

# **EXHIBIT 5**

# McKool Smith

A PROFESSIONAL CORPORATION • ATTORNEYS

Josh W. Budwin  
Direct Dial: (512) 692-8727  
jbudwin@mckoolsmith.com

300 West Sixth Street, Suite 1700  
Austin, Texas 78701

Telephone: (512) 692-8700  
Telecopier: (512) 692-8744

May 21, 2010

## VIA E-MAIL TO ALL OUTSIDE COUNSEL OF RECORD

Re: *Eolas Technologies Incorporated v. Adobe Systems, Inc., et. al*; Civil Action No. 6:09-CV-00446-LED; United District Court of Texas; Eastern District.

Counsel -

Thank you for the productive call this afternoon regarding the proposed interim agreement on the format of document production for this matter. As mentioned in the call, we think it is important that we reach this interim agreement so that the parties can begin document production in accordance with the Discovery Order, while the parties work on negotiating the Protective Order.

As we presently understand it, the parties are generally in agreement with the following interim agreement on the format of document production for all documents in this case (pending some client confirmations):

- Documents can be produced as either (or any combination of):
  - single-page TIFF-formatted images with load files; and/or
  - natively with load files.
- Extracted text for each document is preferred, but OCR for each document is required.
- Eolas will provide the following load files to each defendant:
  - DAT: containing field data with standard concordance delimiters and links to Native files and Text files (can be converted for use with Ringtail by running personalized scripts)
  - Dii: Containing links for loading natives or images
  - LFP and OPT load files for image productions to be loaded into Concordance or other databases (LFP works with iPro)
  - LST: OCR load file
- The defendants will provide Eolas with iConect-compatible load files (our preferences are: 1) a DAT load file containing field data with standard concordance delimiters and links to Native files; 2) an LST load file with document level extracted text files with corresponding document bates number; and 3) an OPT load file for images).
- If reasonably available, and regardless of the form of production, the parties agree to provide at least the following metadata fields:
  - PROD\_BEG
  - PROD\_END
  - ParentID: PROD\_BEG of the Parent of an attached record
  - ATTACH\_BEG
  - ATTACH\_END

- ATTACHMENT\_RANGE
- Custodian
- DOC\_TYPE: A reference to the application that created the file, for example “Word Document” or “Excel Spreadsheet”.
- Confstamp: Confidentiality designation
- Title:
- Subject:
- From:
- To:
- CC:
- BCC:
- Filename:
- FILE\_PATH:
- FILE\_EXT:
- FILE\_SIZE:
- MD5Hash:
- SENT\_DATE (may, but need not, also include time)
- RECV\_DATE (may, but need not, also include time)
- CREATEDATE (may, but need not, also include time)
- MOD\_DATE (may, but need not, also include time)
- NativeFile: The file path to the Native file, beginning at the Volume folder (for example: ABC001\NATIVES\000001\ABC00000001.ntv).
- Attach ID
- Production ID

We have endeavored to accurately set forth our interim agreement, as we presently understand it. Please let us know as soon as possible if all of the defendants agree as set forth above. As mentioned on today’s call, Eolas has a large production ready to send, once agreement is reached on the format.

Sincerely,



Josh W. Budwin

cc: all outside counsel of record (via email):

Defendant	Counsel	E-mail
Adobe Systems Incorporated	David J. Healey Fish & Richardson PC 1221 McKinney Street Suite 2888 Houston, TX 77010	<a href="mailto:healey@fr.com">healey@fr.com</a>

