

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MYMAIL, LTD.,)	
)	
Plaintiff,)	Case No. 6:04-CV-189
)	
v.)	Judge Leonard E. Davis
)	
AMERICA ONLINE, INC., et al.)	Jury Trial Demanded
)	
Defendants.)	
)	

**AOL'S REPLY TO PLAINTIFF MYMAIL, LTD.'S RESPONSE
IN OPPOSITION TO AOL'S EMERGENCY MOTION TO COMPEL**

Plaintiff MyMail, Ltd. ("MyMail") attempts improperly to forestall revealing its infringement contentions by claiming that Plaintiff America Online, Inc. ("AOL") is prematurely seeking MyMail's final infringement contentions and by mischaracterizing the noticed deposition topics.

The noticed topics focus on the basis and foundation of MyMail's infringement contentions. What could be more simple? As a practical matter, MyMail's current infringement contentions will be its final contentions, unless MyMail satisfies one of the limited circumstances that would permit a change pursuant to P.R. 3-6. **Delaying discovery into the basis for those contentions is therefore a bald attempt to obfuscate, delay, and hide the ultimate factual bases for its cause of action against AOL.** Assuming that MyMail can later satisfy the criteria necessary to change its infringement contentions, AOL will be entitled to additional discovery regarding the modified contentions and the reason for those changes. Until then, this Court's rules require MyMail to disclose its infringement contentions as they stand now. They do not provide a

unilateral exception for MyMail to avoid discovery out of a hypothetical concern that its infringement contentions may change over time.

Similarly, MyMail cannot avoid timely discovery by mischaracterizing AOL's deposition topic numbers 3-5 related to AOL 3.0. Contrary to MyMail's assertion that these topics relate to invalidity, these topics go to the center of MyMail's infringement contentions. In filing this lawsuit, MyMail decided which AOL products and services to accuse of infringement, and plaintiff declined to identify AOL 3.0 as an Accused Product. The basis for the exclusion of AOL 3.0 is thus highly probative of the reasons why AOL's successor versions do not infringe or allegedly infringe. Indeed, during the Court's status conference on July 22, 2004, MyMail claimed changes in AOL's software architecture as the basis for deciding which AOL products to accuse. Topic numbers 3-5 inquire into those facts. AOL 3.0 may well be invalidating prior art, but that fact does not preclude legitimate discovery of the basis for MyMail's infringement contentions.

MyMail brought this lawsuit against AOL and several other defendants. It must have had a basis for doing so, and AOL seeks to take the deposition of MyMail on the distinctions between products alleged to infringe and very similar products that are not alleged to infringe. Accordingly, AOL requests that the Court grant its motion to take the deposition on all noticed topics that AOL properly served a month ago.

Dated: September 14, 2004

Respectfully submitted,

/s/Andrew R. Kopsidas

Ruffin B. Cordell—Attorney-in-charge
(Texas State Bar No. 04820550)

E-mail: rbc@fr.com

Lauren A. Degnan

E-mail: lad@fr.com
Andrew R. Kopsidas
E-mail: ark@fr.com
FISH & RICHARDSON P.C.
1425 K Street, N.W., 11th Floor
Washington, D.C. 20005
Telephone: (202) 783-5070
Facsimile: (202) 783-2331

Michael E. Jones
(Texas State Bar No. 10929400)
POTTER MINTON, P.C.
110 N. College
500 Plaza Tower
Tyler, Texas 75702
Telephone: (903) 597-8311
Facsimile: (903) 593-0846
E-mail: mikejones@potterminton.com

Otis W. Carroll
(Texas State Bar No. 03895700)
Wesley Hill
(Texas State Bar No. 24032294)
IRELAND, CARROLL & KELLEY, P.C.
6101 S. Broadway, Suite 500
P.O. Box 7879
Tyler, TX. 75711
Telephone: (903) 561-1600
Facsimile: (903) 581-1071
E-mail: Fedserve@icklkw.com

Attorneys for Defendant
AMERICA ONLINE, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served, via the Court's CM/ECF system per Local Rule CV-5(a)(3) on all counsel of record, as identified below, on September 14, 2004:

<p>Douglas A. Cawley Mike McKool, Jr. Samuel F. Baxter Theodore Stevenson III Matthew P. Harper McKool Smith, P.C. 300 Crescent Court, Suite 1500 Dallas, Texas 75201</p>	<p>Attorneys for Plaintiff MyMail, Ltd.</p>
<p>Randall L. Sarosdy Fred Williams Jennifer Katharine Towle Akin Gump Strauss Hauer & Feld LLP 300 West 6th Street, Suite 2100 Austin, TX 78701</p> <p>Sidney Calvin Capshaw Elizabeth L. DeRieux Brown McCarroll, LLP 220 The Energy Centre 1127 Judson Road Longview, TX 75606-3999</p>	<p>Attorneys for AT&T Corp.</p>

<p>L. Norwood Jameson Claus D. Melarti Mark C. Comtois Duane Morris LLP 1180 West Peachtree Street, Suite 700 Atlanta, GA 30309</p> <p>Tom Henson Deron Dacus Ramey Flock 100 E. Ferguson, Suite 500 Tyler, TX 75702</p>	<p>Attorneys for Earthlink, Inc.</p>
<p>Thomas J. Williams Haynes and Boone, LLP 201 Main Street, Suite 2200 Forth Worth, TX 76102</p> <p>John R. Emerson Haynes and Boone, LLP 901 Main Street, Suite 3100 Dallas, TX 75202</p> <p>William J. Robinson Stephen M. Lobbin Foley & Lardner 2029 Century Park East, 35th Floor Los Angeles, CA 90067</p>	<p>Attorneys for Net Zero, Inc., Juno Online Services, Inc., and Netbrands, Inc.</p>
<p>Thomas J. Williams Haynes and Boone, LLP 201 Main Street, Suite 2200 Forth Worth, TX 76102</p> <p>John R. Emerson Haynes and Boone, LLP 901 Main Street, Suite 3100 Dallas, TX 75202</p> <p>Timothy Newman Anthony Sheldon Cardinal Law Group 1603 Orrington Avenue, Suite 2000 Evanston, IL 60201</p>	<p>Attorneys for SBC Communications, Inc.</p>

<p>T. John Ward Law Office of T. John Ward, Jr, P.C. P.O. Box 1231 Longview, Texas 75606-1231</p> <p>Bryant C. Boren, Jr. Timothy S. Durst Christopher W. Kennerly Fernando Rodriguez, Jr. Baker Botts L.L.P. 2001 Ross Avenue, Suite 700 Dallas, TX 75201-2980</p>	<p>Attorneys for GTE.Net LLC and Verizon Communications, Inc.</p>
---	---

/s/Andrew R. Kopsidas