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Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT COURT OF CALIFORNIA
SAN JOSE DIVISION**

<p>NETSCAPE COMMUNICATIONS CORPORATION, a Delaware corporation; and AMERICAN ONLINE, INC., a Delaware corporation,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>FEDERAL INSURANCE COMPANY, an Indiana corporation; et al.,</p> <p style="text-align: center;">Defendants.</p>	}	<p>CASE NO. 5:06-CV-00198 JW (PVT)</p> <p>SUPPLEMENT TO COMPENDIUM OF DEPOSITION TESTIMONY REFERENCED IN ALL PLEADINGS RE: PARTIES' CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT</p> <p>Date: March 26, 2007 Time: 9:00 a.m. Judge: Honorable James Ware Courtroom: 8, 4th Floor, San Jose</p>
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For the Court's convenience, the Parties jointly submitted on March 9, 2007, a Compendium of Deposition Testimony Referenced in All Pleadings Re: Parties' Cross Motions for Summary Judgment ("the Compendium"). This Compendium does not include certain testimony excerpts from the Deposition of David Y. Park referenced in the parties' collective motion papers. Accordingly, the Parties jointly submit this Supplement to Compendium of Deposition Testimony, attaching certain excerpts from the Park deposition, which should be inserted into the Clerk's copy of Compendium (marked Document 113 on the Docket Report) after the binder tab labeled "PARK." The

1 attached deposition excerpts should also be inserted into Judge Ware's chambers copy
2 of the Compendium after the binder tab labeled "PARK."

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COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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 SPECHT, et al., :
 :
 Plaintiffs, :
 : Civil Action No.
 v. : 00-CIV-4871
 : (AKH) (SDNY)
 NETSCAPE COMMUNICATIONS, :
 et al., :
 :
 Defendants. :
 -----x

-----x
 WEINDORF, et al., :
 :
 Plaintiffs, :
 : Civil Action No.
 v. : 00-CIV-6219
 : (AKH) (SDNY)
 NETSCAPE COMMUNICATIONS, :
 et al., :
 :
 Defendants. :
 -----x

-----x
 GRUBER, et al., :
 :
 Plaintiffs, :
 : Civil Action No.
 v. : 00-CIV-6249
 : (AKH) (SDNY)
 NETSCAPE COMMUNICATIONS, :
 et al., :
 :
 Defendants. :
 -----x

CONFIDENTIAL--SUBJECT TO COURT ORDER

Washington, D.C.
Monday, October 20, 2003

The deposition of DAVID Y. PARK, called for examination by counsel for Plaintiffs in the above-entitled matter, pursuant to notice, in the

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Ex 229

offices of Wilmer, Cutler & Pickering, 2400 N Street, N.W., Conference Room 3NE, Washington, D.C. convened at 9:47 a.m., before David A. Kasdan, RDR-CRR, a notary public in and for the District of Columbia, when were present on behalf of the parties:

APPEARANCES:

On behalf of the Plaintiffs:

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Abbey Gardy, L.L.P.
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(212) 889-3700

On behalf of the Defendants:

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LOWRY A. CROOK, ESQ.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6000

C O N T E N T S

EXAMINATION BY COUNSEL FOR
PLAINTIFFS DEFENDANTS

WITNESS

DAVID Y. PARK

By Mr. Rubin 5, 196

By Mr. Carome 192

E X H I B I T S

NUMBER MARKED FOR IDENTIFICATION

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Park No. 3	45
Park No. 4	46
Park No. 5	46
Park No. 6 (To be attached)	99
Park No. 7	103
Park No. 8	117
Park No. 9	122
Park No. 10	132

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E X H I B I T S

NUMBER	MARKED FOR IDENTIFICATION
Park No. 11	139
Park No. 12	144
Park No. 13	149
Park No. 14	152
Park No. 15	157
Park No. 16	162
Park No. 17	163
Park No. 18	172
Park No. 19	179
Park No. 20	181

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1 notary.- All objections are preserved except for
2 form.

