

# **EXHIBIT 2**

1 ABELSON | HERRON LLP  
2 Michael Bruce Abelson (State Bar No. 130739)  
3 Leslie A. Pereira (State Bar No. 180222)  
4 333 South Grand Ave, Suite 650  
5 Los Angeles, California 90071-1559  
6 Telephone: (213) 402-1900  
7 Facsimile: (213) 402-1901  
8 mabelson@abelsonherron.com  
9 lpereira@abelsonherron.com

7 BERGESON, LLP  
8 Daniel J. Bergeson (State Bar No. 105439)  
9 Marc Van Niekerk (State Bar No. 201329)  
10 303 Almaden Boulevard, Suite 500  
11 San Jose, California 95110-2712  
12 Telephone: (408) 291-6200  
13 Facsimile: (408) 297-6000

11 Attorneys for Plaintiffs  
12 NETSCAPE COMMUNICATIONS  
13 CORPORATION and AMERICA ONLINE, INC.

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

17 NETSCAPE COMMUNICATIONS  
18 CORPORATION, et al,

19 Plaintiffs,

20 v

21 FEDERAL INSURANCE COMPANY, et al

22 Defendants

CASE NO. C-06-00198 JW (PVT)

**PLAINTIFF'S SECOND  
SUPPLEMENTAL RESPONSES TO ST.  
PAUL MERCURY INSURANCE  
COMPANY'S FIRST SET OF  
INTERROGATORIES**

Action Filed: December 12, 2005  
Action Removed: January 11, 2006

24 **PROPOUNDING PARTY: ST. PAUL MERCURY INSURANCE COMPANY**

25 **RESPONDING PARTY: PLAINTIFFS AMERICA ONLINE, INC. and NETSCAPE  
26 COMMUNICATIONS CORPORATION**

27 **SET NO.: ONE [Nos. 1-3, 9-11]**

1 Plaintiffs America Online, Inc and Netscape Communications Corporation (collectively,  
2 "Plaintiffs") provide a second supplemental response to Defendant St Paul Mercury Insurance  
3 Company's First Set of Interrogatories ("Interrogatories") as follows:

4 **PRELIMINARY STATEMENT**

5 At the June 19, 2006 Case Management Conference in this matter, the Court accepted the  
6 parties' proposal that the litigation be "phased." Specifically, the Court determined that the  
7 parties would proceed with a "Phase One" which would permit discovery and motions on issues  
8 pertaining to St Paul's duty to defend under the terms of the St Paul Policy. Discovery  
9 unrelated to Phase One will be reserved until after completion of Phase One

10 The responses set forth here are based on information and documents presently available  
11 to and known to Plaintiffs. Discovery, further investigation, and legal research and analysis may  
12 give rise to additional contentions, facts, documents and witnesses, all of which may lead to  
13 substantial additions to, changes in or variations from these responses. Accordingly, Plaintiffs  
14 reserve the right to change, modify, supplement, add to or subtract from its responses.

15 By responding to the Interrogatories, Plaintiffs do not waive, or intend to waive, but  
16 rather intend to preserve and are preserving: (1) all objections as to competency, relevancy,  
17 materiality and admissibility; (2) all objections on any grounds to the use of any of the responses  
18 herein or documents in any subsequent proceedings, including the trial of this or any other  
19 action; (3) all objections as to vagueness and ambiguity; and (4) all objections on any grounds.

20 **GENERAL OBJECTIONS**

21 1. Plaintiffs object to the Interrogatories as improper to the extent they seek  
22 information beyond the scope of discovery contemplated by the Federal Rules of Civil  
23 Procedure

24 2. Plaintiffs object to the Interrogatories to the extent they seek information or  
25 documents protected against disclosure by the attorney-client privilege and/or the attorney work  
26 product doctrine

1           3       Plaintiffs object to the Interrogatories to the extent they seek information that is  
2 confidential, proprietary, trade secret, constitutionally protected business information, and/or  
3 information that is otherwise protected from discovery.

4           4       Plaintiffs object to the Interrogatories to the extent they are overly broad, unduly  
5 burdensome, harassing, and impose inappropriate burdens and expenses exceeding the  
6 obligations imposed by the Federal Rules of Civil Procedure and case law

7           5       Plaintiffs object to the Interrogatories to the extent they seek information already  
8 in the possession of St Paul or its agents or is equally available to St Paul.

