

1 LEE. L. KAPLAN  
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 3 Houston, Texas 77002  
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5 ATTORNEYS FOR DEFENDANTS  
 L. DANIEL EGGER AND SOFTWARE  
 6 RIGHTS ARCHIVE, LLC

7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN JOSE DIVISION**

12 **GOOGLE INC., AOL LLC, YAHOO!**  
 13 **INC., IAC SEARCH & MEDIA, INC., and**  
 14 **LYCOS, INC.**  
 15 **Plaintiffs**  
 16 **v.**  
 17 **L. DANIEL EGGER, SOFTWARE**  
 18 **RIGHTS ARCHIVE, LLC, and SITE**  
 19 **TECHNOLOGIES, INC.**  
 20 **Defendants**

Case No. CV08-03172RMW

**DECLARATION OF LEE L. KAPLAN TO  
 SOFTWARE RIGHTS ARCHIVE, LLC'S  
 (1) REPLY IN FURTHER SUPPORT OF  
 ITS MOTION TO QUASH PLAINTIFFS'  
 30(b)(6) NOTICE OF DEPOSITION AND  
 (2) OPPOSITION TO PLAINTIFFS'  
 CROSS-MOTION TO COMPEL  
 PRODUCTION OF DOCUMENTS**

21 I, Lee L. Kaplan, declare as follows:

22 1. I am an attorney licensed to practice in the State of Texas and admitted pro hac  
 23 vice before this Court. I am a partner with the law firm of Smyser Kaplan & Veselka, L.L.P.,  
 24 counsel for Software Rights Archive, LLC ("SRA") in this matter. The following facts are  
 25 within my personal knowledge, and, if called upon to do so, I could and would testify  
 26 competently thereto.  
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2. Exhibit 1 to this declaration is a true and correct copy of the December 22, 2008 Plaintiffs' Notice of Deposition Pursuant to Rule 30(b)(6).

3. Exhibit 2 to this declaration is a true and correct copy of February 28, 2009 Declaration of Russell J. Barron, filed in support of SRA, LLC's Opposition to Motion to Compel the Production of Documents by SRA, LLC and Altitude Capital Partners, L.P. in Delaware federal court.

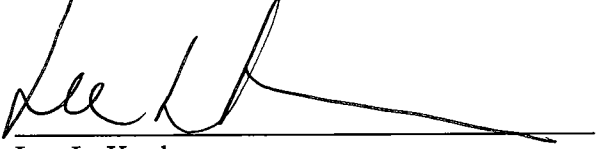
4. Exhibit 3 to this declaration is a true and correct copy of the November 21, 2008 Plaintiffs' First Set of Requests for Production of Documents and Things to Software Rights Archive, LLC.

5. Exhibit 4 to this declaration is a true and correct copy of the December 12, 2008 Plaintiffs' Second Set of Requests for Production of Documents and Things to Software Rights Archive, LLC."

I declare under penalty of perjury under the laws of the United States and California that the foregoing is true and correct and that this Declaration is executed on March 27, 2009 in Houston, Texas.

Date: March 27, 2009

SMYSER KAPLAN & VESELKA, L.L.P.



Lee L. Kaplan  
Attorney for Defendant  
Software Rights Archive, LLC

# **Exhibit 1**

1 [SEE SIGNATURE BLOCK FOR COUNSEL]

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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GOOGLE INC., AOL, LLC, YAHOO! INC.,  
IAC SEARCH & MEDIA, INC., and LYCOS,  
INC.,

Civil Case No. 5:08 -cv-03172 RMW (RS)

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Plaintiffs,

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v.

Honorable Ronald M. Whyte  
Courtroom 6, 4th Floor

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L. DANIEL EGGER, SOFTWARE RIGHTS  
ARCHIVE, LLC, and SITE TECHNOLOGIES,  
INC.,

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Defendants.

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**PLAINTIFFS' NOTICE OF DEPOSITION PURSUANT TO RULE 30(B)(6)**

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PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of

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Civil Procedure, Plaintiffs Google, Inc., AOL, LLC, Yahoo! Inc., IAC Search & Media, Inc., and

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Lycos, Inc. (collectively, "Plaintiffs") will take the deposition of Defendant Software Rights

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Archive, LLC ("Software Rights Archive") on January 29, 2009 at Smyser Kaplan & Veselka,

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L.L.P., 700 Louisiana, Suite 2300, Houston, Texas 77002, commencing at 9:30 a.m., or at such

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other time and place as may be agreed upon by the parties. This deposition will be taken before a

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notary public or such other person who is authorized to administer oaths, will be recorded

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stenographically and by videotape, and will continue from day to day, Saturdays, Sundays and

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holidays excepted, or as otherwise agreed to by counsel, until completed. Software Rights

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Archive is directed to designate individual(s) knowledgeable to offer deposition testimony on

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Topics 1 through 17 set forth in Exhibit A hereto. Software Rights Archive is requested to

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provide Plaintiffs with the identity of each designated individual and the topics for which they

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have been designated to testify no later than five (5) business days prior to the deposition.

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1 Dated: December 22, 2008

Respectfully submitted,

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By: /s/ Thomas B. Walsh, IV  
Thomas B. Walsh, IV  
*pro hac vice*  
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Juanita R. Brooks (CA Bar No. 75934)  
Jason W. Wolff (CA Bar No. 215819)  
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San Diego, CA 92130  
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Email: wolff@fr.com

Attorneys for Plaintiffs GOOGLE INC. and AOL  
LLC

By: /s/ Richard S.J. Hung  
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Richard S.J. Hung (CA Bar No. 197425)  
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425 Market Street  
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Attorneys for Plaintiff YAHOO! INC.

By: /s/ Jennifer A. Kash  
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Jennifer A. Kash (CA Bar No. 203679)  
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Email:jenniferkash@quinnemanuel.com

Attorneys for Plaintiffs IAC SEARCH &  
MEDIA, INC. and LYCOS, INC.

1 **EXHIBIT A**

2 **Definitions**

3 1. Unless otherwise defined herein, capitalized terms herein have the meanings  
4 assigned to them in the Complaint.

