

# EXHIBIT B



1 THE CLERK: 11 C 5807, Dunstan, et al., v comScore, Inc.

2 MR. SCHARG: Good morning, your Honor, Ari Scharg on  
3 behalf of the plaintiffs.

4 MR. GIVENS: Good morning, your Honor, Chandler Givens on  
5 behalf of the plaintiffs.

6 MR. STACK: Good morning, your Honor, Paul Stack for the  
7 defendant.

8 MR. SCHAPIRO: And Andrew Schapiro for defendant, good  
9 morning.

10 THE COURT: Good morning. So how are we doing -- let me  
11 ask Mr. Stack and Mr. Schapiro, how are we doing with  
12 defendants' response to the plaintiff's discovery requests?

13 MR. SCHAPIRO: We think we're doing well. We are  
14 gathering the materials and we have -- we filed or actually  
15 served our adversaries certain objections to some of the  
16 requests, but we feel that the order that your Honor issued  
17 provided us with solid guidance and so we are proceeding apace  
18 and we think we're doing well. We have served discovery on  
19 them as well.

20 THE COURT: So the answers have not been completed yet?

21 MR. SCHAPIRO: No, the responses have been completed and  
22 we are now gathering on a rolling basis the materials to  
23 provide, the documents.

24 THE COURT: Well, it's not a two-stage process, you know.  
25 Requests are made, you file a response. It's a one-step

1 process.

2 MR. SCHAPIRO: I'm sorry, your Honor, with regard to  
3 the --

4 THE COURT: So if you're telling me that you have not  
5 complied with my order that the answers are provided by  
6 March 23rd, just say so.

7 MR. SCHAPIRO: I apologize. We have provided the answers  
8 to the interrogatories. I was also thinking about their  
9 requests for production of documents. We have responded. On  
10 March 23rd we responded.

11 THE COURT: So everything has been turned over, at least  
12 your response is, correct?

13 MR. SCHAPIRO: Correct.

14 THE COURT: Okay. All right.

15 MR. SCHAPIRO: But I just wanted to be clear. I don't  
16 want there to be a misunderstanding. They have also served on  
17 us requests for production of documents and some of the  
18 documents are still being gathered, but we have responded  
19 where there are any objections to requests for production of  
20 documents. All of the interrogatories have been answered  
21 consistent with your Honor's order.

22 THE COURT: But I think my order also covered the  
23 requests for production, right?

24 MR. SCHAPIRO: Yes, and we answered the requests for  
25 production.

1 THE COURT: You answered them by providing the  
2 responsive documents, right?

3 MR. SCHAPIRO: No, your Honor, no.

4 THE COURT: Let me ask you, when you're responding to a  
5 production request, the only response would be -- I mean, a  
6 responsive response would be the responsive documents, right?  
7 And what you're saying is that you have not turned over the  
8 responsive documents yet or not completely.

9 MR. SCHAPIRO: Correct. We have served upon them a  
10 response saying "We will provide these, we will provide these,  
11 this we object to, we think this is too broad," et cetera.  
12 And we think -- in particular where we think requests might be  
13 beyond what your Honor ordered us to provide. But there is a  
14 fair amount of material that's being assembled.

15 MR. STACK: Your Honor, earlier on, we had a face-to-face  
16 conference with counsel before your Honor's order and we  
17 recognized -- I think plaintiffs recognized the difficulties  
18 we would have with the kind of documents we are dealing with,  
19 with the size and getting access and we agreed that between  
20 the two of us, between the two sides, that we would turn  
21 documents over on a rolling basis as they become available and  
22 get it over to them. And so it's not a matter of simply, you  
23 know, there is a contract, here is a copy of the contract.  
24 It's the nature of what they have asked for, plus this is a  
25 case that involves potentially lots of documents. It is that

1 we are going through these documents, and we are and have been  
2 since we got served with the requests to produce, been going  
3 through these documents and we're getting a good start turning  
4 them over on this rolling basis.

