

# EXHIBIT 1

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March 7, 2008

VIA E-MAIL

Re: Function Media LLC v. Google, Inc. & Yahoo!, Inc.

Dear Tom, Jason, and Doug:

Further to my email of yesterday, I have set forth below (A) a non-exclusive list of documents that we believe are relevant to this action, (B) a list of narrow search terms that we propose running across Google's and Yahoo!'s relevant servers, and (C) a list of broader search terms that we propose running across the electronic documents of certain categories of custodians. Function Media reserves its right to supplement these lists if it makes a good-faith determination that such supplementation is necessary.

## A. Relevant Documents

For purposes of this letter:

- The term "Patents-in-Suit" refers collectively to the following patents: U.S. Patent 6,446,045; U.S. Patent 7,240,025; U.S. Patent 6,829,587; U.S. Patent 7,249,059. Any reference to a patent is intended to include the application on which it issued, its entire prosecution history, and all foreign counterparts, including foreign applications and foreign prosecution histories.

- With respect to Google, the term "Accused Products" refers to any products, systems, or services made, used, sold, offered for sale, or licensed by Google utilizing Google's AdWords or AdSense technologies, or any other technology made, used, sold, offered for sale, or licensed by Google that allows a user to create, publish or display advertisements on media owned or controlled by entities other than that user.

- With respect to Yahoo, the term "Accused Products" refers to any products, systems, or services made, used, sold, offered for sale, or licensed by

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Yahoo utilizing Yahoo's Search Marketing and Yahoo Publisher Network technologies, or any other technology made, used, sold, offered for sale, or licensed by Yahoo that allows a user to create, publish, or display advertisements on media owned or controlled by entities other than that user.

- The term "document" and "documents" are used in their broadest sense allowed by Rule 34(a) of the Federal Rules of Civil Procedure and include, but are not limited to, any writings, drawings, graphs, charts, photographs, phonograph records, tape recordings, notes, diaries, calendars, checkbooks, books, papers, accounts, electronic or videotape recordings, and any computer-generated, computer-stored, or electronically-stored matter from which information can be obtained and translated, if necessary, into reasonably useable form.

- The terms "sale," "sales," "sell" or "sold" shall include sales, licenses, leases, loans, consignments, distribution to resellers or others and all other methods of product distribution whether direct or indirect, and whether the product is distributed singly or in combination with or as part of another product, and whether or not revenue was or will be received therefrom.

- The term "prior art" includes by way of example, and without limitation, the subject matter described in 35 U.S.C. §§ 102 and 103, including, without limitation, publications, physical devices, prototypes, uses, sales, and offers for sale and any documents or thing evidencing any of the foregoing.

- The terms "Google," "Yahoo," "you," or "your" mean Google, Inc. and Yahoo!, Inc., respectively, Defendants in this action, as well as any parent company owning all or part of Google or Yahoo and: (i) any Google or Yahoo subsidiary (either wholly or partly-owned), subcontractor, division, branch or department; (ii) any entity under the control of Google or Yahoo; (iii) any proprietorship, joint venture, partnership or other business cooperation involving Google or Yahoo (iv) all Google or Yahoo predecessors-in-interest, representatives, successors-in-interest; (v) the present and former directors, officers, accountants, affiliates, attorneys, agents, employees, in-house and outside counsel or other persons under the control of Google or Yahoo, regardless of their affiliation or employment; and (vi) any other person acting or purporting to act on behalf of Google or Yahoo.

Please produce the following documents:

1. For any of the Accused Products, all documents concerning the implementation of the Accused Products by Google and Yahoo, including code (including executable or compatible code), product specifications, flowcharts,

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models, drawings, promotional literature, advertising, engineering design, engineering analysis and testing.

2. All documents mentioning or concerning any Accused Product's placement or targeting of advertisements, including code (including executable or compatible code), product specifications, flowcharts, models, drawings, promotional literature, advertising, engineering design, engineering analysis and testing.

