

# Exhibit 7

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**MARK CUBAN,**

**Plaintiff,**

**v.**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Defendant.**

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)  
) **Case: 1:09-cv-00996**  
) **Assigned: Walton, Reggie B.**  
) **Description: FOIA/Privacy Act**  
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)

**DECLARATION OF NOELLE L. FRANGIPANE**

I, Noelle L. Frangipane, declare as follows:

1. I am the Deputy Inspector General in the Office of Inspector General (“OIG”) of the Securities and Exchange Commission (“SEC”). I assist the Inspector General in promoting the integrity, economy, efficiency and effectiveness of the SEC. In this capacity, I am responsible for all phases of management in support of OIG operations, including administrative, financial, and human capital management, policy development, information systems management, and management analysis. I am also responsible for the oversight of the OIG Office of Investigations, which responds to and investigates allegations of violations of statutes, rules and regulations, and other misconduct by SEC staff and contractors, and oversight of the OIG Office of Audits, which conducts, coordinates and supervises independent audits and evaluations of the SEC’s programs and operations. I have served in this capacity at all times relevant to this litigation.

2. The OIG is an independent office within the SEC, as required by the Inspector General Act of 1978, as amended. *See* 5 U.S.C. app. 3 § 8G(a)(2)(2000). Among other things, the OIG is responsible for conducting internal investigations to prevent and detect fraud, waste and abuse in the SEC's programs and operations. I make this declaration based on personal knowledge of the matters described below.

3. As the Deputy Inspector General, I have performed a review of the investigatory files for records responsive to the two FOIA requests referred to in paragraphs 5, 6, and 7 below. These records are maintained within the OIG, both in hard copy and electronically. I know of no documents in the possession or control of the OIG other than those described below that would be responsive to the FOIA request. I do not know of any files, other than the ones searched, that are reasonably likely to contain responsive documents.

4. In January, 2009, the Freedom of Information Act ("FOIA") Office of the SEC provided the OIG with a copy of the two FOIA requests, both dated December 19, 2008, from David Ross, counsel to Mark Cuban ("Cuban"), for records including documents relating to Cuban and for certain ongoing investigations reported by the OIG in its 2008 Report to Congress. Copies of these two FOIA requests are attached as Exhibit A (with a heading of FOIA/Privacy Act) and Exhibit B (with a heading of FOIA Request).

5. With respect to Request Nos. 2, 6 and 7 in Exhibit A (FOIA/Privacy Act) and Request No. 8 in Exhibit B (FOIA Request), the only responsive records that the OIG has would be contained in files for one ongoing investigation.

6. Request No. 10 in Exhibit B specifically seeks documents from four OIG

investigations. Of those, only one, "Allegations of Conflict of Interest and Investigative Misconduct" remains open and ongoing. The other three, "Investigation of Alleged Unethical Instructions to Close Cases and Failure to Pursue Investigations," "Allegation of Retaliatory Investigation," and "Allegation of Leak of Confidential Document to the Press" are closed. The reports and exhibits associated with the closed investigations have been turned over to the Commission's Office of the General Counsel ("OGC") for coordination of the release of the documents.

7. Request No. 10 of Exhibit B also seeks documents from the "Other Pending Inquiries" referenced in the OIG's 2008 Semiannual Report to Congress. As of the date of this declaration, all but one of those pending inquiries are closed, and the responsive documents from the closed inquiries have been turned over to OGC for coordination of the release of those documents. The documents from the one open inquiry are now part of the ongoing investigation referenced in paragraph 5 above.

8. The responsive records from the open investigations described above in paragraphs 5 and 6 (hereinafter the "Open Investigations") were compiled for law enforcement purposes, including determining whether there is evidence that any laws or regulations were violated. During OIG investigations, the OIG staff generally gathers evidence by conducting interviews, taking testimony on the record, corresponding with witnesses, searching electronic mail and collecting and reviewing documents. All of those steps have been taken during the Open Investigations.

9. Pursuant to my review of the files of the Open Investigations, the documents withheld from production by the OIG under FOIA exemption 7(A) can be categorized as follows:

A. **Evidentiary Materials Gathered by the OIG.** OIG staff has gathered numerous documents during the Open Investigations. Some of these documents were produced by SEC Offices or Divisions in response to OIG requests. Others, including electronic mail, have been obtained from agency electronic and hard-copy files. From these documents, a person could learn what information OIG investigative staff requested or obtained from a particular witness or witnesses, the identities of witnesses, and what information each witness might possess. Release of these records would reveal the nature, scope, direction, focus, or strategy of the Open Investigations. Revelation of this type of information would provide other potential witnesses with information that could interfere with the OIG's ongoing investigatory efforts. For example, potential subjects of these investigations and/or witnesses could obtain the documents and then shape their testimony, or the testimony of others, to fit those facts.