5 2. The terms "YOU", "YOUR", or "SOFTWARE RIGHTS ARCHIVE" mean  
6 and refer to Software Rights Archive, LLC, and each predecessor (including Software Rights  
7 Archive, Inc.), successor, division, subsidiary, parent, or related company thereof, and their  
8 affiliates, each of their present and former executives, offices, directors, consultants, advisors,  
9 representatives, agents, attorneys, employees and all persons acting or purporting to act on behalf  
10 of any of the foregoing.

11 3. "SRA, LLC" means SRA, LLC, the party identified as wholly owning  
12 Software Rights Archive, LLC in Docket No. 3, individually and collectively, including without  
13 limitation all of its corporation locations, all predecessors, and all directors, officers, agents,  
14 representatives, employees, consultants, attorneys, its parents, and all entities acting in consort,  
15 joint-venture or partnership relationships with, and others acting on behalf of, SRA, LLC.

16 4. The term "CALIFORNIA" means the State of California.

17 5. The term "ACTION" means the above-captioned action.

18 6. The term "COMPLAINT", when not otherwise qualified, means Plaintiffs'  
19 Complaint in this Action.

20 7. The term "PERSON" means and refers to both natural persons and legal  
21 entities, without limitation, including all predecessors-in-interest, groups, associations,  
22 partnerships, corporations, agencies, or any other legal, business or governmental entity.

23 8. The use of the singular shall be deemed to include the plural.

24 9. The connectives "AND" and "OR" shall be construed disjunctively or  
25 conjunctively as necessary to bring within the scope of the Topic all information that might  
26 otherwise be construed to be outside of its scope.

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1           10.     The terms “ALL”, “ANY”, “EACH” and “EVERY” shall each be construed  
2 as both “each” and “every” to bring within the scope of the Topic all responses which might  
3 otherwise be construed to be outside its scope.

4           11.     The term “INCLUDING” shall mean including without limitation.

5                                   **Topics**

6           1.     YOUR relationship with SRA, LLC.

7           2.     YOUR relationship with Altitude Capital Partners, L.P. and ANY partners  
8 thereof, AND any predecessors OR successors in interest.

9           3.     YOUR owners AND/OR any beneficiaries who have an interest in YOU.

10          4.     Each AND every person AND entity having an interest in the outcome of  
11 this Action and/OR the litigation captioned Software Rights Archive, LLC. v. Google Inc. et al.,  
12 Civil Action No.2:07-cv-511-TJW (CE) (Eastern District of Texas).

13          5.     Each AND every contact by YOU, on YOUR behalf, OR directed by YOU  
14 with CALIFORNIA, AND PERSON domiciled in CALIFORNIA, ANY CALIFORNIA  
15 corporation, AND/OR ANY entity doing business in CALIFORNIA.

16          6.     The solicitation AND/OR acquisition of ANY capital, equity, loans, line of  
17 credit. AND/OR funds from PERSONS AND/OR entities in CALIFORNIA, by YOU, SRA, LLC,  
18 YOUR agents, YOUR principals, AND/OR ANY related OR controlling entities, AND/OR on  
19 their behalf.

20          7.     Any activity conducted, or to be conducted in CALIFORNIA, by OR for  
21 YOU AND/OR SRA, LLC AND/OR involving ANY citizen thereof.

22          8.     EACH AND EVERY contractual AND/OR other business relationship  
23 involving YOU AND/OR SRA LLC, and any of the following (i) a PERSON or entity in  
24 CALIFORNIA OR having such citizenship or domicile, (ii) CALIFORNIA law, AND/OR (iii)  
25 anticipated or actual performance OR activity in CALIFORNIA.

26          9.     Each and every communication by YOU AND/OR SRA, LLC to a  
27 CALIFORNIA address, CALIFORNIA telephone number, AND/OR PERSON OR entity located  
28 in or domiciled in CALIFORNIA.

- 1                   10.    YOUR relationship with Daniel Egger including his role, title, AND interest  
2 in You at all times, AND ANY correspondence AND agreements.
- 3                   11.    Each website ever maintained by YOU or on YOUR behalf.
- 4                   12.    Any and all of YOUR business activities in connection with offering an  
5 “Archive” purportedly containing “large library of licensed source code, rare forms of technical  
6 literature and documentation, and oral histories ....”
- 7                   13.    Any and all of YOUR business activities other than “in February 2005, ...  
8 acquir[ing] the patents-in-suit ... and in November 2007, ... fil[ing] its patent lawsuit against  
9 Plaintiffs in the Eastern District of Texas.”
- 10                  14.    YOUR formation and the circumstances surrounding it.
- 11                  15.    ANY change in YOUR status AND/OR name.
- 12                  16.    YOUR (including specifically Software Rights Archive, Inc.) corporate  
13 structure, organization, management, corporate assets, physical locations, and past or present  
14 employees, partners, agents, officers, AND/OR directors.
- 15                  17.    ANY and ALL capital, equity, loans, lines of credit, or investment  
16 established in or for YOU (including specifically Software Rights Archive, Inc.).
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1 CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that a true and correct copy of the foregoing document  
3 has been served on all counsel of record, as follows, on this 22<sup>nd</sup> day of December 2008.

4 Thomas F. Smegal, Jr.  
5 State Bar No. 34819  
6 Law Offices of Thomas F. Smegal, Jr.  
7 One Sansome Street, 35th Floor  
8 San Francisco, CA 94104  
9 Telephone: (415) 217-8383  
10 Facsimile: (415) 399-5093

11 Jay D. Ellwanger  
12 State Bar No. 24036522  
13 DiNovo Price Ellwanger & Hardy LLP  
14 P.O. Box 201690  
15 Austin, Texas 78720  
16 Telephone: (512) 681-4060  
17 Facsimile: (512) 628-3410

18 Lee L. Kaplan  
19 State Bar No. 11094400  
20 (admitted *pro hac vice*)  
21 Jeffrey A. Potts  
22 State Bar No. 00784781  
23 (admitted *pro hac vice*)  
24 Raj Duvvuri  
25 State Bar No. 24054185  
26 (admitted *pro hac vice*)  
27 Smyser Kaplan & Veselka, L.L.P.  
28 700 Louisiana, Suite 2300  
Houston, Texas 77002  
Telephone: (713) 221-2323  
Facsimile: (713) 221-2320  
lkaplan@skv.com

Attorneys for Defendants L. DANIEL EGGER,  
SOFTWARE RIGHTS ARCHIVE, LLC, and  
SITE TECHNOLOGIES, INC.

