IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

MIKE HARRIS and JEFF DUNSTAN, individually and on behalf of a class of similarly situated individuals,	)))))	
Plaintiffs,	))	Case No. 1:11-5807
v.	))	Hon. James F. Holderman
COMSCORE, INC., a Delaware corporation,	))	Magistrate Judge Kim
Defendant.	)))	

DECLARATION OF BENJAMIN S. THOMASSEN

I, Benjamin S. Thomassen, hereby declare and state as follows:

1.   I am an attorney at the law firm of Edelson LLC, I am admitted to practice law in the State of Illinois, and I represent Plaintiffs Mike Harris and Jeff Dunstan in the above-titled action. I am over the age of eighteen and am fully competent to make this declaration. This declaration is based upon my personal knowledge, except where expressly noted otherwise.

2.   True and correct copies of excerpts from Mike Harris's deposition transcript are attached hereto as Exhibit A.

3.   In response to comScore's First Set of Requests for the Production of Documents in this matter, Plaintiffs produced several screenshots captured from the website "macupdate.com," true and accurate copies of which are attached hereto as Exhibit B, and marked as Harris-Dunstan 0001-0007.

4.   Exhibit B shows several comments posted by macupdate.com users, including one uploaded by an individual using the alias "Wcitymike," time stamped March 9, 2010. Harris

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explained in his deposition that he uses the alias "Wcitymike" on the macupdate.com website, and that he posted the comments shown in Exhibit B. (*See* Ex. B at Harris-Dunstan 0006-0007.)

5.   On March 18, 2013, I confirmed that macupdate.com doesn't require users to "log in" to download software hosted on the website. I verified the foregoing through the following steps conducted on a Macintosh (running OS X) and using the Google Chrome web browser:

      a.   I first navigated to the website "macupdate.com" and visually confirmed that, upon reaching the main webpage, I was not "logged in" to any account (text located in the upper right hand corner of the webpage invited me to either "Sign In or create account");

      b.   Next, I clicked on a hyperlink offering "free" software titled "SourceTree 1.5.8";

      c.   Upon clicking the hyperlink, I was directed to another webpage, "http://www.macupdate.com/app/mac/35643/sourcetree," where I then clicked on another hyperlink labeled "Download Now." This action triggered the display of a dialog box informing me that the file "SourceTree_1.5.8.dmg" would be downloaded to my hard drive, and requesting that I identify a target download location;

      d.   After selecting a target folder and clicking "Save," I successfully downloaded the "SourceTree_1.5.8.dmg" file onto my hard drive.

6.   To verify that macupdate.com users also weren't required to "log in" to download software in March of 2010—when Harris posted the above-referenced comments—I used the Internet Archive's "Wayback Machine" to access archived versions of www.macupdate.com.

7.   According to the website's "About" page, The WayBack Machine, (URL: www.archive.org), allows users to "[b]rowse through over 240 billion web pages archived from

1996 to a few months ago." Users simply "type in the web address of a site or page where [they] would like to start, and press enter. Then select from the archived dates available. The resulting pages point to other archived pages at as close a date as possible." The archiving is constant and systematic, and serves as a perpetual Internet time capsule.

8.   On March 18, 2013, I confirmed that macupdate.com didn't require users to "log in" to download software hosted on the website in March of 2010. I verified the foregoing through the following steps conducted on a Macintosh (running OS X) and using the Google Chrome web browser:

a.   First, I navigated to the Wayback Machine's website, "http://web.archive.org/web/web.php,";

b.   Next, I entered "macupdate.com" into the Wayback Machine field prompt and clicked on the "Take Me Back" button, which directed me to the following webpage: "http://web/20100316192040/ http://www.macupdate.com/" (dated March 16, 2010);

c.   Upon reaching the website, I visually confirmed that I was not "logged in" to any account (text located in the upper right hand corner of the webpage invited me to "login");

d.   Next, I clicked on a hyperlink offering software titled "Querious 1.0b2," which was described as "shareware;"

e.   I was then directed to the webpage, "http://web.archive.org/web/20090227100753/ http://www.macupdate.com/info.php/id/29981/querious?," where I clicked on a hyperlink titled "Download Now," which triggered the display of a dialog box informing me that the file "Querious.dmg" would be downloaded to my hard drive, and requesting that I

identify a target download location;

  f. After selecting a target folder and clicking "Save," I successfully downloaded the "Querious.dmg" file onto my hard drive.

  9. On August 21, 2012, Andrew Schapiro, counsel for comScore, sent an e-mail to my firm's managing partner, Jay Edelson, explaining that "comScore planned to subpoena the relevant work records for Mr. Dunstan from [his employer,] Sears."

  10. That same day, Mr. Edelson emailed Mr. Schapiro asking whether comScore would "mind if we approached Sears first" and that Dunstan could "[p]erhaps simply request [the records]."

  11. On August 22, 2012, Mr. Schapiro responded via e-mail that comScore "need[ed the records] directly from the source so that we can be confident that they're genuine and accurate" and offered to "wait until Monday [August 27th]" before serving the subpoena on Dunstan's employer.

  12. Two days later, on August 24, 2012, Jeff Dunstan called me and explained that his wife, Lori Baxter, was served at her home with two separate subpoenas to appear for depositions in this matter (the first subpoena lacked a signature).

  13. On August 25, 2012, the Parties met and conferred to discuss the subpoenas served on Dunstan's wife and comScore's intent to subpoena Dunstan's work records from his employer. During that meet and confer, the Parties agreed that Plaintiffs' counsel would investigate the information sought through the subpoenas and follow-up with their results.

  14. After investigating the matter, I e-mailed comScore's attorney Stephen Swedlow on August 28, 2012, and explained, *inter alia*, that (1) Jeff Dunstan was not scheduled to work on the date indicated by comScore's records as the day OSSProxy was downloaded to and

installed on his personal computer and (2) Lori Baxter *was* scheduled to work on that same date and was therefore, in all likelihood, not home when OSSProxy was downloaded to and installed on Dunstan's personal computer. A true and accurate copy of that email is attached hereto as Exhibit C.

      15.   Plaintiffs' counsel never received any reply to the email referenced *supra*, ¶ 14. I declare under penalty of perjury that the foregoing is true and correct.

      Executed this 19th day of March, 2013 at Chicago, Illinois.

/s/ Benjamin S. Thomassen
Benjamin S. Thomassen