

# EXHIBIT D

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

CERTIFIED  
TRANSCRIPT

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SOFTWARE RIGHTS ARCHIVE, LLC., :  
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 : Plaintiff, :  
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 : -vs- :  
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 : GOOGLE INC., YAHOO! INC., IAC SEARCH :  
 : & MEDIA, INC., AOL, LLC., and LYCOS, :  
 : INC., :  
 :  
 : Defendants. :  
-----x

: Civil Action No.  
: 2:07-cv-511 (CE)

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Videotaped deposition of JEFFREY FRANKLIN AIT, the  
witness herein, called for the purpose of Discovery  
Examination by the Defendants, pursuant to Federal  
Rules of Civil Procedure, taken before Rita Rodriguez,  
a Notary Public for South Carolina, at the Hilton  
Myrtle Beach Resort, 10000 Beach Club Drive, Myrtle  
Beach, South Carolina, on Tuesday, September 30, 2008,  
commencing at 9:45 a.m.

1 JEFFREY FRANKLIN AIT,  
2 of lawful age, the Witness herein, called for  
3 Discovery Examination by the Defendants, being by  
4 me first duly sworn, as hereinafter certified,  
5 deposed and said as follows:

6 EXAMINATION

7 BY MR. WALSH:

8 Q. Good morning, Mr. Ait.

9 A. Good morning.

10 Q. Mr. Ait, my name is Tom Walsh. We met a few  
11 minutes ago when you walked into the room. I  
12 represent Google and AOL in a lawsuit that's been  
13 brought by the Software Rights Archive in the  
14 Eastern District of Texas by my clients.

15 Do you understand that?

16 A. I do.

17 Q. To my knowledge, you and I never met before  
18 today. Does that square with your recollection?

19 A. It does.

20 Q. Have you ever given a deposition before?

21 A. I have.

22 Q. Can you tell me, to the best of your ability,  
23 even if it's an approximation, actually how many  
24 times you believe you have been deposed?

25 A. 15, 20 times.

1           alleged wrong doings you would have allegedly  
2           undertaken while at the company?

3   A.    No.

4   Q.    Companies may have gone under and as a result you  
5           may have left the company but it had nothing to  
6           do with any of your performance?

7   A.    No.

8   Q.    We get now to the time at DeltaPoint.  How long  
9           were you at DeltaPoint and then the company that  
10          it became, Site?

11  A.    Up and through its bankruptcy and dissolution.

12  Q.    In 2004?

13  A.    I believe that's true.

14  Q.    So during that entire time you were the CEO of  
15          DeltaPoint which later became Site?

16  A.    Once we began the bankruptcy proceedings I became  
17          the Responsible Party not necessarily the CEO.

18  Q.    Is it fair to say that your CEO duties ended when  
19          the bankruptcy occurred?

20  A.    Yes.

21  Q.    And that's the duties as the CEO of Site?

22  A.    Yes.

23  Q.    I may ask some follow-up questions like that.

24           I'm just trying to make it clear for the record.

25           You are doing a very good job of communicating

1 with me, so I'm not at all confusing about that.

2 Is it fair to say you ceased being CEO --  
3 I'm going to ask you about Site and then Slash,  
4 you ceased being CEO when you became the  
5 Responsible Person when the bankruptcy was filed  
6 for Site; correct?

7 A. Yes.

8 Q. You ceased being the CEO of Slash when Slash was  
9 merged into Site about the 2000 time frame?

10 A. Yes.

11 Q. Do you remember when, I'm sure we have it, but do  
12 you recall generally when the bankruptcy was  
13 filed by Site?

14 A. 1999, 2000 Februaryish time frame, I believe.

15 Q. So the bankruptcy took several years to conclude?

16 A. Yes.

17 Q. I have never been involved in a bankruptcy, I'll  
18 confess to you, at least not directly involved.  
19 When you become a Responsible Person for a  
20 bankruptcy, does that basically become a  
21 full-time job?

22 A. It does not.

23 Q. It's not occupying all of your working hours?

24 A. It is not.

25 Q. So once the bankruptcy occurred for Site and you

1           may be required by the Bankruptcy Court in  
2           connection with the Final Decree."

