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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

PA ADVISORS, LLC . DOCKET NO. 2:07CV480  
VS. . MARSHALL, TEXAS  
GOOGLE, INC. . OCTOBER 6, 2008, 10:36 A.M.

MOTION FOR PROTECTIVE ORDER

BEFORE THE HONORABLE DAVID FOLSOM,  
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

FOR PLAINTIFF:

MR. ANDREW W. SPANGLER  
SPANGLER LAW PC  
208 N. GREEN ST.  
SUITE 300  
LONGVIEW, TX. 75601

FOR DEFENDANT GOOGLE INC.:

MR. BRIAN C. CANNON  
QUINN EMANUEL URQUHART  
OLIVER & HEDGES  
555 TWIN DOLPHIN DRIVE  
SUITE 560  
REDWOOD SHORES, CA. 94065

MR. JEFF BENTCH  
BECK, REDDEN & SECREST  
ONE HOUSTON CENTER  
1221 MCKINNEY STREET  
SUITE 4500  
HOUSTON, TX. 77010

FOR DEFENDANT YAHOO!, INC.:

MR. JASON C. WHITE  
HOWREY LLP  
321 NORTH CLARK STREET  
SUITE 3400  
CHICAGO, IL. 60610

COURT REPORTER:

MS. LIBBY CRAWFORD, CSR  
OFFICIAL COURT REPORTER  
500 STATE LINE AVENUE

TEXARKANA, TX. 75501  
903.794.4067 EXT. 237

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PROCEEDINGS RECORDED BY STENOMASK VERBATIM REPORTING,  
TRANSCRIPT PRODUCED BY CAT SYSTEM.

P R O C E E D I N G S

MARSHALL, TEXAS

OCTOBER 6, 2008

(OPEN COURT)

1 THE COURT: GOOD MORNING, GENTLEMEN. THIS IS THE  
2 PROTECTIVE ORDER ISSUE. I SORT OF FOUND MYSELF, AS I READ  
3 THROUGH THIS YESTERDAY, ASKING MYSELF WHY I SET THIS BUT,  
4 NEVERTHELESS, WE ARE HERE. SO, MY UNDERSTANDING, YOUR PRIMARY  
5 -- EVERYONE MAY HAVE A SEAT. WHY DON'T WE MAKE ANNOUNCEMENTS  
6 FOR MRS. CRAWFORD'S BENEFIT AS FAR AS THE ATTORNEYS PRESENT  
7 AND WHO YOU REPRESENT.

8 MR. SPANGLER: YOUR HONOR, ANDREW SPANGLER ON BEHALF  
9 OF PA ADVISORS, READY TO PROCEED.

10 MR. CANNON: GOOD MORNING, YOUR HONOR. THIS IS BRIAN  
11 CANNON ON BEHALF OF GOOGLE. WITH ME IS JEFF BENTCH.

12 MR. WHITE: GOOD MORNING, YOUR HONOR, JASON WHITE ON  
13 BEHALF OF YAHOO!.

14 THE COURT: VERY WELL. AND WE HAVE AN ISSUE OF  
15 SOURCE CODE, WHERE IT'S TO BE MADE AVAILABLE FOR INSPECTION.  
16 MY UNDERSTANDING, ESSENTIALLY WE HAVE AN ISSUE OF PLAINTIFFS  
17 SUGGESTING DALLAS, DEFENDANTS SUGGESTING CALIFORNIA, AND  
18 PERHAPS WE HAVE A DISAGREEMENT AS TO THE AMOUNT OF NOTICE.  
19 MAYBE THE PLAINTIFFS ARE SAYING TWENTY-FOUR HOURS AND THE  
20 DEFENDANTS WANTING MORE TIME. IS THAT CORRECT?

21 MR. CANNON: THAT'S ESSENTIALLY CORRECT, YOUR HONOR.

1 I THINK THAT THE NOTICE PERIOD IS SECONDARY TO THE LOCATION.  
2 THE DEFENDANTS WOULD LIKE THE SOURCE CODE INSPECTED WHERE IT  
3 IS PHYSICALLY LOCATED, WHICH IS NORTHERN CALIFORNIA.

4 THE COURT: RIGHT. SO THOSE ARE ESSENTIALLY THE  
5 ISSUES WE NEED TO WORK THROUGH. SO WHAT DO YOU SAY ON BEHALF  
6 OF THE PLAINTIFF?