3. All documents mentioning or concerning the pricing of the Accused Products to any end user. This request includes pricing to advertisers using the Accused Products and pricing or revenue-sharing for media that displays advertisements using the Accused Products.

4. All documents mentioning or concerning any of the Patents-in-Suit or their applications - including parents, divisional, continuation, or continuation-in-part applications, whether or not they matured into parents.

5. All documents concerning your knowledge of any of the Patents-in-Suit, including documents indicating when you became aware of any of the Patents-in-Suit.

6. All correspondence and other documents expressing opinions on or concerning the validity, invalidity, infringement, non-infringement, enforceability, non-enforceability, or license (either express or implied) as to any of the Patents-in-Suit.

7. All documents concerning the results of any prior art search directed to, or relating to, or containing any of the Patents-in-Suit.

8. All documents concerning or relating to an appraisal or valuation of any patent, license, royalty, technology transfer, or authorization-to-use agreement that relates to the Accused Products, including appraisals or valuations performed for tax purposes.

9. All documents concerning your policies or practices concerning patent clearances, right to use opinions, or other mechanisms to avoid your infringement of patents, including the Patents-in-Suit.

10. All documents concerning your contentions on reasonable royalties pursuant to 35 U.S.C. § 284 for any infringement of the Patents-in-Suit.

11. All documents concerning any analysis, opinion, or inquiry regarding potential infringement of the claims in each of the Patents-in-Suit, including, but

not limited to any documents concerning or relating to pre-litigation investigations performed by or on behalf of Google or Yahoo, Google or Yahoo's partners, Google or Yahoo's licensors, Google or Yahoo's customers, Google or Yahoo's resellers, and/or Google or Yahoo's affiliates, relating to the potential infringement by any products or systems made, used, offered for sale, and/or sold by Google or Yahoo, Google or Yahoo's partners, Google or Yahoo's licensors, Google or Yahoo's customers, Google or Yahoo's resellers, and/or Google or Yahoo's affiliates.

12. All documents relating to any communications concerning any of the Patents-in-Suit, including but not limited to communications with Google or Yahoo's employees, managers, sales force, agents, dealers, wholesalers, retailers, representatives, distributors, the press, or any news wire.

13. All documents related to any other lawsuit for patent infringement involving the Accused Products, insofar as such other lawsuit relates in any way to technology that provides for the publication of advertisements on media owned or controlled by entities other than the advertiser.

14. All documents relating or referring to the indemnification or offer to indemnify, or request for indemnification by any of Google or Yahoo's customers, prospective customers, or third-parties with respect to the Patents-in-Issue.

15. All documents furnished to or shown to any fact witness contacted, interviewed, or consulted by Google or Yahoo or their agents or attorneys in connection with the Patents-in-Suit.

16. All documents concerning any analyses or efforts by Google or Yahoo to design any products around the Patents-in-Suit.

17. All documents referring or relating to any non-infringing alternatives to the Patents-in-Suit for the sale of the Accused Products.

18. All documents concerning past sales, manufacturing, research or development, present sales, manufacturing, research, licenses or development, and projected or contemplated future sales, manufacturing, research, license or development of any of the Accused Products.

19. All documents referring or relating to statements made by Google or Yahoo, including communications between Google or Yahoo and any prospective customers or business partners, referring or relating to the actual or contemplated capabilities of the Accused Products.