5 THE COURT: Mr. Scharg.

6 MR. SCHARG: We have never agreed to an extension of time  
7 to turn over these documents. I'm not sure what Mr. Stack is  
8 referring to. In addition, the responses that we did get, the  
9 objections to both the interrogatories and the requests to  
10 produce provides us with no information. There is about 50  
11 general objections that are supposedly incorporated into each  
12 request, each response. We can gather no information from  
13 these.

14 In addition, I want to flag for the court another issue.  
15 We were told since the beginning that there has been one  
16 version of the Mac software. ComScore produced the source  
17 code from the Mac software and it indicates that there were  
18 actually about 78 builds of the software --

19 THE COURT: Say that one more time.

20 MR. SCHARG: 78 builds, so 78 different types of software  
21 had been pushed out to its Mac customers. We have not  
22 received any of the other 78 builds. We need them. And they  
23 refuse to even get their E discovery rep on the phone with us  
24 to talk about this.

25 MR. SCHAPIRO: I need to correct the record on what Mr.

1 Scharg has just said.

2 THE COURT: Before you go on, I just want to get a  
3 handle on the terminology here. Builds, b-u-i-l-d-s?

4 MR. SCHARG: Yes.

5 MR. GIVENS: I can clarify. So earlier on in the case we  
6 had a meet and confer and discussed the types of software that  
7 need to be produced, and we were told by comScore that there  
8 was one version of the Mac software. Come to find out after  
9 examining the source code, there has actually been around 78  
10 different builds, meaning different iterations of the same  
11 version of that software. So while it's technically accurate  
12 there is only one version, there have been 78 different  
13 iterations of that same version of the software developed.

14 THE COURT: But how many versions were launched or  
15 actually used?

16 MR. SCHARG: 78.

17 MR. GIVENS: Well, based on our understanding from the  
18 source codes, it looks like there has been at least 8  
19 different versions deployed. Even though they're all  
20 technically Version 2, it's Version 2.0.1, Version 2.0.2, if  
21 that makes sense to your Honor.

22 THE COURT: Okay.

23 MR. SCHAPIRO: If I may, your Honor, about two weeks ago,  
24 the plaintiffs sent us an e-mail saying "We have been looking  
25 at the source code. There appear to be 78 versions that were

1 released." That's what they originally said.

2 We checked with our client, who told us no, that seems to  
3 be a mistake, and it may be that there has been more than one  
4 and this number that he is raising now, 8, may actually be  
5 accurate, but they kept coming back to us with this number of  
6 78. We said "We think you're mistaken." This term "build" is  
7 kind of like when you're building a car, and so step one is  
8 you put on the headlights and step two might be you put on a  
9 mirror, but that doesn't mean that you have had 78 different  
10 versions that have been public facing.

11 Mr. Stack asked the plaintiffs "Could you please put in  
12 writing for us what you think is missing, we will go back, and  
13 if there is anything that you're entitled to or there have  
14 been other releases of the source code, we're happy to provide  
15 them to you."

16 Last night they finally sent us a list of what they  
17 believe is missing, and we will certainly go back and if there  
18 are additional aspects of the Mac source code that were public  
19 facing that they're entitled to, that's fine. What they're  
20 not entitled to, we believe, under your Honor's order is the  
21 whole history of the development of the software and that's  
22 what most of those 78 builds --

23 THE COURT: I mean, what's important is what actually  
24 was used, implemented, deployed and used by certain Mac users.  
25 That's what's important. And what plaintiffs are saying is



1 that from the source codes, there appear to have been at least  
2 8 versions deployed. I'm not really sure whether the  
3 differences in those versions are substantive because the  
4 issues here are very specific.

5 You know, let's deal -- we have to figure out whether the  
6 differences go to monitoring of one's computers, right? And  
7 do you have any idea?

8 MR. SCHARG: Yes, I would disagree and let me explain  
9 why. I think that between each different iteration of the  
10 builds there are nuances in the way the software functions, so  
11 whereas build No. 3 might collect information X, build No. 4  
12 might have said we need to stop collecting information X  
13 because we might be potentially doing something that's  
14 nefarious or maybe something more innocuous than that, but we  
15 need to test that.