3 All right. Can you give me your current
4 address, please?

5 A. My current address is 617 Bainbridge
6 street, B-A-I-N, bridge, all one word, Foster City,
7 California, 94404.

8 Q. How long have you lived there?

9 A. Approximately about four years.

10 Q. Do you have any other residences?

11 A. No, I don't.

12 Q. Do you have any real property located
13 within a hundred miles of Manhattan?

14 A. No, I don't.

15 Q. Do you do any business in Manhattan?

16 A. No.

17 Q. Do you have any of the companies there,
18 incorporated there, registered to do business there?

19 A. No, I don't.

20 Q. Do you have any other connection--do you
21 have any connections with Manhattan at all?

22 A. Other than having a sister who works in
23 Manhattan.

24 Q. Okay. At some point you came to work for
25 Netscape; right?

1 A. - Yes.

2 Q. When was that?

3 A. It was two occasions. First was in, I
4 believe, January or February of '97.

5 Q. Okay.

6 A. And then I had a second stint in 2001.

7 Q. Could you summarize for me briefly your
8 educational background before--your educational
9 background?

10 A. I have a Bachelor's of Science from Cal
11 State Northridge in management information systems,
12 and also an MBA from Anderson School at UCLA.

13 Q. What years?

14 A. Bachelor's was in '90--I'm sorry, '88, and
15 the MBA was in '96.

16 Q. And can you summarize for me your work
17 experience from '88, from the time you graduated
18 from Cal State, through the time you started with
19 Netscape.

20 A. I worked as a consultant for Stonefield
21 Josephson out of college.

22 Q. I'm sorry?

23 A. Stonefield Josephson.

24 For approximately about two years, and
25 joined another firm called Coopers & Lybrand, and I

1 Q. - How many interviews did you have at
2 Netscape before you were hired?

3 A. I believe I interviewed with four or five
4 individuals.

5 Q. Do you recall who they were?

6 A. One person's name was Brian Byun, B-Y-U-N.
7 Second person's name was Doug Sawamura,
8 S-A-W-A-M-U-R-A. And another person's name was
9 Eckert, E-C-K-E-R-T, Walther, W-A-L-T-H-E-R. And
10 there was probably a couple of other individuals who
11 I don't remember.

12 Q. Just for clarity, Eckert was the first
13 name?

14 A. Eckert was the first name.

15 Q. And do you know who these people were?

16 A. I believe they were all in some sort of
17 product management role. I'm not sure of their
18 exact levels or exact title.

19 Q. Did you wind up working for or under or
20 reporting to any of these four people?

21 A. I reported to Deepak Puri.

22 Q. And what was your position in Netscape when
23 you started?

24 A. I believe my title was senior product
25 manager.

1 the circumstances under which you came back, and the
2 circumstance under which you left again.

3 So, let's just summarily go through your
4 first stint at Netscape. When did that end?

5 A. I believe it was around September of '99.

6 Q. And why did you leave?

7 A. I went to seek other opportunities outside
8 of Netscape.

9 Q. And where did you--where did you wind up?

10 A. I started a startup called Eazel,

11 E-A-Z-E-L.

12 Q. What kind of company was Eazel?

13 A. It was a Linux software company.

14 Q. And what was your position there when you
15 went?

16 A. My role was director of product management.

17 Q. For what kind of product?

18 A. It was for their product called Nautilus
19 software, and also their Web-based services.

20 Q. What was Nautilus?

21 A. Nautilus was a utility software that ran on
22 Linux.

23 Q. What was its utility?

24 A. Primarily a browser/file manager.

25 Q. And what Web-based services were you

1 director of?

2 A. At that time, there is the--the major focus
3 was on operating system patches and upgrades.

4 Q. Apart from SmartDownload, between the
5 summer of '98 and September of '99, did you have any
6 other responsibilities or projects at Netscape?

7 A. I was also responsible for coordinating the
8 efforts of developing and launching SmartDownload.

9 Q. Right. In addition to that. I'm sorry, it
10 was very unclear. In addition to SmartDownload,
11 during that time period did you have any other
12 responsibilities at Netscape?

13 A. In addition to managing the download site
14 that I previously mentioned?

15 Q. Of that the Computing and Internet site?

16 A. Yes.

17 Q. Okay. And so--strike that the question.
18 And then how long were you at Eazel?

19 A. I was there approximately about nine
20 months.

21 Q. That would take us to about the summer of
22 2000?

23 A. Yes.

24 Q. Then what did you do?

25 A. Then I became an independent consultant for

1 Q. Do you know who was in charge of setting up
2 the logging function for that server?

3 A. No, I don't.

4 Q. Who knows?

5 A. Somebody probably from the engineering
6 organization.

7 Q. Now, let's look at Park Exhibit 3, which is
8 version 1.2 for the same document. Did I say--yes,
9 1.2 of the same document.