3                       I read that correctly; correct?

4   A.    Yes.

5   Q.    "The responsible person shall be discharged from  
6           all duties and responsibilities of the plan upon  
7           the issuance of the final decree"; correct?

8   A.    Sure.

9   Q.    And you know for a fact, Mr. Ait, that the final  
10          decree has been issued in the Bankruptcy Court?

11   A.    It has or it is my belief that it has.

12   Q.    It's my belief that it has as well. I just don't  
13          have it in front of me to put it in front of you.

14                       But you would agree with me pursuant to  
15          this plan of reorganization in Exhibit 21, upon  
16          the final decree being signed by the Bankruptcy  
17          Court, you ceased to be the Responsible Person  
18          for Site; correct?

19   A.    That's true.

20   Q.    I said I didn't have it handy but my colleague  
21          does.

22   A.    Okay.

23                               - - - - -

24                               (Thereupon, Ait Exhibit No. 23

25                               was marked)

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Q. Mr. Ait, I'm handing you what's been marked as Deposition Exhibit No. 23. Do you have that handy in front of you now?

A. I do.

Q. Would you agree with me, Mr. Ait, that the Final Decree was in fact signed on January 6, 2004 by the United States Bankruptcy Court for the San Jose Division of the United States Bankruptcy Court in the Northern District of California.

A. Uh-huh.

Q. You agree; correct?

A. I agree.

Q. So pursuant to Paragraph F of Exhibit 21, the Responsible Person shall be discharged from all duties and responsibilities of the plan upon the issuance of the Final Decree, your role as Responsible Person ended on January 6th of 2004; correct, Mr. Ait?

MR. KAPLAN: Objection to form.

Q. You may answer, sir.

A. I assume.

Q. Mr. Ait, it took almost five years for this bankruptcy to be closed or from sometime in 1999 until January of 2004, so almost five years;

1 is that someone else's writing?

2 A. It's not mine.

3 Q. So when I said the writing on the document, I was  
4 meaning on the actual Secretary of State form,  
5 you understood that; right?

6 A. Yes.

7 Q. And you said to Victor Hardy, "Please accept this  
8 e-mail as my permission to remove the company  
9 from its suspended status by executing and  
10 putting into effect the attached document"; is  
11 that correct, Mr. Ait?

12 A. I did send that e-mail, yes.

13 Q. What authority did you believe you had on  
14 July 30th of 2008 to do this for Site?

15 A. The fact that the company was in a suspended  
16 state and that the dissolution that I had  
17 previously been told had been affected was not  
18 actually affected so the corporation was not  
19 dissolved.

20 Q. But, Mr. Ait, your duties as a Responsible Person  
21 had ended back in January of 2004; correct? We  
22 have already seen that today?

23 MR. KAPLAN: Objection to form.

24 A. I didn't even think about that when I did this.  
25 My whole goal was to try to comply with the



1 Judge's Order to dissolve the company and I was  
2 as surprised as anyone to find out it was in a  
3 suspended state and not a dissolved state.

4 Q. Has it been dissolved today?

5 A. I have been in contact with the Franchise Tax  
6 Board and I'm trying to file those papers with  
7 the state of California.

8 Federally it has been dissolved and I  
9 don't know whether it was my legal team who  
10 didn't do the right thing or whether the state of  
11 California has not got all the right paperwork in  
12 place.

13 Q. So, as of today, to your knowledge, Site has not  
14 been dissolved?

15 A. It has not as of this date because there is  
16 certain tax implications that I do not have money  
17 to pay since there is nothing in the company?

18 Q. When you say it has been federally dissolved,  
19 what did you mean by that?

20 A. It is my understanding that upon filing a final  
21 tax document with the federal government, the  
22 federal government then refers to it as being  
23 final.

