

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

**ALOFT MEDIA, LLC,**

**Plaintiff,**

**v.**

**YAHOO!, INC., et al.,**

**Defendants.**

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**Civil Action No. 6:08-cv-509**

**JURY TRIAL DEMANDED**

EXHIBIT "2"

# KING & SPALDING

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December 5, 2008

## VIA OVERNIGHT MAIL & ELECTRONIC MAIL

Craig Tadlock  
Albritton Law Firm  
P.O. Box 2649  
Longview, TX 75606

**Re: Aloft Media v. Microsoft Corporation, et al. (Case No. 6:08-cv-50-LED)**

Dear Craig:

We are now in the discovery phase of this litigation and pursuant to the Court's Patent Rules and Discovery Order, your client's production of all documents, data compilations and tangible things relevant to the case are expected without a formal request. However, to assist you in your production obligations, Google Inc. ("Google") has prepared the following categories of documents and materials that Aloft Media, LLC ("Plaintiff") should disclose and produce to Google, AOL LLC, and Yahoo! Inc. (collectively, "Defendants"). Please note that the categories stated below are not meant to be an exhaustive summary of Plaintiff's disclosure obligations, and are simply intended to facilitate full and complete production.

Please keep in mind the following definitions when reviewing the categories below:

"Zilka/Kotab Entities" includes, but is not limited to, Kevin J. Zilka, Dominic M. Kotab, Aloft Media, LLC, Stragent, LLC, Zilka-Kotab PC, or other entities closely held or controlled at least in part by Kevin J. Zilka, with or without Dominic M. Kotab.

"Material" refers to, without limitation, all paper and digital format information. This includes all forms of data, communications, documents, reports, memoranda, letters, emails, instant messaging text, notes, product manuals, user guides, spreadsheets, databases, software and source code, designs and specifications, and anything else that should be produced under federal law and the rules of the U. S. District Court for the Eastern District of Texas.

"Technology at Issue" includes, but is not limited to, everything related to network browser plug-ins, network browser add-ons, bookmarking applications, bookmarking

software, bookmarking programs, bookmarking systems, and other applications, software, programs, protocols and systems that operate in association with network browsers including:

- A. Technology developed in entirety or in part by any of the Zilka/Kotab Entities; technology owned by any of the Zilka/Kotab Entities at any time; technology assigned or licensed by or to any of the Zilka/Kotab Entities at any time; technology developed by Jesse Ozog on behalf of any of the Zilka/Kotab Entities; technology referred to in the Confidential Deposition of Kevin Joseph Zilka as "AddButton" (Aloft\_Dep 000001 - Aloft\_Dep 000277); technology licensed under the terms of the Confidential Settlement Agreement between Adobe Systems Inc. and Plaintiff (Aloft SP 000001 - Aloft SP 000013); and technology licensed under the terms of the Settlement and License Agreement between Microsoft Corp. and Plaintiff (Aloft SP 000014 - Aloft SP 000037).
- B. Technology disclosed by or related to U.S. Patent No. 7,305,625, U.S. patent application serial no. 10/254,410, U.S. patent application serial no. 60/324,941, and all foreign or United States patents and patent applications related to or claiming priority from U.S. Patent No. 7,305,625, U.S. patent application serial no. 10/254,410, or U.S. patent application serial no. 60/324,941.
- C. Technology related to toolbars, toolbar systems, bookmarks, favorites, hotlinks, shortcuts, web browser plug-ins, web browser add-ons, and any other technology accused of patent infringement by Plaintiff.

"Intellectual Property" includes, but is not limited to, all legal and equitable rights and claims relating to the Technology at Issue that were held by Zilka/Kotab Entities at any time, particularly U.S. Patent No. 7,305,625, U.S. patent application serial no. 10/254,410, U.S. patent application serial no. 60/324,941, and all foreign or United States patents and patent applications concerning the same subject matter. This includes issued, pending, expired, or abandoned patents, patent applications, trademarks, and trademark applications.

With the above definitions in mind, Google identifies the following categories of Material that should be included in the required disclosures:

1. All Material relating to the Technology at Issue.
2. All Material relating to the Intellectual Property.
3. All Material relating to the application and prosecution of any Intellectual Property in the United States, including all drafts and communications, by or on behalf of any Zilka/Kotab Entities.

