

1 DAVID H. KRAMER, State Bar No. 168452 (dkramer@wsgr.com)  
 2 DAVID L. LANSKY, State Bar No. 199952 (dlansky@wsgr.com)  
 3 WILSON SONSINI GOODRICH & ROSATI  
 Professional Corporation  
 4 650 Page Mill Road  
 Palo Alto, CA 94304-1050  
 Telephone: (650) 493-9300  
 Facsimile: (650) 565-5100  
 5  
 6 Attorneys for Defendant/Counterclaimant  
 Google Inc.

7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN JOSE DIVISION

12	DIGITAL ENVOY, INC.,	)	CASE NO. C 04 01497 RS
		)	
13	Plaintiff/Counterdefendant,	)	<b>DECLARATION OF DAVID H.</b>
		)	<b>KRAMER IN SUPPORT OF</b>
14	v.	)	<b>GOOGLE INC.'S OPPOSITION TO</b>
		)	<b>DIGITAL ENVOY, INC.'S MOTION</b>
15	GOOGLE INC.,	)	<b>FOR PARTIAL SUMMARY</b>
		)	<b>JUDGMENT ON CONTRACT</b>
16	Defendant/Counterclaimant.	)	<b>ISSUES</b>
		)	
17		)	Date: August 31, 2005
		)	Time: 9:30 a.m.
18		)	Courtroom: 4, 5 <sup>th</sup> Floor
		)	Judge: Hon. Richard Seeborg
19		)	

1 I, David H. Kramer, declare as follows:

2 1. I am an attorney at law duly licensed to practice in the State of California and before  
3 this Court. I am a member at Wilson Sonsini Goodrich & Rosati, counsel for defendant and  
4 counterclaimant Google Inc. ("Google"). I have personal knowledge of the facts set forth herein  
5 and, if called as a witness, could and would testify competently thereto.

6 2. Attached hereto as Exhibit A is a true and correct copy of an email from Rob  
7 Friedman of Digital Envoy, Inc. ("Digital Envoy") to Sergey Brin and Craig Silverstein of  
8 Google, dated October 24, 2000, Bates numbered GOOG 000793-794. It has been highlighted  
9 by our firm for emphasis. This document was authenticated by Rob Friedman during his  
10 deposition on November 17, 2004, and marked as Defendant's Exhibit 2.

11 3. Attached hereto as Exhibit B is a true and correct copy of an email exchange between  
12 Rob Friedman of Digital Envoy and Steve Schimmel of Google, dated November 21, 2000,  
13 Bates numbered GOOG 008756-8762. The email chain, which by convention is read from end  
14 to beginning, reflects Google's discussions with Digital Envoy concerning a license to certain  
15 Digital Envoy technology and data. It has been highlighted by our firm for emphasis. This  
16 document was authenticated by Rob Friedman during his deposition on November 17, 2004, and  
17 marked as Defendant's Exhibit 5.

18 4. Attached hereto as Exhibit C is a true and correct copy of an email from Steve  
19 Schimmel of Google, forwarding an email to Rob Friedman of Digital Envoy, dated November  
20 21, 2000, Bates numbered GOOG 009318-9332. The email continues the discussion  
21 commenced in Exhibit B between representatives of Google and Digital Envoy and contains  
22 many of the same messages. It has been highlighted by our firm for emphasis. This document  
23 was authenticated by Rob Friedman during his deposition on November 17, 2004, and marked as  
24 Defendant's Exhibit 8.

25 5. Attached hereto as Exhibit D is a true and correct copy of the November 30, 2000  
26 agreement between Google and Digital Envoy (along with its two amendments and subsequent  
27 ratification), which Digital Envoy has acknowledged as authentic in its pleadings in this case.  
28

1 6. Attached hereto as Exhibit E is a true and correct copy of excerpts from the  
2 deposition testimony of Robert B. Friedman, taken on November 17, 2004.

3 7. Attached hereto as Exhibit F is a true and correct copy of a standard Digital Envoy  
4 marketing presentation to DoubleClick. This document was authenticated by Rob Friedman  
5 during his deposition on November 17, 2004, and marked as Defendant's Exhibit 36. I have  
6 seen numerous virtually identical presentations prepared for other parties in Digital Envoy's  
7 document production.

8 8. Attached hereto as Exhibit G is a true and correct copy of excerpts from the transcript  
9 of the May 4, 2005 hearing on Google's Motion for Summary Judgment;

10 9. Attached hereto as Exhibit H is a true and correct copy of the Product and Electronic  
11 Database Evaluation and License Agreement between 24/7 Media and Digital Envoy, Inc.,  
12 entered into as of November 22, 2000. This document was authenticated by Rob Friedman  
13 during his deposition on November 17, 2004, and marked as Defendant's Exhibit 12.

14 10. Attached hereto as Exhibit I is a true and correct copy of the Electronic Database  
15 License Agreement between Advertising.com, Inc. and Digital Envoy, Inc., entered into as of  
16 March 10, 2000. This document was authenticated by Rob Friedman during his deposition on  
17 November 17, 2004, and marked as Defendant's Exhibit 13.

18 11. Attached hereto as Exhibit J is a true and correct copy of a Digital Envoy press  
19 release, dated December 11, 2000. This document was authenticated by Rob Friedman during  
20 his deposition on November 17, 2004, and marked as Defendant's Exhibit 11.

21 12. Attached hereto as Exhibit K is a true and correct copy of an email from Sanjay  
22 Parekh of Digital Envoy to Mike Polk of Advertising.com, dated June 26, 2003, attaching Digital  
23 Envoy marketing materials regarding Advertising.com's use of Digital Envoy's data in its online  
24 advertising network. The document was produced by Advertising.com in response to a subpoena  
25 issued by Google, Inc.

26 13. Attached hereto as Exhibit L is a true and correct copy of an email from Susan Daw  
27 of Digital Envoy to Rob Friedman of Digital Envoy, dated July 26, 2002, forwarding an article  
28 regarding Google signing deals to provide paid listings to AskJeeves and AOL. This document

1 was authenticated by Susan Daw during her deposition on June 21, 2005, and marked as  
2 Defendant's Exhibit 85.

3 14. Attached hereto as Exhibit M is a true and correct copy of an email from Susan Daw  
4 of Digital Envoy to Sanjay Parekh of Digital Envoy, dated May 1, 2003, regarding Google's  
5 April 2003 newsletter discussing Google's advertising network. This document was  
6 authenticated by Rob Friedman during his deposition on November 17, 2004, and marked as  
7 Defendant's Exhibit 28.

8 15. Attached hereto as Exhibit N is a true and correct copy of an email from Sanjay  
9 Parekh of Digital Envoy to Susan Daw of Digital Envoy, dated June 10, 2003, regarding Digital  
10 Envoy advertisements syndicated by Google to a third-party website. This document was  
11 authenticated by Susan Daw during her deposition on June 21, 2005, and marked as Defendant's  
12 Exhibit 89.

13 16. Attached hereto as Exhibit O is a true and correct copy of a Google advertising  
14 account report, showing Digital Envoy's advertising account with Google was set up on June 26,  
15 2002. This document was marked as Defendant's Exhibit 87 at the deposition of Susan Daw on  
16 June 21, 2005.

17  
18 I declare under penalty of perjury under the laws of the United States of America that the  
19 foregoing is true and correct. Executed on August 10, 2005, at Palo Alto, California.

20  
21  
22  
23  
24  
25  
26  
27  
28

/s/ David H. Kramer  
David H. Kramer