

# EXHIBIT E

1 **TRANSCRIBED FROM DIGITAL RECORDING**

2 IN THE UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF ILLINOIS  
4 EASTERN DIVISION

4 JEFF DUNSTAN, individually and on )  
behalf of a class of similarly )  
5 situated individuals; and MIKE )  
HARRIS, )  
6 )  
Plaintiffs, )  
7 )  
vs. ) No. 11 C 5807  
8 )  
COMSCORE, INC., a Delaware )  
9 corporation, ) Chicago, Illinois  
10 Defendant. ) April 17, 2012  
11 ) 11:11 A.M.

11 TRANSCRIPT OF PROCEEDINGS - Status  
12 BEFORE THE HONORABLE YOUNG B. KIM, Magistrate Judge

13 APPEARANCES:

13 For the Plaintiffs: EDELSON McGUIRE, LLC  
14 350 North LaSalle Street, Suite 1300  
Chicago, Illinois 60654  
15 BY: MR. CHANDLER RANDOLPH GIVENS

16 For the Defendant: QUINN EMANUEL URQUHART  
& SULLIVAN, LLP  
17 500 West Madison Street, Suite 2450  
Chicago, Illinois 60606  
18 BY: MR. ANDREW H. SCHAPIRO

19 STACK & O'CONNOR CHARTERED  
20 140 South Dearborn Street, Suite 411  
Chicago, Illinois 60603  
21 BY: MR. PAUL F. STACK

22 PAMELA S. WARREN, CSR, RPR  
Official Court Reporter  
23 219 South Dearborn Street, Room 1928  
Chicago, Illinois 60604  
24 (312) 294-8907

25 **NOTE: Please notify of correct speaker identification.  
FAILURE TO SPEAK DIRECTLY INTO THE MICROPHONE MAKES PORTIONS  
UNINTELLIGIBLE.**

1 (Proceedings held in open court:)

2 THE CLERK: 11 C 5807, Harris, et al., versus  
3 comScore, Inc.

4 MR. SCHAPIRO: Andrew Schapiro for comScore,  
5 defendants.

6 MR. GIVENS: Good morning, your Honor. Chandler  
7 Givens on behalf of plaintiffs.

8 MR. STACK: Good morning, your Honor. Paul Stack for  
9 the defendant.

10 THE COURT: I'm sorry, say that one more time. Mr.?

11 MR. GIVENS: Chandler Givens.

12 THE COURT: Givens.

13 Okay.

14 MR. SCHAPIRO: Your Honor, since we were last here,  
15 comScore has completed its document production. We have turned  
16 over to the plaintiffs more than 8700 documents. If you  
17 printed it all out, it would run to more than a million pages  
18 because some of them are lengthy.

19 In consultation with the plaintiffs, we produced a  
20 number of them in what's called native form, electronic form  
21 for them.

22 You'll also recall that when we were last here the  
23 plaintiffs had raised an issue about what's called the mac  
24 source code.

25 THE COURT: Right.

1           MR. SCHAPIRO: And they said that they -- their expert  
2 said that there had been eight builds. We produced the eight  
3 builds of the mac source code to the plaintiffs.

4           THE COURT: Okay.

5           MR. SCHAPIRO: We had a meet and confer about our  
6 interrogatory answers because the plaintiffs had some  
7 complaints about our interrogatory answers, so we provided them  
8 with a set of supplemental interrogatory answers that we  
9 believe are sufficient and satisfactory. Actually it went a  
10 little beyond what we thought was necessary, but that's what we  
11 provided them with.

12           We have received a production just last week from the  
13 plaintiffs in response to our discovery requests, and we have  
14 just started going through it. But on first glance I think it  
15 is possible that we will see be before your Honor on a motion  
16 of some sort. But first we want to meet and confer with them.

17           They have given us a total of 558 pages. Two hundred  
18 of those pages are our own quarterly report. It also includes  
19 rule -- the text of Rule 23, the legislative history.

20           There doesn't seem to be a whole lot in there. And  
21 there is some requests that we made that we think weren't  
22 responded to. But we may be able to work it out in a meet and  
23 confer.

