

1 TONY WEST  
 Assistant Attorney General  
 2 JOSEPH P. RUSSONIELLO  
 United States Attorney  
 3 JOHN R. GRIFFITHS  
 Assistant Branch Director  
 4 ALEXANDER K. HAAS (SBN 220932)  
 Trial Attorney  
 5 U.S. Department of Justice  
 Civil Division, Federal Programs Branch  
 6 20 Massachusetts Ave. N.W., Room 7142  
 Washington, D.C. 20001  
 7 Tel: (202) 307-3937 — Fax: (202) 616-8470  
 Email: alexander.haas@usdoj.gov  
 8 *Attorneys for the United States*

9 **IN THE UNITED STATES DISTRICT COURT**  
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 11 **OAKLAND DIVISION**

12 \_\_\_\_\_ )  
 13 DOE 1, DOE 2, and KASADORE )  
 RAMKISSOON, on Behalf of Themselves and )  
 14 all other Persons Similarly Situated, )  
 15 Plaintiffs, )  
 16 v. )  
 17 AOL LLC, )  
 18 Defendant. )

**Case No. 4:06-cv-05866-SBA**  
**STIPULATION PERMITTING**  
**THE UNITED STATES TO**  
**INTERVENE**

19 The United States and the parties, through their undersigned counsel, hereby stipulate to it  
 20 to the intervention of the United States, as a matter of right, and limited to defending the  
 21 constitutionality of an act of Congress. The United States respectfully requests that the Court  
 22 enter the order below and allow the United States to intervene.

23 **RECITALS**

24 1. Defendant has challenged in part the constitutionality of Title II of the Electronic  
 25 Communications Privacy Act of 1986, commonly known as the Stored Communications Act  
 26 (SCA), Pub. L. 99-508, ch. 121, §§ 201, *et. seq.*, *codified as amended* at 18 U.S.C. § 2701, *et.*  
 27 *seq.*, in its motion for judgment on the pleadings filed June 29, 2009. *See* Dkt. 100 at 10-12.  
 28 Defendant has also filed a notice of constitutional challenge, *see* Dkt. 102.

2. Section 2403(a) of Title 28 of the U.S. Code provides that:

In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court . . . shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.

3. The Federal Rules of Civil Procedure authorize intervention as of right “when a statute of the United States confers an unconditional right to intervene.” Fed. R. Civ. P. 24(a)(1).

4. By way of this filing, the United States seeks to intervene to address the constitutionality of the SCA.

5. The United States’ brief supporting the constitutionality of the SCA is being filed concurrently herewith.

**STIPULATION**

The Plaintiffs, Defendant, and the United States, through their attorneys of record, hereby stipulate and request that the Court make this stipulation an order of the Court:

1. The United States shall be permitted to intervene in the above-captioned action pursuant to Federal Rule of Civil Procedure 24.

Dated: October 13, 2009

Respectfully submitted,

TONY WEST  
Assistant Attorney General

JOSEPH P. RUSSONIELLO  
United States Attorney

JOHN R. GRIFFITHS  
Assistant Branch Director

*/s/ Alexander K. Haas*  
ALEXANDER K. HAAS (SBN 220932)  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave. N.W., Room 7142  
Washington, D.C. 20001  
Tel: (202) 307-3937 — Fax: (202) 616-8470  
Email: alexander.haas@usdoj.gov  
*Attorneys for the United States*



1 Adam Fotiades  
2 all admitted pro hac vice  
3 601 Lexington Avenue  
4 New York, New York 10022  
5 Telephone: (212) 446-4800—Fax: (212) 446-4900  
6 Email: jserino@kirkland.com

7 Elizabeth L. Deeley  
8 San Francisco, California 94104  
9 Telephone: (415) 439-1400—Fax: (415) 439-1500  
10 Email: edeeley@kirkland.com  
11 *Attorneys for AOL LLC*

12 **[PROPOSED] ORDER**

13 Pursuant to the foregoing stipulation, it is hereby ORDERED that:

14 1. The United States shall be permitted to intervene in the above-captioned  
15 action pursuant to Federal Rule of Civil Procedure 24.

16 IT IS SO ORDERED.

17 Dated: 10/26, 2009.

18   
19 HON. SAUNDRA BROWN ARMSTRONG  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28