

1 DAVID H. KRAMER, State Bar No. 168452  
STEPHEN C. HOLMES, State Bar No. 200727  
2 WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
3 650 Page Mill Road  
Palo Alto, CA 94304-1050  
4 Telephone: (650) 493-9300  
Facsimile: (650) 565-5100  
5  
6 Attorneys for Defendant/Counterclaimant  
Google Inc.

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

11 DIGITAL ENVOY, INC., )  
12 )  
Plaintiff/Counterdefendant, )  
13 )  
v. )  
14 )  
GOOGLE INC., )  
15 )  
Defendant/Counterclaimant. )  
16 )  
17 )  
18 )

CASE NO. C 04 01497 RS  
**DECLARATION OF DAVID H.  
KRAMER IN SUPPORT OF  
GOOGLE INC.'S MOTION FOR  
SUMMARY JUDGMENT**  
Judge: Hon. Richard Seeborg  
Courtroom: 4, 5<sup>th</sup> Floor  
Date: March 30, 2005  
Time: 9:30 a.m.

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 009318-9324. 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 excerpts from the  
26 deposition testimony of Robert B. Friedman, taken on November 17, 2004.

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1           6. Attached hereto as Exhibit E is a true and correct copy of the November 30, 2000  
2 agreement between Google and Digital Envoy (along with its two amendments and subsequent  
3 ratification), which Digital Envoy has acknowledged as authentic in its pleadings in this case.

4           7. Attached hereto as Exhibit F is a true and correct copy of excerpts from the  
5 deposition testimony of Matthew D. Cutts, taken on September 1, 2004.

6           8. Attached hereto as Exhibit G is a true and correct copy of excerpts from the  
7 deposition testimony of Steven L. Schimmel, taken on September 23, 2004.

8           9. Attached hereto as Exhibit H is a true and correct copy of excerpts from the  
9 deposition testimony of Kulpreet Rana, taken on November 16, 2004.

10          10. Attached hereto as Exhibit I is a true and correct copy of an email exchange between  
11 Robert Friedman and Steve Schimmel, dated February 2004, Bates numbered GOOG 007112-  
12 7123. It has been highlighted by our firm for emphasis. This document was authenticated by  
13 Steve Schimmel during his deposition on September 23, 2004, and marked as Plaintiff's Exhibit  
14 39.

15          11. Attached hereto as Exhibit J is a true and correct copy of a draft Product and  
16 Electronic Database Evaluation and License Agreement between Google and Digital Envoy,  
17 Bates numbered GOOG 009217-9225. This document was authenticated by Steve Schimmel  
18 during his deposition on September 23, 2004, and marked as Plaintiff's Exhibit 21.

19          12. Attached hereto as Exhibit K is a true and correct copy of Google press release, dated  
20 March 4, 2003, announcing the launch of Google's AdSense for Content program. On February  
21 17, 2005, I downloaded the press release from Google's website at  
22 <http://www.google.com/press/pressrel/advertising.html>.

23          13. Attached hereto as Exhibit L is a true and correct copy of an email from Susan Daw  
24 of Digital Envoy to Sanjay Parekh of Digital Envoy, dated May 1, 2003, Bates numbered  
25 DE007088-7091, regarding Google's April 2003 newsletter discussing Google's advertising  
26 network. This document was authenticated by Rob Friedman during his deposition on  
27 November 17, 2004, and marked as Defendant's Exhibit 28.

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1 14. Attached hereto as Exhibit M is a true and correct copy of an email from Rob  
2 Friedman of Digital Envoy, dated October 24, 2003, Bates numbered DE008643-8644,  
3 referencing Google's advertising network. It has been highlighted by our firm for emphasis.  
4 This document was authenticated by Rob Friedman during his deposition on November 17,  
5 2004, and marked as Defendant's Exhibit 39.

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7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct. Executed on February 23, 2005, at Palo Alto, California.

9 /s/ David H. Kramer  
10 David H. Kramer

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