9           6       Plaintiffs object to the Interrogatories to the extent they are irrelevant to the  
10 subject matter of the pending action and not reasonably calculated to lead to the discovery of  
11 admissible evidence

12           7       Plaintiffs object to the Interrogatories to the extent they are vague and ambiguous

13           8       Plaintiffs object to the definition of "INSURANCE PROGRAM" in the  
14 Interrogatories on the ground that it overbroad and unduly burdensome to the extent that it seeks  
15 (1) information regarding insurance policies wholly unrelated and inapplicable to the underlying  
16 claims; and (2) information pertaining to policy periods not implicated by the underlying claims

17           The foregoing Preliminary Statement and General Objections are applicable to and  
18 specifically incorporated into each response set forth herein below The assertion of any General  
19 Objection does not preclude the assertion of specific objections

20 ///

21 ///

22 ///

23

24

25

26

27

28

**SECOND SUPPLEMENTAL RESPONSES TO INTERROGATORIES**

**REQUEST NO. 1:**

IDENTIFY each and every insurance policy in the INSURANCE PROGRAMS, including the company that issued the policy, policy title, policy number, policy period, and type of insurance

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1**

Plaintiffs object to this Interrogatory on the ground that it seeks information unrelated to Phase One See Preliminary Statement

Plaintiffs also object to this Interrogatory on the ground that it is overbroad and unduly burdensome to the extent that it seeks (1) information regarding insurance policies wholly unrelated and inapplicable to the underlying claims; and (2) information pertaining to policy periods not implicated by the underlying claims. During the parties' meet and confer regarding the scope of this request, Plaintiffs agreed to provide information pertaining to liability policies in effect during the period April 1, 1999 to April 1, 2000. Subject to this limitation, and subject to and without waiving their objections, Plaintiffs respond as follows: See NET/SDL 0011761-0011763 (America Online, Inc. Insurance Policy Schedule 1999-2000).

**REQUEST NO. 2:**

IDENTIFY all PERSONS at AOL involved with the creation, analysis and/or review of the AOL INSURANCE PROGRAM

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2**

Plaintiffs object to this Interrogatory on the ground that it seeks information unrelated to Phase One See Preliminary Statement

Plaintiffs also object to this Interrogatory on the ground that it is overbroad and unduly burdensome to the extent that it seeks (1) information regarding insurance policies wholly unrelated and inapplicable to the underlying claims; and (2) information pertaining to policy periods not implicated by the underlying claims. Plaintiffs further object to this Interrogatory on the ground that it is vague, ambiguous and overbroad with respect to its use of the phrase "creation, analysis and/or review." During the parties' meet and confer regarding the scope of

1 this request, Plaintiffs agreed to provide information pertaining to liability policies in effect  
2 during the period April 1, 1999 to April 1, 2000. Subject to this limitation, and subject to and  
3 without waiving their objections, Plaintiffs respond as follows: Lori O'Connell, David Prince,  
4 Sheila Clark and Randy Boe

5 **REQUEST NO. 3:**

6 As to each insurance policy identified in response to Interrogatory No. 1, IDENTIFY all  
7 PERSONS at AOL involved with policy negotiations, modifications, drafts, analysis,  
8 calculations, renewal, non-renewal, commutation, and/or cancellation

9 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3**

10 Plaintiffs object to this Interrogatory on the ground that it seeks information unrelated to  
11 Phase One. See Preliminary Statement

12 Plaintiffs also object to this Interrogatory on the ground that it is overbroad and unduly  
13 burdensome to the extent that it seeks (1) information regarding insurance policies wholly  
14 unrelated and inapplicable to the underlying claims; and (2) information pertaining to policy  
15 periods not implicated by the underlying claims. Plaintiffs also object to this Interrogatory on  
16 that ground that under the phased Discovery Plan proposed by St Paul, this information is not  
17 relevant at this time. During the parties' meet and confer regarding the scope of this request,  
18 Plaintiffs agreed to provide information pertaining to liability policies in effect during the period  
19 April 1, 1999 to April 1, 2000. Subject to this limitation, and subject to and without waiving  
20 their objections, Plaintiffs respond as follows: Lori O'Connell, David Prince, Sheila Clark and  
21 Randy Boe

22 **REQUEST NO. 9:**

23 As to each Request in ST. PAUL's Request for Admissions to Plaintiffs, Set. No 1, that  
24 AOL fails to admit without qualification, identify and describe in detail the information upon  
25 which AOL relies for its response.

26 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9**

27 Subject to and without waiving their general objections, Plaintiffs respond as follows:  
28

1            RFA No. 12: The Underlying Actions allege that information allegedly collected by  
2            Netscape and/or AOL was made known to Netscape and/or AOL. Moreover, the plaintiffs in the  
3            Underlying Actions asserted that information allegedly collected by Netscape and/or AOL either  
4            was – or was to have been – shared with third parties.

