

# EXHIBIT D

# FISH & RICHARDSON P.C.

Frederick P. Fish  
1855-1930

W.K. Richardson  
1859-1951

## VIA EMAIL

January 22, 2009

Lee L. Kaplan  
Smyser Kaplan & Veselka, L.L.P.  
Bank of America Center  
700 Louisiana, Suite 2300  
Houston, TX 77002

Re: *Google Inc., AOL LLC, Yahoo! Inc., IAC Search & Media, Inc., and Lycos, Inc. v. L. Daniel Egger, Software Rights Archive, LLC, and Site Technologies, Inc.*

USDC - Northern District of California  
Civil Case No. CV08-03172RMW

Dear Lee:

This letter is in response to (1) Software Rights Archive, LLC's Objections and Responses to Plaintiffs' First Set of Requests for Production of Documents and Things (dated December 9, 2008) ("First Objections"); and (2) Software Rights Archive, LLC's Objections and Responses to Plaintiffs' Second Set of Requests for Production of Documents and Things (dated January 15, 2008 (but which we think should be dated January 15, 2009) ("Second Objections").

As an initial matter, Software Rights Archive, LLC stated in response to each of the 26 Requests for Production at issue in the First Objections and the Second Objections that, subject to and without waiving its objections, it has "no documents responsive" to Plaintiffs' requests. Thus, because of the qualified language that its responses were "subject to and without waiving [its] objections," it is unclear whether Software Rights Archive, LLC is withholding any documents on the basis of its objections.

We therefore ask that you please clarify no later than Monday, January 26, 2009, for each of the 26 Requests for Production at issue in the First Objections and the Second Objections, whether Software Rights Archive, LLC does not have such documents in its possession, custody, or control regarding these 26 Requests for Production, or whether Software Rights Archive, LLC has such documents but refuses to produce them on the purported basis that they are "irrelevant." If Software Rights Archive, LLC is withholding documents on the basis of the attorney-client privilege or other privilege, please provide a privilege log to us.

1717 MAIN STREET  
SUITE 5000  
DALLAS, TEXAS  
75201

Telephone  
214 747-5070

Facsimile  
214 747-2091

Web Site  
[www.fr.com](http://www.fr.com)



ATLANTA

AUSTIN

BOSTON

DALLAS

DELAWARE

HOUSTON

MUNICH

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

**Lee L. Kaplan**  
**January 22, 2009**  
Page 2

In addition, we note that Software Rights Archive, LLC has not produced any documents in response to Plaintiffs' First Set of Requests for Production of Documents and Things to Software Rights Archive, LLC ("First Set") or Plaintiffs' Second Set of Requests for Production of Documents and Things to Software Rights Archive, LLC ("Second Set"). For example, Software Rights Archive, LLC<sup>1</sup> has not produced:

- Documents related to "Software Rights Archive's" relationship with SRA, LLC, such as ownership agreements, stock certificates, and stock holder registries, as well as documents related to any change in name or corporate status (*see, e.g.*, Request Nos. 8, 9, 26);
- Documents related to "Software Rights Archive's" directors, parents (or other persons or entities that exercise control over Software Rights Archive, LLC), employees, partners, agents, officers, and the like, such as identification of the directors, parents, employees, partners, agents, officers, and owners; contracts or other agreements with the same; and annual reports (*see, e.g.*, Requests No. 8, 18);
- Documents related to litigation proceeds, including all agreements relating to how proceeds from this litigation would be distributed and to whom they will be distributed (*see, e.g.*, Request No. 10);
- Documents related to "Software Rights Archive's" relationship with Altitude Capital Partners or other owners and/or beneficiaries having an interest in Software Rights Archive, LLC (*see, e.g.*, Request Nos. 9, 11);
- Documents related to "Software Rights Archive's" relationship with OSRM, including its former public website (*see, e.g.*, Request No. 12);
- Documents relating to "Software Rights Archive's" corporate structure, formation, organization, and management, such as bylaws, articles of incorporation, corporate records, corporate filings, and board of directors' meeting minutes (*see, e.g.*, Requests No. 15, 22, 23, 24, 25);

---

<sup>1</sup> "Software Rights Archive", "You", and "Your" were defined in the First Set and the Second Set to mean Software Rights Archive, LLC and to include, without limitation, all of Software Rights Archive, LLC's predecessors (including Software Rights Archive, Inc.). Thus, when we use "Software Rights Archive" in this letter, we are incorporating the definition of "Software Rights Archive", "You", and "Your" from the First Set and the Second Set.

**Lee L. Kaplan**  
**January 22, 2009**  
Page 3

- Documents relating to “Software Rights Archive’s” corporate assets, physical locations, estimated and actual revenues, expenses, profits, margins, and sales; (*see, e.g.*, Requests No. 16, 20, 21);
- Documents relating to all capital, investment, loans, lines of credit, or equity established in or for “Software Rights Archive;” (*see, e.g.*, Request No. 17);
- Documents relating to “Software Rights Archive’s” relationship with Daniel Egger, including his role, title, interest in “Software Rights Archive”, and his compensation; (*see, e.g.*, Request No. 19);

If Software Rights Archive, LLC is improperly withholding documents on the basis that they are “irrelevant” to personal jurisdiction, then we will have no choice but to move to compel Software Rights Archive, LLC to produce the documents requested in the First Set and the Second Set. As you are aware, Plaintiffs are entitled to seek discovery on anything that is “reasonably calculated to lead to the discovery of admissible evidence.” *See* Fed. R. Civ. P. 26(b)(1). It appears to us that a great deal of effort has been undertaken to set up various corporate shells to attempt to insulate Software Rights Archive, LLC (to which SRA, LLC is apparently the parent corporation), and the requested documents, at a minimum, are reasonably calculated to lead to the discovery of admissible evidence with regard to Software Rights Archive, LLC’s claims that it is not subject to jurisdiction in California. Documents involving the relationship between and among SRA, LLC, Software Rights Archive, LLC, and Altitude Capital Partners, L.P. may give rise to additional contacts in California that can be imputed to Software Rights Archive, LLC through other entities such as SRA, LLC and Altitude Capital Partners, L.P. Plaintiffs are therefore entitled to discovery on the relationship between Software Rights Archive, LLC, on the one side, and SRA, LLC as well as other potentially relevant entities, on the other side, and Plaintiff’s are also entitled to discovery on Software Rights Archive, LLC’s contacts with the state of California.

We look forward to your response.

Very truly yours,

A handwritten signature in black ink that reads "Thomas B. Walsh, IV". The signature is written in a cursive style with a horizontal line underneath.

Thomas B. Walsh, IV