B. **Internal SEC OIG Communications.** This category includes communications (including electronic mail) between OIG staff and SEC staff regarding document or other information requests. From these documents, a person could learn which persons the OIG staff interviewed or intends to interview, what documents the OIG investigative staff requested from various sources, what information those sources might possess, and what information was deemed relevant to the investigations and/or pending inquiries. Release of these records could reveal the scope, nature, direction, focus, or strategy of the Open Investigations. Revelation

of this type of information would provide other potential witnesses with information that could interfere with the OIG's ongoing investigatory efforts. For example, potential subjects of the investigations and/or witnesses could obtain the documents and then shape their testimony, or the testimony of others, to fit those facts.

- C. **Internal Memoranda, Drafts, Outlines, and Work Product Prepared by OIG Staff.** This category includes OIG staff work product, including memoranda, attorney notes, investigative plans, legal research, interview outlines, internal communications, report sections, and drafts of all of the foregoing. Release of these records could reveal the scope, nature, direction, focus, or strategy of the Open Investigations. Revelation of this type of information would provide other potential witnesses with information that could interfere with the OIG's ongoing investigatory efforts. For example, potential subjects of the investigations and/or witnesses could obtain the documents and then shape their testimony, or the testimony of others, to fit those facts.
- D. **OIG Communications with Witnesses and Potential Witnesses.** This category includes communications (including electronic mail) between OIG staff and sources outside the Commission regarding interviews, testimony, document requests and other matters directly pertinent to the Open Investigations. From these documents, a person could learn what documents the OIG investigative staff requested from various sources, and what information these sources might possess. Release of these records

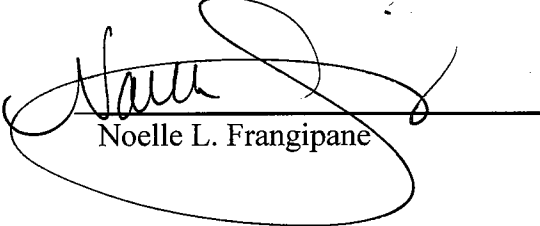
could reveal the scope, nature, direction, focus, or strategy of the Open Investigations. Revelation of this type of information would provide other potential witnesses with information that could interfere with the OIG's ongoing investigatory efforts. For example, potential subjects of the investigations and/or witnesses could obtain the documents and then shape their testimony, or the testimony of others, to fit those facts.

10. When release of the documents from the Open Investigations is no longer likely to interfere with the investigations, the documents still might be protected from disclosure by other FOIA exemptions because many documents reflect predecisional deliberations of OIG staff and many contain information for which individuals would likely have a privacy interest.

11. I have reviewed Document Nos. 9 and 16-18 on the *Vaughn* Index prepared for this matter. Those documents are all contained in the files of an OIG Open Investigation. All of the documents contain information about potential employee misconduct. Also, disclosure of those documents could reasonably be expected to interfere with an open OIG investigation for the reasons stated in Paragraph 9, Category A, above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 15, 2010 in Washington, D.C.

  
Noelle L. Frangipane

# DEWEY & LEBOEUF

Dewey & LeBoeuf LLP  
1101 New York Avenue N.W.  
Washington, D.C. 20005-4213

tel (202) 346-8719  
fax (202) 956-3239  
dross@dl.com

December 19, 2008

## VIA E-MAIL & FEDERAL EXPRESS

U.S. Securities & Exchange Commission  
Freedom of Information Act Office  
100 F. Street NE, Mail Stop 5100  
Washington, DC 20549  
foiap@sec.gov

### Re: **FOIA / Privacy Act Request**

This firm represents Mr. Mark Cuban, and this is a request under the Freedom of Information Act ("FOIA") and the Privacy Act of 1974 ("Privacy Act"). Mr. Cuban's written authorization to release the requested records to this firm is enclosed.

On November 17, 2008, the SEC filed a civil action against Mr. Cuban in the United States District Court for the Northern District of Texas ("SEC v. Cuban"). In view of the pendency of SEC v. Cuban and the adverse impact of the SEC's insider trading allegations on Mr. Cuban's ongoing business interests and opportunities, please provide a timely response. The requested records are needed as part of Mr. Cuban's defense of SEC v. Cuban.

If this request is denied in whole or part, please justify all denials, deletions and redactions by reference to specific exemptions of the FOIA and the Privacy Act. Please release all segregable portions of otherwise exempt records.

