

EXHIBIT 6

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 ST. PAUL MERCURY
 INSURANCE COMPANY

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA -- SAN JOSE DIVISION

11 NETSCAPE COMMUNICATIONS)
 CORPORATION, a Delaware corporation;)
 12 and AMERICA ONLINE, INC., a Delaware)
 corporation;)

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

**ST. PAUL MERCURY INSURANCE
 COMPANY'S RESPONSE TO
 PLAINTIFF NETSCAPE
 COMMUNICATIONS
 CORPORATION'S FIRST SET OF
 SPECIALLY PREPARED
 INTERROGATORIES**

13 Plaintiffs,

14 v

15 FEDERAL INSURANCE COMPANY, an)
 Indiana corporation; ST. PAUL MERCURY)
 16 INSURANCE COMPANY, a Minnesota)
 corporation; EXECUTIVE RISK)
 17 SPECIALTY INSURANCE COMPANY; a)
 Connecticut corporation, and DOES 1)
 18 through 50,

Complaint Filed: 12/12/05
 Amended Complaint Filed: 2/24/06

19 Defendants.

21 PROPOUNDING PARTY: Plaintiff NETSCAPE COMMUNICATIONS CORPORATION

22 RESPONDING PARTY: Defendant ST. PAUL MERCURY INSURANCE COMPANY

23 SET NO.: ONE [1]

24 Defendant ST PAUL MERCURY INSURANCE COMPANY ("ST. PAUL")
 25 responds to plaintiff NETSCAPE COMMUNICATIONS CORPORATION'S
 26 ("NETSCAPE") first set of specially prepared interrogatories ("the interrogatories") as
 27 follows:
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PRELIMINARY STATEMENT

ST PAUL continues to gather information to evaluate Plaintiffs' claims. Consequently, the responses set forth here are based on information and documents presently available to and known by ST PAUL. Discovery, independent investigation, legal research and analysis may give rise to additional contentions, facts, documents and witnesses, all of which may lead to substantial additions to, changes in or variations from these responses. Accordingly, ST PAUL reserves the right to change, modify, supplement, add to or subtract from its responses.

ST. PAUL objects to these interrogatories to the extent they seek information not relevant to the Phase I issues described in the Order On Case Management Conference.

By responding to the Requests, ST. PAUL does not waive, or intend to waive, but rather intends to preserve and is preserving: (1) all objections as to competency, relevancy, materiality and admissibility; (2) all objections on any grounds to the use of any of the responses herein or documents in any subsequent proceedings, including the trial of this or any other action; (3) all objections as to vagueness and ambiguity; and (4) all objections on any grounds.

GENERAL OBJECTIONS

1. ST. PAUL objects to the interrogatories as improper to the extent they seek information beyond the scope of discovery contemplated by the Federal Rules of Civil Procedure.

2. ST. PAUL objects to the interrogatories to the extent they seek information or documents protected against disclosure by the attorney-client privilege and/or the attorney work product doctrine.

3. ST. PAUL objects to the interrogatories to the extent they seek information that is confidential, proprietary, trade secret, constitutionally protected business information, and/or information otherwise protected from discovery.

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1 4. ST. PAUL objects to the interrogatories to the extent they are overly
2 broad, unduly burdensome, harassing, and impose inappropriate burdens and
3 expenses exceeding the obligations imposed by Federal Rules of Civil Procedure and
4 case law.

5 5 ST. PAUL objects to the interrogatories to the extent they seek information
6 already in the possession of AOL or its agents or is otherwise equally available to AOL.

7 6. ST. PAUL objects to the interrogatories to the extent they are irrelevant to
8 the subject matter of the pending action and not reasonably calculated to lead to the
9 discovery of admissible evidence.

10 7 ST. PAUL objects to the interrogatories to the extent they are vague and
11 ambiguous.

12 8. ST. PAUL objects to Definition and Instruction A regarding the term "AOL"
13 and to all interrogatories that apply this definition/instruction on the grounds that they
14 are overly broad, unduly burdensome and attempt to expand ST. PAUL'S obligations
15 beyond those required by the Federal Rules of Civil Procedure.

16 9. ST. PAUL objects to Definition and Instruction B regarding the term
17 "IDENTIFY" when "used to refer to a PERSON not currently employed by ST. PAUL"
18 and to all interrogatories that apply this definition/instruction on the grounds that they
19 are overly broad, unduly burdensome and attempt to expand ST. PAUL'S obligations
20 beyond those required by the Federal Rules of Civil Procedure.

