

1 DAVID H. KRAMER, State Bar No. 168452  
 2 WILSON SONSINI GOODRICH & ROSATI  
 3 Professional Corporation  
 4 650 Page Mill Road  
 5 Palo Alto, CA 94304-1050  
 6 Telephone: (650) 493-9300  
 7 Facsimile: (650) 565-5100

8 Attorneys for Defendant/Counterclaimant  
 9 Google Inc.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

13 DIGITAL ENVOY, INC., )  
 14 )  
 15 Plaintiff/Counterdefendant, )  
 16 )  
 17 v. )  
 18 )  
 19 GOOGLE INC., )  
 20 )  
 21 Defendant/Counterclaimant. )

22 CASE NO. C 04 01497 RS  
 23 **DECLARATION OF**  
 24 **DAVID H. KRAMER IN SUPPORT**  
 25 **OF GOOGLE INC.'S MOTION FOR**  
 26 **ENTRY OF A PROTECTIVE**  
 27 **ORDER STAGING DISCOVERY**  
 28 Judge: Hon. Richard Seeborg  
 Courtroom: 4, 5<sup>th</sup> Floor  
 Date: September 22, 2004  
 Time: 9:00 a.m.

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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 of 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 to Steve Schimmel of Google, dated November 21, 2000, which was  
8 retrieved from Google's electronic mail system. The email chain, which by convention is read  
9 from end to beginning, reflects Google's discussions with Digital Envoy concerning a license to  
10 certain Digital Envoy technology. It has been highlighted by our firm for emphasis.

11 3. Attached hereto as Exhibit B is a true and correct copy of an email from Steve  
12 Schimmel of Google to Rob Friedman of Digital Envoy, dated November 21, 2000, also  
13 retrieved from Google's electronic mail system. The email continues the discussion commenced  
14 in Exhibit A between representatives of Google and Digital Envoy. It too has been highlighted  
15 by our firm for emphasis.

16 4. Attached hereto as Exhibit C is a true and correct copy of the November 30, 2000  
17 agreement between Google and Digital Envoy (along with its two amendments and subsequent  
18 ratification), which Digital Envoy has acknowledged as authentic in its pleadings in this case.

19 5. Attached hereto as Exhibit D are true and correct copies of emails from Steve  
20 Schimmel of Google to Digital Envoy representatives that were retrieved from Google's email  
21 system. The messages reflect discussions between Google and Digital Envoy concerning  
22 Digital Envoy's use of Google's online advertising programs.

23 6. Digital Envoy originally commenced litigation over this dispute with Google in the  
24 U.S. District Court of the Northern District of Georgia (Civil Action No. 1:04-CV-0864) (CAP).  
25 By Order dated May 21, 2004, the Georgia court granted Google's motion to transfer the case to  
26 California. *See* 319 F.Supp.2d 1377 (N.D. Ga. 2004).

27 7. Before the transfer order issued, Digital Envoy filed a proposed discovery plan for  
28 the action, a true and correct copy of which is attached hereto as Exhibit E. Digital Envoy's

1 plan called for far-reaching discovery into Google's operations, finances, plans, and business  
2 partners.

3 8. Both while the parties were litigating in Georgia and again later, when the case was  
4 transferred here, I met and conferred with Digital Envoy's counsel in an effort to reach  
5 agreement on a plan to stage discovery in the matter. I explained that Google believed that its  
6 license defense would be dispositive of Digital Envoy's claims, and suggested that discovery be  
7 limited to matters concerning the negotiation and interpretation of the license agreement. Digital  
8 Envoy rejected those proposals.

9 9. Digital Envoy recently served its first set of requests for production in this matter, a  
10 copy of which is attached as Exhibit F. The requests reflect Digital Envoy's desire for a  
11 substantial amount of information that does not bear on Google's license defense. The same is  
12 true for Digital Envoy's initial disclosures in this matter, which detail the breadth and scope of  
13 the discovery it plans to seek. A copy of those initial disclosures is attached hereto as Exhibit G.  
14

15 I declare under penalty of perjury under the laws of the United States of America that the  
16 foregoing is true and correct. Executed on August 16, 2004, at Palo Alto, California.

17  
18 /s/ David H. Kramer  
19 David H. Kramer

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