

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CONNECTU, INC.,)	
)	
Plaintiff,)	CIVIL ACTION NO. 1:07-cv-10593 (DPW)
)	
v.)	Related Action 1:04-cv-11923 (DPW)
)	
FACEBOOK, INC., MARK ZUCKERBERG,)	
EDUARDO SAVERIN, DUSTIN)	
MOSKOVITZ, ANDREW MCCOLLUM,)	
CHRISTOPHER HUGHES, AND)	
THEFACEBOOK LLC,)	
)	
Defendants.)	

**AMENDED JOINT REPORT PURSUANT TO JUDGE COLLINGS'S
JUNE 8 AND AUGUST 14, 2007 ORDERS**

I. INTRODUCTION

The parties apologize for any confusion caused by the Joint Report filed July 28, 2007. At the July 25, 2007 hearing, both Mr. Hornick and Mr. Chatterjee were hopeful that all disputes between the parties would be resolved. Unfortunately, several matters were unresolved. ConnectU and the Facebook Defendants further compromised after the Court's August 14, 2007 Order. This amended joint report identifies the issues that remain in dispute. All other motions are currently withdrawn, as set forth in the previous report.

A. ConnectU's Motion for Imaging of Electronic Memory Devices (Dkt. 37)

Docket No. 37 was discussed on pages 4-6 and 10-44 of the November 18, 2005 hearing transcript and pages 4-42 and 139-142 of the March 3, 2006 hearing transcript.

ConnectU's Statement of the Disputed Issue: ConnectU has asked Facebook Defendants to identify precisely where the relevant code¹ is located on the CD ROMS and hard drive(s) ("memory devices") Facebook Defendants have produced (or will soon produce), or to state that such code has not been located and produced. Facebook Defendants have not done so.

ConnectU's Statement Supporting Such Discovery: ConnectU has searched such storage devices at great expense, but cannot find the relevant code. Facebook Defendants have never said the relevant code was produced.

Facebook Defendants' Statement Opposing Such Discovery: All existing responsive code has been produced. Dkt. 37 was not a motion to compel RFPs 64-69, but rather was a motion regarding hard drive imaging. The compromise below moots this motion.

¹ As used herein, relevant code means the Harvard Connection code Zuckerberg allegedly worked on, the facebook.com code from before launch, the time of launch, and after launch through September 2004, the coursematch code, and the facemash code.

B. Joint Protocol for Imaging Defendants' Electronic Memory Devices (Dkt 37 and 148)

To resolve the outstanding issues related to imaging of electronic devices, Facebook Defendants and ConnectU have largely agreed to a protocol for the imaging and examination of certain Facebook Defendants' memory devices for source code. The parties ask the Court to enter the protocol as a Stipulated Order, after resolving three remaining issues. The proposed amended protocol is attached hereto as **Exhibit A**. Disputed text is identified in bold and brackets, and the parties have presented alternate versions of paragraph 5 (ConnectU's and Facebook Defendants' alternate versions of paragraph 5 are identical up through “. . . specifications for those languages).”).

The parties also ask the Court to enter the protocol as quickly as possible. Because of surgery scheduled for early October 2007, ConnectU's expert needs to begin the imaging process no later than September 10, 2007.

ConnectU's Statement:

ConnectU disagrees with Facebook's statement regarding the protocol used in another case.

Paragraph 4: According to ConnectU's experts, code cannot be identified as such until AFTER completing a search. Thus, Facebook's text will severely limit ConnectU's expert's code search.

Paragraph 5: According to ConnectU's experts, Facebook's text severely restricts their search methodology. They will use new search methods, and searching extensions will prevent locating deleted code.

Paragraph 12: The Court should decide what effect a violation will have, based on the nature of the violation, only after a fair presentation of the facts.

Facebook Defendants' Statement:

ConnectU's undersigned counsel promised to provide a stipulated protocol used in an earlier case that addressed similar issues raised by Facebook in the present matter. ConnectU has recanted this material representation and will provide no information related to it.

Paragraph 4: The proposed additions make clear that searching materials other than those materials likely to contain code is forbidden except for paragraph 5 and prevents fishing expeditions.

Paragraph 5: The disputed text focuses the search on areas likely to procure responsive information. *Fennell v. First Step Designs, Ltd.*, 83 F.3d 526 (1st. Cir. 1996). A fishing expedition is improper.

Paragraph 12: The protocol language ensures compliance with the protocol through the sanction of disqualification. That restriction should be expressly stated.

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DATED: August 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on August 28 2007.

Dated: August 28, 2007.

Respectfully submitted,

/s/ I. Neel Chatterjee /s/
I. Neel Chatterjee