
EXHIBIT E

From: Hemminger, Steve
Sent: Thursday, January 29, 2009 8:12 PM
To: Mancini, A. John P.
Cc: Stephen Hibbard; Kramer, David; Baum, Brandon; Schapiro, Andrew H.
Subject: RE: Court's Order

Dear John,

I am not sure what issue your first paragraph is trying to address. While you refer to monitoring of non-YouTube websites, you specifically include request 5 that is expressly limited to YouTube.com. Further, your comments appear to be inconsistent with the arguments made at the hearing and the motion papers regarding the scope of the requests. Despite the fact that we have already negotiated with you for a year we are always willing to work with you to try to narrow the scope of the requests.

I am not sure what you mean by "prepared to agree" "so long as there is a meeting of the minds." It is our understanding that the only monitoring of the internet that is relevant is the monitoring of the YouTube.com website and that the Order reflects that. Since knowing who BayTSP's customers are should have no bearing on whether P2P monitoring or any other internet monitoring is relevant, we see no reason for waiting to see the list.

While I can't say for certain, I thought the search term list was an exhibit to our opposition papers.

I look forward to our teleconference on Monday.

Regards,

Steve

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From: Mancini, A. John P. [<mailto:JMancini@mayerbrown.com>]
Sent: Thursday, January 29, 2009 2:42 PM
To: Hemminger, Steve
Cc: Stephen Hibbard; Kramer, David; Baum, Brandon; Schapiro, Andrew H.
Subject: RE: Court's Order

Steve:

I believe the parties' disagreement regarding production of documents not related to monitoring of YouTube is much narrower than you suggest. The Order itself is obviously not limited to "documents related to monitoring of YouTube.com," since it grants YouTube's motion to compel without limitation. However, YouTube's document requests call only for specific categories of documents related to BayTSP's monitoring of non-YouTube websites

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and network resources. Specifically, YouTube's requests 2, 5, 8, and 10 are carefully tailored to specific information regarding the monitoring of non-YouTube websites and network resources, and do not call for all documents relating to all of BayTSP's activities for its entire client base. We hope and assume that BayTSP has not misinformed any content providers that the Court's Order was anything different, and if it has, we request that you correct that misinformation.

We are, of course, willing to address any specific concerns BayTSP can identify regarding this production. Indeed, we have considered and are prepared to agree to your January 19 request to exclude documents related to the monitoring of P2P sites for the distribution of content owned by non-Plaintiffs (even though the Order does not carve those out), so long as there is a meeting of the minds as to the scope of the exclusion. We believe the parties will better able to address these issues after BayTSP produces the "roster of its other clients" which the Order calls for "no later than January 30, 2009." (Order at p. 10.) The Court-ordered discussion of the scope of production will be further facilitated by your providing, at the same time, the list of search terms used in BayTSP's initial collection.

Finally, I am available for a telephone conference with Kroll at 4 PM EST on Monday, February 2, 2009 to confer on the format of BayTSP's production.

Sincerely,

John

A. John P. Mancini

Partner

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From: Hemminger, Steve [<mailto:Steve.Hemminger@alston.com>]

Sent: Thursday, January 29, 2009 12:01 AM

To: Mancini, A. John P.

Cc: Stephen Hibbard; Kramer, David; Baum, Brandon

Subject: RE: Court's Order

Dear John,

Obviously we are in disagreement. Further your characterization of how the topic arose is incorrect. We did not ask you to relieve BayTSP of its obligations under the Court's Order. We explained that the Order was limited to documents related to monitoring of YouTube.com and asked for your confirmation. We did point out that the inclusion of documents other than those related to the monitoring of YouTube would certainly impact the scope of the document collection. You indicated that you did not agree with our interpretation of the order but would let us know if you still wanted to pursue those documents. I am disappointed that you are using this as leverage in an effort to gain concessions rather than admitting that the material is simply not relevant.

With regard to the teleconference with Kroll, we have arranged a teleconference with them for Monday, February 2 at 4 PM EST. Please let me know if that works for you.

Regards,

Steven D. Hemminger

Alston + Bird, LLP

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From: Mancini, A. John P. [<mailto:JMancini@mayerbrown.com>]
Sent: Tuesday, January 27, 2009 4:55 PM
To: Hemminger, Steve
Cc: Stephen Hibbard; Kramer, David; Baum, Brandon
Subject: RE: Court's Order

Steve,

We write in response to your email, dated January 26, 2008, and requesting a response by today, January 27, 2008. By your email, you suggest that Judge Trumbull's Order on YouTube's motion to compel excluded certain documents from YouTube's document requests served by Subpoena on BayTSP. We disagree. The Court's Order granted YouTube's motion to compel in all respects and did not contain any limiting language. *See, e.g.*, Order at 11. During our recent January 19 meet and confer discussion following the Court's ruling, you asked us to consider relieving BayTSP of its obligation to produce documents related to P2P web sites, such as BitTorrent, and we agreed to consider that request, only as a courtesy to expedite the document production by your client (as you indicated that such exclusion would eliminate a significant number of documents from your collection and review). We are amenable to BayTSP excluding from its production documents related to enforcement efforts on P2P networks on behalf of its clients, with the exception of enforcement efforts on behalf of Viacom entities or other plaintiffs in the putative class action, so long as BayTSP expedites the production of certain other documents, namely all contracts between BayTSP and Viacom, or BayTSP and any other plaintiff, including all schedules of work to be performed by BayTSP. Please confirm that BayTSP commits to producing such contracts by February 6th in exchange for this concession (as these contracts should be readily available).

Additionally, and importantly, you have twice committed (once in open court, and again on the January 19th call) to arrange a conference call with your electronic discovery vendor, namely, Kroll, to discuss the process of transferring documents from your Kroll database to our review database, as the Court had ordered. *See* Order at 11. To date, you have not made the arrangement for this communication. Please arrange for this call by Friday, as it is urgent that we have access to documents that are ready for our review.

We look forward to your confirmation of these points.

Sincerely,

John

A. John P. Mancini

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From: Hemminger, Steve [mailto:Steve.Hemminger@alston.com]
Sent: Monday, January 26, 2009 8:36 PM
To: Mancini, A. John P.
Cc: Stephen Hibbard
Subject: Court's Order

Dear John,

We have not heard back from you with regard to your position on the scope of Judge Trumbull's order. As we explained, based on the hearing and our reading of the order, Judge Trumbull limited the production, as it relates to BayTSP clients other than Viacom, to communications and documents concerning YouTube. (See (1) and (4) on Page 6). You indicated that you would get back to us and let us know whether you disagreed. Please let us know by the close of business tomorrow, January 27, 2009, if you have a different view of the order.

Regards,

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