21 10. ST. PAUL objects to Definition and Instruction C regarding the term
22 "NETSCAPE" and to all interrogatories that apply this definition/instruction on the
23 grounds that they are overly broad, unduly burdensome and attempt to expand ST.
24 PAUL'S obligations beyond those required by the Federal Rules of Civil Procedure.
25 "NETSCAPE" is not defined as described in Definition and Instruction C in this action or
26 in the underlying claims which are the subject matter of this action

27 11. ST. PAUL objects to Definition and Instruction E regarding the term
28 "SMARTDOWNLOAD CLAIM" and to all interrogatories that apply this

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1 definition/instruction on the grounds that they are overly broad, subject ST. PAUL to
2 unreasonable burden and expense and attempt to expand ST. PAUL'S obligations
3 beyond those required by the Federal Rules of Civil Procedure.

4 12. ST. PAUL objects to Definition and Instruction F regarding the terms "ST.
5 PAUL", "YOU" and "YOUR" and to all interrogatories that apply this definition/instruction
6 to the extent they refer to "all PERSONS acting for, on behalf of, or at the direction of
7 ST. PAUL, including . . . ST. PAUL'S agents, representatives, contractors, consultants
8 and/or attorneys who acted, in whole or in part, in one or more of those capacities at
9 any time" on the grounds that they are overly broad, subject ST. PAUL to unreasonable
10 burden and expense and attempt to expand ST. PAUL'S obligations beyond those
11 required by the Federal Rules of Civil Procedure.

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

15 **RESPONSE TO SPECIAL INTERROGATORIES**

16 **SPECIAL INTERROGATORY NO. 1:**

17 IDENTIFY all amounts YOU paid to AOL and/or NETSCAPE in connection with
18 any claim AOL and/or NETSCAPE contended implicated the Personal Injury and/or
19 Advertising Injury coverages in the ST. PAUL POLICY. (For purposes of this
20 Interrogatory only, the term "IDENTIFY" means to state: (1) the amount paid by St. Paul;
21 and (2) the name of the claim.)

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

23 ST. PAUL incorporates by reference its Preliminary Statement and General
24 Objections as though set forth fully here. ST. PAUL objects to this interrogatory as
25 vague and ambiguous and overbroad, and to the extent it seeks information equally
26 available to the requesting party. This interrogatory is also unduly burdensome, as AOL
27 and NETSCAPE have not identified the prior claims which they contended implicated
28 the Personal Injury and/or Advertising Injury coverages in the ST. PAUL POLICY.

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1 **SPECIAL INTERROGATORY NO. 2:**

2 Please define "online activities."

3 **RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

4 ST. PAUL incorporates by reference its Preliminary Statement and General
5 Objections as though set forth fully here. ST. PAUL objects to this interrogatory as
6 being overly broad, including as to time and as to whether the question pertains to the
7 St Paul policy at issue in this litigation. Subject to and without waiving these objections,
8 ST. PAUL responds as follows: At the time ST. PAUL agreed to insure AOL and its
9 subsidiaries under ST. PAUL policy no. TE 09000917, ST. PAUL personnel understood
10 "online activities" to refer to activities on the internet, including all products and services
11 related to and arising out of those activities.

12 **SPECIAL INTERROGATORY NO. 3:**

13 To the extent YOUR response to the foregoing Interrogatory No. 2 varies from
14 the definition stated in the ST. PAUL POLICY'S "Personal Injury and Advertising Injury
15 Endorsement," please indicate and explain all such differences.

16 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

17 ST. PAUL incorporates by reference its Preliminary Statement and General
18 Objections as though set forth fully here. ST. PAUL objects to the interrogatory to the
19 extent it is vague and ambiguous in the context of this dispute. ST. PAUL objects to this
20 request to the extent AOL has ascribed a different meaning to "online activities" than
21 was the intent of St Paul at the time of contracting in April 1999, and at the time of
22 clarifying the policy's coverage. ST PAUL objects to the extent the interrogatory seeks
23 a legal opinion or legal conclusion, which is solely within the province of the Court.

24 Subject to and without waiving these objections, ST. PAUL responds as follows:
25 ST. PAUL'S understanding is that the definition in the endorsement AOL prepared was
26 intended to reflect the intent of the parties when they entered into the contract in April
27 1999, as is set forth in response to interrogatory no 2, above

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1 **SPECIAL INTERROGATORY NO. 4:**

2 Please set forth what YOU contend is the commonly understood definition of
3 "online activities "

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

5 ST. PAUL incorporates by reference its Preliminary Statement and General
6 Objections as though set forth fully here ST. PAUL objects to this interrogatory as
7 irrelevant to this dispute and not reasonably calculated to lead to the discovery of
8 admissible evidence. ST. PAUL further objects to this interrogatory as vague and
9 ambiguous and overbroad, including as to time and because it is not limited to the St.
10 Paul policy at issue in this lawsuit.