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26 Mark D. Baker  
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# **Exhibit 2**

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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**

**DECLARATION OF RUSSELL J.  
BARRON**

1 I, Russell J. Barron, declare as follows:

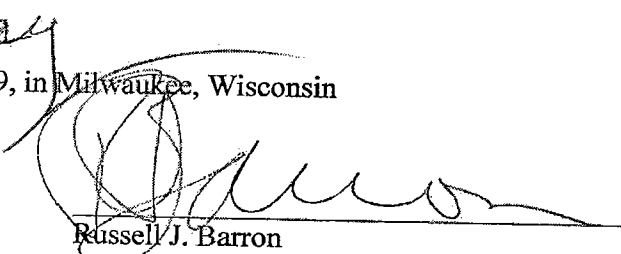
2 1. My name is Russell J. Barron. I am over the age of 21 years and am competent to  
3 make this declaration. The statements set forth herein are within my personal knowledge based  
4 on my investigation into the pertinent facts.

5 2. No entity with a controlling ownership stake in Software Rights Archive, LLC,  
6 including SRA, LLC and Altitude Capital Partners, L.P. ("controlling entity"), has ever  
7 contacted any entity in California to allege infringement of the patents-in-suit. No controlling  
8 entity has ever licensed the patents-in-suit or the patented technology in California. No  
9 controlling entity has ever sold the patented technology in California. No controlling entity has  
10 ever hired a patent attorney in California.

11 3. No controlling entity is organized under the laws of California. No controlling  
12 entity has its principal place of business in California. No controlling entity is pursuing litigation  
13 in California. No controlling entity has an office in California. No controlling entity has any  
14 employees in California. No controlling entity has any addresses in California. No controlling  
15 entity has any telephone numbers in California. No controlling entity has any bank accounts in  
16 California. No controlling entity has any real property interests in California. No controlling  
17 entity possesses personal property located in California. No controlling entity is registered to do  
18 business in California. No controlling entity is subject to continuing contractual obligations in  
19 California. No controlling entity has an agent for service of process in California. No  
20 controlling entity has solicited or consummated sales of any products or services in California.  
21 No controlling entity holds any licenses issued by the State of California. No controlling entity  
22 pays taxes in California.

23 I declare under penalty of perjury under the laws of the United States of America that the  
24 foregoing statements are true and correct.

25 Executed this 20<sup>th</sup> day of March, 2009, in Milwaukee, Wisconsin

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Russell J. Barron

# **Exhibit 3**

1 [SEE SIGNATURE PAGE FOR COUNSEL]

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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GOOGLE INC., AOL LLC, YAHOO! INC., IAC  
SEARCH & MEDIA, INC., and LYCOS, INC.,

Case No. CV 08-03172 RMW (RS)

12

Plaintiffs,

**PLAINTIFFS' FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS  
AND THINGS TO SOFTWARE RIGHTS  
ARCHIVE, LLC**

13

v.

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L. DANIEL EGGER, SOFTWARE RIGHTS  
ARCHIVE, LLC, and SITE TECHNOLOGIES,  
INC.,

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Defendants.

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Pursuant to Federal Rule of Civil Procedure 34, Plaintiffs Google Inc., AOL LLC, Yahoo!  
Inc., IAC Search & Media, Inc., and Lycos, Inc. request that Defendant Software Rights Archive,  
LLC, produce for inspection and copying all of the following documents and other tangible things  
that are in their possession, custody, or control. Production shall take place within 30 (thirty) days  
of service of this request at the offices of Fish & Richardson P.C., 5000 Bank One Center, 1717  
Main Street, Dallas, TX 75201, or at such other location and time as the parties may agree. The  
following definitions and instructions shall apply:

**DEFINITIONS**

1  
2           1.       “SOFTWARE RIGHTS ARCHIVE,” “YOU” and “YOUR” means Software Rights  
3 Archive, LLC., individually and collectively, including without limitation all of your corporate  
4 locations, all predecessors (including Software Rights Archive, Inc.), and all directors, officers,  
5 agents, representatives, employees, consultants, attorneys, and all entities acting in consort, joint-  
6 venture or partnership relationships with, and others acting on behalf of, Software Rights Archive,  
7 LLC.

8           2.       “SRA, LLC” means SRA, LLC, the party identified as wholly owning Software  
9 Rights Archive, LLC in Docket No. 3, individually and collectively, including without limitation  
10 all of its corporate locations, all predecessors, and all directors, officers, agents, representatives,  
11 employees, consultants, attorneys, its parents, and all entities acting in consort, joint-venture or  
12 partnership relationships with, and others acting on behalf of, SRA, LLC.

13           3.       “GOOGLE” means Google Inc., including its directors, officers, agents,  
14 representatives, employees, consultants, attorneys, subsidiaries, affiliates, and divisions.

15           4.       “AOL” means AOL LLC, including its directors, officers, agents, representatives,  
16 employees, consultants, attorneys, subsidiaries, affiliates, and divisions.

17           5.       “YAHOO!” means Yahoo! Inc. including its directors, officers, agents,  
18 representatives, employees, consultants, attorneys, subsidiaries, affiliates, and divisions.

19           6.       “IAC SAM” means IAC Search & Media, Inc. including its directors, officers,  
20 agents, representatives, employees, consultants, attorneys, subsidiaries, affiliates, and divisions.

21           7.       “LYCOS” means Lycos, Inc. including its directors, officers, agents,  
22 representatives, employees, consultants, attorneys, subsidiaries, affiliates, and divisions.

23           8.       “PLAINTIFFS” means Google, Yahoo!, IAC SAM, Lycos, and AOL, collectively  
24 and individually.

