EXHIBIT B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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ICONFIND INC.,

Plaintiff,

v.

YAHOO! INC.,

Defendant.

_____/

NO. CIV. 09-109 WBS JFM

MEMORANDUM AND ORDER RE: MOTION FOR CLAIM CONSTRUCTION

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Iconfind Inc. ("Iconfind") seeks to improve access to the Internet's contents by organizing network or web pages through a standardized categorization system for the information contained on those pages. Plaintiff's U.S. Patent No. 7,181,459 B2 ("the '459 patent") categorizes network pages based on their content, including the copyright status of the material on the page and whether the pages contain commercial or non-commercial information. Plaintiff contends that Yahoo! Inc.'s ("Yahoo!") Flickr online photo management and sharing application infringes on the '459 patent by incorporating the Creative Commons license

into its website and allowing Flickr users to assign Creative Commons licenses to their photographs.

On November 5, 2009, defendant filed a motion for claim construction, and the court held a Markman[1] hearing on December 7, 2009. After considering the parties' briefs and all other relevant documents, along with the parties' arguments at the Markman hearing, the court construes the disputed claims as set forth below.

I. Factual and Procedural Background

Iconfind is the owner of U.S. Patent No. 7,181,459 B2 ("the '459 patent"), issued on February 20, 2007 and entitled "Method of Coding, Categorizing, and Retrieving Network Pages and Sites." (Mot. Claim Construction Ex. 1 [hereinafter cited as "'459 patent"].) The '459 patent describes a method for manually sorting network pages into a hierarchy of categories based on their content. Claim one of the patent states:

> 1. A computer implemented method of categorizing a network page, comprising:
> Providing a list of categories, wherein said list of categories include a category for transacting business and a category for providing information, and wherein said list of categories include a category based on copyright status of material on a page;
> assigning said network page to one or more of said list of categories;
> providing a categorization label for the network page using the copyright status of material on the network page; and
> controlling usage of the network page using the categorization label and the copyright status of the network page.

[1] Markman v. Westview Instruments, Inc., 517 U.S. 370, 372, 116 S.Ct. 1384 (1996).

('459 patent 12:24-38.[2]) Claim one of the '459 patent sorts network pages into three categories: (1) a category for providing information; (2) a category for transacting business; and (3) a category based on the copyright status of the material on the network page. Id. The network page is then assigned a label based on the copyright status of the material on the page. That label, along with the copyright status of the network age, are used to control the usage of the page, by, for example, permitting a user to limit his network pages solely to pages in particular categories. (9:40-12:12.)

The preferred embodiment of the invention describes a four-tiered categorization system, depicted in the '459 patent as Figure 1. ('459 patent Fig. 1.) The "first tier" divides network pages into whether they are for transacting business or providing information. (4:60-65.) The "second tier" divides the pages according to subject matter. (5:10-28.) The "third tier" divides the pages according to the types of files associated with the network page. (5:29-47.) Another tier divides the pages according to the copyright status of the material on the network page. (5:48-58.)

In the preferred embodiment, a designer of a network page manually assigns the page to appropriate categories by applying a "categorization code" for each category to which the page is assigned. (6:62-65.) The network designer then combines various "codes" to form a "categorization label" that is placed

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[2]The format #:## signifies the column and line number of the '459 patent. Subsequent references to content within the '459 patent are made solely using this numerical format.

on a network page. (7:27-47.) Search engines can then read the categorization label and determine how the page is categorized.

During the prosecution of the '459 patent, the inventors repeatedly had their patent rejected due to the prior art that disclosed categorizing web pages. (Mot. Claim Construction Ex. 2 at IF001485-90.) The inventors eventually narrowed the claims of their patent to claim a categorization system which included at least the three categories of transacting business, providing information, and copyright status.

Yahoo!'s Flickr is an online photo management and sharing application. (Mot. Claim Construction 6.) Flickr users upload digital photos to the Flickr website for storage and sharing. Id. Users can make their photos private or visible to others. Id. Photographs that are public may be browsed or searched by various "tags" that may be attached to them. Id. Flickr also incorporates the Creative Commons license system whereby users can select to grant others the right to use their photographs with certain restrictions. Id. Creative Commons is a non-profit organization that provides free licenses to users to mark their creative work with the usage restrictions they want their work to carry. Id. Flickr users have the option to "tag" their photographs with a Creative Commons license.

