10 with a document request
10 calling for production of the Microsoft settlement agreement, but P10 has refused to
11 produce it. Nolan Decl. ¶ 5. Accordingly, it may be necessary for Google join in the
12 Amazon Motion. Google cannot make that determination without first having
13 received service of and reviewed the complete, unredacted Amazon Motion (and
14 supporting papers).

15 Accordingly, Google respectfully requests that the Court order the Amazon
16 Defendants and P10 to serve Google with the complete and unredacted version of the
17 Amazon Motion (Docket No. 368, filed under seal) and all supporting papers.

18
19 DATED: January 27, 2010

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

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21
22 By *Rachel Herrick Kassabian*
23 Rachel Herrick Kassabian
24 Attorneys for Defendant GOOGLE INC.
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