25           9.       “PATENTS-IN-SUIT” means U.S. Patent No. 5,544,352 (“the ’352 patent”), U.S.  
26 Patent No. 5,832,494 (“the ’494 patent”), and U.S. Patent No. 6,233,571 (“the ’571 patent”), and  
27 any application from which each such patent issued.

1           10.    “RELATED APPLICATION” means any application, either in the United States or  
2 any other jurisdiction, which includes a claim of priority, directly or indirectly, to any application  
3 from which a PATENT-IN-SUIT issued.

4           11.    “RELATED PATENTS” means any patent, other than a PATENT-IN-SUIT,  
5 issuing from a RELATED APPLICATION.

6           12.    “DOCUMENT” is defined broadly to be given the full scope of that term  
7 contemplated in Federal Rule of Civil Procedure 34, and includes all tangible things, all originals  
8 (or, if originals are not available, identical copies thereof), all non-identical copies of a document,  
9 all drafts of final documents, all other written, printed, or recorded matter of any kind, and all  
10 other data compilations from which information can be obtained and translated if necessary, that  
11 are or have been in your actual or constructive possession or control, regardless of the medium on  
12 which they are produced, reproduced, or stored (including without limitation electronic messages,  
13 computer programs and files containing any requested information), and any recording or writing,  
14 as these terms are defined in Rule 1001, Federal Rules of Evidence. Any document bearing  
15 marks, including without limitation, initials, stamped initials, comments, or notations not a part of  
16 the original text or photographic reproduction thereof, is a separate document.

17           13.    “PERSON” includes not only natural persons, but also, firms, partnerships,  
18 associations, corporations, and other legal entities, and divisions, departments, or other units  
19 thereof.

20           14.    “RELATES TO”, “RELATING TO” and “RELATED TO” mean describing,  
21 discussing, concerning, evidencing, reflecting, comprising, illustrating, containing, embodying,  
22 constituting, analyzing, stating, identifying, referring to, dealing with, or in any way pertaining to.

23           15.    “COMMUNICATION” means any form of transmittal of information without  
24 limitation as to means of transmittal, including meetings, telephone conversations,  
25 correspondence, electronic messages, memoranda, contracts, agreements, and verbal or nonverbal  
26 actions intended to or actually conveying information.

27           16.    “DESCRIBE,” “DESCRIBE IN DETAIL” and “DESCRIPTION” mean to give a  
28 full and complete explanation of the requested information, including identifying all relevant



1 circumstances, all relevant dates, all persons involved or having relevant knowledge, all relevant  
2 documents, and explaining the significance or the role of each date, person, and document.

3 17. When referring to a person, "IDENTIFY" and "IDENTIFICATION" means to  
4 give, to the extent known, the person's full name, present or last known address, and, when  
5 referring to a natural person, to additionally give the person's present or last known place of  
6 employment and title. When referring to a document, "IDENTIFY" and "IDENTIFICATION"  
7 means to provide the range of production numbers corresponding to the document or to give, to  
8 the extent known, (a) type of document; (b) general subject matter; (c) date of the document; and  
9 (d) author(s), addressee(s), and recipient(s).

10 18. The singular form of a word should be interpreted in the plural as well. Any  
11 pronoun shall be construed to refer to the masculine, feminine, or neutral gender as in each case is  
12 most appropriate. The words "and" and "or" shall be construed conjunctively or disjunctively,  
13 whichever makes the interrogatory more inclusive.

#### 14 INSTRUCTIONS

15 1. These requests are continuing pursuant to Rule 26(e) of the Federal Rules of Civil  
16 Procedure and require supplemental production of documents and things if Software Rights  
17 Archive discovers responsive documents and things after the date of response hereto despite a  
18 diligent effort to provide all responsive documents within the time specified.

19 2. These requests shall apply to all documents in your possession, custody, or control  
20 at the present time, or coming into your possession, custody, or control during the pendency of this  
21 action, and shall include all documents known and available to you regardless of whether such  
22 documents are possessed directly by you, any parent, subsidiary, or affiliate, or any of your  
23 officers, directors, employees, agents, representative or attorneys. If you know of the existence,  
24 past or present, of any documents or things requested below, but are unable to produce such  
25 documents or things because they are not presently in your possession, custody, or control, you  
26 shall so state and identify such documents or things, and the person who has possession, custody,  
27 or control.

28 3. Documents attached to each other must not be separated.

1           4.     If no documents are responsive to a particular request, state that no responsive  
2 documents exist.

3           5.     If any request is objected to in part, a complete production to all portions of the  
4 request not objected to should be provided.

5           6.     For any document or thing that has been lost, destroyed, or withheld on any ground,  
6 provide a written statement setting forth, at a minimum:

7                   (a)    an identification of the document;

8                   (b)    the nature of the document;

9                   (c)    the identity of all person(s) from and to whom the document, or its contents,  
10                   has been communicated;

11                   (d)   a brief description of the subject matter of the information; and

12                   (e)   the circumstances of the loss or destruction of the document.

13           7.     If you decline to produce any document or part thereof based on a claim of  
14 privilege or any other claim, you shall describe the nature and basis of your claim and the  
15 information withheld in a manner sufficient to:

16                   (a)   disclose the facts upon which you rely in asserting your claim;

17                   (b)   identify the legal and factual ground(s) upon which you rely in withholding  
18                   the information in sufficient detail so that the Court may make a  
19                   determination on your claim of privilege; and

20                   (c)   permit the information withheld to be unambiguously identified.

21           8.     To the extent these requests seek information that is recorded in any form of  
22 document or thing, including electronically stored documents such as word processing files, voice  
23 files, and e-mail, or to the extent these requests seek documents, including electronically stored  
24 documents, you are asked to take steps to ensure that all such documents and things are preserved  
25 for this litigation, and to take steps to ensure that no responsive electronically stored documents  
26 are erased or deleted. Sanctions may be imposed for failure to maintain evidence within your care,  
27 custody or control.

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1 **REQUESTS FOR DOCUMENTS AND THINGS**

2 **RELATING TO JURISDICTIONAL ISSUES**

3 **REQUEST FOR PRODUCTION NO.1:**

4 All DOCUMENTS RELATING TO any activity conducted by or for YOU and/or SRA,  
5 LLC in California and/or with or involving any PERSON located, residing in, and/or doing  
6 business in California.