10 MR. CAROME: Just for the record, I'm not
11 sure that your characterization is right. I'm not
12 sure, sitting here, that the pages from 629 to the
13 end of Park 3 are, in fact, part of the same
14 document or part of a later version of the Park 2.

15 MR. RUBIN: I think--I suspect that your
16 suspicion was correct that they're not part of the
17 same document.

18 THE WITNESS: Could I take a short restroom
19 break?

20 MR. RUBIN: Yes, just to close the record,
21 they're as a single document, that's why I had them
22 as a single document.

23 (Brief recess.)

24 BY MR. RUBIN:

25 Q. If you look at Park Exhibit 3, on the

1 second page which is Bates numbered 618 under
2 Section 2. nothing, which is entitled "Objectives,"
3 the last bullet point is "must have an ad solution."

4 Do you see what I'm looking at?

5 A. Yes.

6 Q. What does that mean?

7 A. I believe this refers to displaying a small
8 banner in the SmartDownload client.

9 Q. Did you have an understanding of why that
10 was necessary, required?

11 A. I believe it was again a revenue
12 opportunity for Netscape to do some advertising.

13 Q. If you would look back at Park Exhibit 2,
14 the same section, Section 2, Objectives, you will
15 see that there is no such bullet point there. The
16 other bullet points are the same, approximately,
17 give or take, the shipping date is a little bit
18 different, but everything else is the same except it
19 doesn't say anything about an ad solution.

20 Do you see what I'm looking at?

21 A. Yes.

22 Q. Do you know why there was--why that was
23 added between version 1.1 and 1.2 of this document?

24 A. I do not know. This was a working doc, an
25 SDI, and I didn't author it.

1 Software Builders, and with probably Robin Zucker.

2 Q. When did those discussions begin?

3 A. I believe again during the summer of '98.

4 Q. And did those discussions concern how ads
5 would be targeted?

6 A. I believe we did have that discussion.

7 Q. And what did you discuss about how ads
8 would be targeted?

9 A. I believe some discussions were about
10 understanding the URL of the users they were
11 downloading at that moment, and using the info
12 browser to show relevant content to that file being
13 downloaded, which would have some advertising on the
14 content.

15 Q. Was that ever done?

16 A. No, that was never done.

17 Q. Why not?

18 A. It basically lost its focus, lack of
19 resources to maintain the initiative to have
20 targeted advertising.

21 Q. Why? Why did it lose its focus?

22 A. Lack of resources.

23 Q. Were there resources that had been
24 allocated to this project that were subsequently
25 withdrawn?

1 (Witness reviews document.)

2 THE WITNESS: I'm not a hundred percent.
3 sure what David Pann meant by this sentence.

4 BY MR. RUBIN:

5 Q. Do you have any idea? And by the way,
6 it's--well, do you have any idea?

7 A. I believe that this was probably collecting
8 some type of survey data and doing a study which is
9 common in the advertising business.

10 Q. In the next paragraph, I'm going to read
11 the first two sentences, "Robin and I agree that
12 Modem has the right experience and attitude to help
13 make the SmartDownload ad opportunity successful.
14 They gave us great insight into the various ad
15 servers and how they work and don't work with rich
16 media ads."

17 Do you see where I'm looking at?

18 A. Yes.

19 Q. Now, when SmartDownload was launched, the
20 ad server it used was a company called AdForce;
21 right?

22 A. I believe so.

23 Q. And what exactly did AdForce do?

24 MR. CAROME: Objection. Lack of
25 foundation.

1 THE WITNESS: To my best recollection, they
2 were responsible for serving the actual ad itself.

3 BY MR. RUBIN:

4 Q. And when you say they were responsible for
5 serving the ad, they would send the ad to the
6 InfoBrowser window?

7 A. I'm not sure if the InfoBrowser itself used
8 ads from AdForce, but I believe in the SmartDownload
9 client they would send some information that would
10 be displayed in SmartDownload as an ad.