16 So we know that there are different functionalities. We  
17 have been told that because in the source code there are  
18 certain -- I don't want to get too technical, but there are  
19 certain methods that are being called which no longer exist.

20 THE COURT: The source code that you got is the final  
21 version?

22 MR. SCHARG: Yes, your Honor.

23 THE COURT: So you need the previous seven versions  
24 deployed?

25 MR. SCHARG: Yes, sir.

1           MR. SCHAPIRO: And your Honor, in principle we have no  
2 disagreement. I think there is a factual question, but now  
3 that they have last night sent us their list of what they say  
4 are the different builds and the developer notes, we're happy  
5 to go back and if there is anything that they're entitled to,  
6 we will certainly --

7           THE COURT: Has there been a meeting among the technical  
8 representatives in this case or just the attorneys?

9           MR. SCHARG: We had our technical rep on the phone  
10 yesterday -- on Friday for a meet and confer conference, but  
11 comScore did not.

12          MR. STACK: Your Honor, we were waiting for the letter we  
13 got last night, which sets forth what precisely the issues are  
14 that they think and we gave it to our technical person because  
15 the main purpose of the last conference that we had was to try  
16 to get them to provide this kind of information. They were  
17 willing to give it to us over the phone and we were taking  
18 notes, but --

19          MR. SCHARG: And that's the whole point. I mean, if  
20 their E discovery rep was on the phone, then we wouldn't have  
21 to keep having these conversations and keep writing these  
22 letters.

23          MR. SCHAPIRO: I need to correct the record on that, that  
24 is, as I think Mr. Scharg, Rule 2.02 of the E discovery  
25 protocol in the Northern District of Illinois makes very clear

1 that your E discovery liaison can be an in-house person or  
2 outside counsel and we had -- we have an associate --

3 THE COURT: I believe the outside counsel has to have  
4 some technical expertise --

5 MR. SCHAPIRO: Correct.

6 THE COURT: -- in order to understand the technical  
7 aspects of the case.

8 MR. SCHAPIRO: Correct. And we have an associate named  
9 Robyn Bowland who was on the call who has lots of experience  
10 in E discovery, but what we ended up with was not really a  
11 dispute about E discovery. We have a substantive question,  
12 which is is this -- was this source code released to the  
13 public or not.

14 MR. SCHARG: And that is exactly --

15 THE COURT: Hold on, hold on, please.

16 MR. SCHAPIRO: There is no question, E discovery question  
17 about well, where are the files or are there backups or in  
18 what form are they kept.

19 So now that they have articulated to us what their belief  
20 is, we thought it was that they said there were 78 versions.  
21 Now we're hearing they say there were 8 versions and this is  
22 only of the Mac source code, correct?

23 MR. SCHARG: This only relates to the Mac source code,  
24 yes, as far as we know.

25 MR. SCHAPIRO: We will go back today and if that's

1 correct -- it's not really an E discovery question, it's a  
2 factual question -- if it's correct and if they're entitled to  
3 it, we certainly have an agreement in principle.

4 THE COURT: Going back to the responses, are you saying,  
5 Mr. Scharg, that certain objections are used as a response and  
6 no substantive response is forwarded?

7 MR. SCHARG: Yes.

8 THE COURT: Because if I remember correctly, when I  
9 dealt with the motion to bifurcate, I thought I went over each  
10 interrogatory and request to produce and what requests are to  
11 be responded to and what interrogatories are to be responded  
12 to.

13 MR. SCHAPIRO: And we think we did, your Honor.

14 THE COURT: But if you're objecting, and just taking Mr.  
15 Scharg's version for the sake of argument, but if you're  
16 posing objections, you're not answering the question or  
17 responding to their request, right?

18 MR. SCHAPIRO: Well --

19 MR. STACK: Your Honor, the discovery was promulgated  
20 prior to your Honor's order, so there is -- we're saying that  
21 under your Honor's order these are our responses, but as  
22 required by your Honor's order, we made those responses.