11 Subject to and without waiving these objections, ST. PAUL responds as follows:
12 see response to special interrogatory no. 2, above.

13 **SPECIAL INTERROGATORY NO. 5:**

14 To the extent YOUR response to the foregoing Interrogatory No. 4 varies from
15 the definition stated in the ST. PAUL POLICY'S "Personal Injury and Advertising Injury
16 Endorsement," please indicate and explain all such differences

17 **RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

18 ST. PAUL incorporates by reference its Preliminary Statement and General
19 Objections as though set forth fully here ST. PAUL further objects to this interrogatory
20 as vague and ambiguous ST. PAUL objects to the extent this interrogatory asks for a
21 legal opinion or conclusion, since that is within the province of the Court to decide.

22 Subject to and without waiving these objections, ST. PAUL responds as follows:
23 see response to interrogatory no. 3, above.

24 **SPECIAL INTERROGATORY NO. 6:**

25 Please describe how the SMARTDOWNLOAD CLAIM involves "online activities."

26 **RESPONSE TO SPECIAL INTERROGATORY NO. 6:**

27 ST. PAUL incorporates by reference its Preliminary Statement and General
28 Objections as though set forth fully here. ST. PAUL further objects to this interrogatory

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1 as vague and ambiguous. ST. PAUL objects to the extent this interrogatory seeks a
2 legal opinion or conclusion, since that is within the province of the Court to decide.

3 Subject to and without waiving these objections, ST. PAUL responds as follows:
4 the allegations in the SMARTDOWNLOAD CLAIM relate to activity on the internet,
5 including products and services of AOL and its subsidiaries related to or arising out of
6 that activity.

7 **SPECIAL INTERROGATORY NO. 7:**

8 Please define "non-online activities."

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 7:**

10 ST. PAUL incorporates by reference its Preliminary Statement and General
11 Objections as though set forth fully here. ST. PAUL further objects to this interrogatory
12 as vague and ambiguous. ST. PAUL objects to this interrogatory as overly broad,
13 including as to time. ST. PAUL objects to the extent this interrogatory asks for a legal
14 opinion or conclusion, since that is within the province of the Court to decide.

15 Subject to and without waiving these objections, ST. PAUL responds as follows:
16 At the time ST. PAUL agreed to insure AOL and its subsidiaries under ST. PAUL policy
17 no. TE 09000917, ST. PAUL personnel understood "non-online activities" to refer
18 activities that were not online activities.

19 **SPECIAL INTERROGATORY NO. 8:**

20 Please define "e-mail services."

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

22 ST. PAUL incorporates by reference its Preliminary Statement and General
23 Objections as though set forth fully here. ST. PAUL further objects to this interrogatory
24 as vague and ambiguous. ST. PAUL objects to this interrogatory as overly broad,
25 including as to time. ST. PAUL objects to the extent this interrogatory asks for a legal
26 opinion or conclusion, since that is within the province of the Court to decide.

27 Subject to and without waiving these objections, in connection with the definition
28 for "online activities" AOL prepared for St. Paul policy no. TE 09000917, ST. PAUL

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1 personnel understood the term "e-mail services" to refer to the electronic mail services
2 provided by AOL and its subsidiaries' business via the internet, including all products
3 and services relating to or arising out of that activity.

4 **SPECIAL INTERROGATORY NO. 9:**

5 Please define "instant messaging services "

6 **RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

7 ST PAUL incorporates by reference its Preliminary Statement and General
8 Objections as though set forth fully here. ST. PAUL further objects to this interrogatory
9 as vague and ambiguous. ST. PAUL objects to this interrogatory as overly broad,
10 including as to time. ST. PAUL objects to the extent this interrogatory asks for a legal
11 opinion or conclusion, since that is within the province of the Court to decide.

12 Subject to and without waiving these objections, in connection with the definition
13 of "online activities" AOL prepared for St. Paul policy no. TE 09000917, ST PAUL
14 personnel understood the term "instant messaging services" to refer to "chat" or other
15 instantaneous communications between internet users via the internet that were part of
16 the services and products AOL and its subsidiaries provided, including all products and
17 services relating to or arising out of that activity.