5            **REQUEST NO. 10:**

6            As to each Request in ST. PAUL's Request for Admissions to Plaintiffs, Set No. 1, that  
7            AOL fails to admit without qualification, IDENTIFY the PERSONS with knowledge upon  
8            which AOL relies for its response

9            **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:**

10           Subject to and without waiving their general objections, Plaintiffs respond as follows:

11           RFA No. 12: Plaintiffs object to this Interrogatory on the ground that it seeks  
12           information which is neither relevant nor reasonable calculated to lead to the discovery of  
13           admissible evidence. RFA No 12 merely makes an inappropriate request for an interpretation of  
14           the complaints in the Underlying Actions. Subject to and without waiving their objections,  
15           Plaintiffs identify Joshua Rubin as a person with knowledge about what the plaintiffs in the  
16           Underlying Actions were asserting.

17           **REQUEST NO. 11:**

18           As to each Request in ST. PAUL's Request for Admissions to Plaintiffs, Set No. 1, that  
19           AOL fails to admit without qualification, IDENTIFY the DOCUMENTS upon which AOL relies  
20           for its response

21           **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:**

22           Subject to and without waiving their general objections, Plaintiffs respond as follows:

23           RFA No. 12: Complaints in Underlying Actions; pleadings in the Underlying Action,  
24           including, but not limited to, Plaintiffs' counsel's fee application; the settlement presentation  
25           made by the Plaintiffs in the Underlying Actions; transcripts of depositions taken in the  
26           Underlying Actions.

1 Dated: July 28, 2006

Respectfully Submitted,  
ABELSON | HERRON LLP  
Michael Bruce Abelson  
Leslie A. Pereira

4  
5 By   
Leslie A. Pereira

6 Attorneys for Plaintiff s  
7 AMERICA ONLINE, INC.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



PROOF OF SERVICE

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

I am over the age of 18 and not a party to the within action; I am employed by Abelson | Herron, LLP in the County of Los Angeles at 333 South Grand Avenue, Suite 650, Los Angeles, California, 90071-1559.

On July 28, 2006, I served the foregoing document(s) described as:

**PLAINTIFF’S SECOND SUPPLEMENTAL RESPONSES TO ST. PAUL  
MERCURY INSURANCE COMPANY’S FIRST SET OF INTERROGATORIES**

The document(s) was served by the following means:

- BY PERSONAL SERVICE** I personally delivered the documents to the persons at the addresses listed in the attached service list. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney’s office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party’s residence with some person not less than 18 years of age.
- BY U.S. MAIL** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses in the attached service list and placed the sealed envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the said date, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid.
- BY OVERNIGHT DELIVERY** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in the attached service list. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY MESSENGER SERVICE** I enclosed the documents in an envelope or package addressed to the persons in the attached service list and provided them to a professional messenger service for service. *(A declaration by the messenger is contained in the Declaration of Messenger below.)*
- BY FACSIMILE TRANSMISSION** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in the attached service list. Our facsimile activity report indicated that all pages were transmitted successfully. No error was reported by the fax machine that I used.
- BY E-MAIL OR ELECTRONIC TRANSMISSION** Based on the court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Executed on July 28, 2006 at Los Angeles, California.

  
\_\_\_\_\_  
Soonja Bin

PROOF OF SERVICE

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

I am over the age of 18 and not a party to the within action; I am employed by Abelson | Herron, LLP in the County of Los Angeles at 333 South Grand Avenue, Suite 650, Los Angeles, California, 90071-1559.

On July 28, 2006, I served the foregoing document(s) described as:

**PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSES TO ST. PAUL  
MERCURY INSURANCE COMPANY'S FIRST SET OF INTERROGATORIES**

The document(s) was served by the following means:

- BY PERSONAL SERVICE** I personally delivered the documents to the persons at the addresses listed in the attached service list (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age
- BY U.S. MAIL** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses in the attached service list and placed the sealed envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the said date, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid
- BY OVERNIGHT DELIVERY** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in the attached service list. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier
- BY MESSENGER SERVICE** I enclosed the documents in an envelope or package addressed to the persons in the attached service list and provided them to a professional messenger service for service. *(A declaration by the messenger is contained in the Declaration of Messenger below.)*
- BY FACSIMILE TRANSMISSION** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in the attached service list. Our facsimile activity report indicated that all pages were transmitted successfully. No error was reported by the fax machine that I used
- BY E-MAIL OR ELECTRONIC TRANSMISSION** Based on the court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct

Executed on July 28, 2006 at Los Angeles, California

  
\_\_\_\_\_  
Soonja Bin

SERVICE LIST

Netscape Communications Corporation, et al. v. Federal Insurance Company, et al.

USDC Case No.: C-06-00198 JW (PVT)

Sara M. Thorpe, Esq.	Attorney for Defendant
D. Christopher Kerby, Esq.	ST PAUL MERCURY INSURANCE COMPANY
GORDON & REES LLP	
Embarcadero Center West	
275 Battery Street, Suite 2000	
San Francisco, CA 94111	
Tel: (415) 986-5900	
Fax: (415) 986-8054	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28