

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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Indiaweekly.com, LLC,

Plaintiff,

ORDER

Case No. 07-cv-0194 (TLM)

-against-

Nehaflix.com, Inc. et al.,

Defendants

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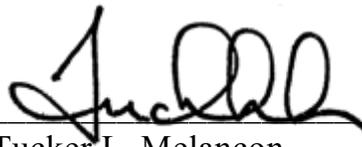
The Court attempted this date, unsuccessfully, to set a teleconference to clarify several of the rulings it made during the May 26, 2011 teleconference [Rec. Doc. 236]. It is true, as stated by the Court during the teleconference, that “[o]nly a person may be a declarant and make a statement; accordingly, ‘nothing ‘said’ by a machine ... is hear-say,” *United States v. Washington*, 498 F.3d 225, 231 (4th Cir. 2007) (citing treatise and cases from other circuits). The Court, however, neglected during the teleconference to bring to the attention to the attorneys for the parties the second prong of the *Washington* holding, i.e., that the proponent of the computer-generated evidence, short of a stipulation, must offer a witness who is able to testify under oath that the data sought to be introduced was in fact compiled automatically by a computer and that the computer’s functions were reliable. *Id.* 498 F.3d at 231. The Court’s omission was correctly noted by counterclaim defendants’ attorney in his Memorandum re: Defendants’

Exhibit 14 [Rec. Doc. 241] filed on June 1, 2011.

As a result of the foregoing, short of a stipulation between the attorneys for the parties, the following exhibits will not be allowed to be introduced at trial without the testimony of a live witness capable of complying with the second prong of *Washington*: plaintiff's exhibit 1 (File Transfer Protocol logs), plaintiff's exhibit 7 (Yahoo records), and defendants' exhibit 14 (Alexa.com graph).

The Court will attempt to dispose of the other matters that the attorneys for the parties filed on June 1, 2011—specifically, Rec. Docs. 239, 240, and 242—as soon as expeditiously as possible. NO FURTHER FILINGS ARE TO BE MADE IN THIS PROCEEDING BY THE ATTORNEYS FOR THE PARTIES.

SO ORDERED.



Tucker L. Melançon
United States District Judge

June 2, 2011
Bridgeport, CT