

MORRISON | FOERSTER425 MARKET STREET
SAN FRANCISCO
CALIFORNIA 94105-2482TELEPHONE: 415.268.7000
FACSIMILE: 415.268.7522

WWW.MOFO.COM

MORRISON & FOERSTER LLP
NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.
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SINGAPORE, BRUSSELS

September 17, 2008

Writer's Direct Contact
(415) 268-7602
rhung@mofocomVia Electronic Mail to lkaplan@skv.comLee L. Kaplan, Esq.
Smyser Kaplan & Veselka, L.L.P.
700 Louisiana, Suite 2300
Houston, Texas 77002Re: *Software Rights Archive, LLC v. Google Inc., et al.*, No. 07-CV-511 (E.D. Tex.)

Dear Lee:

As I mentioned during our call last week, Site Technologies Inc.'s documents cannot be withheld from production based on a claim of attorney-client privilege.

Site filed its First Amended Plan of Reorganization ("the Plan") on April 25, 2000 with the United States District Court for the Northern District of California ("the Bankruptcy Court"). The Bankruptcy Court confirmed the plan on June 12, 2000 by entering the Order Confirming Debtor's First Amended Plan of Reorganization ("the Confirmation Order")

Section 7.9 of the Plan states:

7.9 Dissolution of Corporation. Pursuant to authority contained in Section 1400 of the California Corporations Code, *the Debtor shall be dissolved and its corporate existence terminated* without further corporate action upon the entry of a final decree in this case pursuant to Rule 3022 of the Bankruptcy Rules. The Confirmation Order shall be deemed an order authorizing and directing the Responsible Person to file a certificate of dissolution as required by Section 1401 of the California Corporations Code and the Responsible Person shall file such certificate concurrently with the request for entry of a final decree. (emphasis added)

As a result of the Plan's confirmation, Site was dissolved. Under California law, a dissolved corporation cannot assert the attorney-client privilege. *See City of Rialto v. U.S. Dept. of Defense*, 492 F.Supp.2d 1193 (C.D. Cal. 2007) (discussing authorities). The

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Restatement of the Law Governing Lawyers confirms this, explaining that the attorney-client privilege no longer protects Site's documents: "When ownership of a corporation . . . as an entity passes to successors, the transaction carries with it authority concerning asserting or waiving the privilege When a corporation . . . has ceased to have a legal existence such that no person can act in its behalf, ordinarily the attorney-client privilege terminates." Restatement (Third), Law Governing Lawyers, § 73, Illustration 2(k) (2000); *accord Swidler & Berlin v. United States*, 524 U.S. 399, 405 n.2 (1998) (construing California law as terminating the privilege where there is no successor-in-interest).

Assuming that Jeffrey Ait has purported to authorize you to assert the attorney-client privilege and consented to your joint representation of Site, Software Rights Archive ("SRA"), Daniel Egger, and himself, please note that Mr. Ait lacks the authority to do so on behalf of Site. In accordance with the Plan (§§ 7.9 and 7.3F), the Confirmation Order (¶¶ 1-6) and the final decree closing the Chapter 11 case entered on January 6, 2004 (the "Final Decree"), Mr. Ait was discharged as a Responsible Person and Site was dissolved and ceased to exist. Because Mr. Ait as the Responsible Person was "discharged from all duties and responsibility of the Plan upon the issuance of the final decree" (Plan ¶ 7.3F) and Site's "corporate existence terminated" under the Final Decree (Plan ¶ 7.9), Mr. Ait can neither authorize you to assert the privilege of Site's behalf nor consent to your joint representation of Site and Messrs. Egger and Ait. Any such authority and action would require the Bankruptcy Court's approval, which you have not sought.

Sincerely,



Richard S.J. Hung

cc: C T Corporation System, Agent for Site Technologies, Inc.