

1 Scott R. Mosko (State Bar No. 106070)  
 scott.mosko@finnegan.com  
 2 FINNEGAN, HENDERSON, FARABOW,  
 GARRETT & DUNNER, L.L.P.  
 3 Stanford Research Park  
 3300 Hillview Avenue  
 4 Palo Alto, California 94304  
 Telephone: (650) 849-6600  
 5 Facsimile: (650) 849-6666

6 Attorneys for Defendants  
 ConnectU LLC, Pacific Northwest  
 7 Software, Inc., Winston Williams, and  
 Wayne Chang  
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10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

13 FACEBOOK, INC., and MARK ZUCKERBERG,

14 Plaintiffs,

15 v.

16 CONNECTU LLC, (now known as CONNECTU,  
 INC.), , ET AL.,

17 Defendants.  
 18  
 19

CASE NO. C 07-01389 RS

**DECLARATION OF SCOTT R.  
 MOSKO IN SUPPORT OF  
 DEFENDANTS' MOTION FOR  
 RELIEF PURSUANT TO FED. R. CIV.  
 P. 56(f)**

Date: February 20, 2008  
 Time: 9:30 a.m.  
 Dept.: 4  
 Mag. Judge: Hon. Richard Seeborg

1 **DECLARATION OF SCOTT R. MOSKO**

2 I, Scott R. Mosko declare,

3 1. I am an attorney duly licensed to practice law in the state of California and before the  
4 Northern District of California. I am a member of Finnegan, Henderson, Farabow, Garrett &  
5 Dunner, LLP, attorneys of record for Defendants ConnectU, Winston Williams and Pacific  
6 Northwest Software, Inc. The matters referred to in this declaration are based on my personal  
7 knowledge and if called as a witness I could, and would, testify competently to those matters.

8 2. Attached as Exhibit A is a true and correct copy of Plaintiffs and counterclaim  
9 Defendants' Second Set of Interrogatories (Nos. 19-23), Served on August 31, 2005 in connection  
10 with Civil Action No. 1:04-cv-11923 (DWP), a case the parties have commonly referred to as "The  
11 Massachusetts Action" filed by ConnectU LLC against Mark Zuckerberg and others.

12 3. Attached as Exhibit B is a true and correct copy of Facebook Defendants' Responses  
13 to Plaintiff's and Counterclaim Defendant's Second Set of Interrogatories (Nos. 19-23), served on  
14 October 5, 2005 in the connection with the Massachusetts Action.

15 4. Attached as Exhibit C is a true and correct copy of Facebook Defendants'  
16 Supplemental Responses to Plaintiff's and Counterclaim Defendants' Second Set of Interrogatories  
17 (Nos 21 and 23), served on December 9, 2005 in connection with the Massachusetts Action.

18 5. Attached as Exhibit D is a true and correct copy of Defendant ConnectU, LLC's  
19 Second Request for the production of documents to Plaintiff Facebook, Inc., served on August 24,  
20 2004 in this action.

21 6. Attached as Exhibit E is a true and correct copy of a Local Rule 16.1(D) Joint  
22 Statement filed on May 23, 2007 in connection with the Massachusetts Action.

23 6. Attached as Exhibit F is a true and correct copy of an Order issued in connection with  
24 the Massachusetts Action, dated September 13, 2007.

25 7. Attached as Exhibit G is a true and correct copy of a November 1, 2007  
26 correspondence from Yvonne Greer to Scott Mosko.

27 8. Attached is Exhibit H is a true and correct copy of a November 5, 2007  
28 correspondence from Yvonne Greer to Scott Mosko.

1           9.       Attached as Exhibit I is a true and correct copy of a November 13, 2007  
2 correspondence from Theresa Sutton to Richard Werder.

3           10.       Attached as Exhibit J is a true and correct copy of Facebook Defendants'  
4 Supplemental Response to Court's September 13, 2007 Order RE Location of Relevant Code, served  
5 on November 16, 2007 in connection with the Massachusetts Action.

6           11.       Attached as Exhibit K is a true and correct copy of Facebook Defendants' Third  
7 Supplemental Response to Plaintiff's Interrogatory No. 19, served on November 16, 2007 in  
8 connection with the Massachusetts Action.

9           12.       Attached as Exhibit L is a true and correct copy of a correspondence from Theresa  
10 Sutton to Scott Mosko dated November 28, 2007.

11          13.       Attached as Exhibit M is a true and correct copy of a correspondence from Yvonne  
12 Greer to Scott Mosko and Valerie Wagner dated November 30, 2007.

13          14.       Attached as Exhibit N is a true and correct copy of a printout from an email string, the  
14 first email bearing a date of December 14, 2007, at 4:36 p.m. from Theresa Sutton to Scott Mosko.

15          15.       Attached as Exhibit O is a true and correct copy of a printout of an email from Scott  
16 Mosko to Theresa Sutton, dated December 24, 2007

17          16.       Attached as Exhibit P is a true and correct copy of a correspondence from Theresa  
18 Sutton to Scott Mosko dated January 8, 2008.

19          17.       Each of the facts that will be elicited in the proposed discovery set forth in the  
20 accompanying Rule 56(f) Motion is essential to the opposition Defendants expect to file. The  
21 written discovery requested in the accompanying Rule 56(f) motion will likely establish at a  
22 minimum that the characteristics of Plaintiffs' servers and systems will raise a question of fact as to  
23 whether Plaintiffs can satisfy the required elements pursuant to each claim for relief asserted in the  
24 Second Amended Complaint. The written discovery and the expected depositions referenced in the  
25 accompanying Rule 56(f) motion will likely result in additional evidence proving that Plaintiffs'  
26 servers and systems do not qualify for the relief available pursuant to the asserted claims, that  
27 Plaintiffs have not and cannot establish they have suffered compensable damages, and that  
28 Defendants acts as they relate to the websites in question did not violate the statutes raised in the