18 **SPECIAL INTERROGATORY NO. 10:**

19 Please define "3rd party advertising."

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

21 ST. PAUL incorporates by reference its Preliminary Statement and General
22 Objections as though set forth fully here. ST. PAUL further objects to this interrogatory
23 as vague and ambiguous. ST. PAUL objects to this interrogatory as overly broad,
24 including as to time. ST. PAUL objects to the extent this interrogatory asks for a legal
25 opinion or conclusion, since that is within the province of the Court to decide

26 Subject to and without waiving these objections, in connection with the definition
27 of "online activities" AOL prepared for St. Paul policy no. TE 09000917, ST. PAUL
28 personnel understood the term "3rd party advertising" to refer to someone, other than

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1 AOL and its subsidiaries, advertising through AOL and its subsidiaries' internet services
2 and products, including all products and services relating to or arising out of that activity.

3 **SPECIAL INTERROGATORY NO. 11:**

4 Please define "supplying 3rd party content "

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

6 ST. PAUL incorporates by reference its Preliminary Statement and General
7 Objections as though set forth fully here. ST. PAUL further objects to this interrogatory
8 as vague and ambiguous. ST. PAUL objects to this interrogatory as overly broad,
9 including as to time. ST. PAUL objects to the extent this interrogatory asks for a legal
10 opinion or conclusion, since that is within the province of the Court to decide.

11 Subject to and without waiving these objections, in connection with the definition
12 of "online activities" AOL prepared for St. Paul policy no. TE 09000917, ST. PAUL
13 personnel understood the term "supplying 3rd party content" to refer to AOL and its
14 subsidiaries supplying content created by a person or entity other than AOL and its
15 subsidiaries to others through the internet, including all products and services relating to
16 or arising out of that activity.

17 **SPECIAL INTERROGATORY NO. 12:**

18 Please define "providing internet access to 3rd parties."

19 **RESPONSE TO SPECIAL INTERROGATORY NO. 12:**

20 ST. PAUL incorporates by reference its Preliminary Statement and General
21 Objections as though set forth fully here. ST. PAUL further objects to this interrogatory
22 as vague and ambiguous. ST. PAUL objects to this interrogatory as overly broad,
23 including as to time. ST. PAUL objects to the extent this interrogatory asks for a legal
24 opinion or conclusion, since that is within the province of the Court to decide.

25 Subject to and without waiving these objections, in connection with the definition
26 of "online activities" AOL prepared for St. Paul policy no. TE 09000917, ST. PAUL
27 personnel understood the term "providing internet access to 3rd parties" to refer to AOL
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1 and its subsidiaries providing third parties access to the internet, including all products
2 and services related to or arising out of that activity.

3 **SPECIAL INTERROGATORY NO. 13:**

4 As to each Request in AOL's Request for Admissions to St Paul that ST. PAUL
5 fails to admit without qualification, identify and describe in detail the information upon
6 which ST PAUL relies for its response

7 **RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

8 ST. PAUL incorporates by reference its Preliminary Statement and General
9 Objections as though set forth fully here ST. PAUL further objects to this interrogatory
10 as vague and ambiguous and overbroad, including as to time. Further, the definitions
11 and instructions contained in AOL's Request for Admissions are vague and ambiguous
12 and overbroad in the context of this litigation.

13 Subject to and without waiving these objections, ST. PAUL responds as follows:

14 Request for Admission No. 1: Admit that the SMARTDOWNLOAD CLAIM does
15 not involve "online activities." Response: Deny.

16 See response to special interrogatory no. 6. See also the underlying complaints,
17 the ST. PAUL policy, the ST. PAUL claim file relating to the SMARTDOWNLOAD
18 CLAIM, and the description of Smartdownload on AOL's website.

19 Request for Admission No. 5: Admit that the SMARTDOWNLOAD CLAIM does
20 not involve "supplying 3rd party content." Response: Deny.

21 See response to special interrogatory no. 6 and no. 11. See also the underlying
22 complaints, the ST. PAUL policy, the ST. PAUL claim file relating to the
23 SMARTDOWNLOAD CLAIM, and the description of Smartdownload on AOL's website

24 Request for Admission No. 6: Admit that the SMARTDOWNLOAD CLAIM does
25 not involve " providing internet access to 3rd parties." Response: Deny.

26 See response to special interrogatory no. 6 and no. 12. See also the underlying
27 complaints, the ST. PAUL policy, the ST. PAUL claim file relating to the
28 SMARTDOWNLOAD CLAIM, and the description of Smartdownload on AOL's website.