24           One issue that I wanted to flag for the Court, that is  
25 probably one we're not going to be able to work in a meet and

1 confer, but hopes spring eternal, is that we have asked to  
2 inspect the computers of the two named plaintiffs in this  
3 case. And we were told that one of the named plaintiffs threw  
4 his computer away and doesn't have it anymore. And the other  
5 one they are -- they are refusing to let us inspect.

6           Maybe we can work that out. If -- if not, we think it  
7 is a problem, and we're likely to be before you. But we would  
8 want to marshal our authorities before we do that.

9           THE COURT: As I recall the allegation is that either  
10 Dunstan or Mr. Harris had to buy a program to have the -- you  
11 know, whatever that was downloaded, removed. So I'm not  
12 sure -- I guess I'm limited in that regard exactly what the  
13 forensic analyst is able to in fact conclude from an inspection  
14 as to whether this particular program that was downloaded did  
15 in fact interfere with other programs.

16           MR. SCHAPIRO: At the threshold, your Honor, we don't  
17 even know that these -- that these individuals ever downloaded  
18 our software. We have no record that they did.

19           And so if you imagine a class action in which someone  
20 came and said, I was an AT&T customer and they overbilled me,  
21 you at least need to show they used AT&T.

22           THE COURT: But I think that if -- if at some point  
23 that this has to be briefed, at a minimum I think that I would  
24 like to see from a forensic analyst what he or she is able to  
25 in fact discover from reviewing a computer.

1 MR. SCHAPIRO: That's a good point.

2 THE COURT: You know, can he or she confirm that this  
3 particular computer did not in fact download the program at  
4 issue.

5 If the conclusion is that he can't verify, he can't  
6 confirm, that has no weight at all.

7 MR. SCHAPIRO: That makes perfect sense, your Honor.  
8 So we will, if we do end up having to move on it, we will offer  
9 a proffer saying -- of saying what we think an expert would be  
10 able to determine and why it would be relevant.

11 There is one issue -- there may be others that  
12 Mr. Givens raises. There is one outstanding issue, and I don't  
13 know whether the plaintiffs are likely to make a motion on this  
14 or not. It came up at a meet and confer that we had.

15 The one discovery request of theirs that -- as to  
16 which we have not provided an interrogatory response or  
17 documents because we think it does not fall under the terms of  
18 your Honor's order bifurcating between class --

19 THE COURT: Yes.

20 MR. SCHAPIRO: -- and merits discovery has to do with  
21 their request to learn the number of complaints that comScore  
22 has received from the public or from panelists and in a  
23 document request the text of such complaints.

24 THE COURT: I have to go back to my order. I don't  
25 remember that specifically.

1           MR. SCHAPIRO: That was one on which earlier -- prior  
2 counsel Cooley Godward had agreed in preliminary negotiations  
3 with the plaintiffs is that --

4           THE COURT: So I didn't deal with it.

5           MR. SCHAPIRO: -- we'll produce it, so your Honor  
6 didn't address it.

7           THE COURT: Okay.

8           MR. SCHAPIRO: We have looked at it, especially in the  
9 context of the order, but also there is some burden issues that  
10 frankly we weren't aware of earlier until we dug a little more  
11 deeply into how the company works. And one of the burden  
12 issues there is that there are many communications back and  
13 forth between panelists and the companies. People saying, you  
14 know, I'd like it if you offered a different kind of -- a  
15 premium for answering -- filling out surveys. Or I didn't get  
16 get my points on time. Or where should I look for blah, blah,  
17 blah?

18           So even determining what qualifies as a complaint is  
19 going to require someone, probably a lawyer, to look through a  
20 very large number of communications. Because they are not  
21 filed by type of communication --

22           THE COURT: Okay.

23           MR. SCHAPIRO: -- they are just communications.

24           But we don't -- we -- it may come to it. It may turn  
25 out that that's relevant at the merit stage. But our belief

1 now is that, in any event, it is not relevant for class cert,  
2 and so we don't think we should (unintelligible) with that  
3 burden.

