

Smith Declaration

Exhibit KS2

**Issued by the
UNITED STATES DISTRICT COURT
Northern District of California**

API Technologies, LLC
V.
Facebook, Inc., et al.,

SUBPOENA IN A CIVIL CASE

Case Number:¹ E.D. Tex. Case No. 2:09-cv-147

TO: Adobe Systems Incorporated
345 Park Avenue
San Jose, CA 95110-2704

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

| | |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM |
| | DATE AND TIME |

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

| | |
|---------------------|---------------|
| PLACE OF DEPOSITION | DATE AND TIME |
|---------------------|---------------|

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

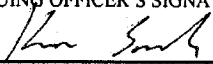
See Attachment A.

| | |
|--|------------------------------------|
| PLACE Quinn Emanuel Urquhart & Sullivan LLP; 50 California St., 22nd Floor; San Francisco, CA 94111 | DATE AND TIME 6/22/2010 1:00 pm |
|--|------------------------------------|

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

| | |
|----------|---------------|
| PREMISES | DATE AND TIME |
|----------|---------------|

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

| | |
|--|------------------|
| ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney for Defendant Yahoo! Inc. | DATE 6/7/2010 |
|--|------------------|

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Kevin Alexander Smith; Quinn Emanuel Urquhart & Sullivan LLP; 50 California St., 22nd Floor; San Francisco, CA 94111; (415) 875-6383

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

| | |
|------------------------|-------------------|
| DATE | PLACE |
| SERVED | |
| SERVED ON (PRINT NAME) | MANNER OF SERVICE |
| SERVED BY (PRINT NAME) | TITLE |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE _____ SIGNATURE OF SERVER _____

ADDRESS OF SERVER _____

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT A.

I. DEFINITIONS

1. The terms "YOU," "YOUR," and "ADOBE" mean Adobe Solution, Inc. any predecessor or successor, and any past or present parent, division, subsidiary, affiliate, joint venture, associated organization, director, officer, agent, attorney, employee, consultant, staff member, and/or other representative.
2. The terms "DOCUMENT" and "DOCUMENTS" include "electronically stored information," "things," and everything contemplated by Rules 26 and 34 of the Federal Rules of Civil Procedure. They include any handwritten, typewritten, printed, or photocopied material, including without limitation all correspondence, emails, memoranda, notes of meetings or conversations (personal or telephonic), reports, models, photographs, summaries, agreements, legal DOCUMENTS, and writings of every description, from which information can be obtained, whether maintained in hard copy or electronic form.
3. "RELATING TO" means concerning, mentioning, pertaining to, evidencing, involving, describing, discussing, commenting on, embodying, responding to, supporting, contradicting, or constituting (in whole or in part), as the context makes appropriate.
4. The terms "any" and "all" shall each mean and include the other.
5. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary in order to bring within the scope of the interrogatory all DOCUMENTS, information, and things that might otherwise be construed as falling outside of the scope thereof.
6. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
7. The singular form of any word shall be deemed to include the plural. The plural form of any word shall be deemed to include the singular.

II. DOCUMENT REQUESTS

1. ALL DOCUMENTS RELATING TO intellectual property regarding Adobe Web Buy, including without limitation patents, patent applications, prosecution histories, functional diagrams, mechanical drawings, and technical specifications.

2. ALL DOCUMENTS RELATING TO intellectual property regarding Adobe PDF Merchant, including without limitation patents, patent applications, prosecution histories, functional diagrams, mechanical drawings, and technical specifications.

3. DOCUMENTS sufficient to describe the design, operation, and development of Adobe Web Buy including, but not limited to, reference manuals, specifications, flowcharts, developer handbooks, white papers, training materials, data sheets, and guides.

4. DOCUMENTS sufficient to describe the design, operation, and development of Adobe PDF Merchant, including, but not limited to, reference manuals, specifications, flowcharts, developer handbooks, white papers, training materials, data sheets, and guides.

5. DOCUMENTS sufficient to determine the capability of Adobe Web Buy to:

- generate a user interface allowing the selection of data over a network;
- receive information from a user related to the identity of the user, including without limitation, a machine tag, hardware serial number or derivative thereof, other identifier of the user machine, email address, user ID, or password;
- validate user information
- generate license keys or other indicator of permission to access data based on any user information or validation of user information; or
- control access to data, over the network, on the user machine, or otherwise using a license key, code, or certificate.

6. DOCUMENTS sufficient to determine the capability of Adobe PDF Merchant to:

- generate a user interface allowing the selection of data over a network;

- receive information from a user related to the identity of the user, including without limitation, a machine tag, hardware serial number or derivative thereof, other identifier of the user machine, email address, user ID, or password;
- validate user information
- generate license keys or other indicator of permission to access data based on any user information or validation of user information; or
- control access to data, over the network, on the user machine, or otherwise using a license key, code, or certificate.

III. INSTRUCTIONS

The following instructions shall apply to each of the Document Requests herein:

1. In responding to this subpoena, YOU are requested to furnish all DOCUMENTS or things in YOUR possession, custody, or control, regardless of whether such DOCUMENTS or things are possessed directly by ADOBE or its employees, attorneys, or any other PERSON or PERSONS acting on YOUR behalf.
2. In producing DOCUMENTS for inspection, YOU are requested to produce the original of each DOCUMENT together with all non-identical copies and drafts of that DOCUMENT. A copy of a DOCUMENT bearing a comment, notation, or marking of any kind, which is not a part of the original, shall be considered a separate DOCUMENT. Any draft, preliminary, or superseded version of any DOCUMENT also is to be considered a separate DOCUMENT.
3. All DOCUMENTS that are maintained in electronic form should be produced in electronic form even if a paper copy of the same DOCUMENT was produced.
4. DOCUMENTS attached to each other should not be separated. DOCUMENTS attached to an email should be produced following, and together with, the email.
5. If YOU are aware that a DOCUMENT that is responsive to any of the requests for production below once existed but has been destroyed, please identify the DOCUMENT and

state when the DOCUMENT was destroyed, why it was destroyed, and the circumstances under which it was destroyed.

6. If any requested DOCUMENT or thing cannot be produced in full, please produce it to the extent possible, indicating what is being withheld and the reason it is being withheld.

7. If any requested DOCUMENT is withheld on the grounds of privilege, please provide the information required by Federal Rule of Civil Procedure 45(d)(2). For each item on the list include the following: (1) the specific privilege asserted; (2) the date of the DOCUMENT; (3) a brief description of the subject matter of the DOCUMENT; (4) the steps taken to ensure the confidentiality of the DOCUMENT, including affirmation that no unauthorized persons have received it; and (5) a statement of the basis upon which the privilege is claimed in sufficient detail to permit the court to adjudicate the validity of such claim.

8. If a portion of a DOCUMENT has been designated for production, the designation shall be deemed to call for the production of the entire DOCUMENT without alteration or deletion. A request for the production of a DOCUMENT that requests information that can be retrieved by the utilization of a computer or computer data in the possession or under YOUR control shall be deemed to ask YOU to prepare and produce a DOCUMENT disclosing such information.

9. DOCUMENTS and things responsive to these requests shall be produced as they are kept in the usual course of business with any identifying labels, file markings, or similar identifying features, or, alternatively, organized and labeled to correspond to each request to which the DOCUMENTS or things are responsive.