7 **REQUEST FOR PRODUCTION NO.2:**

8 DOCUMENTS sufficient to IDENTIFY each PERSON that YOU have a contractual  
9 and/or other business relationship with involving any of the following (i) a PERSON located,  
10 residing in, and/or doing business in California, (ii) California law, and/or (iii) anticipated or  
11 actual performance or activity in California.

12 **REQUEST FOR PRODUCTION NO.3:**

13 All DOCUMENTS RELATING TO any contact by YOU and/or SRA, LLC with  
14 California or California law, including any COMMUNICATIONS to a California address,  
15 California telephone number, and/or PERSON located, residing in, and/or doing business in  
16 California.

17 **REQUEST FOR PRODUCTION NO.4:**

18 All DOCUMENTS RELATING TO any capital, equity, loans, line of credit, or funds  
19 obtained from, or solicited from PERSONS located, residing in, and/or doing business in  
20 California, by YOU, YOUR agents, YOUR principals, any related or controlling entities, and/or  
21 any PERSON acting on YOUR behalf.

22 **REQUEST FOR PRODUCTION NO.5:**

23 All DOCUMENTS RELATING TO any prospectus, subscription, subscription agreement,  
24 portfolio, disclosure, agreement, fund, trust, and/or other vehicle, identifying YOU, SRA, LLC,  
25 this litigation, *Software Rights Archive, LLC. v. Google Inc. et al.*, Civil Action No.2:07-cv-511  
26 (CE) (Eastern District of Texas), and/or the PATENTS-IN-SUIT, and DOCUMENTS sufficient to  
27 IDENTIFY all PERSONS receiving such document or participating in such investment who have  
28 a residence, domicile, or place of business in California.

1 **REQUEST FOR PRODUCTION NO.6:**

2 All DOCUMENTS RELATING TO any and all of YOUR activities *other than* “in  
3 February 2005, ... acquir[ing] the patents-in-suit ... and in November 2007, ... fil[ing] its patent  
4 lawsuit against Plaintiffs in the Eastern District of Texas.”

5 **REQUEST FOR PRODUCTION NO.7:**

6 All DOCUMENTS RELATING TO YOUR purported “Archive [that] contains a large  
7 library of licensed source code, rare forms of technical literature and documentation, and oral  
8 histories ...,” including any promotional materials, correspondence, websites, indexes, catalogs,  
9 news media, presentations, memoranda, and notes regarding such “Archive.”

10 **REQUEST FOR PRODUCTION NO.8:**

11 DOCUMENTS sufficient to IDENTIFY all YOUR current directors and to identify the  
12 PERSONS that excise control over YOU.

13 **REQUEST FOR PRODUCTION NO.9:**

14 DOCUMENTS sufficient to IDENTIFY all owners and/or beneficiaries having an interest  
15 in YOU, including any such PERSONS having a domicile, residence, or place of business in  
16 California.

17 **REQUEST FOR PRODUCTION NO.10:**

18 DOCUMENTS sufficient to IDENTIFY each PERSON who stands to directly or indirectly  
19 benefit from any alleged recovery that is sought by YOU in this case and/or in *Software Rights*  
20 *Archive, LLC. v. Google Inc. et al.*, Civil Action No.2:07-cv-511 (CE) (Eastern District of Texas),  
21 including any such PERSONS having a domicile, residence, or place of business in California.

22 **REQUEST FOR PRODUCTION NO.11:**

23 DOCUMENTS sufficient to fully DESCRIBE YOUR relationship with Altitude Capital  
24 Partners, L.P., any partners thereof, and any predecessors or successors-in-interest thereof.

25 **REQUEST FOR PRODUCTION NO.12:**

26 DOCUMENTS sufficient to fully DESCRIBE YOUR relationship with Open Source  
27 Research Management, Inc., any partners thereof, and any predecessors or successors-in-interest  
28 thereof.

1 **REQUEST FOR PRODUCTION NO.13:**

2 All DOCUMENTS RELATING TO any website currently or formerly maintained by  
3 YOU, on YOUR behalf, and/or at the web address "srarchive.com," including any DOCUMENTS  
4 RELATING TO the registration of the domain name "srarchive.com" and any records of access  
5 made to any such website.

6 **REQUEST FOR PRODUCTION NO.14:**

7 All DOCUMENTS RELATING TO any travel to California by any of YOUR employees,  
8 principals, officers, agents, attorneys, and/or owners before July 1, 2008.

10 Dated: November 21, 2008

Respectfully submitted,

11 By: /s/ Thomas B. Walsh, IV  
12 Thomas B. Walsh, IV  
13 *pro hac vice*  
14 Texas Bar No. 00785173  
15 E-mail: walsh@fr.com  
16 Fish & Richardson P.C.  
17 1717 Main Street  
18 Suite 5000  
19 Dallas, TX 75201  
20 Telephone: (214) 747-5070  
21 Facsimile: (214) 747-2091

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Jason W. Wolff (CA Bar No. 215819)  
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San Diego, CA 92130  
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Facsimile: 858-678-5099  
Email: wolff@fr.com

24 Attorneys for Plaintiffs GOOGLE INC. and AOL  
25 LLC

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By: /s/ Richard. S.J. Hung  
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Attorneys for Plaintiffs IAC SEARCH &  
MEDIA, INC. and LYCOS, INC.

1 **PROOF OF SERVICE**

2 I am employed in the County of San Diego. My business address is Fish & Richardson  
3 P.C., 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a  
party to the foregoing action.

4 I am readily familiar with the business practice at my place of business for collection and  
5 processing of correspondence for personal delivery, for mailing with United States Postal Service,  
6 for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight  
service.

