

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

[SEE SIGNATURE BLOCK FOR COUNSEL]

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

**GOOGLE INC., AOL LLC, YAHOO!  
INC., IAC SEARCH & MEDIA, INC., and  
LYCOS, INC.**  
**Plaintiffs**  
**v.**  
**L. DANIEL EGGER, SOFTWARE  
RIGHTS ARCHIVE, LLC, and SITE  
TECHNOLOGIES, INC.**  
**Defendants**

**Case No. CV08-03172RMW**

**SOFTWARE RIGHTS ARCHIVE, LLC'S  
AND L. DANIEL EGGER'S OPPOSITION  
TO PLAINTIFFS' ADMINISTRATIVE  
MOTION FOR CONTINUANCE OF THE  
BRIEFING SCHEDULE AND HEARING  
ON THE MOTIONS SET FOR MAY 22,  
2009**

1 Software Rights Archive, LLC (“SRA”) and L. Daniel Egger<sup>1</sup> oppose the motion for  
2 continuance. For many months, and again over the last 24 hours, SRA’s counsel has tried to  
3 ascertain what legitimate purpose is served by having a belated, later-filed case on the docket.  
4 The accused infringers have never offered any plausible explanation.

5 Declaratory Judgment Plaintiffs ask that the Court delay the presentation and submission  
6 of SRA’s Motion to Dismiss, Transfer or Stay, which has been on file for over five months, so  
7 that they may obtain discovery purportedly concerning personal jurisdiction over SRA. But  
8 SRA’s motion is supported by independent bases that indisputably have nothing to do with, and  
9 are unaffected by, the discovery sought by these Plaintiffs—including the pendency of a first-  
10 filed case in Texas and a lack of subject matter jurisdiction. Declaratory Judgment Plaintiffs’  
11 stated reason for continuance ignores this fact. They have forced SRA to litigate this dispute on  
12 multiple fronts for too long, and SRA is entitled to have its motion heard.

13  
14 In addition, now that the Eastern District of Texas has found that SRA has standing, that  
15 case will not be dismissed anytime soon. The Texas defendants have recently filed a motion to  
16 transfer venue in the Eastern District of Texas, seeking transfer to this Court. As is customary,  
17 the issue of venue will be decided in the regular order by the Court in which the first-filed case is  
18 pending.

19  
20 SRA and Mr. Egger ask that the Court deny the motion for continuance and hear the  
21 Motion to Dismiss, Transfer, or Stay on May 22 as scheduled.  
22  
23  
24

---

25 <sup>1</sup> Declaratory Judgment Plaintiffs have raised questions about the undersigned’s representation of  
26 Site Tech in their motion to strike Site Tech’s responsive pleading. Although the undersigned  
27 believes that its representation of Site Tech was proper, in light of the Plaintiffs’ accusations, and  
28 in light of the fact that Site Tech’s corporate status is currently suspended, this opposition is filed  
on behalf of SRA and Egger alone.

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

Respectfully submitted,

/s/ Lee L. Kaplan  
Thomas F. Smegal, Jr. (Bar No. 34,819)  
One Sansome Street, 35th Floor  
San Francisco, CA 94104  
Telephone: (415) 217-8383  
Facsimile: (415) 399-5093  
Email: tomsmegal@smegallaw.com

Lee L. Kaplan (Texas Bar No. 11094400)  
Kristen L. McKeever (Texas Bar No. 24030775)  
Raj Duvvuri (Texas Bar No. 24054185)  
(admitted *pro hac vice*)  
700 Louisiana Street, Suite 2300  
Houston, TX 77002  
Telephone: (713) 221-2300  
Facsimile: (713) 221-2320  
Email: lkaplan@skv.com

Jay D. Ellwanger (California Bar No. 217747))  
DiNovo Price Ellwanger & Hardy LLP  
7000 North MoPac Expressway  
Suite 350  
Austin, Texas 78731  
Telephone: (512) 539-2630  
Facsimile: (512) 539-2627  
Email: jellwanger@dpelaw.com

Attorneys for Defendants L. Daniel Egger  
and Software Rights Archive, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record pursuant to Federal Rules of Civil Procedure on this the 30<sup>th</sup> day of April, 2009.

/s/ Lee L. Kaplan  
Lee L. Kaplan

Juanita R. Brooks  
Jason W. Wolff  
Fish & Richardson P.C.  
12390 El Camino Real  
San Diego, California 92130

Thomas B. Walsh, IV  
Fish & Richardson P.C.  
5000 Bank One Center  
1717 Main St.  
Dallas, Texas 75201

Ramon K. Tabtiang  
Stephen A. Marshall  
Fish & Richardson P.C.  
225 Franklin Street  
Boston, Massachusetts 02110-2804

Michael A. Jacobs  
Richard S.J. Hung  
Morrison & Foerster  
425 Market Street  
San Francisco, CA 94105

Claude M. Stern  
Jennifer A. Kash  
Quinn Emanuel Urquhart Oliver & Hedges, LLP  
555 Twin Dolphin Drive, Suite 560  
Redwood Shores, CA 9406

Mark D. Baker  
Quinn Emanuel Urquhart Oliver & Hedges, LLP  
51 Madison Ave., 22<sup>nd</sup> Floor  
New York, New York 10010