

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

**CERTIFIED
TRANSCRIPT**

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SOFTWARE RIGHTS ARCHIVE, LLC., :
: :
Plaintiff, :
: Civil Action No.
- vs - : 2:07-cv-511 (CE)
: :
GOOGLE INC., YAHOO! INC., IAC SEARCH :
& MEDIA, INC., AOL, LLC., and LYCOS, :
INC., :
: :
Defendants. :
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Videotaped deposition of JEFFREY FRANKLIN AIT, the witness herein, called for the purpose of Discovery Examination by the Defendants, pursuant to Federal Rules of Civil Procedure, taken before Rita Rodriguez, a Notary Public for South Carolina, at the Hilton Myrtle Beach Resort, 10000 Beach Club Drive, Myrtle Beach, South Carolina, on Tuesday, September 30, 2008, commencing at 9:45 a.m.

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EXHIBIT 3

1 A. Yes.

2 Q. The next paragraph she says, "In 2000 while
3 finalizing the 2000 tax returns it appears we
4 became aware that Slash still existed on paper
5 and had not been liquidated."

6 And then she says, "I have an e-mail
7 string from Wilson, Sonsini relating to the bill
8 from the franchise tax board asking us to prepare
9 a letter saying that Slash had no assets and a
10 response back saying we were not comfortable
11 stating that since we had just determined the
12 entity still existed."

13 Do you see that?

14 A. Okay.

15 Q. Do you recall any of that that she just describes
16 there that Wilson, Sonsini had e-mailed -- that
17 the franchise tax board, somebody had wanted them
18 to prepare a letter saying that Slash had no
19 assets and in 2000 y'all were not comfortable
20 stating that since you hadn't determined if Slash
21 still existed?

22 Do you recall that?

23 A. I mean, I did not recall that until she sent me
24 this e-mail.

25 Q. But you have no reason to dispute the accuracy of

1 her e-mail; do you?

2 A. No.

3 Q. In fact, we have seen tax returns from 1998 and
4 1999 for Slash showing that they still had some
5 ongoing business activities; correct?

6 A. They were filed in 2001 as a result of this
7 determination that we needed to do that.

8 Q. Right. Which confirmed that slash still had some
9 ongoing business activities in 1998 and 1999;
10 correct, Mr. Ait?

11 A. Yes.

12 Q. And she says, "I don't have any records but we
13 must have done some work in 2000 to allocate
14 something to the entity as the final tax returns
15 have filings for the entity each year until 2000.
16 We recognize royalty income and showed some fixed
17 assets."

18 Do you see that?

19 A. Right, but we did not allocate any gain on sale
20 of software.

21 Q. You don't have any reason to dispute the accuracy
22 of that statement by Miss Fugitt; right?

23 A. I don't. It's a direct interpretation.

24 Q. You would agree, wouldn't you, Mr. Ait, that in
25 1998 and 1999, based on the documents we have

1 misremembered it or misheard it?

2 A. No, I said those employees I agreed to keep
3 employed for one year in North Carolina but as
4 employees of Site not as employees of Slash.

5 Q. Well, if we look at the federal income tax return
6 for 1998, we show Slash paying salaries of
7 \$88,000?

8 A. But I don't know what that's for. Their salaries
9 would have been much greater than that. That
10 actually can be a portion of my salary as the CEO
11 that they decided to apply to this. Again,
12 without asking the accountants the way that they
13 distributed these assets across that for whatever
14 purposes, I can't tell you. I can't remember.

15 But I could tell you that Ron Sauer's
16 salary, Neal's salary and Sean's salary far
17 exceeded \$88,000.

18 Q. But that \$88,000 could be a portion of their
19 salaries too; couldn't it?

20 A. It could be but I don't believe that it is.

21 Q. But we have here \$88,000, compensation of
22 officers. That's what was written, compensation
23 of officers, on a federal income tax return that
24 you signed in 2001 on behalf of Slash?

25 A. But it would not have been their salary. This

1 would have been mine because it says officers.

2 They were not officers.

3 Q. But you would agree that Slash was paying at
4 least \$88,000 because that was what was reported
5 to the federal government for an officer in the
6 1998 tax year; correct?

7 A. Yes.

8 MR. KAPLAN: Objection. Asked and
9 answered.

10 Q. Wouldn't you agree, based on what we have seen
11 here today, Mr. Ait, that Slash was not a shell
12 entity in 1998 or 1999?

13 A. No, I don't agree with that. There was no
14 business carried out by Slash.

15 Q. Even though Slash is taking these losses and
16 other amortizations and depreciations and has
17 capital paid in as we have seen on these income
18 tax returns in 1998, your opinion and belief, as
19 you sit here today under oath, was that Slash was
20 a shell entity in 1998?

21 A. Yes, it was a wholly-owned subsidiary that did no
22 business. I don't know what you classify as a
23 shell but that's what I would classify as a
24 shell.

25 Q. Let me ask you, what is your definition of a

1 shell entity? If you told me I didn't get it.

2 A. A shell entity basically is a corporation that
3 has no assets.

4 Q. But we know from looking at the 1998 tax return
5 that in fact Slash had assets in 1998, don't we,
6 sir?

7 A. Desks, chairs and computers, yes.

8 Q. So you would agree under your own definition of
9 shell entity, under the definition that you just
10 told me, and I mean this respectfully, Slash was
11 not a shell entity at least in 1998, you would
12 agree with that; right, and the same in 1999;
13 correct?

14 A. Okay.

15 Q. I'm going to get through some stuff here that I
16 don't want to ask you. Give me a second here.
17 I'm going to cut some stuff here.

18 V-Search technology, Mr. Ait, you have
19 talked about that being the technology that you
20 intended to sell to Mr. Egger; correct?

21 A. Yes.

22 Q. Did you ever try to sell the V-Search technology
23 to anyone other than Mr. Egger?

24 A. No.

25 Q. When we say the V-Search technology, do you know

1 STATE OF SOUTH CAROLINA :
2 : SS: CERTIFICATE
3 COUNTY OF HORRY :

4 I, Rita Rodriguez, a Notary Public for South
5 Carolina, do hereby certify that the within named
6 witness, , was by me first duly sworn to
7 testify the truth, the whole truth and nothing but the
8 truth in the cause aforesaid:

9 That the testimony then given was reduced by me
10 to stenotype in the presence of said witness,
11 subsequently transcribed onto a computer under my
12 direction, and that the foregoing is a true and correct
13 transcript of the testimony so given as aforesaid.

14 I do further certify that this deposition was
15 taken at the time and place as specified in the
16 foregoing caption, and that I am not a relative,
17 counsel or attorney of either party, or otherwise
18 interested in the outcome of this action.

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 and affixed my seal of office at Myrtle Beach, South
21 Carolina this day of ,
22

23 Rita Rodriguez
RITA RODRIGUEZ, Notary Public
24 for South Carolina.

25 My Commission expires October 4, 2010.