7 On November 21, 2008, I caused a copy of the following document(s):

8 **PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
AND THINGS TO SOFTWARE RIGHTS ARCHIVE, LLC**

9 to be served on the interested parties in this action by placing a true and correct copy thereof,  
10 enclosed in a sealed envelope, and addressed as follows:

11 Lee Landa Kaplan  
12 Email: [lkaplan@skv.com](mailto:lkaplan@skv.com)  
13 Jeffrey A. Potts  
14 Email: [jpotts@skv.com](mailto:jpotts@skv.com)  
15 Narasa Raju Duvvuri  
16 Email: [rduvvuri@skv.com](mailto:rduvvuri@skv.com)  
Smyser Kaplan & Veselka  
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Houston, TX 77002  
Telephone: (713) 221-2300  
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RIGHTS ARCHIVE, LLC, and SITE  
TECHNOLOGIES, INC.

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19 DiNovo Price Ellwanger LLP  
20 P.O. Box 201690  
21 Austin, TX 78720-1690  
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22 Thomas Frank Smegal, Jr.  
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4 Jennifer A. Kash  
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Quinn Emanuel Urquhart Oliver & Hedges  
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LYCOS, INC.

9 Claude M. Stern  
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Quinn Emanuel Urquhart Oliver & Hedges  
11 LLP  
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12 Redwood Shores, CA 94065  
Telephone: (650) 801-5002

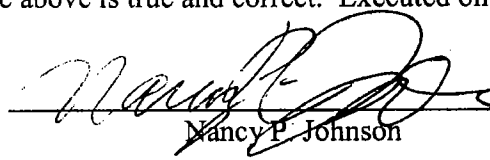
Attorneys for Plaintiff  
IAC SEARCH & MEDIA, INC. and  
LYCOS, INC.

- 14  **MAIL:** Such correspondence was deposited, postage fully paid, with the  
15 United States Postal Service on the same day in the ordinary course  
of business.
- 16  **PERSONAL:** Such envelope was delivered by hand to the offices of the addressee.
- 17
- 18  **FACSIMILE:** Such document was faxed to the facsimile transmission machine  
19 with the facsimile machine number stated above. Upon completion  
of the transmission, the transmitting machine issued a transmission  
20 report showing the transmission was complete and without error.
- 21  **ELECTRONIC MAIL:** Such document was transmitted by electronic mail to the addressees'  
email addresses as stated above.
- 22  **FEDERAL EXPRESS:** Such correspondence was deposited on the same day in the ordinary  
23 course of business with a facility regularly maintained by Federal  
Express.
- 24  **EXPRESS MAIL:** Such correspondence was deposited on the same day in the ordinary  
25 course of business with a facility regularly maintained by the United  
States Postal Service.
- 26  **OVERNIGHT DELIVERY:** Such correspondence was given on the same day in the ordinary  
27 course of business to an authorized courier or a driver authorized by  
that courier to receive documents.
- 28



1 I declare that I am employed in the office of a member of the bar of this Court at whose  
2 direction the service was made.

3 I declare under penalty of perjury that the above is true and correct. Executed on  
4 November 21, 2008, at San Diego, California.

  
Nancy P. Johnson

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6 22074910.doc

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# **Exhibit 4**

1 [SEE SIGNATURE PAGE FOR COUNSEL]

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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. CV 08-03172 RMW (RS)

**PLAINTIFFS' SECOND SET OF  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS TO  
SOFTWARE RIGHTS ARCHIVE, LLC**

Honorable Ronald M. Whyte  
Courtroom 6, 4<sup>th</sup> Floor

Pursuant to Federal Rule of Civil Procedure 34, Plaintiffs Google Inc., AOL LLC, Yahoo!  
Inc., IAC Search & Media, Inc., and Lycos, Inc. request that Defendant Software Rights Archive,  
LLC, produce for inspection and copying all of the following documents and other tangible things  
that are in their possession, custody, or control. Production shall take place within 30 (thirty) days  
of service of this request at the offices of Fish & Richardson P.C., 5000 Bank One Center, 1717  
Main Street, Dallas, TX 75201, or at such other location and time as the parties may agree. The  
following definitions and instructions shall apply:

1 DEFINITIONS

2 1. "SOFTWARE RIGHTS ARCHIVE," "YOU" and "YOUR" means Software Rights  
3 Archive, LLC, individually and collectively, including without limitation all of your corporate  
4 locations, all predecessors (including Software Rights Archive, Inc.), and all directors, officers,  
5 agents, representatives, employees, consultants, attorneys, and all entities acting in consort, joint-  
6 venture or partnership relationships with, and others acting on behalf of, Software Rights Archive,  
7 LLC.

8 2. "SRA, LLC" means SRA, LLC, the party identified as wholly owning Software  
9 Rights Archive, LLC in Docket No. 3, individually and collectively, including without limitation  
10 all of its corporate locations, all predecessors, and all directors, officers, agents, representatives,  
11 employees, consultants, attorneys, its parents, and all entities acting in consort, joint-venture or  
12 partnership relationships with, and others acting on behalf of, SRA, LLC.

13 3. "GOOGLE" means Google Inc., including its directors, officers, agents,  
14 representatives, employees, consultants, attorneys, subsidiaries, affiliates, and divisions.

15 4. "AOL" means AOL LLC, including its directors, officers, agents, representatives,  
16 employees, consultants, attorneys, subsidiaries, affiliates, and divisions.

17 5. "YAHOO!" means Yahoo! Inc. including its directors, officers, agents,  
18 representatives, employees, consultants, attorneys, subsidiaries, affiliates, and divisions.

19 6. "IACSAM" means IAC Search & Media, Inc. including its directors, officers,  
20 agents, representatives, employees, consultants, attorneys, subsidiaries, affiliates, and divisions.

21 7. "LYCOS" means Lycos, Inc. including its directors, officers, agents,  
22 representatives, employees, consultants, attorneys, subsidiaries, affiliates, and divisions.

23 8. "PLAINTIFFS" means Google, Yahoo!, IACSAM, Lycos, and AOL, collectively  
24 and individually.

25 9. "PATENTS-IN-SUIT" means U.S. Patent No. 5,544,352 ("the '352 patent"), U.S.  
26 Patent No. 5,832,494 ("the '494 patent"), and U.S. Patent No. 6,233,571 ("the '571 patent"), and  
27 any application from which each such patent issued.

28

1           10.    “RELATED APPLICATION” means any application, either in the United States or  
2 any other jurisdiction, which includes a claim of priority, directly or indirectly, to any application  
3 from which a PATENT-IN-SUIT issued.

