

# **EXHIBIT M**



169 Saxony Road  
Suite 204  
Encinitas, CA 92024

tel 760-942-8505  
fax 760-942-8515  
www.coastlawgroup.com

May 27, 2009

Colleen Kennedy  
O'Melveny & Myers LLP  
Two Embarcadero Center, 28<sup>th</sup> Floor  
San Francisco, California 94111

Via Facsimile and First Class Mail  
415.984.8701

**Re: Ebay, Inc. v. Digital Point Solutions, Inc., et al.**

Dear Colleen:

This is to follow up on my letter dated May 21, 2009 regarding Defendant Digital Point Solutions, Inc.'s responses to your client's written discovery. Given the current procedural circumstances of the case, this is to propose that the parties defer consideration of the matters raised in your meet and confer letter until after the Court has adjudicated the pending motions to dismiss (or transfer in the alternative), and until a formal decision has been made as to whether any criminal charges will be forthcoming.

As a preliminary matter, the FBI has not yet returned all of the materials that were seized in June of 2007. Further, due to the ongoing nature of the investigation and the FBI's continued retention of seized materials, the parties recently agreed to postpone the initial Case Management Conference to August 14, 2009 to allow additional time for the charging decision to be made. The present discovery issues should likewise be revisited at that time.

For instance, as a general principle, a defendant may seek a protective order postponing civil discovery until termination of any criminal proceedings. See e.g. *United States v. Kordel* (1970) 397 U.S. 1, 9. Here, as noted, the parties have already agreed to postpone the initial Case Management Conference for *three months* based on the pending criminal investigation, the FBI's refusal to return seized materials, and the resulting inefficiencies that would arise in conducting discovery in the interim.

In addition, as you are aware, all defendants in this action have moved to dismiss Plaintiff's Second Amended Complaint (SAC) based on the one-year limitations period set forth in the Commission Junction Publisher Service Agreement (PSA). While this office has not yet received access to the documents produced by Commission Junction



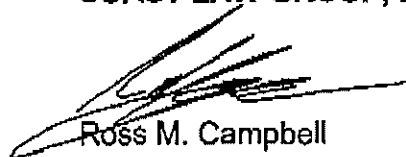
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in response to Plaintiff's recent subpoenas, it appears the documents will further confirm the June 2007 termination date.

Moreover, in the event the motions to dismiss (or transfer) are denied, it may be appropriate to seek dismissal based on the doctrine of forum non conveniens. See *Murphy v. Schneider Nat'l, Inc.* (9th Cir. 2003) 362 F.3d 1133, 1143, fn. 5, (federal courts will resort to pre-1948 motion to dismiss for forum non conveniens to the extent enforcement of forum selection clause requires adjudication of dispute in state court).

In short, it would be both premature and a potential waste of resources to meet and confer at this stage of the proceedings. Plaintiff will have more than sufficient opportunity to pursue supplemental responses in the future and will not suffer any prejudice in doing so. To the extent you wish to discuss the matter further, please do not hesitate to contact me.

Very Truly Yours,  
COAST LAW GROUP, LLP



Ross M. Campbell



COAST LAW GROUP LLP

169 Saxony Road, Suite 204 Encinitas, CA 92024  
Ph: 760.942.8505 Fx: 760.942.8515  
www.coastlawgroup.com

## FAX COVER SHEET

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To: **Colleen Kennedy**

From: **Ross M. Campbell**

Client/Matter: **Re: Ebay, Inc. v. Digital Point Solutions, Inc., et al**

Date: **05/27/09**

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