

EXHIBIT 5



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September 16, 2009

OUR FILE NUMBER
234,948-0007

VIA FACSIMILE AND MAIL

WRITER'S DIRECT DIAL
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Steve Priolo
Rackspace US, Inc.
9725 Datapoint Drive, Ste. 100
San Antonio, TX 78229

WRITER'S E-MAIL ADDRESS
ckennedy@omm.com

Re: *eBay Inc. v. Digital Point Solutions, Inc., et al., Case No. CV-08-4052*
JF

Dear Mr. Priolo:

I write regarding the conversation we had on Friday, September 11, 2001 regarding the response by Rackspace US, Inc. ("Rackspace") to the Amended Subpoena served by eBay on June 9, 2009 (the "Amended Subpoena").

During our conversation, you advised me that Rackspace produced approximately twenty pages of documents to Leo Presiado on or about September 9, 2009. You advised that these documents constitute billing records and the agreement and renewals memorializing the relationship between Rackspace and one or more of the Defendants in the above-captioned litigation.

You also stated that Rackspace currently has in its possession multiple drives containing data belonging to Defendants, which may or may not be responsive to the Amended Subpoena. You stated that, because the data residing on the drives belongs to Defendants and because Defendants have full access to that data, Defendants—not Rackspace—are responsible for any production of such data to eBay.

As a courtesy to you, and without waiving eBay's right to seek to compel Rackspace to produce directly all responsive materials in the future, eBay will not yet move to compel Rackspace's performance and will continue its efforts to obtain the responsive materials from Defendants. eBay does not, however, release Rackspace from its obligation to produce responsive documents and formally requests that Rackspace continue to preserve any and all of Defendants' data in Rackspace's possession that might be responsive to the Amended Subpoena. Please be advised that if Rackspace does not maintain its possession of and preserve the integrity

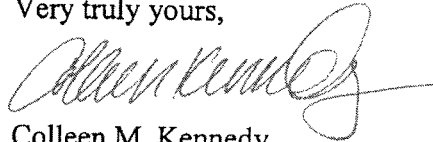
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of all potentially responsive data, eBay will view that as a violation of the Amended Subpoena and will seek appropriate judicial relief.

If eBay later concludes that it is able to release Rackspace from its obligations under the Amended Subpoena, I will so inform you in writing. If this letter does not accurately reflect our conversation, or if you have any questions or concerns, please let me know.

Very truly yours,



Colleen M. Kennedy
for O'MELVENY & MYERS LLP

cc: David R. Eberhart, Esq.
Patrick K. McClellan, Esq.
Leo J. Presiado, Esq.
Stewart H. Foreman, Esq.