

KRAMER DECLARATION EXHIBIT G

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DIGITAL ENVOY, INC.,) C-04-01497-RS
)
Plaintiffs,)
) San Jose, CA
vs.) May 4, 2005
)
GOOGLE, INC.,)
)
Defendant.)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RICHARD SEEBORG
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

COPY

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(APPEARANCES CONTINUED ON THE NEXT PAGE)

Court Reporter: PETER TORREANO, CSR
License Number C-7623

1 THE COURT: You mean going to the third
2 party?

3 MR. KRATZ: Yes, absolutely.

4 THE COURT: What's your theory there?

5 MR. KRATZ: The theory there is that
6 when they have a contract with an AdSense user
7 they are effectively licensing their AdSense
8 ability and it includes effectively the ability
9 to Geo-Target which includes our Geo-Targeting
10 process and they --

11 THE COURT: How can that be? I mean,
12 how can you say that a third party, that
13 effectively what Google has done in the AdSense
14 program is to license any aspect of its
15 intellectual property to the extent it includes
16 yours or otherwise to a third party?

17 They are not licensing anything. They
18 are providing a service for which they are
19 getting some monetary benefit, but they are
20 not turning anything over to a third party.

21 MR. KRATZ: If that's the case, then why
22 in the AskJeeves agreement, the portions of which
23 we can find does it read like a license, why does
24 it make clear that by entering into this we're
25 not giving up any of our intellectual property

1 deliver content-targeted ads to your users.

2 THE COURT: If your decision is right,
3 there's a whole lot of licensing going on that I
4 don't think has ever been characterized as
5 licensing. I mean, that is broadening out the
6 concept of licensing to the point that I've got
7 to tell you I just don't see it.

8 MR. KRATZ: All right. Well, then they
9 say it in their SEC thing and if you look at what
10 portions of the AskJeeves contract we were able
11 to come up with, the idea that they're doing all
12 this provision of services and we're doing all
13 these things and enabling, sorry, AskJeeves to do
14 certain things and then making sure they reserve
15 the right that they didn't transfer the
16 intellectual property by doing so implicates a
17 typical language of the license.

18 Because what they've done is they are
19 letting AskJeeves do it and using the service,
20 but they don't want AskJeeves by virtue of that
21 kind of transfer of rights not to take with it
22 the transfer of the whole pie. That's a
23 license. You can only do it for specific uses in
24 this contract and by doing that specific use in
25 the contract you're not getting any more than