

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

THE WEATHER UNDERGROUND, INC.,  
a Michigan corporation,

Plaintiff,

vs.

Case No. 2:09-CV-10756  
Hon. Marianne O. Battani

NAVIGATION CATALYST SYSTEMS, INC.,  
a Delaware corporation; BASIC FUSION, INC.,  
a Delaware corporation; CONNEXUS CORP.,  
a Delaware corporation; and FIRSTLOOK, INC.,  
a Delaware corporation,

Defendants.

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**DECLARATION OF SETH JACOBY**

I, Seth Jacoby, declare as follows:

1. I am over the age of eighteen and am a duly authorized representative of the defendants in this lawsuit. I make this declaration with regard to NCS's Supplemental Responses to Plaintiff's First Set of Requests for Production.

**Request No. 33**

2. I have reviewed Request for Production No. 33 which calls for "all Documents identifying what advertisement links on each Domain at Issue were clicked and for each click: (a) the advertisement text, (b) the advertisement hyperlink, (c) the entrance and navigation path for each visitor."

3. Prior to May 25, 2009, the information requested by Request No. 33 was not maintained by Connexus Corporation, Firstlook, Basic Fusion, or Navigation Catalyst Systems, Inc. (collectively "NCS" for purposes of this declaration). As a result, prior to May 25, 2009, the request information was never in NCS's possession.

4. Starting on May 25, 2009, NCS commenced keeping track of the hyperlinks clicked by visitors to the parked pages created by Firstlook.

5. Two domains at issue in this lawsuit, [whetherunderground.com](http://whetherunderground.com) and [uundergroundweather.com](http://uundergroundweather.com) were not deleted until October 2009 and September 2009, respectively. Nevertheless, as of May 1, 2009, both of these domain names were on "410" PRT which means that Firstlook never displayed any web pages with advertisements on them. Instead, visitors to the websites would have gotten a 404 error (i.e., "Page not found"). As a result, there is no information for these two domain names, despite the fact that they were not

deleted until after May 25, 2009. Attached as Exhibit A is a query verifying that no hyperlink data is available for these two domains.

**Request No. 35**

6. I have reviewed the Court's Order regarding Request No. 35 and understand it to require a list of all domain names registered by NCS on January 1, 2004 and July 1, 2004 and every year thereafter on the same dates until 2009.

7. NCS is unable to comply with this request for various reasons detailed below. As a general matter, though, NCS does not keep historic lists of its domain name portfolio. Attempting to recreate the lists at specific moments in time through data sources would not be successful for the reasons I noted in my earlier declaration and which include the following:

- a. Early registration systems maintained no records at all.
- b. Earlier lists of domains owned were maintained in spreadsheets that no longer exist.
- c. Many, larger, older database tables were deleted due to disk space limitations.
- d. Interpreting data in older systems would be difficult if not impossible without the engineers who programmed the systems who are no longer around.
- e. The systems have been re-written several times which would mean that significant effort would have to be spent determining how the system worked at each iteration and what any surviving data means.


8. After reviewing all currently-available data sources available to NCS and conferring with my on-staff engineers, it was determined that it was not possible to recreate such

lists with accuracy. As a result, we considered possible alternatives for purposes of satisfying this request.

9. For example, starting in March 2009, we have periodically sent portfolio snapshots to Iron Mountain. We were able to locate copies of the files sent to Iron Mountain. Unfortunately, they have been encrypted using Iron Mountain's public key, and we are unable to open these files.

10. We contacted Iron Mountain to determine whether we could get the snapshot for June 1, 2009 directly from them but were informed that the person who handles these requests was presently in Europe and, therefore, difficult to reach, and Iron Mountain would not release the documents without approval from ICANN regardless.

Executed on this 17<sup>th</sup> day of June 2010 at New York, New York.



Seth Jacoby