On January 13, 2009, plaintiff filed a complaint with this court alleging that the Creative Commons license on Yahoo!'s Flickr site infringes the '459 patent. Presently before the court is defendant's motion for claim construction pursuant to

Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996).

II. Discussion

A. Legal Standard

The court, not the jury, must determine the meaning and scope of patent terms. Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed. Cir. 1995), aff'd., 517 U.S. 370, 372, 116 S.Ct. 1384 (1996). When construing disputed claim terms, the court often looks to both intrinsic and extrinsic evidence. Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996).

Intrinsic evidence includes the language of the claims, specification, and prosecution history. Vitronics, 90 F.3d at 1582. The language of a patent's claims are "generally given their ordinary and customary meaning," which is "the meaning that the term would have to a person of ordinary skill in the art in question . . . as of the [patent's] effective filing date." Phillips v. AWH Corp., 415 F.3d 1303, 1313 (Fed. Cir. 2005). "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." Id.

The specification "is the single best guide to the meaning of a disputed term." Vitronics, 90 F.3d at 1582. The specification can provide further guidance on the meaning of terms in the claims by, for example, (1) revealing a "special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess," Phillips, 415 F.3d

at 1316, (2) revealing an "intentional disclaimer, or disavowal, of claim scope by the inventor," Id., or (3) defining a term by implication, "such that the meaning may be found in or ascertained by a reading of the patent documents," Novartis Pharms. Corp. v. Abbott Labs., 375 F.3d 1328, 1334-35 (Fed. Cir. 2004). Limitations from the preferred embodiments or specific examples in the specification, however, cannot be read into the claim. Anchor Wall Sys. v. Rockwood Retaining Walls, Inc., 340 F.3d 1298, 1306 (Fed. Cir. 2003).

The patent's prosecution history "can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be." Phillips, 415 F.3d at 1317.

Extrinsic evidence "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." Markman, 52 F.3d at 980. When used, extrinsic evidence cannot "vary or contradict" claim language, Vitronics, 90 F.3d at 1584, but it can be useful "for a variety of purposes, such as to provide background . . . [and] to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field." Phillips, 415 F.3d at 1318.

B. Disputed Terms

Viewing the disputed terms from the perspective of a person of ordinary skill in the art at the time of the invention, the court adopts the constructions set forth below.

The five disputed terms appear in boldface below.[3]

> 1. A computer implemented method of categorizing a **network page**, comprising:
>
> providing a list of categories, wherein said list of categories include a **category for transacting business** and a **category for providing information**, and wherein said list of categories include a category based on copyright status of material on a page;
>
> . . . ;
>
> providing a **categorization label** for the network page using the copyright status of the material on the network page;
>
> . . . .
>
> 19. The method of claim 1, further comprising providing a **categorization code** that can be used to label the page with the **categorization label** that indicates the categories to which the page is assigned.

(12:24-38, 13:40-43.)

1. Network Page

The parties' proposed constructions are as follows:

Plaintiff	Defendant
Page on the Internet, private corporate network, intranet, local area network or other network.	All files, data, and information presented when a network address is accessed, including any text, audio, advertising, images, files, graphics, or graphical user interface.

[3]These terms appear in independent claims 1, 30, and 31, and dependent claims 19-27 of the '459 patent.

The parties' dispute over this term revolves around whether the term "page" needs to be separately defined. The parties do not dispute the meaning of "network." The patent claims clearly distinguish "network page" from "material on a page" and "material on the network page." (14:15-50.) At oral argument, counsel for the plaintiff conceded that an image on a "page" did not constitute a "page." The parties then agreed that the term "page" did not need to be further defined.

Therefore, the term "page" needs no further construction, and the court concludes that the term "network page" means **"Page on the Internet, private corporate network, intranet, local area network or other network."**

2. Category for Transacting Business

The parties' proposed constructions are as follows:

Plaintiff	Defendant
Category for (1) e-commerce pages, which provide users with the ability to conduct online purchases, sales, leases, or other financial transactions, (2) pages that may be involved in transacting business, but do not enable the user to conduct the transaction on-line, and (3) other pages that contain commercial information.	A category for network pages that have as a primary purpose transacting business. In the alternative, this term is indefinite.

Plaintiff's proposed construction closely mirrors the preferred embodiment set out in the specification of the '459 patent, which states that:

> Web pages involved in transacting business include e-commerce pages, which provide users with the ability to conduct online purchases, sales, leases, or other

> financial transactions, pages that may be involved in transacting business, but do not enable the user to conduct the transaction on-line, and other pages that contain commercial information.