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1 Request for Admission No. 7: Admit that, as worded, the ST PAUL POLICY'S
2 existing "Personal Injury and Advertising Injury Endorsement" (Processing Date
3 10/05/00) does not exclude coverage for the SMART DOWNLOAD CLAIM. Response:
4 Deny

5 See the ST. PAUL policy, the underlying complaints, the ST. PAUL claim file, and
6 the description of Smartdownload on AOL's website.

7 Request for Admission No. 8: Admit that, as worded, the ST. PAUL POLICY'S
8 existing "Personal Injury and Advertising Injury Endorsement" (Processing Date
9 10/05/00) extends to only the five categories of activities listed, and no others
10 Response: Deny.

11 See response to special interrogatory no. 2.

12 Request for Admission No. 9: Admit that NETSCAPE'S alleged interception of
13 consumers' allegedly private information (as set forth in the UNDERLYING LAWSUITS)
14 satisfies the following personal injury offense in the ST. PAUL POLICY: "Making known
15 to any person or organization written or spoken material that violates a person's right of
16 privacy." Response: Deny.

17 See the ST. PAUL claim file, the underlying complaints, the ST. PAUL policy, and
18 the description of Smartdownload on AOL's or Netscape's website or websites
19 belonging to AOL's subsidiaries

20 **SPECIAL INTERROGATORY NO. 14:**

21 As to each Request in AOL's Request for Admissions to St Paul that ST. PAUL
22 fails to admit without qualification, IDENTIFY the PERSONS with knowledge upon
23 which ST. PAUL relies for its response.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 14:**

25 ST. PAUL incorporates by reference its Preliminary Statement and General
26 Objections as though set forth fully here. ST. PAUL further objects to this interrogatory
27 as vague and ambiguous and overbroad, including as to time. Further, the definitions
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1 and instructions contained in AOL's Request for Admissions are vague and ambiguous
2 and overbroad in the context of this litigation

3 Subject to and without waiving these objections, ST. PAUL responds as follows:

4 Request for Admission No. 1: Dan Weiss, Dale Evensen.

5 Request for Admission No. 5: Dan Weiss, Dale Evensen.

6 Request for Admission No. 6: Dan Weiss, Dale Evensen.

7 Request for Admission No. 7: Dan Weiss, Dale Evensen.

8 Request for Admission No. 8: Michele Midwinter.

9 Request for Admission No. 9: Dan Weiss, Dale Evensen.

10 **SPECIAL INTERROGATORY NO. 15:**

11 As to each Request in AOL's Request for Admissions to St. Paul that ST PAUL
12 fails to admit without qualification, IDENTIFY the DOCUMENTS upon which ST. PAUL
13 relies for its response.

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 15:**

15 ST. PAUL incorporates by reference its Preliminary Statement and General
16 Objections as though set forth fully here ST. PAUL further objects to this interrogatory
17 as vague and ambiguous and overbroad, including as to time. Further, the definitions
18 and instructions contained in AOL's Request for Admissions are vague and ambiguous
19 and overbroad in the context of this litigation.

20 Subject to and without waiving these objections, ST. PAUL responds as follows:

21 Request for Admission No. 1: Complaints in the underlying lawsuits, the AG
22 investigation letter, the claim file, the ST. PAUL policy, St. Paul's underwriting file,
23 documents produced by Marsh and AOL.

24 Request for Admission No. 5: Complaints in the underlying lawsuits, the AG
25 investigation letter, the claim file, the ST. PAUL policy, St. Paul's underwriting file,
26 documents produced by Marsh and AOL.

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1 Request for Admission No. 6: Complaints in the underlying lawsuits, the AG
2 investigation letter, the claim file, the ST. PAUL policy, St. Paul's underwriting file,
3 documents produced by Marsh and AOL.

4 Request for Admission No. 7: Complaints in the underlying lawsuits, the AG
5 investigation letter, the claim file, the ST. PAUL policy, St. Paul's underwriting file

6 Request for Admission No. 8: The ST. PAUL policy and underwriting file, AOL's
7 insurance files, and documents from Marsh.

8 Request for Admission No. 9: Complaints in the underlying lawsuits, the AG
9 investigation letter, the claim file, the ST. PAUL policy, and St. Paul's underwriting file.

10 **SPECIAL INTERROGATORY NO. 16:**

11 Please set forth in full and complete detail the precise advertising injury/personal
12 injury exclusion ST. PAUL intended to include in the ST. PAUL POLICY regarding
13 online activities (Note: Please define all terms which require definition to make the
14 exclusion conspicuous, clear, and complete.)

