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January 19, 2011

The Honorable Leonard P. Stark  
United States District Court  
844 King Street  
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: Xerox Corp. v. Google Inc. et al.,  
C.A. No. 10-136-LPS -MPT

Dear Judge Stark:

Pursuant to the Court's Order, dated January 7, 2011, enclosed is a proposed scheduling order in the above matter. Where the parties have not come to an agreement on specific provisions, we have set forth the competing proposals in bracketed, bold type. For the Court's convenience, the parties are also submitting a side-by-side comparison of each side's proposed dates.

Plaintiff Xerox proposes a more rapid schedule than the one previously in place. To ensure that this action will resolve all issues between the parties more comprehensively, quickly and efficiently than reexamination, Xerox will withdraw one of the two patents at issue. As a result, there will be only one patent and seven accused products (instead of twelve) in this action. Because the issues in this case will be greatly simplified, Xerox believes this action should be resolved more quickly than was the case under the prior schedule. Xerox's proposed schedule is not substantially different from that of the prior scheduling order in the near term, yet it would allow the parties and Court to proceed to trial at least seven months sooner than under Defendants' proposal, which was intended for a case of much broader scope.

The position of Defendants Google, YouTube, Yahoo! and Right Media is as follows: "It is the position of Defendants Google, YouTube, Yahoo! and Right Media that, apart from the dates vacated by the Court's recent Order (D.I. 82), the agreed dates in Magistrate Judge Thyng's June 17, 2010 Order (D.I. 60) should remain in place. Defendants also seek to replace the vacated dates with dates that follow the general timeline set forth in Judge Thyng's Order, subject to the Court's availability. By contrast, Xerox proposes to overhaul the entire schedule, including the existing dates that have not been vacated. The parties have been proceeding under the current schedule, which was the subject of substantial negotiation among the parties, for more than six months. Several of the dates Xerox proposes are fast approaching. For example,

Xerox's proposal moves up almost the entire claim construction schedule, including the dates in February and March that the Court did not vacate. Defendants have planned their work in this case, and in other cases, based on the schedule that has been in place, and would be prejudiced by adoption of Xerox's newly proposed schedule. That Xerox has indicated a willingness nearly a year into this litigation to drop a patent that never should have been asserted to begin with does not justify uprooting settled and negotiated expectations regarding the schedule in this case."

Respectfully,

*/s/ John G. Day*

John G. Day

JGD: nml

Enclosure

cc: Counsel of Record (via electronic mail; w/enclosures)