4           11.    “RELATED PATENTS” means any patent, other than a PATENT-IN-SUIT,  
5 issuing from a RELATED APPLICATION.

6           12.    “DOCUMENT” is defined broadly to be given the full scope of that term  
7 contemplated in Federal Rule of Civil Procedure 34, and includes all tangible things, all originals  
8 (or, if originals are not available, identical copies thereof), all non-identical copies of a document,  
9 all drafts of final documents, all other written, printed, or recorded matter of any kind, and all  
10 other data compilations from which information can be obtained and translated if necessary, that  
11 are or have been in your actual or constructive possession or control, regardless of the medium on  
12 which they are produced, reproduced, or stored (including without limitation electronic messages,  
13 computer programs and files containing any requested information), and any recording or writing,  
14 as these terms are defined in Rule 1001, Federal Rules of Evidence. Any document bearing  
15 marks, including without limitation, initials, stamped initials, comments, or notations not a part of  
16 the original text or photographic reproduction thereof, is a separate document.

17           13.    “PERSON” includes not only natural persons, but also, firms, partnerships,  
18 associations, corporations, and other legal entities, and divisions, departments, or other units  
19 thereof.

20           14.    “RELATES TO”, “RELATING TO” and “RELATED TO” mean describing,  
21 discussing, concerning, evidencing, reflecting, comprising, illustrating, containing, embodying,  
22 constituting, analyzing, stating, identifying, referring to, dealing with, or in any way pertaining to.

23           15.    “COMMUNICATION” means any form of transmittal of information without  
24 limitation as to means of transmittal, including meetings, telephone conversations,  
25 correspondence, electronic messages, memoranda, contracts, agreements, and verbal or nonverbal  
26 actions intended to or actually conveying information.

27           16.    “DESCRIBE,” “DESCRIBE IN DETAIL” and “DESCRIPTION” mean to give a  
28 full and complete explanation of the requested information, including identifying all relevant

1 circumstances, all relevant dates, all persons involved or having relevant knowledge, all relevant  
2 documents, and explaining the significance or the role of each date, person, and document.

3 17. When referring to a person, "IDENTIFY" and "IDENTIFICATION" means to  
4 give, to the extent known, the person's full name, present or last known address, and, when  
5 referring to a natural person, to additionally give the person's present or last known place of  
6 employment and title. When referring to a document, "IDENTIFY" and "IDENTIFICATION"  
7 means to provide the range of production numbers corresponding to the document or to give, to  
8 the extent known, (a) type of document; (b) general subject matter; (c) date of the document; and  
9 (d) author(s), addressee(s), and recipient(s).

10 18. The singular form of a word should be interpreted in the plural as well. Any  
11 pronoun shall be construed to refer to the masculine, feminine, or neutral gender as in each case is  
12 most appropriate. The words "and" and "or" shall be construed conjunctively or disjunctively,  
13 whichever makes the interrogatory more inclusive.

#### 14 INSTRUCTIONS

15 1. These requests are continuing pursuant to Rule 26(e) of the Federal Rules of Civil  
16 Procedure and require supplemental production of documents and things if Software Rights  
17 Archive discovers responsive documents and things after the date of response hereto despite a  
18 diligent effort to provide all responsive documents within the time specified.

19 2. These requests shall apply to all documents in your possession, custody, or control  
20 at the present time, or coming into your possession, custody, or control during the pendency of this  
21 action, and shall include all documents known and available to you regardless of whether such  
22 documents are possessed directly by you, any parent, subsidiary, or affiliate, or any of your  
23 officers, directors, employees, agents, representative or attorneys. If you know of the existence,  
24 past or present, of any documents or things requested below, but are unable to produce such  
25 documents or things because they are not presently in your possession, custody, or control, you  
26 shall so state and identify such documents or things, and the person who has possession, custody,  
27 or control.

28 3. Documents attached to each other must not be separated.

1           4.     If no documents are responsive to a particular request, state that no responsive  
2 documents exits.

3           5.     If any request is objected to in part, a complete production to all portions of the  
4 request not objected to should be provided.

5           6.     For any document or thing that has been lost, destroyed, or withheld on any ground,  
6 provide a written statement setting forth, at a minimum:

7                 (a)     an identification of the document;

8                 (b)     the nature of the document;

9                 (c)     the identity of all person(s) from and to whom the document, or its contents,  
10                         has been communicated;

11                (d)     a brief description of the subject matter of the information; and

12                (e)     the circumstances of the loss or destruction of the document.

13           7.     If you decline to produce any document or part thereof based on a claim of  
14 privilege or any other claim, you shall describe the nature and basis of your claim and the  
15 information withheld in a manner sufficient to:

16                 (a)     disclose the facts upon which you rely in asserting your claim;

17                 (b)     identify the legal and factual ground(s) upon which you rely in withholding  
18                         the information in sufficient detail so that the Court may make a  
19                         determination on your claim of privilege; and

20                 (c)     permit the information withheld to be unambiguously identified.

21           8.     To the extent these requests seek information that is recorded in any form of  
22 document or thing, including electronically stored documents such as word processing files, voice  
23 files, and e-mail, or to the extent these requests seek documents, including electronically stored  
24 documents, you are asked to take steps to ensure that all such documents and things are preserved  
25 for this litigation, and to take steps to ensure that no responsive electronically stored documents  
26 are erased or deleted. Sanctions may be imposed for failure to maintain evidence within your care,  
27 custody or control.

28

1                                   **REQUESTS FOR DOCUMENTS AND THINGS**

2                                   **RELATING TO JURISDICTIONAL ISSUES**

3   **REQUEST FOR PRODUCTION NO. 15:**

4           All DOCUMENTS RELATING TO the corporate structure, organization, and  
5 management of YOU (including specifically Software Rights Archive, Inc.), including without  
6 limitation YOUR (including specifically Software Rights Archive, Inc.) corporate records, articles  
7 of incorporation, and bylaws.

8   **REQUEST FOR PRODUCTION NO. 16:**

9           DOCUMENTS sufficient to IDENTIFY all the corporate assets of YOU (including  
10 specifically Software Rights Archive, Inc.).

