

Plaintiffs The Regents of the University of California and Eolas Technologies Incorporated (collectively “Plaintiffs”) and Defendants Adobe Systems Inc., Amazon.com, Inc., CDW Corp., Citigroup Inc., The Go Daddy Group, Inc., Google Inc., J.C. Penney Company, Inc., Staples, Inc., Yahoo! Inc., and YouTube, LLC jointly file this Omnibus Motion *in Limine* to which Plaintiffs and one or more Defendants agree and in support thereof would show as follows:

I. PRELIMINARY STATEMENT

Plaintiffs and Defendants¹ move for an order *in limine* prior to *voir dire* examination of the jury to exclude matters that are inadmissible or prejudicial in this case. If any of these matters are injected into the trial of this case or any hearing through a party, attorney, or witness (including a witness who may testify by deposition only), it will cause irreparable harm to the parties’ cases, which no jury instruction could cure. Additionally, sustaining the parties’ objections to questions, comments, or other offers of evidence as to such topics at trial would serve only to reinforce the prejudicial impact of such matters on the jurors. For the same reason, curative instructions are equally incapable of preventing the prejudicial impact. In an effort to avoid prejudice and a mistrial, the parties urge these unopposed motion *in limine* topics.

II. UNOPPOSED MOTION *IN LIMINE* TOPICS

In compliance with this Court’s September 15, 2011 Order (Doc. No. 979), counsel for the parties met and conferred on January 4, 2011 and in subsequent correspondence in a good faith attempt to resolve all *limine* issues before filing any motions *in limine*. Based on this meeting and follow-up correspondence between the parties, Plaintiffs and one or more of the

¹ In the instance where less than all of the Defendants agree to the motion *in limine* topic, identification of the particular unopposed Defendants is made within the text of the motion *in limine* topic.

Defendants agree to the following motion *in limine* topics. Where certain Defendants required differing language in order to agree to the motion *in limine* topic, multiple versions of the motion *in limine* topic are set forth, as agreed to by the Defendants identified therein. The parties anticipate filing a joint stipulation reflecting these agreements within a week.

A. Motions *in Limine* Topics Proposed by Plaintiffs.

- 1. Any argument, testimony, evidence, or reference to the effect that Plaintiffs have licensed the “adult entertainment”, “pornography”, or “adult entertainment industries” or that the licensed technology is used to provide pornographic and other online adult videos and other media.**

Defendants J.C. Penney Company, Inc., Adobe Systems Inc., Staples, Inc., and Citigroup Inc. agree that they should be precluded from presenting any argument, testimony, evidence, or reference to the effect that Plaintiffs have licensed the “adult entertainment”, “pornography”, or “adult entertainment industries” or that the licensed technology is used to provide pornographic and other online adult videos and other media.

- 2. Any argument, evidence, testimony, or reference to the retention agreement between the parties and their counsel or any reference to the nature of the agreement.**

Defendants Yahoo! Inc., Amazon.com, Inc., and CDW Corp. agree that they and Plaintiffs should be precluded from presenting against one another any argument, evidence, testimony, or reference to the retention agreement between the parties and their counsel or any reference to the nature of the agreement.

- 3. Any argument, evidence, testimony, or reference to either Plaintiff as a “patent troll” or “patent pirate”.**

All Defendants (Adobe Systems Inc., Staples, Inc., J.C. Penney Company, Inc., The Go Daddy Group, Inc., Google Inc., YouTube LLC, Yahoo! Inc., Amazon.com, Inc., CDW Corp.,

and Citigroup Inc.) agree that they should be precluded from presenting any argument, evidence, testimony, or reference to either Plaintiff as a “patent troll” or “patent pirate”.

- 4. Any argument, evidence, testimony, or reference to legal and expert fees and expenses incurred by the parties in prosecuting and defending this litigation and/or incurred in a typical patent litigation, including but not limited to SI267566-578. This agreement will not in any way restrict use at trial of Eolas’ business plans, including argument, evidence, testimony, or reference to Eolas’ statements in Business Plans to the effect of making the cost of a license less than the cost of fighting an infringement suit.**

Defendants Adobe Systems Inc., The Go Daddy Group, Inc., and Citigroup Inc. agree that they and Plaintiffs should be precluded from presenting against one another any argument, evidence, testimony, or reference to legal and expert fees and expenses incurred by the parties in prosecuting and defending this litigation and/or incurred in a typical patent litigation, including but not limited to SI267566-578. This agreement will not in any way restrict use at trial of Eolas’ business plans, including argument, evidence, testimony, or reference to Eolas’ statements in Business Plans to the effect of making the cost of a license less than the cost of fighting an infringement suit.