20. All documents sufficient to show all sales, revenue, costs, and profit information for the Accused Products, broken down by quarter, including all documents sufficient to explain any acronyms or terminology employed by Google or Yahoo's accounting system. To the extent possible, this information should be as specific as possible, and at a minimum should be broken down by Accused Product, by country from which the revenue is received, by the type of advertisement that generated the revenue (e.g., Text Ads, Image Ads, Newspaper Ads), and by any interface or program used to generate the advertisements. These documents should, to the extent possible, distinguish between revenue received from advertisers for the use of the Accused Product and the amount passed on to the media to which the advertisement is published.
21. All invention disclosures or pending or abandoned patent applications covering or concerning any aspect of the Accused Products.
22. All manuals, architecture descriptions, training documents, and specifications for the Accused Products.
23. All internal architecture specifications and/or documents relating to the theory of operation of the Accused Products.
24. All documents relating to the promotion or advertising of the Accused Products.
25. All documents that refer or relate to strategic plans, business plans, business strategies, licensing plans, licensing proposals, licensing forecasts, prospectuses, market surveys, marketing strategies, market analyses, and/or marketing forecasts of customer demand for the Accused Products, including both internal documents and any schedules or reports by third party industry analysts, research firms, trade associations, or similar entities.
26. All documents that relate to the accounting practices used by Google or Yahoo to account for the sales, expenses, and income for the Accused Products.
27. All documents relating to Google or Yahoo's market share in the Accused Products' markets since 2000.
28. All documents concerning any license, royalty, technology transfer, or authorization-to-use agreements entered into by Google or Yahoo relating in any way to the Accused Products, whether or not formal agreement was ever reached.
29. All documents relating to Google or Yahoo's policies or practices concerning Google or Yahoo's entry into license, royalty, technology transfer, or authorization-to-use agreements since 1999.

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30. All documents relating to any agreement between Google and Yahoo to enter into a license, royalty, technology transfer, or authorization-to-use agreement that relates to the Accused Products.
31. All documents that refer or relate to any prior art reference that you believe anticipate or render obvious any of the Patents in Suit.
32. All documents that refer or relate to any document that Google or Yahoo believe is relevant to the construction or interpretation of any claim of any of the Patents in Suit.
33. All documents that reference Michael Dean by name.
34. All documents that reference Lucinda Stone by name.
35. All documents that reference Function Media or Virtual Cities by name.
36. All documents that support or relate to your contention that any of the Patents in Suit were not legally issued and/or are not enforceable.
37. All documents that support or relate to your contention that Google or Yahoo have not infringed, induced the infringement of, or contributed to the infringement of any of the Patents in Suit.
38. All documents that support or relate to your contention that any of the Patents-in-Suit are unenforceable by reason of estoppel.
39. All documents that support or relate to your contention that damages derived from any of the Patents-in-Suit are barred in whole or in part by the doctrine of laches.
40. All documents referring or relating to any patents, publications, documents, events, suggestions, arguments or contentions that have been asserted by any person as prior art or as affecting the validity or enforceability of any of the Patents-in-Suit or of any foreign counterparts thereof.
41. All documents that refer or relate to whether any invention disclosed in any of the Patents-in-Suit, or any product that embodies or uses such an invention, has been commercially successful.
42. All documents that refer or relate to whether any invention encompassed in any of the Accused Products, or any product that embodies or uses such an invention, has been copied by others.

43. All documents that refer or relate to whether anyone has praised, criticized, or discussed the significance of any invention disclosed in any of the Patents-in-Suit, or any product that embodies or uses any such invention.

44. All documents, including past and present organizational charts, that list or identify the persons at Google or Yahoo who have or had responsibility for the following functions relating to the Accused Products:

- (a) conception or implementation;
- (b) marketing or distribution;
- (c) advertising;
- (d) sales;
- (e) design;
- (f) engineering;
- (g) product testing;
- (h) product specifications;
- (i) research and development;
- (j) patent activities;
- (k) international operations
- (l) licensing of technology; and
- (m) acquisition of technology through third party business entities.

45. Documents sufficient to demonstrate or understand all user interfaces for the Accused Products for every category of user, from their respective inceptions through the present.

46. All documents (such as purchase price allocations) that describe or discuss the value of patents, intellectual property rights, or technology that you acquired through the purchase, acquisition, or change of control of any third party business entity, so long as the patent, intellectual property right, or technology relates to the Accused Products.