7 MR. SPANGLER: YOUR HONOR, BASICALLY, AND I AM GOING  
8 TO GO THROUGH THE ARGUMENT THAT THE DEFENDANTS HAVE MADE BOTH  
9 IN THE PROTECTIVE ORDER AND THEIR SUPPLEMENTAL BRIEF. WE  
10 BELIEVE THAT THIS CASE SHOULD BE TREATED THE SAME AS THE  
11 POLARIS CASE, THE BRIGHT RESPONSE CASE. THERE ARE A NUMBER OF  
12 REASONS.

13 FIRST, THE DEFENDANTS SAY THAT THIS --

14 THE COURT: IS THAT, I AM TRYING TO REMEMBER, IS THAT  
15 ONE OF MY CASES OR IS THIS --

16 MR. SPANGLER: THAT CASE IS IN FRONT OF JUDGE  
17 EVERINGHAM RIGHT NOW.

18 THE COURT: IS THAT A RELATED CASE IN ANY FASHION?

19 MR. SPANGLER: NOT RELATED IN TERMS OF PARTIES BUT IN  
20 TERMS OF CORE TECHNOLOGY. YOU HAVE BOTH CASES ARE GOING ON  
21 ABOUT THE SAME TIME. YOU HAVE BOTH GOOGLE AND YAHOO! IN THE  
22 CASES; YOU HAVE SOME OF THE SAME PLAINTIFF LAWYERS; YOU HAVE  
23 THE SAME LOCAL COUNSEL FOR GOOGLE; YOU HAVE THE SAME NATIONAL  
24 AND LOCAL COUNSEL FOR YAHOO! THE SOURCE CODE EXPERT IS THE  
25 SAME IN BOTH CASES.

1 THE COURT: WHERE DOES THE PLAINTIFF'S EXPERT RESIDE?

2 MR. SPANGLER: AUSTIN.

3 THE COURT: AUSTIN.

4 MR. SPANGLER: YES, YOUR HONOR. ONE THING I WANTED  
5 TO POINT OUT IS IN THE SUPPLEMENTAL BRIEF THE DEFENDANTS  
6 ALLEGE THAT THEY SHOULDN'T HAVE TO PRODUCE IT IN DALLAS  
7 BECAUSE WE HAVE ACCUSED A WIDER RANGE OF PRODUCTS IN THIS CASE  
8 VERSUS IN THE BRIGHT RESPONSE CASE. IN FACT, IF YOU LOOK AT  
9 THE INFRINGEMENT CONTENTIONS, THEY ARE EXACTLY THE SAME  
10 ACCUSED PRODUCTS, EXACTLY THE SAME. SO YOU HAVE THE SOURCE  
11 CODE EXPERT THAT TRAVELS TO DALLAS TO LOOK AT THE CODE, THE  
12 GOOGLE CODE AND THE YAHOO! CODE, WHO THEN HAS TO TRAVEL TO  
13 NORTHERN CALIFORNIA TO ESSENTIALLY DO SIMILAR --

14 THE COURT: WAS THAT PROTECTIVE ORDER AGREED UPON OR  
15 IS THAT JUDGE EVERINGHAM'S RULING?

16 MR. SPANGLER: IT WAS AGREED UPON. IT WAS AGREED  
17 UPON BY YAHOO!'S COUNSEL THAT IS SITTING HERE TODAY. THE  
18 OTHER THING IS THEY SAY THEY CAN'T GIVE UP PHYSICAL CONTROL,  
19 THAT THEY NEED TO HOLD ONTO IT BECAUSE THEY ARE SCARED ABOUT  
20 TRANSPORTING IT. WELL, WE WILL AGREE TO FLY SOMEONE TO DALLAS  
21 WITH THE SOURCE CODE IN HAND. THAT'S NOT A PROBLEM. SO THEY  
22 NEVER GIVE UP PHYSICAL CONTROL. AND THE ARGUMENT THAT THEY --

23 THE COURT: WHAT ABOUT THE NOTICE ISSUE, WHY DO YOU  
24 FEEL TWENTY-FOUR HOURS IS SUFFICIENT?

25 MR. SPANGLER: WHATEVER IS IN THE BRIGHT RESPONSE

1 CASE, THE POLARIS CASE, WE WILL AGREE TO THAT IN THIS CASE. I  
2 DON'T KNOW WHAT THE -- I DON'T REMEMBER WHAT IT IS, BUT IF  
3 IT'S FORTY-EIGHT HOURS, THAT'S FINE. IF IT'S TWENTY-FOUR, WE  
4 DON'T UNDERSTAND WHY IN ONE CASE WITH THE SAME ACCUSED  
5 PRODUCTS, THE SAME LAWYERS THAT AGREED TO IT, WHY WE CAN'T  
6 HAVE THAT NOW.

