

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**GOOGLE INC., AOL LLC, YAHOO! INC.,  
IAC SEARCH & MEDIA, INC.,  
and LYCOS, INC.,**

**Plaintiffs,**

**v.**

**L. DANIEL EGGER, SOFTWARE RIGHTS  
ARCHIVE, LLC, and  
SITE TECHNOLOGIES, INC.,**

**Defendants.**

**MISC NO. 09-017 (JJF)**

**PENDING IN THE UNITED STATES  
DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF  
CALIFORNIA (SAN JOSE  
DIVISION)**

**Civil Action No. CV08-03172RMW**

**SOFTWARE RIGHTS ARCHIVE, LLC,**

**Plaintiff,**

**v.**

**GOOGLE INC., YAHOO! INC., IAC SEARCH  
& MEDIA, INC., AOL LLC, and LYCOS, INC.,**

**Defendants.**

**PENDING IN THE UNITED STATES  
DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TEXAS  
(MARSHALL DIVISION)**

**Civil Action No. 2:07-cv-511 (CE)**

**STIPULATION AND ORDER**

WHEREAS, Google Inc., Yahoo! Inc., IAC Search & Media, Inc., AOL LLC, and Lycos, Inc. (collectively, "Movants") are parties to two related actions pending in the United States District Courts for the Eastern District of Texas ("the Texas action")<sup>1</sup> and the Northern District of California ("the California action")<sup>2</sup>;

<sup>1</sup> *Software Rights Archive, LLC v. Google Inc., et al.*, Case No. 2:07-cv-511 (E.D. Tex.).

<sup>2</sup> *Google Inc., et al. v. Egger, et al.*, Case No. 5:08-03172-RMW (N.D. Cal.).

WHEREAS, on May 21, 2009, this Court issued a Memorandum Opinion and Order granting in its entirety Movants' Motion to Compel the Production of Documents by Third Parties SRA, LLC ("SRA") and Altitude Capital Partners, L.P. ("Altitude Capital") Pursuant to Rule 45 Subpoenas (Dkt. Nos. 28 & 29) (the "Order")<sup>3</sup>;

WHEREAS, the Order requires SRA and Altitude Capital to produce within thirty (30) days thereof (1) all documents within their possession, custody or control that are responsive to Movants' Rule 45 subpoenas; and (2) a privilege log corresponding to any responsive documents that SRA or Altitude Capital contend are privileged;

WHEREAS, the Movants, SRA, Altitude Capital, and Software Rights Archive, LLC, a defendant in the California action (collectively, "the Parties") seek to clarify and coordinate potential issues related to the Order without burdening the Court, the court in the California action, or the court in the Texas action. To that end, the Parties have conferred in good faith and reached the following agreement regarding SRA and Altitude Capital's compliance with the Order;

THEREFORE, the Parties hereby stipulate and agree as follows:

1. In the California action, the Parties will continue the hearing of the following two motions until July 24, 2009, or a date thereafter which is acceptable to the parties and the California Court: (i) Defendants' Motion to Dismiss, Transfer or Stay Under the First-to-File Rule, Under Rule 12(b)(2) for Lack of Personal Jurisdiction, and Under Rule 12(b)(1) for Lack of Subject Matter Jurisdiction (Dkt. No. 42) ("Defendants' Motion to Dismiss"), and (ii) Plaintiffs' Motion to Strike Site Technologies, Inc.'s Motion to Dismiss, Transfer or Stay (Dkt. No. 64) ("Plaintiffs' Motion to Strike").

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<sup>3</sup> The May 21, 2009 Memorandum Opinion and Order were entered on the Court's docket on May 22, 2009.

2. On or before June 12, 2009, SRA and Altitude Capital will produce documents sufficient to show any contacts with California for purposes of personal jurisdiction, including, but not limited to, information regarding (i) their California contacts (including but not limited to California investors) and such contacts of any related entities; (ii) the identity of all investors in SRA and Software Rights Archive, LLC; and (iii) those investors' contacts with the state of California. Any such non-public information produced by SRA and Altitude Capital shall be designated and treated as "CONFIDENTIAL ATTORNEYS' EYES ONLY" pursuant to the terms set forth in the Protective Order entered in the Texas action (Dkt. No. 99). Moreover, with regard to this paragraph, "investors" include the ultimate persons and/or entities that are beneficiaries of any such investment, to the extent that their identities are known to SRA or Altitude Capital. For example, if Altitude Capital has information that individuals X and Y are members of ABC, LLC which is an investor in SRA, then Altitude Capital would identify X, Y, and ABC, LLC as investors in SRA, LLC.

3. On or before June 30, 2009, SRA and Altitude Capital will produce all remaining non-privileged documents in their possession, custody or control that are responsive to Movants' Rule 45 subpoenas, as required by and in accordance with the Order.


4. On or before July 6, 2009, SRA and Altitude Capital will produce a privilege log corresponding to all responsive documents created before the filing of the Texas action that were withheld from the June 12, 2009 and/or the June 30, 2009 production on privilege or attorney work product grounds.

5. Movants will provide SRA and Altitude Capital with written notice if Movants intend to seek discovery from non-party investors in SRA or Altitude Capital whose identities are disclosed in SRA or Altitude Capital's June 12, 2009 document production. After providing

SRA and Altitude Capital with such written notice, Movants will wait ten (10) business days before serving any discovery on such non-party investors. During the ten (10) business day waiting period, the Parties will work in good faith to attempt to obtain the information sought by Movants from Altitude Capital or SRA. If the Parties cannot reach an agreement that avoids or resolves the need for the requested discovery within the ten (10) business days, Movants are free to seek such discovery from the non-party investors. Similarly, Altitude Capital and SRA reserve the right to seek to quash any such discovery. To the extent that any party files a motion to compel, motion to quash, or other motion related to such discovery, all such motions and related briefing shall be filed by the parties under seal. Notwithstanding the above, the Parties expressly reserve all other rights to seek discovery from or oppose discovery from any party or non-party in accordance with the Federal Rules of Civil Procedure and applicable local court rules, and nothing in this Stipulation shall be construed as a waiver of such rights. Software Rights Archive, LLC agrees not to oppose any request by Movants to delay the filing of any brief or to file a supplemental brief in the underlying litigations regarding the subject matter sought from such non-party investors in view of any delay imposed by this paragraph. For purposes of clarity, this paragraph 5 does not relieve Altitude Capital or SRA from complying with the Order.

6. SRA and Altitude Capital agree they will not seek reconsideration of or other relief from the Order.

PURSUANT TO STIPULATION, IT IS SO ORDERED THIS 9 DAY OF June, 2009.

  
The Honorable Joseph J. Farnan, Jr.  
UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

Dated: June 5, 2009

Respectfully submitted,

By: /s/ Gregory R. Booker

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