

1 Andrew P. Bridges (SBN: 122761)  
 2 [ABridges@winston.com](mailto:ABridges@winston.com)  
 3 David S. Bloch (SBN: 184530)  
 4 [DBloch@winston.com](mailto:DBloch@winston.com)  
 5 Matthew A. Scherb (SBN: 237461)  
 6 [MScherb@winston.com](mailto:MScherb@winston.com)  
 7 WINSTON & STRAWN LLP  
 8 101 California Street, 39th Floor  
 9 San Francisco, CA 94111-5802  
 10 Telephone: (415) 591-1000  
 11 Facsimile: (415) 591-1400

12 Attorneys for Plaintiffs  
 13 INTERSERVE, INC., dba TECHCRUNCH  
 14 and CRUNCHPAD, INC.

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

Winston & Strawn LLP  
 101 California Street  
 San Francisco, CA 94111-5894

13 **INTERSERVE, INC., dba TECHCRUNCH, )**  
 14 **a Delaware corporation, and CRUNCHPAD, )**  
 15 **INC., a Delaware corporation, )**  
 16 Plaintiffs, )  
 17 vs. )  
 18 **FUSION GARAGE PTE. LTD., a Singapore )**  
 19 **company, )**  
 20 Defendant. )

**Case No. CV-09-5812 RS (PVT)**

**PLAINTIFFS' OPPOSITION TO  
 DEFENDANT'S MOTION FOR  
 EXPEDITED DESIGNATION OF  
 TRANSCRIPT OF TECHCRUNCH 30(B)(6)  
 DEPOSITION**

Date: June 1, 2010  
 Time: 10:00 A.M.  
 Place: Courtroom 5, 4th Floor, San Jose  
 (motion to shorten time pending)

1 The deposition of TechCrunch’s founder, CEO, Editor, and blogger, Michael Arrington, took  
2 place on April 20, 2010. Because the deposition touched on a number of confidential topics,  
3 including TechCrunch’s financials, TechCrunch requested that the transcript provisionally be  
4 designated “Highly Confidential” under the Stipulated Protective Order governing this case, with the  
5 understanding that non-confidential portions would be de-designated within 20 days. (Dkt. 35.)  
6 This is the efficient and common practice in litigation, and one that the Stipulated Protective Order  
7 specifically contemplates. TechCrunch therefore opposes Defendant’s motion, which would force it  
8 to provide final confidentiality designations for the deposition transcript of its Rule 30(b)(6)  
9 designee on an expedited basis, contrary to the schedule that the parties adopted in the Stipulated  
10 Protective Order governing this case.

11 There is no need for expediting final designations. Because the TechCrunch deposition took  
12 place on April 20, 2010, final designations are due Monday, May 10, 2010. This is three days before  
13 the preliminary injunction hearing and just six days after the May 4, 2010, *hearing date* that  
14 Defendant seeks for this motion. Defendant’s counsel will be able to share non-AEO portions of the  
15 transcript with its client and receive meaningful input and feedback for the hearing. Oddly,  
16 Defendant’s only other argument for why it needs rapid de-designation of the transcript is its desire  
17 to file its preliminary injunction opposition brief publicly. Perhaps the parties could have agreed, if  
18 Defendant had identified what portions of the deposition it wished to cite. But it has made no effort  
19 to do so, and it has already filed its brief, which was due today, *Monday, April 26, 2010*. So  
20 resolving this motion on Defendant’s preferred date of May 4 offers no help.

21 TechCrunch shares Defendant’s goal of keeping the Court record as public and open as  
22 possible. But rather than springing half-baked, resource-wasting motions with shoddy or nonexistent  
23 meet-and-confer efforts, TechCrunch instead will be requesting that Defendant de-designate a  
24 discrete, identified materials that it has produced under the Stipulated Protective Order for inclusion  
25 in its briefing. TechCrunch would gladly consider similar requests from Defendant.

26 It is particularly ironic that Defendant now asks the Court to set aside the procedures set forth  
27 in the Stipulated Protective Order. Defendant’s counsel, during discussions at the deposition about  
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1 confidentiality of the transcript, stated brusquely that counsel would “*comply with the protective*  
2 *order to the letter with respect to this deposition.*”

3 As Defendant now concedes, Paragraph 5.2(b) of the Stipulated Protective Order allows  
4 provisional designation of an entire transcript as “Confidential” or “Confidential – Attorneys’ Eyes  
5 Only” for a period of 20 days. This gives the deposed party a full and fair opportunity to carefully  
6 select appropriate portions for designation. TechCrunch’s Rule 30(b)(6) witness has already begun  
7 reviewing the 390 pages of testimony, but he is not yet finished.

8 Rather than discuss an alternative designation schedule with TechCrunch, Defendant simply  
9 wrote by email on the day after the deposition, April 21, 2010, and demanded de-designation of the  
10 entire transcript *that very day*. TechCrunch’s counsel responded that afternoon, informing  
11 Defendant of its intention to use Paragraph 5.2(b) and that Defendant’s written demand was not the  
12 proper “voice-to-voice” conference of counsel that Paragraph 6.2 of the Stipulated Protective Order  
13 requires. At no time did Defendant’s counsel verbally request immediate de-designation of the  
14 entire transcript or verbally discuss an alternate designation schedule.

15 Failure to comply with Paragraph 6.2, and thus also Local Civil Rule 37’s meet and confer  
16 requirement, is just one procedural defect associated with this motion.

17 Others include:

- 18 1. Defendant’s failure to file any declaration or stipulation supporting its  
19 administrative motion to shorten time. Local Civil Rule 6-3(a) requires filing one  
20 or the other. Defendant could file no stipulation, because it made no attempt to  
21 even discuss a stipulation with TechCrunch. Defendant chose to omit a  
22 declaration, in which it would have had to describe its non-existent efforts to  
23 obtain a stipulation or its compliance with Local Civil Rule 37-1(a).
- 24 2. Defendant’s failure to file any declaration or stipulation supporting its  
25 administrative motion to seal. Local Civil Rule 7-11(a), which explicitly applies  
26 to sealing motions, requires filing one or the other. Defendant could file no  
27 stipulation, because it made no attempt to even discuss a stipulation with  
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