Defendant	Counsel	E-mail
	<b>Lead Counsel for Adobe Systems Incorporated</b>	
	Joseph P. Reid	<a href="mailto:reid@fr.com">reid@fr.com</a>
<b>Amazon.com Inc.</b>	<b>Douglas E. Lumish</b> <b>Weil Gotshal &amp; Manges</b> <b>201 Redwood Shores Parkway</b> <b>Redwood City, CA 94065</b>  <b>Lead Counsel for Amazon.com, eBay Inc., and Yahoo! Inc.</b>	<a href="mailto:doug.lumish@weil.com">doug.lumish@weil.com</a>
	Matthew Powers Jared B. Bobrow Joseph H. Lee Christian Hurt	<a href="mailto:Amazon-Eolas@weil.com">Amazon-Eolas@weil.com</a>
<b>Apple, Inc.</b>	<b>David T. Pritikin</b> <b>Sidley Austin - Chicago</b> <b>Bank One Plaza</b> <b>One South Dearborn Ave</b> <b>Chicago, IL 60603</b>  <b>Lead Counsel for Apple, Inc.</b>	<a href="mailto:dpritikin@sidley.com">dpritikin@sidley.com</a>
	Richard A. Cederoth Shubham Mukherjee Duy D. Nguyen Teague I. Donahey Theodore Whitley Chandler	<a href="mailto:apple-eolas@sidley.com">apple-eolas@sidley.com</a>
	Eric Albritton	<a href="mailto:ema@emafirm.com">ema@emafirm.com</a>
	Matthew Clay Harris	<a href="mailto:mch@emafirm.com">mch@emafirm.com</a>
<b>Blockbuster Inc.</b>	<b>Scott Wayne Breedlove</b> <b>Vinson &amp; Elkins</b> <b>2001 Ross Avenue</b> <b>3700 Trammel Crow Center</b> <b>Dallas, TX 75201</b>  <b>Lead Counsel for Blockbuster Inc.</b>	<a href="mailto:sbreedlove@velaw.com">sbreedlove@velaw.com</a>
	David Kent Wooten	<a href="mailto:Blockbuster-Eolas@velaw.com">Blockbuster-Eolas@velaw.com</a>
<b>CDW Corporation</b>	<b>Thomas L. Duston</b> <b>Marshall Gerstein &amp; Borun</b> <b>233 S. Wacker Drive</b> <b>6300 Sears Tower</b> <b>Chicago, IL 60606</b>	<a href="mailto:tduston@marshallip.com">tduston@marshallip.com</a>

<b>Defendant</b>	<b>Counsel</b>	<b>E-mail</b>
	<b>Lead Counsel for CDW Corporation</b>	
	Juliane Hartzell Scott A. Sanderson Anthony S. Gabrielson	<a href="mailto:eolas@marshallip.com">eolas@marshallip.com</a>
	Eric Hugh Findlay	<a href="mailto:efindlay@findlaycraft.com">efindlay@findlaycraft.com</a>
	Brian Craft	<a href="mailto:bcraft@findlaycraft.com">bcraft@findlaycraft.com</a>
<b>Citigroup Inc.</b>	<b>Edwin R. DeYoung Locke Lord Bissell &amp; Liddell LP 2200 Ross Ave. Suite 2200 Dallas, TX 75201</b>  <b>Lead Counsel for Citigroup Inc.</b>	<a href="mailto:edeyoung@lockelord.com">edeyoung@lockelord.com</a>
	Roger Brian Cowie Galyn Dwight Gafford Michael Scott Fuller Roy William Hardin Jason E. Mueller	<a href="mailto:Citibank.Eolas@lockelord.com">Citibank.Eolas@lockelord.com</a>
	Eric L. Sopher	<a href="mailto:esopher@kslaw.com">esopher@kslaw.com</a>
	Alexas D. Skucas	<a href="mailto:askucas@kslaw.com">askucas@kslaw.com</a>
<b>eBay Inc.</b>	<b>Douglas E. Lumish Weil Gotshal &amp; Manges 201 Redwood Shores Parkway Redwood City, CA 94065</b>  <b>Lead Counsel for Amazon.com, eBay Inc., and Yahoo! Inc.</b>	<a href="mailto:doug.lumish@weil.com">doug.lumish@weil.com</a>
	Matthew Douglas Powers Christian J. Hurt Jared B. Bobrow Joseph H. Lee	<a href="mailto:eBay-Eolas@weil.com">eBay-Eolas@weil.com</a>
<b>Frito-Lay, Inc. and Rent-A-Center, Inc.</b>	<b>Jeffrey K. Joyner Greenberg Taurig, LLP 2450 Colorado Ave. Suite 400E Santa Monica, CA 90404</b>  <b>Lead Counsel for Frito-Lay, Inc. and Rent-A-Center, Inc.</b>	<a href="mailto:joynerj@gtlaw.com">joynerj@gtlaw.com</a>
	Jeffrey F. Yee	<a href="mailto:Frito-JCP-RAC-Eolas@gtlaw.com">Frito-JCP-RAC-Eolas@gtlaw.com</a>
	Brian Carpenter	<a href="mailto:Brian.Carpenter@BJCIPLaw.com">Brian.Carpenter@BJCIPLaw.com</a>