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

16 ST. PAUL incorporates by reference its Preliminary Statement and General
17 Objections as though set forth fully here. ST. PAUL objects to this interrogatory to the
18 extent it characterizes the advertising injury/personal injury exclusion presently
19 contained in the ST. PAUL policy as unintended. ST. PAUL objects to this interrogatory
20 as irrelevant to this dispute and not reasonably calculated to lead to the discovery of
21 admissible evidence. ST. PAUL further objects to this interrogatory as vague and
22 ambiguous. ST. PAUL objects to the request as overbroad, including as to time

23 Subject to and without waiving these objections, ST. PAUL responds as follows:
24 the exclusion ST. PAUL intended was: "For the purposes of advertising injury and
25 personal injury, all online activities are excluded from these coverages."
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1 **SPECIAL INTERROGATORY NO. 17:**

2 State the date on which YOU first realized that the ST. PAUL POLICY did not
3 conform with YOUR intentions with respect to the personal injury and advertising injury
4 coverages

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 17:**

6 ST. PAUL incorporates by reference its Preliminary Statement and General
7 Objections as though set forth fully here. ST. PAUL objects to this interrogatory to the
8 extent it characterizes the advertising injury/personal injury exclusion presently
9 contained in the ST. PAUL. policy as unintended. ST. PAUL further objects to this
10 interrogatory as irrelevant to this dispute and not reasonably calculated to lead to the
11 discovery of admissible evidence. ST. PAUL has dismissed its counter-claim for
12 reformation.

13 **SPECIAL INTERROGATORY NO. 18:**

14 IDENTIFY all inequitable conduct, misrepresentations and/or omissions by
15 Plaintiff's which YOU contend support YOUR counter-claim for reformation (For
16 purposes of this Interrogatory, the term "IDENTIFY" means to state: (1) the inequitable
17 conduct, misrepresentation and/or omission; (2) the date on which the inequitable
18 conduct, misrepresentation and/or omission occurred; and (3) the individual(s) who
19 engaged in the inequitable conduct, misrepresentation and/or omission

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 18:**

21 ST. PAUL incorporates by reference its Preliminary Statement and General
22 Objections as though set forth fully here. ST. PAUL objects to this interrogatory as
23 irrelevant to this dispute and not reasonably calculated to lead to the discovery of
24 admissible evidence. ST. PAUL has dismissed its counter-claim for reformation

25 **SPECIAL INTERROGATORY NO. 19:**

26 State all facts supporting YOUR affirmative defenses.
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1 **RESPONSE TO SPECIAL INTERROGATORY NO. 19:**

2 ST. PAUL incorporates by reference its Preliminary Statement and General
3 Objections as though set forth fully here. ST PAUL objects to this interrogatory to the
4 extent it seeks discovery with respect to issues outside of those to be adjudicated in
5 Phase I. Further, ST. PAUL asserted its affirmative defenses in its answer in order to
6 avoid waiver and preserve their use at trial Discovery and investigation facts and
7 information pertaining to the claims set forth by plaintiffs which will enable ST. PAUL to
8 accurately respond to this interrogatory is ongoing, including written discovery and
9 depositions.

10 Subject to and without waiving these objections, ST. PAUL responds as follows:

11 First Affirmative Defense: (Fails to state a claim.) Plaintiffs' have failed to supply
12 facts which support their causes of action for breach of contract and bad faith. ST.
13 PAUL asserted its affirmative defenses in its answer in order to avoid waiver and
14 preserve their use at trial. Discovery and investigation of facts and information
15 pertaining to the claims set forth by plaintiffs which will enable ST. PAUL to accurately
16 respond to this interrogatory is ongoing, including written discovery and depositions.

17 Second Affirmative Defense: (Statute of limitations.) ST. PAUL asserted its
18 affirmative defenses in its answer in order to avoid waiver and preserve their use at trial.
19 Discovery and investigation of facts and information pertaining to the claims set forth by
20 plaintiffs which will enable ST. PAUL to accurately respond to this interrogatory is
21 ongoing, including written discovery and depositions.

22 Third Affirmative Defense: (Waiver/estoppel.) ST. PAUL asserted its affirmative
23 defenses in its answer in order to avoid waiver and preserve their use at trial Discovery
24 and investigation of facts and information pertaining to the claims set forth by plaintiffs
25 which will enable ST. PAUL to accurately respond to this interrogatory is ongoing,
26 including written discovery and depositions.

27 Fourth Affirmative Defense: (Unclean hands.) ST. PAUL asserted its affirmative
28 defenses in its answer in order to avoid waiver and preserve their use at trial Discovery

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1 and investigation of facts and information pertaining to the claims set forth by plaintiffs
2 which will enable ST. PAUL to accurately respond to this interrogatory is ongoing,
3 including written discovery and depositions.