(4:62-5:4). The defendant argues that the plaintiff is impermissibly attempting to turn the description of the preferred embodiment into a definition, and that the term "commercial information" is ambiguous.

As to the former claim, criteria outlined in the preferred embodiment do not ordinarily serve to limit the claims of the patent to those criteria. See Anchor Wall Sys., 340 F.3d at 1306. Yet the claim terms can be defined by what is set forth in the preferred embodiment as long as that limitation properly describes the whole invention. See Honeywell Intern., Inc. v. ITT Indus., Inc., 452 F.3d 1312, 1318 (Fed. Cir. 2006); Vitronics, 90 F.3d at 1582 ("Although words in a claim are generally given their ordinary and customary meaning, a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history."

The specification "acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication"); Irdeto Access, Inc. v. Echostar Satellite Corp., 383 F.3d 1295, 1300 (Fed. Cir. 2004) ("Even when guidance is not provided in explicit definitional format, the specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents.") (citations omitted); see also Phillips v. AWH Corp.,

415 F.3d 1303, 1316 (Fed Cir. 2005) ("[T]he specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor . . . . In that instance [], the inventor has dictated the correct claim scope, and the inventor's intention, as expressed in the specification, is regarded as dispositive."). Often, it will be clear upon reading the specification in the context of its purpose--which is to teach and enable those of skill in the art to make and use the invention and to provide a best mode for so doing--whether the patentee is setting out specific examples of how to practice the invention or "whether the patentee intends for the claims and the embodiments in the specification to be strictly coextensive." Phillips, 415 F.3d at 1323.

In Honeywell International, the Federal Circuit found that the preferred embodiment of a fuel filter was the only embodiment of the invention because it referred to the fuel filter as "this invention" on multiple occasions in the specification. Id. ("The public is entitled to take the patentee at his word and the word was that the invention is a fuel filter."). The preferred embodiment of "category for transacting business" in this case does not expressly define the invention by its terms. Here, the preferred embodiment states that "web pages involved in transacting business **include** [the three types of pages listed by the plaintiff as its proposed construction.]" (4:62-5:4) (emphasis added). Generally, this use of the word "include" is meant to convey a minimum rather than a maximum. See Black's Law Dictionary 831 (9th ed. 2009)("To contain as a part of something. The participle including typically indicates

a partial list."). By the preferred embodiment's own language, it does not purport to limit categories for transacting business to the list of three types of web pages offered by the plaintiff as its proposed construction.

There is further support in the specification that the use of the word "include" was meant to be illustrative rather than definitional of the term "category for transacting business." The word "include" is used similarly in the preferred embodiment of another disputed term, "category for providing information." (5:4-6; see infra.) Immediately after the purported definition of "category for transacting business," the specification goes on to state: "Web pages involved in providing information **include** pages that contain articles, journals, publications, or other non-commercial materials." (5:4-6) (emphasis added).

The specification later, however, provides an example of how one would categorize the fictional website www.abcde.com, which had "as its purpose" the teaching of the alphabet, as providing information. (8:31-32.) This purposeful metric for categorizing pages as providing information is lacking from the alleged definition of the term "category of providing information," indicating that the preferred embodiment is not the only embodiment of that category. Nor do other uses of the word "include" in the specification imply that what follows is exclusive. (See '459 patent 4-5.) The preferred embodiment, therefore, does not clearly define the term "category for transacting business" as exclusive to the examples listed and accordingly the court will not limit the scope of the patent

claim to those examples.

The defendant's proposed construction imports the term "primary purpose," which the plaintiff argues limits the term to categories with one "primary purpose" when the specification is clear that a web page can be assigned to both the transacting business and providing information categories. (5:7-9.) Such pages, asserts plaintiff, would therefore have two "primary purposes" according to the defendant's logic. The dictionary definition of the adjective "primary" applicable here is the secondary definition, "something that stands first in rank, importance, or value." Mirriam-Webster's Collegiate Dictionary 986 (11th ed. 2003). This definition of "primary" appears to exclude the possibility of multiple "primary purposes," and would exclude the preferred embodiment of the invention which has network pages categorized as both for transacting business and for providing information.