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**B. Narrow Search Terms To Run Across All Relevant Servers**

(Michael w/3 Dean)

(Mike w/3 Dean)

(Lucinda w/3 Stone)

((invent! or patent or claim or publi! or applica!) w/s (Stone or Dean))

((Michael w/3 Morrissey) & (Dean or patent or license))

((Mike w/3 Morrissey) & (Dean or patent or license))

("Venture Law Group" or VLG) & (Dean or patent or license)

("Function Media")

("function-media")

("Virtual Cities" or "Virtualcities")

("1st Traveler's Choice" or "First Traveler's Choice" or "1st Travelers' Choice" or "First Travelers' Choice")

("O.N.S., Inc." or "ONS, Inc.")

(6446045 or "6,446,045")

(045 /p (patent or Dean or Stone))

(7240025 or "7,240,025")

(025 /p (patent or Dean or Stone))

(6829587 or "6,829,587")

(587 /p (patent or Dean or Stone))

(7249059 or "7,249,059")

(059 /p (patent or Dean or Stone))

(6567824 or "6,567,824")

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(824 /p patent)

(6401075 or "6,401,075")

(075 /p patent)

((patent or 824 or 075 or 025 or 059) /p (Mason or Grant or Behrman or Stillwell or Croskell or Roberts))

(James w/2 Mason)

(Arnold w/2 Behrman)

("media venue")

("presentation rule")

("third party professional" or "third-party professional")

("method for utilizing computers to facilitate")

**C. Broader Search Terms To Run Across The Electronic Files of the Categories of Custodians Identified In Nos. 1-6 Below**

1. The three people most knowledgeable about the computer code used to operate the Accused Products.
2. Other than anyone identified in response to 1., the three people most knowledgeable about the conception, implementation and development of the Accused Products.
3. The three people most knowledgeable about promotion, marketing, and/or advertising (i.e., advertising to potential users, not advertising through the use of the systems) of the Accused Products.
4. The three people most knowledgeable about the business aspects of the Accused Products, including the business reasons for the formation of those services, business plans for those services, and synergies between the accused features of those services and other non-accused Google/Yahoo services.
5. The three people most knowledgeable about the revenues and profits associated with the Accused Products.
6. The three people most knowledgeable about Google and Yahoo's patent licensing policies, procedures, and past licenses.

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(AdWords)

(AdSense)

(PrintAds or "Print Ads")

("My Client Center" or MCC)

("advertising professional")

("Google Mobile" or (ad! w/2 mobile))

("AdWords Editor")

("Publisher Network")

(Yahoo w/3 Publisher)

("Search Marketing")

("Sponsored Search")

("Content Network")

("Content Search")

("Content Match")

("show\_ads.js")

(ad! w/2 code)

("ypn-js")

((publis! or displa! or delive! or transmi! or show! or creat!) /p ad!)

(internet w/3 ad!)

(online w/3 ad!)

("ads by Google")

("ads by Yahoo")

(DoubleClick or "double click" or "double-click" or DART)

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(Overture)

("Global Networks" & ad!)

(patent)

("prior art")

(willful)

(infring!)

(licens!)

(royalty)

(invent!)

((revenu! or profit! or income) /p ad!)

(Yahoo /p competit! /p ad!)

(Google /p competit! /p ad!)

("thick client" or "thick-client" or "fat client" or "fat-client")

("thin client" or "thin-client")

("database")

("user-interface" or "user interface")

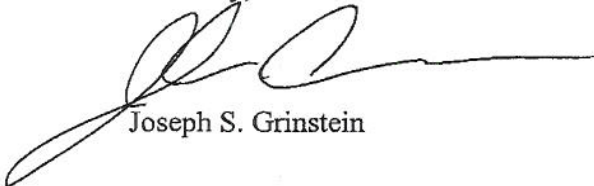
("demographic" or "demographics")

((target! or filter!) w/3 (ad! or site or website))

\* \* \*

We are happy to discuss the production of these documents with you at any time.

Cordially,



Joseph S. Grinstein