7 THE COURT: VERY WELL. COMMENTS ON BEHALF OF GOOGLE.

8 MR. CANNON: YES, YOUR HONOR. I AM NOT A LAWYER IN  
9 THE POLARIS CASE. I DID NOT REPRESENT GOOGLE IN THE POLARIS  
10 CASE. IT IS NOT A RELATED CASE. IT'S A DIFFERENT PATENT, A  
11 DIFFERENT INVENTOR. PLAINTIFF'S COUNSEL MAY BE THE SAME, BUT  
12 DEFENDANT'S COUNSEL IS TO SOME DEGREE DIFFERENT. SO THE  
13 TECHNOLOGY IS DIFFERENT BECAUSE IT'S A DIFFERENT PATENT. AND  
14 IN THAT CASE THE PROTECTIVE ORDER WAS AGREED UPON. IT AROSE  
15 OUT OF A SERIES OF NEGOTIATIONS AND COMPROMISES, YOUR HONOR,  
16 AND IT SHOULD NOT SERVE AS THE DEFAULT RULE FOR ALL CASES  
17 MOVING FORWARD.

18 WE SUBMITTED A SUPPLEMENTAL BRIEF WHERE ONE OF THE  
19 ARGUMENTS WE MADE IS THE RISK IS CUMULATIVE. WHAT THAT MEANS  
20 IS IF GOOGLE AND YAHOO! HAVE TO REPEATEDLY SEND ITS SOURCE  
21 CODE OUT OF ITS PHYSICAL LOCATION, THE RISK FOR SOMETHING  
22 HAPPENING TO THAT SOURCE CODE INCREASES. SO A RULE THAT'S  
23 AGREED TO IN ONE CASE SHOULD NOT SERVE FOREVER MORE AS THE  
24 RULE THAT GOOGLE AND YAHOO! SHOULD TRANSPORT THEIR SOURCE CODE  
25 OUT OF WHERE IT IS PHYSICALLY LOCATED.

1           AND ONE THING I REALLY WANT TO EMPHASIZE THIS MORNING IS  
2 JUST HOW VALUABLE THIS SOURCE CODE IS. THE REMAINDER OF THE  
3 DOCUMENTS WE HAVE AGREED TO PRODUCE ON CDS IN SEARCHABLE  
4 FORMAT. WE CAN SEND THEM TO PLAINTIFFS, TO PLAINTIFF'S  
5 OFFICES IN TEXAS SO THEY CAN INSPECT THEM AND SEARCH THEM AND  
6 BUILD THEIR CASE AS THEY SEE FIT.

7           THE SOURCE CODE IS DIFFERENT, YOUR HONOR. THE SOURCE  
8 CODE REPRESENTS THE ACTUAL SOFTWARE THAT GOOGLE AND YAHOO!  
9 HAVE BUILT THEIR BUSINESSES ON. IT'S THE SOFTWARE THAT TELLS  
10 THE COMPUTERS WHAT TO DO. AND THE PROBLEM IS ONCE, IF THAT IS  
11 COMPROMISED IN ANY WAY, THE INVESTMENT THAT GOOGLE AND YAHOO!  
12 MADE IN THAT SOFTWARE IS, I MEAN, THE DOWNSIDE IS CATASTROPHIC  
13 COMPARED TO THE, I WOULD SAY, RELATIVELY MINOR INCONVENIENCE  
14 OF HAVING AN EXPERT IN A HIGH PROFILE KIND OF CASE HAVE TO FLY  
15 TO WHERE THE SOURCE CODE IS LOCATED.

16           AND PLAINTIFF HAS TOLD US THAT IT HAS AN EXPERT IN  
17 AUSTIN. WE HAD NOT HEARD THAT BEFORE. UNDER THE PROTECTIVE  
18 ORDER, THERE HAS BEEN NO DISCLOSURE OF AN EXPERT YET. SO THAT  
19 WAS NEWS TO US THIS MORNING. I AM NOT SAYING IT'S NOT TRUE,  
20 WE JUST DID NOT KNOW THAT THERE WAS AN EXPERT IN THE PA  
21 ADVISOR'S CASE.