11   **REQUEST FOR PRODUCTION NO. 17:**

12           DOCUMENTS sufficient to IDENTIFY all capital, equity, loans, line of credit, or  
13 investment established in or for YOU (including specifically Software Rights Archive, Inc.),  
14 including all capital, equity, loans, lines of credit, or investments made in YOU (including  
15 specifically Software Rights Archive, Inc.) by L. Daniel Egger.

16   **REQUEST FOR PRODUCTION NO. 18:**

17           DOCUMENTS sufficient to IDENTIFY all YOUR (including specifically Software Rights  
18 Archive, Inc.) past or present employees, partners, agents, officers, owners, and/or directors,  
19 including organizational charts, personnel files, start date and end date, and responsibilities.

20   **REQUEST FOR PRODUCTION NO. 19:**

21           DOCUMENTS sufficient to DESCRIBE YOUR (including specifically Software Rights  
22 Archive, Inc.) relationship with L. Daniel Egger, including his role, title, interest in YOU, and  
23 compensation at all times (including at all times since January 7, 2004).

24   **REQUEST FOR PRODUCTION NO. 20:**

25           DOCUMENTS sufficient to IDENTIFY each physical location (i.e., office or other  
26 business location) for YOU (including specifically Software Rights Archive, Inc.) and each lease,  
27 deed, or other agreement granting YOU use of each such physical location.

28



1 **REQUEST FOR PRODUCTION NO. 21:**

2 DOCUMENTS sufficient to IDENTIFY all estimated and actual revenues, expenses, costs,  
3 profits, margins, and sales earned or incurred by YOU (including specifically Software Rights  
4 Archive, Inc.) from January 1, 2004, to the present.

5 **REQUEST FOR PRODUCTION NO. 22:**

6 All DOCUMENTS sufficient to identify each PERSON having any management authority  
7 or control over YOU, including such PERSON'S role, title, and interest in YOU (including at all  
8 times since January 7, 2004).

9 **REQUEST FOR PRODUCTION NO. 23:**

10 All of YOUR corporate filings with any federal, state, or local government or government  
11 agency.

12 **REQUEST FOR PRODUCTION NO. 24:**

13 All minutes from every one of YOUR board of directors' meetings.

14 **REQUEST FOR PRODUCTION NO. 25:**

15 ALL DOCUMENTS RELATING TO YOUR formation and the circumstances  
16 surrounding it, including without limitation the role of Daniel Egger in such FORMATION.

17 **REQUEST FOR PRODUCTION NO. 26:**

18 ALL DOCUMENTS RELATING TO each change in YOUR status or YOUR name,  
19 including without limitation all documents describing the name change from Software Rights  
20 Archive, LLC. to Software Rights Archive, Inc., the associated circumstances, and the identity of  
21 each PERSON involved.

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1 Dated: December 12, 2008

Respectfully submitted,

2 By: /s/ Thomas B. Walsh, IV

3 Thomas B. Walsh, IV (admitted *Pro Hac*  
4 *Vice*, walsh@fr.com)

5 FISH & RICHARDSON P.C.

6 5000 Bank One Center

7 1717 Main Street

8 Dallas, Texas 75201

9 Telephone: (214)747-5070

10 Facsimile: (214) 747-2091

11 Juanita R. Brooks (SBN 75934,  
12 brooks@fr.com)

13 Jason W. Wolff (SBN 215819,  
14 wolff@fr.com)

15 FISH & RICHARDSON P.C.

16 12390 El Camino Real

17 San Diego, California 92130

18 Telephone: (858) 678-5070

19 Facsimile: (858) 678-5099

20 Jerry T. Yen (SBN 247988, yen@fr.com)

21 FISH & RICHARDSON P.C.

22 500 Arguello Street, Suite 500

23 Redwood City, California 94063

24 Telephone: (650) 839-5070

25 Facsimile: (650) 839-5071

26 Attorneys for Plaintiffs

27 GOOGLE INC. and AOL LLC

28 By: /s/ Richard. S.J. Hung (with permission)

Michael A. Jacobs (CA Bar No. 111664)

Richard S.J. Hung (CA Bar No. 197425)

MORRISON & FOERSTER

425 Market Street

San Francisco, CA 94105

Telephone: 415-268-7000

Facsimile: 415-268-7522

Email: mjacobs@mofocom

Attorneys for Plaintiff

YAHOO! INC.

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By: /s/ Jennifer A. Kash (with permission)  
Claude M. Stern (CA Bar No. 96737)  
Jennifer A. Kash (CA Bar No. 203679)  
QUINN EMANUEL URQUHART  
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Redwood Shores, CA 94065  
Telephone: (650) 801-5000  
Facsimile: (650) 801-5100  
Email: claudestern@quinnemanuel.com  
Email: jenniferkash@quinnemanuel.com

Attorneys for Plaintiffs  
IAC SEARCH & MEDIA, INC. and LYCOS,  
INC.

1 **PROOF OF SERVICE**

2 I am employed in the County of San Diego. My business address is Fish & Richardson  
3 P.C., 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a  
party to the foregoing action.

4 I am readily familiar with the business practice at my place of business for collection and  
5 processing of correspondence for personal delivery, for mailing with United States Postal Service,  
6 for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight  
service.

7 On December 12, 2008, I caused a copy of the following document(s):

8 **PLAINTIFFS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
AND THINGS TO SOFTWARE RIGHTS ARCHIVE, LLC**

9 to be served on the interested parties in this action by placing a true and correct copy thereof,  
10 enclosed in a sealed envelope, and addressed as follows:

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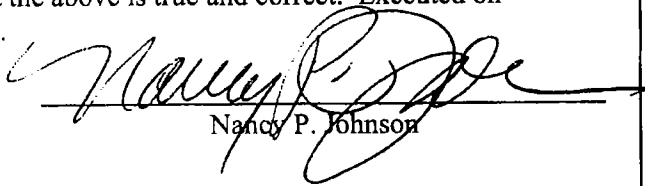
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I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct. Executed on December 12, 2008, at San Diego, California.



Nancy P. Johnson

2nd RFPs frm Pntfs to SRA.DOC