4. All Material relating to the application and prosecution of any Intellectual Property outside the United States, including all drafts and communications, by or on behalf of any Zilka/Kotab Entities.
5. All Material received by any prosecuting attorneys related to any Intellectual Property.
6. All Material concerning patentability searches relating to the Intellectual Property including, but not limited to, search results and reports, Material relating to the referral of James W. Pemrick and the decision to retain him, Material relating to any decisions to retain any other patentability search providers, communications with James W. Pemrick regarding lawsuits initiated by Zilka/Kotab Entities, Material provided to each search provider to use as a basis for constructing a search, and Material relating to James W. Pemrick's decision to modify his initial assessment of the Intellectual Property in view of the prior art (*see, e.g.*, Aloft\_Dep 000491 - Aloft\_Dep 000492).
7. All Material relating to the development of Intellectual Property or Technology at Issue, including documents relating to any alleged conception, diligence, and reduction to practice, documents concerning the first written description of any Intellectual Property, inventor notes, communications with third parties concerning the Intellectual Property, and documents concerning collaboration between Zilka/Kotab Entities and Dominic M. Kotab, Jesse Ozog, or any other entity or individual.
8. All Material relating to any previous or current employees or consultants of Zilka/Kotab Entities or anyone else who may have contributed to the Intellectual Property or the Technology at Issue, including at least Kevin J. Zilka, Dominic M. Kotab, and Jesse Ozog.
9. All Material concerning agreements or accounting records relating to services rendered by Jesse Ozog, James Pemrick, Zilka-Kotab PC, its employees, contractors or consultants, patentability search service providers, or any other entity or individual involved with Zilka/Kotab Entities, in the prosecution of the Intellectual Property or in the development of Technology at Issue including, but not limited to, agreements for services, invoices, payment records, bookkeeping records, and documents showing the amount of time spent on any services rendered.
10. All Material concerning any device, prototype, physical sample, model, working model, hardware, or software that embodies or otherwise incorporates or uses the subject matter allegedly disclosed and/or claimed by the Intellectual Property.
11. All Material concerning Jesse Ozog and his involvement with Zilka/Kotab Entities, the Technology at Issue, or the Intellectual Property including, but not limited to, Material provided to Jesse Ozog for use in his development of AddButton or the aloftmedia.com website, Material received from Jesse Ozog relating to his development of software or websites for Zilka/Kotab Entities, source code developed or written by Jesse Ozog, Material relating to and including agreements or contracts regarding services Jesse Ozog agreed to provide Zilka/Kotab Entities, communications with Jesse Ozog relating to the

- aloftmedia.com website or AddButton, financial records evidencing payment to Jesse Ozog for services rendered, and records of time Jesse Ozog spent working on matters, such as software or website development, for Zilka/Kotab Entities.
12. All Material relating to AddButton including, but not limited to, software, source code, instructions, software licenses, download records, sales records, marketing information, and promotional information.
  13. All Material relating to the aloftmedia.com website including, but not limited to, copies of web pages and any other documents, software, or source code made available at the aloftmedia.com website.
  14. All Material relating to the making, use, offer to sell, or sale of Intellectual Property or Technology at Issue in or outside the United States.
  15. All Material relating to the marking of any products with the number of any Intellectual Property, as the terms "mark" or "marking" are used in 35 U.S.C. § 287.
  16. All Material relating to the validity or invalidity of the Intellectual Property.
  17. All Material relating to prior art (material or otherwise) that was not provided to the United States Patent & Trademark Office in connection with the prosecution of any Intellectual Property.
  18. All Material relating to communications between Zilka/Kotab Entities and one or more of: Umair Khan, Rizsan Tufail, Christine (Odero) Abernathy, Sergey Zabelin, Carina J. Jan, Haixiao Yu, Anthony N. LaPine, Clickmarks, Inc., Semotus Solutions Inc., or NVIDIA Corp. concerning the Intellectual Property, the Technology at Issue, Zilka/Kotab Entities, lawsuits filed by Zilka/Kotab Entities, or patents, publications, products, or services identified as prior art to the Intellectual Property.
  19. All Material relating to any inspection, testing, evaluation, or analysis of any product or service of Defendants for any purpose by or on behalf of Zilka/Kotab Entities.
  20. All Material relating to how any product or service of Defendants compares to one or more claims of the Intellectual Property.
  21. All Material relating to allegations that the Intellectual Property is infringed or not infringed, including all Material giving rise to *Plaintiff Aloft Media LLC's Patent Rule 3-1 Disclosure of Asserted Claims and Infringement Contentions* (served on August 25, 2008), and all Material supporting any allegations of inducement of infringement by Google and any allegations of contributory infringement by Google.
  22. All Material relating to how and when any Zilka/Kotab Entities became aware of the existence of each product or service of Defendants now accused of infringement.

23. All Material relating to any public use or disclosure of any product, system, or method that embodies or employs any aspect or feature of the Intellectual Property or the Technology at Issue.
24. All Material relating to enforcement of any Intellectual Property.
25. All Material relating to past or present decisions by any person or entity concerning whether to assert the Intellectual Property against any other person or entity.
26. All Material relating to legal proceedings concerning the Intellectual Property or the Technology at Issue including, but not limited to, all Material produced and/or served by Zilka/Kotab Entities in *Aloft Media, LLC v. Adobe Systems Inc., et al.*, Civil Action No. 6:07-cv-355-LED, such as documents, source code, privilege logs, discovery requests, and responses to discovery requests.
27. All Material that Plaintiff contends supports its construction of any claim terms of the asserted Intellectual Property.
28. All Material relating to the giving of notice of the asserted Intellectual Property to Google, and all Material relating to the awareness by Google of the asserted Intellectual Property.
29. All Material concerning any of the defendants in any lawsuit initiated by Zilka/Kotab Entities, including all communications with or about those defendants or their representatives and all Material received from those defendants or their representatives, including, but not limited to, all Material, revenue and unit volume figures, and draft agreements exchanged for settlement purposes.
30. All Material relating to the formation, incorporation, bylaws, dormancy and reinstatement of Aloft Media, LLC, Stragent, LLC, and any other entities closely held or controlled by Kevin J. Zilka.
31. All Material relating to the corporate actions and resolutions (including those of officers, directors and/or shareholders) of Aloft Media, LLC, Stragent, LLC, and any other entities closely held or controlled by Kevin J. Zilka.
32. All Material necessary for the identification of any person who is or has been a prospective or actual owner, employee, contractor, consultant, manager, officer, director, partner, agent, investor, shareholder, or other representative of Aloft Media, LLC, Stragent, LLC, and any other entities closely held or controlled by Kevin J. Zilka, including, but not limited to, Kevin J. Zilka.
33. All Material concerning the Intellectual Property or the Technology at Issue that relates to discussions, communications, proposals, product pitches, sales offers, joint projects, or other similar interactions with third parties, including communications between

Zilka/Kotab Entities and third parties concerning products offered, sold, developed, or distributed by Zilka/Kotab Entities.

34. All Material relating to communications between Zilka/Kotab Entities and third parties concerning Zilka/Kotab Entities and their activities, including the filing of any lawsuits.
35. All Material relating to exclusive or non-exclusive license agreements of Intellectual Property or Technology at Issue including, but not limited to, licenses, technology transfer agreements, venture capital partnerships, covenants not to sue, settlement agreements, and other similar agreements involving Zilka/Kotab Entities, Microsoft Corp., Adobe Systems Inc., and any other person or company, as well as all Material concerning any negotiation of or due diligence documents for these agreements or any unconsummated agreements.
36. All Material relating to specific lists of licensed products sold or distributed by Microsoft Corp. or Adobe Systems Inc., whether such products are licensed under at least the '625 patent alone or in combination with other products or systems.
37. All Material relating to the purchase, sale or assignment of Intellectual Property or Technology at Issue including, but not limited to, Material involving Zilka/Kotab Entities, Kevin J. Zilka, Dominic M. Kotab, and any other person or company.
38. All Material regarding Dominic M. Kotab including, but not limited to, e-mails and other correspondence to, from, or about Dominic M. Kotab relating to the Intellectual Property, the Technology at Issue, Zilka/Kotab Entities, litigation initiated by Zilka/Kotab Entities, Dominic M. Kotab's assignment of rights in the Intellectual Property to Zilka/Kotab Entities, negotiations or discussions leading up to Dominic M. Kotab's assignment of rights in the Intellectual Property to Zilka/Kotab Entities, and records relating to payment to Dominic M. Kotab for his assignment of rights in the Intellectual Property to Zilka/Kotab Entities.
39. With respect to each person who Plaintiff may call as an expert witness at trial, please produce the following:
  - a. a CV or resume for the expert;
  - b. all documents that contain and describe any opinion held by the expert relating to any issue in this lawsuit, including, without limitation, all relevant reports of the expert;
  - c. all memos, letters, handwritten notes, data compilations, or other documents relied upon by the expert in connection with this case;
  - d. all documents provided to the expert by Plaintiff or its counsel;

- e. all publications authored by the expert within the preceding ten years;
  - f. a list of all cases in which the expert has testified as an expert witness during the past four years;
  - g. all transcripts of deposition and trial testimony given by the expert in the past four years;
  - h. all work records, diaries, calendars, or other documents that show or reflect the work performed by the expert in connection with this case; and
  - i. all agreements, bills, invoices, or other documents that show the compensation paid or to be paid to the expert in connection with this case.
40. All Material concerning the computation of damages claimed by Plaintiff in this lawsuit.
41. All Material necessary to identify each person or entity having a financial or pecuniary interest in the outcome of this litigation, as well as the amount or percentage of each person's or entity's interest, and including correspondence with any such person or entity.
42. All Material concerning any business decision leading up to the filing of this lawsuit including, but not limited to, personal files, e-mails, documents, and correspondence of Kevin J. Zilka relating to Zilka/Kotab Entities, the Intellectual Property, or the Technology at Issue, Material regarding Kevin J. Zilka's own assessment of any alleged infringement of the Intellectual Property by the Defendants, Material relating to the business decision to form a limited liability corporation in Texas, Material relating to the business decision to bring a lawsuit in Texas, and correspondence between Zilka/Kotab Entities and any law firms, whether or not retained, relating to any business or financial issues and decisions leading up to the formation of Zilka/Kotab Entities or leading up to the filing of this lawsuit.
43. All Material demonstrating use, by Zilka/Kotab Entities, of Technology at Issue or any product or service allegedly practicing the Intellectual Property including, but not limited to, any competing activity documentation collected by Zilka/Kotab Entities and used in any Zilka/Kotab Entities' decision to initiate a lawsuit.
44. All Material concerning financial information of Zilka/Kotab Entities including, but not limited to, Material relating to the capitalization and funding of Zilka/Kotab Entities, accounting records, business records, sales records, business plans, financial projections, financial filings, tax records and filings, and personal tax records and filings of Kevin J. Zilka revealing activity related to Zilka/Kotab Entities.
45. All Material concerning document retention and/or destruction policies of Zilka/Kotab Entities.
46. All Material concerning insurance policies issued to Zilka/Kotab Entities.

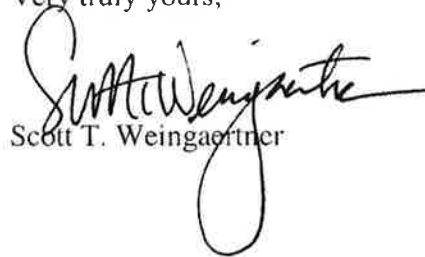


47. All Material authored, co-authored, and/or contributed to by Kevin J. Zilka and/or Dominic M. Kotab, including, but not limited to, any articles, texts, source code, software, books, blog postings, and any other published or unpublished works.
48. All Material concerning public statements relating to the Intellectual Property or the Technology at Issue made by, about, or on behalf of Zilka/Kotab Entities including, but not limited to, press releases and news articles.

The above categories do not represent a complete list of Plaintiff's required disclosures and simply represent some of the disclosures expected to be received by Google. At this time, Google has limited knowledge of the extent of Plaintiff's documents and the former activities of Kevin J. Zilka. We may therefore supplement this list based on further developments.

As always, please feel free to contact me if you have any questions.

Very truly yours,



Scott T. Weingaertner

cc: Eric M. Albritton (via e-mail)  
Scott Stevens (via e-mail)  
Danny Williams (via e-mail)  
Robert F. Perry (via e-mail)  
Christopher C. Carnaval (via e-mail)  
Mike Jones (via e-mail)  
Allen Gardner (via e-mail)