22           AND I GUESS MY BOTTOM LINE IS, IF YOU COMPARE THE  
23 POTENTIAL PREJUDICE TO DEFENDANTS TO HAVING A RULE GOING  
24 FORWARD THAT ITS SOURCE CODE HAS TO BE TRANSPORTED FROM WHERE  
25 IT IS PHYSICALLY LOCATED, COMPARED TO THE INCONVENIENCE IN

1 THIS CASE OF HAVING A PLAINTIFF GO TO WHERE THE COMPANIES ARE  
2 LOCATED, I WOULD SUBMIT, YOUR HONOR, THAT THE PREJUDICE TO  
3 DEFENDANTS FAR OUTWEIGHS THE --

4 THE COURT: AND HOW MUCH NOTICE ARE YOU REQUESTING?

5 MR. CANNON: WELL, WE PROPOSE SEVENTY-TWO HOURS  
6 NOTICE. IF THE INSPECTION IS IN NORTHERN CALIFORNIA, WE CAN  
7 GET A LOT LESS NOTICE. IF THE ISSUE IS GETTING THE SOURCE  
8 CODE, PUTTING IT ON A DISK AND TRANSPORTING IT SOMEWHERE, THAT  
9 TAKES TIME. IF WE DO IT IN NORTHERN CALIFORNIA, WE CAN HAVE  
10 IT PRELOADED ON A COMPUTER AND PHYSICALLY TAKE IT FROM GOOGLE  
11 OR YAHOO! UP TO COUNSEL'S OFFICES WHICH IS WITHIN THE  
12 DISTRICT. WE CAN ACCOMMODATE THEM ON A MUCH SHORTER NOTICE  
13 PERIOD.

14 THE COURT: VERY WELL. ANY ADDITIONAL COMMENTS?

15 MR. WHITE: ON BEHALF OF YAHOO! I WAS A PART OF THE  
16 NEGOTIATION IN THE POLARIS CASE, YOUR HONOR, AND AS MY CO-  
17 COUNSEL MENTIONED, THAT WAS A RESULT OF A SERIES OF COMPLEX  
18 NEGOTIATIONS THAT WERE GIVE AND TAKE HERE AND THERE. IF  
19 YAHOO! WOULD HAVE UNDERSTOOD THAT IT WAS FOREVER AGREEING TO  
20 PRODUCE ITS SOURCE CODE IN ALL INSTANCES IN TEXAS BY AGREEING  
21 TO THAT PROTECTIVE ORDER, OBVIOUSLY THE NEGOTIATIONS MAY HAVE  
22 GONE DIFFERENTLY AND WE MAY NOT HAVE AGREED TO THAT.

23 THE COURT: WHY DO YOU THINK THERE IS MORE POTENTIAL  
24 FOR HARM IN THIS CASE VERSUS THE POLARIS CASE, WHICH I DON'T  
25 KNOW ANYTHING ABOUT THE SUBJECT MATTER, BUT --



1 MR. WHITE: I WAS SURPRISED TO HEAR THAT THE ACCUSED  
2 TECHNOLOGIES ARE EXACTLY THE SAME BECAUSE I DON'T BELIEVE  
3 THAT'S EXACTLY THE CASE. I THINK THAT HERE THERE IS A WIDER  
4 RANGE OF THESE APPLICATIONS IN TERMS OF THE LISTINGS OF  
5 PRODUCTS. SO IT DOES AT LEAST APPEAR TO US ON ITS FACE THAT  
6 IT IS A BROADER ACCUSATION OF INFRINGEMENT.

7 THE COURT: WELL, I MEAN DO YOU THINK THAT INCREASES  
8 THE POTENTIAL FOR HARM?

9 MR. WHITE: ABSOLUTELY. TO THE EXTENT IT SWEEPS IN  
10 MORE CODE, OR MORE PRODUCTS, OR MORE TECHNOLOGY, THE RISK IS  
11 JUST HEIGHTENED.

12 THE COURT: AND THEN WE WILL GIVE YOU A CHANCE TO  
13 REPLY. ADDITIONAL COMMENTS?

14 MR. CANNON: I JUST WANT TO ADD, YOUR HONOR, THE MORE  
15 TIMES ONE PUTS A CD IN THE FED EX AND SENDS IT OUT OF STATE,  
16 THE RISK SIMPLY INCREASES. SO WHATEVER THE RISK THAT WAS, YOU  
17 KNOW, EVALUATED BASED ON THE ACCUSED PRODUCTS IN THE POLARIS  
18 CASE, A NEW CASE WITH MORE, YOU KNOW, THE MORE TIMES ONE  
19 PHYSICALLY LETS GO OF THE SOURCE CODE, JUST SIMPLY THE GREATER  
20 THE RISK THAT INCREASES.

