

1 JOSEPH J. DE HOPE, JR. (SBN: 79271)
 jdehope@hinshawlaw.com
 2 HINSHAW & CULBERTSON LLP
 One California Street, 18th Floor
 3 San Francisco, CA 94111
 Telephone: 415-362-6000
 4 Facsimile: 415-834-9070

5 Attorneys for Third Party
 MURRAY & MURRAY
 6
 7
 8

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 SOFTWARE RIGHTS ARCHIVE, LLC

12 Plaintiff,

13 vs.

14 GOOGLE INC., YAHOO! INC., IAC
 15 SEARCH & MEDIA, INC., AOL, LLC
 AND LYCOS, INC.

16 Defendants.
 17
 18

Case No. Misc. Action C-09-80004

Case No.: 2:07-cv-511 (CE)
EASTERN DISTRICT OF TEXAS

**OPPOSITION TO MOTION TO
 COMPEL COMPLIANCE WITH
 YAHOO! INC.'S SUBPOENA ON
 MURRAY & MURRAY PC**

19 MURRAY & MURRAY, PC ("Murray") was served a subpoena by Yahoo! Inc.
 20 ("Yahoo!") on December 22, 2008. Murray responded and objected to the subpoena in a
 21 timely manner. Copies of the Yahoo! subpoena and Murray's response to same are
 22 attached as Exhibits A and B to Mr. De Hope's declaration.

23 Murray met its affirmative obligation to object to a subpoena seeking disclosure of
 24 privileged information by asserting the attorney client privilege, the work product
 25 privilege, the privacy rights of its client, similar privileges and immunities, and
 26 documents subject to non-disclosure agreements. (Business and Professions Code
 27 Section 6068(e); Evidence Code section 955; California Rules of Professional Conduct,
 28

1 Rule 3-100). MURRAY may not and has not disclosed client confidential information
2 without the consent of Site Technologies, Inc. and/or any successor in interest.

3 Murray also objected due to the burdensome and expensive nature of the overly
4 broad requests. Murray further objected to the requests to the extent they exceeded the
5 agreed scope of discovery as set forth in the objections of plaintiff.

6 Without waiving its objections, Murray explained that all of the documents it has
7 in its possession relating to the requests are documents maintained, obtained, prepared,
8 and/or considered by or on behalf of MURRAY or are otherwise within the course and
9 scope of its legal representation of the debtor in United States Bankruptcy Court,
10 Northern District of California Case No. 99-50736. This demonstrates that the
11 documents may not be produced for the reasons stated.

12 Murray understands that the parties to this extensive litigation, filed in several
13 courts and jurisdictions, dispute the existence or extent of the privileges. Murray has
14 been placed in an untenable position by these differing positions. If Murray complies
15 with the subpoena and produces documents as requested, Murray is subject to a possible
16 claim by its client or others claiming that the documents should not be produced. By
17 asserting the privileges, Murray faces this motion to compel for failing to comply with
18 the subpoena.

19 **Murray seeks guidance from this Court.** Murray asks the Court to determine
20 whether there is an existing holder of the privileges, whether a holder of the privileges
21 may be reinstated if there is no existing holder of the privileges, whether a person or
22 entity will be appointed as the holder of the privileges or whether the privileges, in whole
23 or in part, are irrevocably waived or no longer available to any person or entity that holds,
24 ever held or may hereafter assert the privileges.

25 Further, as stated in the declaration of Joseph J. De Hope, Jr., filed herewith, the
26 cost of complying with the subpoena is substantial and it is not fair to require that a third
27 party incur these costs. If Murray is required to respond to the subpoena, it is respectfully
28

1 submitted that the cost of responding should be borne by the party requesting the
2 documents.

3 DATED: March 24, 2009

HINSHAW & CULBERTSON LLP



Joseph J. De Hope, Jr.
Attorneys for Third Party
MURRAY & MURRAY

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