Where possible, please produce the requested records as digital TIFF images, if the records are readily reproducible in that format. As used in this request, "records" mean any form of information maintained by the SEC in any format, including but not limited to emails and other electronic documents and information. "Records of any investigation" include, but are not limited to, all complaints, resolutions, dispositions, settlements, dismissals, declinations, witness statements, summaries of statements, interview or deposition transcripts, notes, or reports, recommendations, and, if involving an investigation of SEC personnel, all records of any disciplinary action considered or taken by the SEC. "Investigation" includes both formal and informal investigations. Public SEC filings are excluded from this request.





Please produce the records requested below:

1. Records of any investigation involving Copernic Inc. (including when it was known as Mamma.com Inc., Intasys Corporation, Smartel Communications Corporation, Celltech Media Inc., Health Care Products Inc. and Quartet Management Ltd.) (collectively "Copernic") or its officers, directors,<sup>1</sup> major shareholders or employees, including but not limited to investigations into any financing or acquisition transactions involving Copernic.
2. Records which mention or relate to Mr. Cuban, including but not limited to all records relating to any SEC investigation of Mr. Cuban or SEC v. Cuban.
3. Records of any investigation of Broadcast.com Inc., Immediatek Inc., the NBA's Dallas Mavericks, HDNet, HDNet Films, LLC, Landmark Theatres, Magnolia Pictures, Sharesleuth.com, or 2929 Entertainment.
4. Records of any "Application for Award of a Bounty" filed in conjunction with SEC v. Cuban or any trading in Copernic, pursuant to the SEC's insider trading bounty program (as detailed at <http://www.sec.gov/divisions/enforce/insider.htm>), including but not limited to all information the applicant seeking the bounty provides, a detailed statement of the information the applicant has about the suspected insider trading and, where available, the applicant's identity.
5. Records relating to Mr. Cuban's Wells Submission dated September 21, 2007, including but not limited to the Commissioners' receipt or lack of receipt of that submission.
6. Records of any internal investigation of SEC Trial Counsel Jeffrey B. Norris relating to his interactions with Mr. Cuban, or his complaints about Mr. Cuban to others, from March 2007 to the present.
7. Records of any internal investigation relating to the conduct of SEC personnel involved with any investigation of Mr. Cuban or Copernic, including but not limited to allegations of (i) instructing, advising, encouraging, or otherwise recommending that a witness or his agent not communicate with or otherwise be

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<sup>1</sup> Such Copernic officers or directors include, but are not limited to: V. Simon Aznavour, Daniel Bertrand, Eric Bouchard, Martin Bouchard, Claire Castonguay, Michele Chaboudy, Dennis Dion, W. Brian Edwards, Guy Fauré, Marc Ferland, Claude E. Forget, Patrick Gagné, Benoit Godbout, David Goldman, Luke Hardy, Patrick Hopf, Irwin Kramer, Joel Lamantia, R. Michael Pavane, Robert Raich, Stephen Roth, Steve Saviuk, David Schwartz, Michael Timmouth, Herman Tumurcuoglu, or Lawrence Yelin.

available to a particular individual, entity or counsel involved in an investigation by the SEC (i.e. a "tamp down" communication); (ii) suppression or destruction of any potential evidence; (iii) promises or inducements to potential witnesses to encourage cooperation with the SEC's investigation; or (iv) permitting personal or political views of any SEC personnel to influence the investigation or the decision to recommend that any type of enforcement action be brought.

I understand that I am responsible for the costs of searching, reviewing, copying and shipping the requested records, and I agree to pay reasonable fees for the processing of this request in an amount not to exceed \$10,000. Please notify me before any expenses are incurred in excess of that amount. You may send an invoice with the requested records, or you may bill me in advance.

If there are any questions about this request, please contact me using the information above. I look forward to receiving your response to this request within 20 business days, as required by the FOIA.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Ross", written over a horizontal line.

David M. Ross

Enclosure

# DEWEY & LEBOEUF

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1101 New York Avenue N.W.  
Washington, D.C. 20005-4213

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fax (202) 956-3239  
dross@dl.com

December 19, 2008

## VIA E-MAIL & FEDERAL EXPRESS

U.S. Securities & Exchange Commission  
Freedom of Information Act Office  
100 F. Street NE, Mail Stop 5100  
Washington, DC 20549  
foiap@sec.gov

### Re: **FOIA Request**

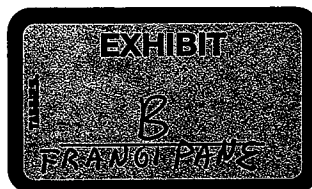
This firm represents Mr. Mark Cuban, and this is a request under the Freedom of Information Act ("FOIA"). If this request is denied in whole or part, please justify all denials, deletions and redactions by reference to specific exemptions of the FOIA. Please release all segregable portions of otherwise exempt records.