Plaintiff further asserts that defendant's proposed construction excludes the preferred embodiments of e-commerce pages and pages that contain commercial information. Concerns regarding the first embodiment are without merit, as "transacting business" would be thought to include web pages that allow users to complete online commercial and financial transactions. The second embodiment of pages that merely "contain commercial information" might be excluded if defendant's "primary purpose" construction is adopted. While the other two preferred embodiments would be included in the "primary purpose" language proposed by the defendant, the defendant's proposal would seem to exclude pages that merely "contain" commercial information but

whose "primary purpose" remained the providing non-commercial information. Therefore, the defendant's proposed construction must be rejected.

Since the plaintiff and defendant both have proposed constructions that do not perfectly align with the claims and specifications of the patent, the court construes the term as: A category for network pages that have as a purpose transacting business. At oral argument both parties indicated that, while they each preferred their own proposed construction, this construction could be satisfactory. This definition is broad enough to encompass the preferred embodiment and also takes into account the purposeful analysis that the patent specification has indicated is also appropriate. Furthermore, this construction recognizes that for the patent to function the term "category for transacting business" must both be sufficiently definite to be meaningful to network page creators seeking to categorize their network pages, and be flexible enough to allow them to categorize their network pages as they best see fit. This construction also avoids the term "commercial information" proposed by plaintiff and challenged by defendant as impermissibly indefinite.

Therefore, the term "category for transacting business" means **"A category for network pages that have as a purpose transacting business."**

3. Category for Providing Information

The parties' proposed constructions are as follows:

Plaintiff	Defendant
Category for pages that contain articles, journals, publications, or other non-	A category for network pages that have as a primary purpose the provision of information,

commercial materials.	for example, network pages that contain articles, journals, or publications. In the alternative, this term is indefinite.

Plaintiff's proposed construction closely mirrors the preferred embodiment set out in the specification of the '459 patent, which states that: "Web pages involved in providing information include pages that contain articles, journals, publications, or other non-commercial materials." (5:4-6.) As discussed above, the use of the word "include" in the preferred embodiment, and the example of the fictional website www.abcde.com, which had "as its purpose" the teaching of the alphabet, as providing information (8:31-32), indicate that the preferred embodiment is not the only embodiment of the "category for providing information." Plaintiff's proposed construction, therefore, improperly limits the claim to the preferred embodiment.

As also discussed above, defendant's importation of the term "primary purpose" likewise poses the problem of not aligning with the preferred embodiment that allows for network pages to be categorized as both providing information and transacting business. Thus, the court proposes a modified construction: A category for network pages that have as a purpose the provision of information, for example, network pages that contain articles, journals, or publications. This construction encompasses the preferred embodiment and allows for other embodiments of the invention, while eliminating the potentially troublesome commercial/non-commercial distinction present in the plaintiff's

proposed construction.

Defendants argue that any network page provides some form of information, and that the term "category for providing information" is indefinite so to render the patent invalid. Because every network page theoretically "provides information," defendant argues that this category could include every network page every made. Patents enjoy a presumption of validity because they have gone through the prosecution process with the Patent Office, and defendants offer no expert testimony or evidence that a person with ordinary skill in the art would not be able to determine the scope of the patents claims. This argument is therefore rejected.

Therefore, the term "category for providing information" means **"A category for network pages that have as a purpose the provision of information, for example, network pages that contain articles, journals, or publications."**

4. Categorization Label

The parties' proposed constructions are as follows:

Plaintiff	Defendant
Tag indicating the category or categories to which a page is assigned.	The complete code string representing all the categories to which a network page is assigned.

Defendant's proposed construction clearly is contrary to the preferred embodiment of the invention with respect to the words "complete" and "all." The specification states that: "The categorization label **preferably** consists of the indicia for all of the categories to which the page is assigned." (7:3-4)

(emphasis added). According to the preferred embodiment, therefore, it is not necessary that the categorization label include the indicia representing every category to which the page has been assigned. Plaintiffs also point to dependent claim 22, which states: "The method of claim 20, wherein said categorization label includes the indicia for each category to which a page is assigned." (13:48-50.) Furthermore, independent claim 30, which includes both terms "categorization code" and "categorization label," makes clear that the categorization label need not contain the indicia of all the categories to which a network page is assigned:

> 30. A computer implemented method for categorizing a network page, comprising:
>
> providing a list of categories, wherein said list of categories include a category for transacting business and a category for providing information, and wherein said list of categories include a plurality of categories based on the copyright status of material on a page;
>
> providing a **categorization code** for labeling the network page with a **categorization label**, wherein said **categorization label** indicates **a set** of categories and subcategories to which the network page is assigned, and wherein said **categorization label** indicates the copyright status of material on the network page; and
>
> controlling usage of the network page using the **categorization label** and the copyright status of the network page.