- 4v2. Any argument, evidence, testimony, or reference to legal fees and expenses (aside from expert fees) incurred by the parties in prosecuting and defending this litigation and/or incurred in a typical patent litigation, including but not limited to SI267566-578. This agreement will not in any way restrict use at trial of Eolas’ business plans, including argument, evidence, testimony, or reference to Eolas’ statements in Business Plans to the effect of making the cost of a license less than the cost of fighting an infringement suit.**

Defendants CDW Corp. and J.C. Penney Company, Inc. agree that they and Plaintiffs should be precluded from presenting against one another any argument, evidence, testimony, or reference to legal fees and expenses (aside from expert fees) incurred by the parties in prosecuting and defending this litigation and/or incurred in a typical patent litigation, including but not limited to SI267566-578. This agreement will not in any way restrict use at trial of Eolas’

business plans, including argument, evidence, testimony, or reference to Eolas' statements in Business Plans to the effect of making the cost of a license less than the cost of fighting an infringement suit.

5. Any argument, evidence, testimony, or reference to (1) any jury study or focus groups that have been conducted by either party or (2) the use by either party of a shadow jury during trial.

All Defendants (Adobe Systems Inc., Amazon.com, Inc., CDW Corp., Citigroup Inc., The Go Daddy Group, Inc., Google Inc., J.C. Penney Company, Inc., Staples, Inc., Yahoo! Inc., and YouTube, LLC) and Plaintiffs agree that they should be precluded from presenting any argument, evidence, testimony, or reference to (1) any jury study or focus groups that have been conducted by either party or (2) the use by either party of a shadow jury during trial.

B. Motions *in Limine* Topics Proposed by Defendants Yahoo! Inc. and Amazon.com, Inc.

1. Any evidence, testimony, or argument concerning company firings and/or layoffs as a result of this litigation and/or damages awards.

Plaintiffs and Defendants Yahoo! Inc., Amazon.com, Inc., and CDW Corp. agree that they should be precluded from presenting against one another any evidence, testimony, or argument concerning company firings and/or layoffs as a result of this litigation and/or damages awards.

2. Any evidence, testimony, or argument of any kind mentioning religion of any particular individuals, including making any general references to religion or religious figures or symbols. The parties agree that religion is not relevant to any issues in this case.

Plaintiffs and Yahoo! Inc., Amazon.com, Inc., CDW Corp., Google Inc., and YouTube, LLC agree that they should be precluded from presenting against one another any evidence, testimony, or argument of any kind mentioning religion of any particular individuals, including

making any general references to religion or religious figures or symbols. Plaintiffs and Yahoo! Inc. and Amazon.com, Inc. agree that religion is not relevant to any issues in this case.

- 3. Any evidence, testimony, or argument of Plaintiffs referring, mentioning, or otherwise offering evidence of any kind regarding instances in which third parties have used or attempted to use Defendants' websites for any kind of unlawful or immoral purposes.**

Plaintiffs agree that they should be precluded from presenting against any Defendants any evidence, testimony, or argument referring, mentioning, or otherwise offering evidence of any kind regarding instances in which third parties have used or attempted to use Defendants' websites for any kind of unlawful or immoral purposes.

- 4. Any evidence, testimony, or argument from any party referring to a prior retention or relationship between any expert with counsel or any party in this case.**

Plaintiffs and Defendants Yahoo! Inc., Amazon.com, Inc., Adobe Systems Inc., Google, Inc., CDW Corp., The Go Daddy Group, Inc., Staples, Inc., and YouTube, LLC agree that they should be precluded from presenting against one another any evidence, testimony, or argument from any party referring to a prior retention or relationship between any expert with counsel or any party in this case.

- 5. Preclude mention that Yahoo! or Amazon copied the patents-in-suit.**

Plaintiffs agree that they should be precluded from presenting against any Defendants any evidence, testimony, or argument that they copied the patents-in-suit.