On November 17, 2008, the SEC filed a civil action against Mr. Cuban in the United States District Court for the Northern District of Texas ("SEC v. Cuban"). In view of the pendency of SEC v. Cuban and the adverse impact of the SEC's insider trading allegations on Mr. Cuban's ongoing business interests and opportunities, please provide a timely response. The requested records are needed as part of Mr. Cuban's defense of SEC v. Cuban.

Where possible, please produce the requested records as digital TIFF images, if the records are readily reproducible in that format. As used in this request, "records" mean any form of information maintained by the SEC in any format, including but not limited to emails and other electronic documents and information. "Records of any investigation" include, but are not limited to, all complaints, resolutions, dispositions, settlements, dismissals, declinations, witness statements, summaries of statements, interview or deposition transcripts, notes, or reports, recommendations, and, if involving an investigation of SEC personnel, all records of any disciplinary action considered or taken by the SEC. "Investigation" includes both formal and informal investigations. Public SEC filings are excluded from this request.

Please produce the records requested below:

1. Records of any investigation involving Coveo Solutions Inc. ("Coveo").



2. Records of any investigation involving any former or current Coveo officers or directors, including but not limited to: Michael Besner, Howard Gwin, Fred Harding, Benoit Hogue, Dominic Lajoie, Jean Lavigueur, Benoit Leclerc, Barry Lieberman, Serge Michaud, Eric Negler, Patrick O'Leary, Marc Sanfaçon, Laurent Simoneau, Richard Tessier, Louis Tetu, James Waters, or J. Alberto Yépez.
3. Records of any investigation involving Intermediary Lines Overseas Management.
4. Records of any investigation involving Jormian Capital Inc.
5. Records of any investigation involving the law firm of Spiegel Sohmer (the firm is located in Montreal, Quebec).
6. Records which mention or relate to Irving, Ian or Michael Kott (Ian and Michael are Irving Kott's sons), including but not limited to all records relating to any involvement by any of the Kotts in Copernic Inc. (including when it was known as Mamma.com Inc., Intasys Corporation, Smartel Communications Corporation, Celltech Media Inc., Health Care Products Inc. and Quartet Management Ltd.) (collectively "Copernic") or trading in the securities of Copernic.
7. Records of any trading history by SEC personnel in Copernic securities, including but not limited to any internal investigation of such trades.
8. Records of any internal investigation of SEC Trial Counsel Jeffrey B. Norris, including but not limited to all records encompassed by the "Investigations and Inquiries Conducted" and "Pending Investigations and Inquiries" described on pages 38 through 63 of the SEC Office of Inspector General's Semiannual Report to Congress for the period April 1, 2008 to September 30, 2008 (the "Report").
9. Records of any internal investigation of SEC personnel Adam S. Aderton, Daniel T. Chaudoin, Scott W. Friestad, Robert B. Kaplan, Kevin P. O'Rourke, Julie M. Riewe, or Alton O. Turner, including but not limited to all records encompassed by the "Investigations and Inquiries Conducted" and "Pending Investigations and Inquiries" described on pages 38 through 63 of the Report.
10. Records of any internal investigation into the "Investigation of Alleged Unethical Instructions to Close Cases and Failure to Pursue Investigations," "Allegations of Conflict of Interest and Investigative Misconduct," "Allegation of Retaliatory Investigation," "Allegation of Leak of Confidential Document to the Press" and

"Other Pending Inquiries," including but not limited to "allegations that a Commission attorney continued to send inappropriate e-mails after being disciplined for that type of behavior and failed to comply with notices requiring the preservation of documents for litigation" as described on pages 56, 62 and 63 of the Report.

11. Records of any internal investigation into or involving allegations that SEC personnel initiated the Wells process (i.e. sent a Wells notice) prior to the substantial completion of the SEC staff's investigation of the recipient of the Wells notice, including but not limited to any investigation that such conduct violated the applicable SEC policy set forth on page 23 of the Enforcement Manual of the SEC's Division of Enforcement or any investigation involving Mr. Cuban or Copernic.
12. Records of any internal investigation into or involving allegations that SEC personnel instructed, advised, encouraged, or otherwise recommended that a witness or his agent not communicate with or otherwise be available to a particular individual, entity or counsel involved in an investigation by the SEC (i.e. a "tamp down" communication).
13. Records of any internal investigation into or involving allegations that SEC personnel failed to forward a Wells Submission to the Commission, including but not limited to any investigation that such conduct violated 17 C.F.R. § 202.5.

I understand that I am responsible for the costs of searching, reviewing, copying and shipping the requested records, and I agree to pay reasonable fees for the processing of this request in an amount not to exceed \$10,000. Please notify me before any expenses are incurred in excess of that amount. You may send an invoice with the requested records, or you may bill me in advance.

If there are any questions about this request, please contact me using the information above. I look forward to receiving your response to this request within 20 business days, as required by the FOIA.

Sincerely,



David M. Ross