4 Fifth Affirmative Defense: (Laches) ST PAUL asserted its affirmative defenses
5 in its answer in order to avoid waiver and preserve their use at trial. Discovery and
6 investigation of facts and information pertaining to the claims set forth by plaintiffs which
7 will enable ST. PAUL to accurately respond to this interrogatory is ongoing, including
8 written discovery and depositions.

9 Sixth Affirmative Defense: (Failure to include indispensable parties) Plaintiffs
10 have failed to name National Union and Lloyds as parties to this action. To the extent
11 plaintiffs seek full recovery of the amounts they incurred defending the SmartDownload
12 claims, those insurers are indispensable parties if their policies potentially cover the
13 damages plaintiffs seek in this litigation.

14 Seventh Affirmative Defense: (Not covered by terms, limitations, conditions,
15 exclusions and other provisions in policy.) The SmartDownload claims are not covered
16 by the ST. PAUL policy because the claims do not state a personal injury offense, and
17 the policy does not cover personal injury resulting from deliberately breaking the law
18 and relating to the insureds' online activities.

19 Eighth Affirmative Defense: (Other insurance.) The Executive Risk policy may
20 provide coverage to plaintiffs for the underlying claims Further, plaintiffs may be
21 afforded coverage under the Lloyds of London policy and the National Union policy.

22 Ninth Affirmative Defense: (Settlement, compromise, set off.) Plaintiffs have
23 settled with Executive Risk and obtained settlement funds from Executive Risk. ST.
24 PAUL has the right to an offset of any amounts already paid by other carriers.

25 Tenth Affirmative Defense: (Failure to mitigate.) ST PAUL objects to this
26 portion of the interrogatory to the extent is seeks information relating to an issue to be
27 adjudicated during Phase Two of this litigation. Discovery and investigation of this issue
28 has not been completed.

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1 Eleventh Affirmative Defense: (Misrepresentation.) ST. PAUL objects to this
2 portion of the interrogatory to the extent is seeks information relating to an issue to be
3 adjudicated during Phase Two of this litigation. Discovery and investigation of this issue
4 has not been completed.

5 Twelfth Affirmative Defense: (Reformation based on mutual mistake) ST PAUL
6 objects to this portion of the interrogatory because it relates to ST. PAUL's reformation
7 claim which ST. PAUL is not pursuing at this time

8 Thirteenth Affirmative Defense: (Reformation based upon unilateral mistake, in
9 equitable conduct.) ST. PAUL objects to this portion of the interrogatory because it
10 relates to ST PAUL's reformation claim which ST. PAUL is not pursuing at this time.

11 Fourteenth Affirmative Defense: (Reformation based upon fraud) ST. PAUL
12 objects to this portion of the interrogatory because it relates to ST. PAUL's reformation
13 claim which ST. PAUL is not pursuing at this time.

14 Fifteenth Affirmative Defense: (No bad faith because no breach of contract) ST.
15 PAUL objects to this portion of the interrogatory to the extent is seeks information
16 relating to an issue to be adjudicated during Phase Two of this litigation. Discovery and
17 investigation of this issue has not been completed. If it is determined that there is no
18 breach of contract by ST. PAUL, there can be no claim for breach of the covenant of
19 good faith and fair dealing under California Law and Virginia law. See *Waller v. Truck*
20 *Ins. Exchange, Inc.* (1995) 11 Cal 4th 1, 36; *Brenner v. Lawyers Title Insurance Corp.*
21 (1990) 240 Va. 185.

22 Sixteenth Affirmative Defense: (No bad faith because acted in good faith.) ST.
23 PAUL objects to this portion of the interrogatory to the extent is seeks information
24 relating to an issue to be adjudicated during Phase Two of this litigation. Discovery and
25 investigation of this issue has not been completed.

26 Seventeenth Affirmative Defense: (No bad faith because genuine dispute.) ST.
27 PAUL objects to this portion of the interrogatory to the extent is seeks information
28 relating to an issue to be adjudicated during Phase Two of this litigation. Discovery and

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1 investigation of this issue has not been completed Under California law, there can be
2 no bad faith where there is a genuine factual dispute as to the insurer's liability under
3 the policy. *Chateau Chamberay v Associated International Ins. Co.* (2001) 90
4 Cal.App 4th 335.

5 Eighteenth Affirmative Defense: (Causation) ST. PAUL objects to this portion of
6 the interrogatory to the extent is seeks information relating to an issue to be adjudicated
7 during Phase Two of this litigation. Discovery and investigation of this issue has not
8 been completed.