24 That final tax document was filed in the  
25 state of California. However, the state of

1 Q. What did Mr. Hardy tell you when he said he was  
2 going to send you this document?

3 MR. KAPLAN: Just a moment.

4 MR. WALSH: This is August of 2008.

5 MR. KAPLAN: Fine. Go ahead.

6 A. He just said, as a matter of support, that he  
7 would ask me to sign the assignment of patents if  
8 that is what I had actually intended to happen  
9 just to clarify that it was my intent for that  
10 assignment to have taken place.

11 Q. Did you check -- do you see Schedule A on that  
12 document?

13 A. I did.

14 Q. You checked those patent numbers against some  
15 independent record to make sure those are the  
16 right patents numbers to include?

17 A. I did not.

18 Q. Did you check with anyone to make sure those were  
19 the patent numbers that should be listed on  
20 Schedule A?

21 A. I did not.

22 Q. You took Mr. Hardy's word for it that those were  
23 the right patents to be listed?

24 A. I did.

25 Q. You signed this document, Deposition Exhibit 29,

1 as the chief executive officer of Site; correct?

2 A. Yes.

3 Q. But I think you agreed with me earlier, didn't  
4 you, Mr. Ait, that you ceased being chief  
5 executive officer of Site when it went into  
6 bankruptcy?

7 A. That's true.

8 Q. You also signed it as the president and chief  
9 executive officer of Slash; correct?

10 A. Yes.

11 Q. And you told me earlier that Slash ceased to  
12 exist when it merged into DeltaPoint in 2000;  
13 correct?

14 A. That's true.

15 Q. On the second page of this document, Mr. Ait --  
16 let's start on the first page.

17 You see about the sixth Whereas clause  
18 down?

19 A. "Whereas the Site entities have ratified"?

20 Q. Yes. This is the 2005 assignment that you saw  
21 for the first time when Mr. Wolff sent it to you  
22 in July of 2008; correct?

23 A. Yes.

24 Q. Give me one second, Mr. Ait. I want to make sure  
25 I'm not getting confused, which I may be.

1           agreed to ratify it.

2   Q.       Would you agree with me, Mr. Ait, that you simply  
3           did not have the authority in August of 2008, on  
4           behalf of Site or Slash, to do any ratification  
5           of any of the prior assignment to Mr. Egger or  
6           purported assignment to Mr. Egger since your  
7           duties as Responsible Person had ended almost  
8           four years ago?

9   A.       Perhaps.    I mean, I don't know that to be true  
10           or not.    Since the company was not dissolved, I  
11           don't know what my Responsible Party position is.

12   Q.       Don't you think it would be a good idea, to the  
13           extent you are going to be involved with any sort  
14           of further action with respect to these, for you,  
15           as the former Responsible Person, to go into the  
16           Bankruptcy Court and see what the Bankruptcy  
17           Court has to say about this?

18                       MR. KAPLAN:  Objection to form.

19   A.       Perhaps.

20   Q.       Let me finish up a line of questioning here in  
21           just a second and then we can take a break.  If  
22           you could go a couple more minute, Mr. Ait.

23                       - - - - -

24                       (Thereupon, Ait Exhibit No. 30  
25                       was marked)

1 STATE OF SOUTH CAROLINA :  
2 : SS: CERTIFICATE  
3 COUNTY OF HORRY :

4 I, Rita Rodriguez, a Notary Public for South  
5 Carolina, do hereby certify that the within named  
6 witness, , was by me first duly sworn to  
7 testify the truth, the whole truth and nothing but the  
8 truth in the cause aforesaid:

9 That the testimony then given was reduced by me  
10 to stenotype in the presence of said witness,  
11 subsequently transcribed onto a computer under my  
12 direction, and that the foregoing is a true and correct  
13 transcript of the testimony so given as aforesaid.

14 I do further certify that this deposition was  
15 taken at the time and place as specified in the  
16 foregoing caption, and that I am not a relative,  
17 counsel or attorney of either party, or otherwise  
18 interested in the outcome of this action.

19 IN WITNESS WHEREOF, I have hereunto set my hand  
20 and affixed my seal of office at Myrtle Beach, South  
21 Carolina this day of ,

22

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24

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Rita Rodriguez  
RITA RODRIGUEZ, Notary Public  
for South Carolina.

My Commission expires October 4, 2010.