(14:17-33) (emphasis added.)

Plaintiff argues that the defendant's proposed construction also improperly reads "categorization code" and "code string" into independent claim 1 of the '459 patent. Specifically:

> 1. A computer implemented method of categorizing a network page, comprising:

> Providing a list of categories, wherein said list of categories include a category for transacting business and a category for providing information, and wherein said list of categories include a category based on copyright status of material on a page;
>
> assigning said network page to one or more of said list of categories;
>
> providing a **categorization label** for the network page using the copyright status of material on the network page; and
>
> controlling usage of the network page using the **categorization label** and the copyright status of the network page.
>
> 19. The method of claim 1, further comprising providing a **categorization code** that can be used to label the page with the **categorization label** that indicates the categories to which the page is assigned.

('459 patent 12-13) (emphasis added.) "[T]he presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." Phillips, 415 F.3d at 1314-15. Dependent claim 19 adds the limitation of "further comprising a categorization code," which presumably is not contained in independent claim 1. While independent claim 30 includes both "categorization label" and "categorization code," independent claims 1 and 31 do not require a "categorization code." The court will not import a dependent claim into independent claim 1 by importing the term "categorization code" to the term "categorization label."

Furthermore, the language of the specification, which was quoted only in part by the defendant, states that: The indicia for the categories are **preferably** placed in an unbroken code string in the following order: first tier, second tier,

third tier, and copyright-status categories." (7:15-18) (emphasis added). The specification further states that: **"An example** of such a categorization label is a single, simple character string consisting of the two-letter or two-numerical indicia for all of the categories to which the page is assigned." (7:5-8) (emphasis added). It does not appear, therefore, that the preferred embodiment is the only embodiment of the categorization label, and the court will not interpret the term "categorization label" to require a "code string."

Finally, because the patent does not limit its claims to placing only one categorization label on a network page, it is clear that each label does not need to include every category to which a page is assigned in order for the patent to function. A network page creator could assign a network page two categorization labels, each indicating only some of the categories to which a page is assigned. Furthermore, the specification provides that a network page designer can communicate the categories to which a page is assigned directly to search engines rather than include those categories in the categorization label. (6:50-58.) This clearly contemplates that a categorization label might not include every category to which a network page is assigned.

Defendants object to plaintiff's including the word "tag" in their proposed construction of the term "categorization label." While the word "tag" may be a term of art, "a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent

specification or file history." Honeywell Intern., Inc., 452 F.3d at 1318. In the specification, the patent clearly uses the words "tag" and "label" and "mark" in the verb form interchangeably. (6:50-53, 6:63-65.) The construction suggested by plaintiff, however, uses the word "tag" as a noun, which is not supported by the patent language as being synonymous with a "label." Additionally, the preferred embodiment somewhat confusingly also states that "The method also includes the step of providing the creator with a categorization code that can be used to tag or label each page or site." (6:63-65.) Substituting the word "tag" for "label" in the definition adds nothing to enlighten the jury. To the contrary, it would just add another word which arguable would have to be defined. Since the plaintiff asserts that the patent uses the terms "tag" and "label" interchangeably, this construction provides the same meaning while avoiding possible confusion. Furthermore, this construction makes clear that the label need not include every category to which a page is assigned.

Therefore, the term "categorization label" means **"Label indicating a category or categories to which a page is assigned."**

5. Categorization Code

The parties' proposed constructions are as follows:

Plaintiff	Defendant
System of characters or symbols that represent categories.	A code representing a category to which a network page is or could be assigned.

The parties dispute whether the term "categorization code" refers to an entire "system" of codes or to the individual codes that correspond to each category. The term "categorization code"

appears in dependent claims 19, 20 25, and 30:

> 19. The method of claim 1, further comprising providing a **categorization code** that can be used to label the page with the categorization label that indicates the categories to which the page is assigned.
>
> 20. The method of claim 19, wherein said **categorization code** comprises an indicium for each of said categories.
>
> 25. The method of claim 19, wherein said categorization label further includes an identifier to indicate that said label is part of said **categorization code**.
>
> 30. A computer implemented method for categorizing a network page, comprising:
>
> providing a list of categories, wherein said list of categories include a category for transacting business and a category for providing information, and wherein said list of categories include a plurality of categories based on the copyright status of material on a page;
>
> providing a **categorization code** for labeling the network page with a categorization label, wherein said categorization label indicates a set of categories and subcategories to which the network page is assigned, and wherein said categorization label indicates the copyright status of material on the network page; and
>
> controlling usage of the network page using the categorization label and the copyright status of the network page.