4 THE COURT: So what you are saying is that you agreed  
5 to produce this stuff thinking that it wasn't going to be that  
6 big of a deal, and it turns out that it is a big deal. So now  
7 you would like to raise the objection that it really isn't  
8 relevant to the class discovery.

9 MR. SCHAPIRO: Precisely.

10 THE COURT: Okay.

11 And Mr. Givens --

12 MR. GIVENS: Your Honor, if I may.

13 THE COURT: -- anything you wish to add?

14 MR. GIVENS: I can respond to a few of Mr. Schapiro's  
15 points here.

16 THE COURT: Okay.

17 MR. GIVENS: First off, there are some deficiencies in  
18 defendant's production that we wanted to raise with the Court  
19 right away. One is that they did produce a million documents  
20 this past Friday, or over a million if you printed them out,  
21 although we haven't printed them yet, but we will.

22 However, they haven't identified which Bates numbers  
23 are responsive to which requests. So we're left with what  
24 effectively is a million pages, and we're just sifting through  
25 without knowing what responds to which requests.



1           The second point is Interrogatory Number 8, which we  
2 met and conferred about last week, we have another meet and  
3 confer scheduled for this week, but if we're not able to -- to  
4 resolve that issue between the parties, we wanted to say that  
5 the reason that we propounded that interrogatory was because we  
6 were looking to see whether or not panelists have been  
7 complaining about the software being on their computers and  
8 them not knowing about it.

9           So comScore is purporting that they are obtaining  
10 meaningful consent from consumers. But we also know for a fact  
11 that they don't have a full record of all the different types  
12 of terms of service displayed for different users. So it would  
13 be helpful for us, to guide us in the right direction, to see  
14 if a user is saying, hey, look, I never agreed to this, what is  
15 the software on my computer, comScore, to then be able to go  
16 examine and to test the veracity of whether or not consent was  
17 obtained through those different pieces of software, if that  
18 makes sense to your Honor.

19           THE COURT: Well, you know better -- you know about  
20 this case better than I do. I don't really understand that  
21 point.

22           MR. GIVENS: It may be easiest to lay out in the  
23 papers, your Honor.

24           THE COURT: All right. Maybe, but -- I don't want to  
25 lose -- all right. Let's do this. You have a meet and confer

1 scheduled for this week. And that meet and confer meeting is  
2 designed to discuss all outstanding issues?

3 MR. GIVENS: Yes, your Honor.

4 MR. SCHAPIRO: Yes.

5 THE COURT: I mean, on the one hand I want to move as  
6 quickly as possible with these discovery issues. But, on the  
7 other hand, I do want to give you the time to work some of  
8 these things out on your own.

9 So what I will do is, if necessary, and I think that  
10 there will be some motions, if necessary motions to compel  
11 filed -- motions to compel to be filed by May 4.

12 Response, if motions are filed, by May 18.

13 And once I look at -- look at the motions and the  
14 responses, I'll set a date for status hearing or oral argument  
15 or just simply rule by mail.

16 MR. SCHAPIRO: And, your Honor, are you contemplating  
17 simultaneous submissions --

18 THE COURT: Correct.

19 MR. SCHAPIRO: -- so if we have --

20 THE COURT: So if you have motions, file them by the  
21 4th.

22 MR. SCHAPIRO: The 4th and the 4th.

23 THE COURT: And the same thing.

24 MR. SCHAPIRO: Terrific.

25 THE COURT: So I'll just deal with them all. Okay?

1 MR. SCHAPIRO: We'll try and minimize them, your  
2 Honor.

3 THE COURT: All right. Thank you.

4 MR. GIVENS: Thank you, your Honor.

5 MR. STACK: Thank you, your Honor.

6 (Which concluded the proceedings in the above-entitled  
7 matter.)

8 CERTIFICATE

9 I HEREBY CERTIFY that the foregoing is a true, correct  
10 and complete transcript of the proceedings had at the hearing  
11 of the aforementioned cause on the day and date hereof.

12  
13 /s/Pamela S. Warren  
14 Official Court Reporter  
15 United States District Court  
Northern District of Illinois  
Eastern Division

April 18, 2012  
Date

16

17

18

19

20

21

22

23

24

25