C. Motions in *Limine* Topics Proposed by Defendants Adobe Systems Inc., Amazon.com, Inc., Citigroup Inc., The Go Daddy Group, Inc., Google Inc., J.C. Penney Company, Inc., Staples, Inc., Yahoo! Inc., and YouTube, LLC

- 1. Any evidence, testimony, argument, or reference to discovery disputes.**

Plaintiffs and Defendants Adobe Systems Inc., Amazon.com, Inc., Citigroup Inc., The Go Daddy Group, Inc., Google Inc., J.C. Penney Company, Inc., Staples, Inc., Yahoo! Inc., and YouTube, LLC agree that they should be precluded from presenting against one another any evidence, testimony, argument, or reference to discovery disputes.

- 2. Any evidence, testimony, argument, or reference to the sufficiency of a party's production, investigation, and document collection efforts, including the content of a party's privilege log.**

Plaintiffs and Defendants Adobe Systems Inc., Amazon.com, Inc., Citigroup Inc., The Go Daddy Group, Inc., Google Inc., J.C. Penney Company, Inc., Staples, Inc., Yahoo! Inc., and YouTube, LLC agree that they should be precluded from presenting against one another any evidence, testimony, argument, or reference to the sufficiency of a party's production, investigation, and document collection efforts, including the content of a party's privilege log.

D. Motions in *Limine* Topics Proposed by Defendant CDW Corp. (and for 3., Staples, Inc.)

- 1. Any evidence, testimony, argument, or reference to the cost of defense or argument that the fact that this case is being defended is evidence of the value of the accused features.**

Plaintiffs and Defendant CDW Corp. agree that they should be precluded from presenting against one another any evidence, testimony, argument, or reference to the cost of defense or argument that the fact that this case is being defended is evidence of the value of the accused features.

2. **Any evidence that is only relevant to willfulness based on Plaintiffs' representation that they will not pursue willfulness against Defendant CDW Corp.**

Plaintiffs agree that they should be precluded from presenting any evidence against Defendant CDW Corp. that is only relevant to willfulness based on Plaintiffs' representation that it will not pursue willfulness against Defendant CDW Corp

3. **Any evidence that is only relevant to willfulness based on Plaintiffs' representation that they will not pursue willfulness against Defendant Staples, Inc.**

Plaintiffs agree that they should be precluded from presenting any evidence against Defendant Staples, Inc. that is only relevant to willfulness based on Plaintiffs' representation that it will not pursue willfulness against Defendant Staples, Inc.

E. Motions *in Limine* Topics Proposed by All Defendants.

1. **Any evidence, testimony, argument, or reference to motions *in limine* filed and the outcomes of such motions.**

Plaintiffs and all Defendants agree that they should be precluded from presenting any evidence, testimony, argument, or reference to motions *in limine* filed and the outcomes of such motions.

F. Motions *in Limine* Topics Proposed by All Defendants and Modified Thereafter.

1. **Any evidence, testimony, argument, or reference to summary judgment motions, motions to strike, and motions to exclude filed and the outcomes of such motions.**

Plaintiffs and Adobe Systems Inc., Amazon.com, Inc., Citigroup Inc., The Go Daddy Group, Inc., Google Inc., J.C. Penney Company, Inc., Staples, Inc., Yahoo! Inc., and YouTube, LLC agree that they should be precluded from presenting any evidence, testimony, argument, or reference to summary judgment motions, motions to strike, and motions to exclude filed and the outcomes of such motions.

III. CONCLUSION

For the foregoing reasons, the parties request that this Court enter an order that those parties identified in the corresponding motions, their counsel, and through counsel, any and all of those parties' witnesses (whether testifying live or by deposition only), be instructed to refrain from any mention or interrogation, directly or indirectly, in any manner whatsoever, including the offering of documentary evidence or through deposition, of any of the matters set forth in the those motions.

Dated: January 6, 2012.

McKool Smith, P.C.

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CERTIFICATE OF CONFERENCE

I hereby certify that the parties met and conferred regarding the relief requested in this Motion on January 4, 2011 and in correspondence thereafter. Plaintiffs and one or more of the Defendants were able to reach resolution as to the motions *in limine* topics set forth herein.

/s/ Gretchen K. Curran
Gretchen K. Curran

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) and therefore served on all counsel of record on January 6, 2011.

/s/ Gretchen K. Curran
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