(13:40-45; 14:3-5; 14:16-33) (emphasis added.) The language of a patent's claims are "generally given their ordinary and customary meaning." Phillips, 415 F.3d at 1313. Furthermore, the claim term is read in the context of both the particular claim in which it appears and in the context of the entire patent. Id.

These claims reveal a system of characters that represent categories to which network pages can be assigned. Specifically, dependent claim 20 refers to a categorization code as comprising "an indicium for each of said categories" to which

a page is assigned. (13:44-45.) For claim 20 to make sense, the term "categorization code" must contemplate a system that can comprise the categorical indicia. Likewise, dependent claim 25 refers to an "identifier" to indicate that the categorization label is part of the categorization code. Defendant's proposed construction is nonsensical when posed along side claim 25. If a "categorization code" is merely a two-letter indicium of a particular category to which a page has been labeled, then the categorization code should constitute part of the categorization label rather than the label constituting a part of the code. The specification provides further light for interpreting claim 25:

> The categorization label for a page preferably also includes an identifier, such as a combination of several characters or symbols, to indicate that the characters or symbols that follow are part of a categorization code system.

(7:8-11.) This portion of the preferred embodiment directly speaks to dependent claim 25 of the specification, and uses the term "categorization code system" where the claim uses "categorization code." According to the patent, the terms are used interchangeably, and is further evidence that the inventors intended the term "categorization code" to mean a code system.

Defendants cite the example of coding a pornographic web page, where the patent states: "The categorization label would be 'coexvimu,' which indicates: Commerce (co); Explicit (ex); Visual (vi); and Multimedia (mu). The Explicit category 42, identified by the 'X' icon and the 'ex' code, ..." (7:48-54.) While the specification also uses the term "code" when referring to individual category symbols, this is not in conflict with recognizing that the term "categorization code" refers to the

system of as a whole. The patent repeatedly refers to these individual codes as "indicia":

> The list of categories includes at least one different indicium for each category. The indicium is preferably a universal symbol or icon that is not associated with any one language, but it may also include a combination of letters, numerals, or other characters, or symbols. The indicia preferably used are universal icons and two-letter or two-numeral indicia, as shown in FIG. 1. Thus, the indicia for commerce are "co" and the "$" symbol, while the indicum for "Public Domain" is "01."

(6:3-11.)

The preferred embodiment further states: "The method also includes the step of providing the creator with a categorization code that can be used to tag or label each page or site . . . . and is preferably the indicia shown in FIG 1." (6:63-7:1.) Figure 1 of the '459 patent displays the three "tiers" of categories and the fourth category comprising copyright status, and the various categories within the tiers. Accordingly, "categorization code" as used in this instance cannot constitute a singular code or category, but must represent the entire system of codes displayed in Figure 1 of the '459 patent.

Defendant also points to portions of the provisional patent applications which referred to the term "categorization code" as both a system and as the individual string of codes as evidence that the term could mean an individual code. (E.g., Yahoo! Reply Decl. Kevin A. Smith Ex. 15 Fig. 1 ("The iics copyright code can simply be typed in at the end of the categorization code . . . .").) The provisional applications that the defendant points to, however, did not use the term "categorization label." Rather, they used the term

"categorization code" to also mean what is now defined as the "categorization label." While the provisional patent applications may have used the term "categorization code" to express multiple meanings, the '459 patent claims and specification are consistent in their usage of the term.

Finally, the preferred embodiment generally speaks about the "categorization code" as something that the network page creator "uses" to assign categorization labels to network pages. (See 6:63-65; 7:1-3; 7:12-15.) This conception of "categorization code" aligns with a systemic view of the term, and is incompatible with a construction that limits the term to one particular set of characters or symbols in code.

Therefore, the term **"categorization code" means "System of characters or symbols that represent categories."**

The Court accordingly construes the claims as set forth above.

IT IS SO ORDERED.

DATED: December 14, 2009

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE