

EXHIBIT 3

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16 NETSCAPE COMMUNICATIONS
17 CORPORATION and AMERICA ONLINE, INC.

18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

20 NETSCAPE COMMUNICATIONS
21 CORPORATION, et al.,
22
23 Plaintiffs,
24
25 v
26
27 FEDERAL INSURANCE COMPANY, et al.
28
29 Defendants.

CASE NO. C-06-00198 JW (PVT)
**PLAINTIFF AMERICA ONLINE INC.'S
FIRST SET OF REQUESTS FOR
ADMISSION TO DEFENDANT ST.
PAUL MERCURY INSURANCE
COMPANY**

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

1 PROPOUNDING PARTY: AMERICA ONLINE INC.
2 RESPONDING PARTY: ST. PAUL MERCURY INS. CO.
3 SET NO.: ONE [Nos 1 - 9]

4 Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Plaintiff America Online
5 Inc. hereby requests that, within thirty (30) days hereof, Defendant St. Paul Mercury Ins. Co.
6 admit the truthfulness of each fact set forth below:

7 **DEFINITIONS AND INSTRUCTIONS**

8 A. "NETSCAPE" means Netscape Communications Corp. and all PERSONS acting
9 for, on behalf of, or at the direction of NETSCAPE, including any and all NETSCAPE
10 employees, officers, directors, agents, representatives, contractors, consultants and/or attorneys
11 who acted, in whole or in part, in one or more of those capacities at any time.

12 B. "SMARTDOWNLOAD CLAIM" means any demand made by NETSCAPE
13 and/or AOL for insurance coverage in connection with the following actions and/or
14 investigations brought against NETSCAPE and/or AOL: *Specht v Netscape Communications*
15 *Corp and American Online, Inc.*, 00 CIV 4871 (S.D.N.Y.); *Weindorf v. Netscape*
16 *Communications Corp and America Online, Inc*, No. 00 CIV 6219 (S.D.N.Y.); *Gruber v*
17 *Netscape Communications Corp and America Online, Inc*, No. 00 CIV 6249 (S.D.N.Y.);
18 *Mueller v Netscape Communications Corp and America Online, Inc*, No. 00 CIV 01723
19 (D.D.C.); and investigation by New York's Attorney General into consumer protection issues
20 associated with Netscape Communicator and/or Smartdownload.

21 C. "ST PAUL POLICY" means policy number TE 09000917 issued by ST. PAUL
22 for the period April 1, 1999 to April 1, 2000, including all declarations and endorsements
23 thereto.

24 D "UNDERLYING LAWSUITS" means the following actions and/or investigations
25 brought against NETSCAPE and/or AOL: *Specht v Netscape Communications Corp and*
26 *American Online, Inc.*, 00 CIV 4871 (S.D.N.Y.); *Weindorf v. Netscape Communications Corp*
27 *and America Online, Inc*, No. 00 CIV 6219 (S.D.N.Y.); *Gruber v. Netscape Communications*

1 *Corp. and America Online, Inc.*, No. 00 CIV 6249 (S.D.N.Y.); *Mueller v. Netscape*
2 *Communications Corp. and America Online, Inc.*, No. 00 CIV 01723 (D.D.C.); and investigation
3 by New York's Attorney General into consumer protection issues associated with Netscape
4 Communicator and/or Smartdownload.

5 **REQUESTS FOR ADMISSION**

6 1 Admit that the SMARTDOWNLOAD CLAIM does not involve "online
7 activities."

8 2 Admit that the SMARTDOWNLOAD CLAIM does not involve "e-mail
9 services."

10 3 Admit that the SMARTDOWNLOAD CLAIM does not involve "instant
11 messaging services."

12 4 Admit that the SMARTDOWNLOAD CLAIM does not involve "3rd party
13 advertising."

14 5 Admit that the SMARTDOWNLOAD CLAIM does not involve "supplying 3rd
15 party content."

16 6 Admit that the SMARTDOWNLOAD CLAIM does not involve "providing
17 internet access to 3rd parties."

18 7 Admit that, as worded, the ST. PAUL POLICY'S existing "Personal Injury and
19 Advertising Injury Endorsement" (Processing Date 10/05/00) does **not** exclude coverage for the
20 SMARTDOWNLOAD CLAIM.

21 8 Admit that, as worded, the ST. PAUL POLICY'S existing "Personal Injury and
22 Advertising Injury Endorsement" (Processing Date 10/05/00) extends to only the five categories
23 of activities listed, and no others.

24 9 Admit that NETSCAPE'S alleged interception of consumers' allegedly private
25 information (as set forth in the UNDERLYING LAWSUITS) satisfies the following personal
26

1 injury offense in the ST PAUL POLICY: "Making known to any person or organization written
2 or spoken material that violates a person's right of privacy."

3 Dated: July 24, 2006

ABELSON | HERRON LLP

Michael Bruce Abelson

Leslie A. Pereira

4
5
6 By 

Leslie A. Pereira

Attorneys for Plaintiffs

7 Netscape Communications Corporation and
8 America Online, Inc.

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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 24, 2006, I served the foregoing document(s) described as:

**PLAINTIFF AMERICA ONLINE INC.'S FIRST SET OF REQUESTS FOR
ADMISSION TO DEFENDANT ST. PAUL MERCURY INSURANCE COMPANY**

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 24, 2006 at Los Angeles, California.



Soonja Bin

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SERVICE LIST

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

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

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