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**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 EGGER'S RESPONSE TO
PLAINTIFFS' MOTION TO STRIKE
SITE TECHNOLOGIES, INC.'S MOTION
TO DISMISS, TRANSFER, OR STAY**

Hearing Date: August 21, 2009

Hearing Time: 9:00 am

1 Defendants Software Rights Archive, LLC (“SRA”) and Daniel Egger file this Response
2 to Plaintiffs’ Motion to Strike Site Technologies, Inc.’s Motion to Dismiss, Transfer, or Stay and
3 would respectfully show this Court as follows:

4 Plaintiffs’ motion is a total waste of time. Even assuming the truth of Plaintiffs’
5 assertion—that Site Technologies, Inc. (“Site Tech”) did not join Defendants’ Motion to
6 Dismiss, Transfer, or Stay—this case still can and should be dismissed in its entirety.
7 Defendants have advanced three arguments for dismissing this case: (1) preemption by a prior
8 lawsuit under the first-to-file rule, because a virtually identical, first-filed case is pending in the
9 Eastern District of Texas; (2) a lack of personal jurisdiction as to Daniel Egger and SRA,
10 because neither party possesses minimum contacts with California; and (3) a lack of subject
11 matter jurisdiction as to Egger and Site Tech, because neither party owns the patents, claims
12 ownership of the patents, or has taken any affirmative act indicating an intent to assert a patent
13 infringement claim against Plaintiffs. It is beyond dispute—and Plaintiffs do not dispute—that
14 Egger and SRA, as parties to the Motion to Dismiss, Transfer, or Stay, can be dismissed from
15 this case if that motion is granted. Ninth Circuit law makes clear that Site Tech also can be
16 dismissed from this case whether or not it is deemed a party to that motion: “[T]he district court
17 ha[s] a duty to establish subject matter jurisdiction . . . *sua sponte*, whether the parties raised the
18 issue or not.” *United Investors Life Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir.
19 2004); *see also Kolev v. Davidi*, 2008 WL 4447561, at *2 (C.D. Cal. Sept. 29, 2008) (“This
20 Court must *sua sponte* consider whether it has subject matter jurisdiction over plaintiff’s
21 complaint, and it is required to dismiss the complaint if the court determines at any time it lacks
22 subject-matter jurisdiction.” (internal citations, quotation marks, and modifications omitted)).
23 Because, as pointed out in Defendants’ Motion to Dismiss, Transfer, or Stay, this Court lacks
24 subject matter jurisdiction over Site Tech, this case can and should be dismissed against Site
25 Tech along with the other parties irrespective of the merits of Plaintiffs’ motion. Thus,
26 Plaintiffs’ motion makes no difference and should be denied.

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 24th day of July, 2009.

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