11 Q. Now, when a user was using SmartDownload,
12 how did the ad server, AdForce, for example, know to
13 send information to SmartDownload on that particular
14 user's computer?

15 A. I believe there was probably a request made
16 from the client to the ad server, requesting a new
17 ad.

18 Q. And how did the client know to ask the
19 AdForce server for a new ad?

20 A. I believe somewhere in the client we had
21 put in the refresh rate of how many seconds it
22 should take to ask for a new ad.

23 Q. It's correct, isn't it, that the client was
24 set up so that Netscape could tell the client what
25 server to get an ad from?

1 profiling feature to be turned on and off.

2 Do you recall that testimony?

3 A. Yes.

4 Q. Was there any other follow-up that you
5 recall that related to that same subject?

6 A. I believe there was some discussion about
7 treating, some website copied--described what we
8 referred to as SmartDownload profiling. I believe
9 that was--we decided to put that in the FAQ.

10 Q. To the best of your knowledge, did that, in
11 fact, happen?

12 A. Yes.

13 Q. To the best of your knowledge, did Netscape
14 ever make any use whatsoever at any time of the URL
15 information regarding the file that user downloaded
16 that the SmartDownload client transmitted to
17 Netscape?

18 A. To the best of my knowledge, we never used
19 that information.

20 Q. To the best of your knowledge, did Netscape
21 ever share that information with anyone at all?

22 A. To the best of my knowledge, no.

23 Q. To the best of your knowledge, did anyone
24 within Netscape ever even do so much as to look at
25 that information or know what that information was?

1 A. - To the best of my knowledge, I don't think
2 anyone did.

3 Q. Mr. Park, I'm showing you again a document
4 that was marked earlier as Park Exhibit 18, and I'm
5 directing your attention in particular to page SDB
6 679, and in particular to the third box or row from
7 the bottom that talks about the support distribution
8 underline ID tag which you testified about earlier.

9 Do you see where I'm referring to?

10 A. Yes.

11 Q. Mr. Rubin asked a question about whether or
12 not that was a field inputting a serial number or
13 some such data.

14 Do you recall that?

15 A. Yes.

16 Q. Does the fact that there was a reference to
17 an alphanumeric character field, in your mind, at
18 all suggest that what was called for was something
19 in the nature of a serial number as opposed to a
20 much more simple and straightforward type of
21 content?

22 MR. RUBIN: Objection to the form.

23 THE WITNESS: I think it was going to be
24 something simpler like the vendor name in this case.
25 Nothing that would be cryptic.

1 one it would belong to.

2 BY MR. RUBIN:

3 Q. Okay. Let me ask you this way: Were there
4 some SBI participants in one or the other of those
5 lists?

6 A. I believe, yes.

7 Q. What makes you think so?

8 A. I do recall it's got to be part of one of
9 those lists.

10 Q. Do you recall who was on one of those
11 lists, which SBI people?

12 A. One person I remember being on the list was
13 Phil Hill.

14 Q. Anybody else from SBI?

15 A. I don't specifically recall which
16 individuals.

17 Q. Now, Mr. Carome asked you a couple of
18 questions about whether Netscape at any time made
19 any use of URL information, and you testified to the
20 best of your knowledge that Netscape never used that
21 information; is that correct?

22 A. Yes.

23 Q. Would you have known if Netscape had used
24 that information?

25 A. I probably would have.

1 Q. How?

2 A. I would have assumed that someone would
3 have come to me to ask me more details.

4 Q. Details about what?

5 A. About the SmartDownload program.

6 Q. Why do you make that assumption?

7 A. It was sort of in the normal course if you
8 were the prog manager.

9 Q. Did any engineers ever come to you about
10 how to set up Netscape's web servers in connection
11 with SmartDownload data?

12 A. No.

13 Q. I think that you also testified that, to
14 the best of your knowledge, Netscape never shared
15 that information with anyone; is that right?

16 A. Yes.

17 Q. Would you know if Netscape had shared that
18 information?

19 A. I would say I would have known, yes.

20 Q. How would you have known?

21 A. Again, I again would have been the person
22 that people would have come to, to compile
23 information.

24 Q. What do you mean to compile?

25 A. Can you rephrase that, the question before