9 Nineteenth Affirmative Defense: (No unfair business practice claim because
10 adequate remedy at law.) ST. PAUL objects to this portion of the interrogatory to the
11 extent is seeks information relating to an issue to be adjudicated during Phase Two of
12 this litigation. Discovery and investigation of this issue has not been completed.

13 Plaintiffs cannot state a cause of action under the Calif Unfair Business Practices Act
14 because they have failed to demonstrate they do not have an adequate remedy at law.
15 *Heighley v. J.C. Penney Life Ins. Co.* 257 F. Supp. 2d 1241, 1259-60 (C.D. Cal., 2003)

16 Twentieth Affirmative Defense: (No unfair business claim stated.) ST. PAUL
17 objects to this portion of the interrogatory to the extent is seeks information relating to
18 an issue to be adjudicated during Phase Two of this litigation. Discovery and
19 investigation of this issue has not been completed.

20 Twenty-first Affirmative Defense: (Punitive damages) ST. PAUL objects to this
21 portion of the interrogatory to the extent is seeks information relating to an issue to be
22 adjudicated during Phase Two of this litigation Discovery and investigation of this issue
23 has not been completed.

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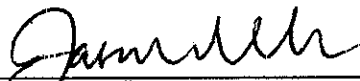
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1 Twenty-second Affirmative Defense: (Reservation of rights; lack of information.)
 2 ST. PAUL asserted its affirmative defenses in its answer in order to avoid waiver and
 3 preserve their use at trial. Discovery and investigation facts and information pertaining
 4 to the claims set forth by plaintiffs which will enable ST PAUL to accurately respond to
 5 this interrogatory is ongoing, including written discovery and depositions

6
 7 Dated: August 24, 2006

GORDON & REES LLP

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 9 By: 
 10 Sara M. Thorpe
 11 Attorneys for Defendant
 12 ST. PAUL MERCURY
 13 INSURANCE COMPANY
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VERIFICATION

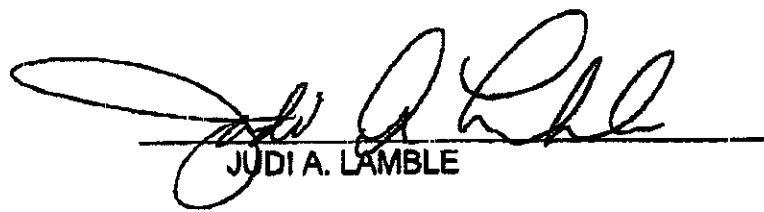
I, Judi A. Lamble, declare:

1. I am Senior Claim Attorney, Technology Claim, employed by Travelers Indemnity Company and authorized to make this Verification on behalf of St. Paul Mercury Insurance Company, defendant in this lawsuit ("St. Paul").

2. I have read St. Paul's RESPONSE TO PLAINTIFF NETSCAPE COMMUNICATIONS CORPORATION'S FIRST SET OF SPECIALLY PREPARED INTERROGATORIES, and know the contents thereof. To the extent I have personal knowledge of the matters set forth therein, the same are true and correct. To the extent said matters are a composite of information from a number of individuals or documents or I do not have personal knowledge thereof, I am informed and believe that the information set forth therein for which I lack personal knowledge is true and correct.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 28th day of August, 2006, in Ramsey County,
Minnesota


JUDI A. LAMBLE

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PROOF OF SERVICE

Netscape Communications Corp., v. Federal Ins. Co., et al. Case No. C 06 00198 JW

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Embarcadero Center West, 275 Battery Street, Suite 2000, San Francisco, CA 94111. On the date noted below, I served the within document(s):

Defendant St. Paul Mercury Insurance Company's Response To Plaintiff Netscape Communications Corporation's First Set Of Specially Prepared Interrogatories

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid or provided for, at a station designated for collection and processing of envelopes and packages for mailing with the United States Post Office, addressed as set forth below
- by placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid or provided for, at a station designated for collection and processing of envelopes and packages for mailing by overnight delivery by FedEx, addressed as set forth below.
- by transmitting via the internet the document(s) listed above to the email address(es) set forth below.

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(Via FedEx)

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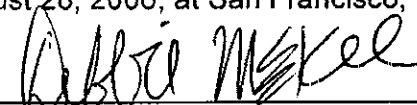
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(408) 297-6000 fax

(Via U.S. Mail)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service and Fed Ex on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 28, 2006, at San Francisco, California.



Debbie McKee