23 Now, what I'm hearing today -- this is the first time I  
24 have heard this today -- they have had our answers for awhile  
25 and I have not heard any objection or any concern whatsoever.

1 And this is a little bit of -- it's a difficult thing for me,  
2 this is a complicated discovery issue and I have a phone  
3 number and I'm glad to meet with them. I was over at their  
4 offices meeting with them --

5 THE COURT: All right, let me set some ground rules.  
6 When I set a deadline for responding, it's a deadline to  
7 respond, not to say "Response will be forthcoming." That's  
8 not a response in my book.

9 And if the defendant requires additional time because of  
10 the complexity and the nature of the action, I need to be kept  
11 in the loop. You can't simply pick up the phone and say to  
12 the plaintiff's counsel "We need more time." Well, the  
13 plaintiffs have nothing to do with the deadlines that I set.  
14 So I would like to be included in the conversation as to when  
15 the deadlines need to be moved. That's number one.

16 Number two, it appears that we are going to have some  
17 close scrutiny of the discovery issues in this case, so my  
18 plan is to have frequent meetings with the attorneys to move  
19 through this thing as quickly as possible. In granting the  
20 defendant's motion to bifurcate, my intention is to go through  
21 that process as quickly as possible.

22 So you know, when I set a deadline, I do mean it. So  
23 don't take it as a guideline or a suggestion, because you  
24 might not like what I say if you don't meet it. And I also  
25 need the plaintiffs to raise issues with discovery as quickly

1 as possible and not let them linger for a long time. So today  
2 is the 28th.

3 MR. SCHARG: We have only known about for five days now,  
4 including this weekend. We were preparing a letter but  
5 certainly wanted to raise --

6 THE COURT: And I think I also issued a standing order  
7 on E discovery in this case, right?

8 MR. GIVENS: Judge Holderman did.

9 THE COURT: Oh, Judge Holderman did, okay.

10 We will have a status hearing on April 17th at 11 a.m.,  
11 and on the 17th I would like a report from the defendant as to  
12 where we are with production of documents, and also on the  
13 17th I would like to hear from the plaintiffs as to where we  
14 are with some of the outstanding issues with discovery because  
15 if push comes to shove, I'm going to have the plaintiffs file  
16 a motion to compel so that we can go ahead and address those  
17 issues in a formal fashion.

18 It's up to you how you want to proceed with discovery.  
19 You can either cooperate and work through these issues or you  
20 could have me rule on them. The latter might be more  
21 expensive.

22 Any questions?

23 MR. SCHARG: No, your Honor.

24 MR. SCHAPIRO: No, your Honor.

25 THE COURT: And plaintiff -- I'm sorry, defendant also

1 has served interrogatories and requests to produce and those  
2 requests are limited to certification issues?

3 MR. SCHAPIRO: Correct.

4 THE COURT: And when are they due, the responses?

5 MR. SCHAPIRO: 30 days after.

6 MR. SCHARG: Maybe a week or two, I believe.

7 THE COURT: So by the 17th we should have an answer as  
8 to where you are.

9 MR. SCHARG: Yes, absolutely.

10 THE COURT: Okay, so I'll expect plaintiffs to report on  
11 that as well.

12 MR. SCHARG: Sure.

13 THE COURT: And in the meantime, your associate might be  
14 technically inclined, but I need somebody who is technically  
15 inclined in this arena, not E discovery. You know, there is a  
16 difference, I think. So it will be helpful to have somebody  
17 from comScore serve as a representative so that the techs can  
18 talk to each other and not have anything get lost in  
19 translation. So I would hope that the meeting occurs so that  
20 we can get some of the technical issues resolved by the  
21 technical folks.

22 Anything else?

23 MR. SCHARG: Nothing here, your Honor.

24 THE COURT: All right. See you on the 17th.

25 MR. STACK: Thank you.

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I certify that the above was transcribed was  
digital recording to the best of my ability.

/s/ Lois A. LaCorte

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Lois A. LaCorte

Date