21 THE COURT: NOW, REPLY COMMENTS.

22 MR. SPANGLER: THANK YOU, YOUR HONOR. FIRST OF ALL,  
23 THE LIST OF ACCUSED PRODUCTS, AND I HAVE THEM BOTH RIGHT HERE,  
24 ARE EXACTLY THE SAME. THERE IS NO DEFAULT RULE. IN FACT, WE  
25 WOULD ENCOURAGE THE COURT TO PUT A FOOTNOTE IN THE ORDER THAT

1 SAYS THIS IS NOT A DEFAULT RULE. THIS IS A UNIQUE SET OF  
2 CIRCUMSTANCES.

3 THE COURT: OH, I LOOK AT EVERY ONE OF THESE  
4 INDIVIDUALLY. MAYBE SOME GUIDANCE FROM PAST ORDERS, BUT I  
5 DON'T HAVE ANY TYPE OF DEFAULT RULE.

6 MR. SPANGLER: THE OTHER THING IS THEY SAY THEY HAVE  
7 TO TAKE IT ON A DISK, LOAD IT ON A SECURE LAPTOP; IT HAS TO  
8 LEAVE GOOGLE'S PREMISES AND YAHOO!'S PREMISES AND TRAVEL TO  
9 THAT LAW FIRM. IT IS LEAVING THE PREMISES. SO WHAT WE SAY  
10 IS, THEY DON'T WANT TO SEND IT FED EX. YOU LOAD IT ON THE  
11 SAME LAPTOP, WE WILL PAY FOR THE SAME PERSON THAT WAS GOING TO  
12 GO, WE WILL PAY FOR THEM TO TRAVEL ON A PLANE. THEY NEVER  
13 GIVE UP PHYSICAL CONTROL. THEY ARE ALREADY PRODUCING THAT, A  
14 LOT OF THAT SAME SOURCE CODE IN THE POLARIS CASE. THE  
15 EFFICIENCIES ACTUALLY FAVOR US IN EVERY WAY. THIS IS A UNIQUE  
16 SET OF CIRCUMSTANCES. WHEREAS THE DEFAULT RULE THAT CUTS  
17 AGAINST THE PLAINTIFF IS YOU CAN HAVE IT IN ONE CASE, YOU CAN  
18 HAVE ALL THIS OVERLAP, AND THEN BECAUSE THERE IS SUPPOSEDLY  
19 MORE CODE OR IF THAT'S SENSITIVE, WHICH EVERY DEFENDANT  
20 ALLEGES, YOU THEN -- THEY NEVER HAVE TO LEAVE THOSE PREMISES.  
21 AND SO NOW IN EVERY CASE WE WOULD HAVE TO TRAVEL ALL OVER. SO  
22 THERE ARE ARGUMENTS BOTH WAYS.

23 WE THINK WITH THIS MUCH OVERLAP, SOME OF THE SAME  
24 LAWYERS, THE EXACT SAME LAWYERS FOR YAHOO!, THE SAME ACCUSED  
25 PRODUCTS, THE SAME TIME, IT JUST MAKES SENSE.

1 THE COURT: WHY DALLAS VERSUS MAYBE HOUSTON WHERE MR.  
2 BECK'S OFFICE AND MR. WILLIAMS' OFFICE IS LOCATED?

3 MR. SPANGLER: THE PROBLEM WITH THAT IS WE HAVE  
4 ALREADY NEGOTIATED ALL THAT WITH THE POLARIS CASE. AND WE DID  
5 SAY IN THAT CASE WE DON'T CARE WHAT CITY IN TEXAS AS LONG AS  
6 IT'S IN THE SAME STATE. SO SINCE WE HAVE ALREADY NEGOTIATED,  
7 AND THIS WAS JUST A FEW WEEKS AGO IN DALLAS, WE WOULD LIKE TO  
8 KEEP IT IN DALLAS.

9 THE COURT: VERY WELL. THEN I WILL TAKE THIS UNDER  
10 ADVISEMENT, AND I WANT TO LOOK AT THE POLARIS ORDER AND SEE IF  
11 I RECEIVE ANY GUIDANCE FROM THAT. AND I WILL HAVE SOMETHING  
12 OUT BEFORE THIS WEEK IS OVER SO THIS CASE IS NOT DELAYED  
13 ADDITIONALLY.

14 ANYTHING ELSE? I APPRECIATE YOUR COMMENTS, AND IF THERE  
15 IS NOTHING MORE, WE WILL BE IN RECESS.

16 (ADJOURNED AT 10:46 A.M.)

17

18 REPORTER'S CERTIFICATION

19 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM  
20 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

21 DATE: OCTOBER 15, 2008

/S/LIBBY CRAWFORD

22

LIBBY CRAWFORD, CSR

23

OFFICIAL COURT REPORTER

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