<b>Defendant</b>	<b>Counsel</b>	<b>E-mail</b>
	Eric W. Buether	<a href="mailto:Eric.Buether@BJCIPLaw.com">Eric.Buether@BJCIPLaw.com</a>
	Christopher M. Joe	<a href="mailto:Chris.Joe@BJCIPLaw.com">Chris.Joe@BJCIPLaw.com</a>
<b>The Go Daddy Group, Inc.</b>	<b>Thomas M. Melsheimer Fish &amp; Richardson 1717 Main Street Suite 5000 Dallas, TX 75201</b>  <b>Lead Counsel for The Go Daddy Group, Inc.</b>	<a href="mailto:melsheimer@fr.com">melsheimer@fr.com</a>
	Neil J. McNabnay	<a href="mailto:mcnabnay@fr.com">mcnabnay@fr.com</a>
	J. Nicholas Bunch	<a href="mailto:bunch@fr.com">bunch@fr.com</a>
<b>Google Inc. and YouTube</b>	Scott T. Weingaertner King & Spalding, LLP 1185 Avenue of the Americas New York, NY 10036  <b>Lead Counsel for Google Inc. and YouTube, LLC</b>	<a href="mailto:sweingaertner@kslaw.com">sweingaertner@kslaw.com</a>
	Robert F. Perry Christopher C. Carnaval Mark H. Francis	<a href="mailto:Google-Eolas@kslaw.com">Google-Eolas@kslaw.com</a>
	Michael E. Jones	<a href="mailto:mikejones@potterminton.com">mikejones@potterminton.com</a>
	Allen F. Gardner	<a href="mailto:allengardner@potterminton.com">allengardner@potterminton.com</a>
<b>J.C. Penney Company, Inc.</b>	<b>Christopher M. Joe Buether Joe &amp; Carpenter 1700 Pacific, Suite 2390 Dallas, TX 75201</b>  <b>Lead Counsel for J.C. Penney Company, Inc.</b>	<a href="mailto:Chris.Joe@BJCIPLaw.com">Chris.Joe@BJCIPLaw.com</a>
	Jeffrey Joyner Jeffrey Yee	<a href="mailto:Frito-JCP-RAC-Eolas@gtlaw.com">Frito-JCP-RAC-Eolas@gtlaw.com</a>
	Brian Carpenter	<a href="mailto:Brian.Carpenter@BJCIPLaw.com">Brian.Carpenter@BJCIPLaw.com</a>
	Eric W. Buether	<a href="mailto:Eric.Buether@BJCIPLaw.com">Eric.Buether@BJCIPLaw.com</a>
<b>J.P. Morgan Chase &amp; Co.</b>	<b>Joel Mark Freed McDermott Will &amp; Emery 600 13th Street, NW 12th Floor Washington, CD 20005-3096</b>  <b>Lead Counsel for JPMorgan Chase &amp; Co.</b>	<a href="mailto:jfreed@mwe.com">jfreed@mwe.com</a>
	Debra Elaine Gunter	<a href="mailto:debby@yw-lawfirm.com">debby@yw-lawfirm.com</a>
	Herbert A. Yarbrough, III	<a href="mailto:trey@yw-lawfirm.com">trey@yw-lawfirm.com</a>

<b>Defendant</b>	<b>Counsel</b>	<b>E-mail</b>
<b>New Frontier Media, Inc.</b>	<b>Michael Simons</b> <b>Akin Gump Strauss Hauer &amp; Feld LLP</b> <b>300 West 6th</b> <b>Suite 2100</b> <b>Austin, TX 78701</b>  <b>Lead Counsel for New Frontier Media, Inc.</b>	<a href="mailto:msimons@akingump.com"><u>msimons@akingump.com</u></a>
	Tara Melisha Williams Anthony T. Pierce	<a href="mailto:eolaslitigation@akingump.com"><u>eolaslitigation@akingump.com</u></a>
<b>Office Depot</b>	<b>Kenneth Jurek</b> <b>McDermott Law Firm</b> <b>227 West Monroe Street</b> <b>Chicago, IL 60606</b>  <b>Lead Counsel for Office Depot</b>	<a href="mailto:kjurek@mwe.com"><u>kjurek@mwe.com</u></a>
	David M. Stein	<a href="mailto:dstein@mwe.com"><u>dstein@mwe.com</u></a>
	Suzanne M. Wallman	<a href="mailto:swallman@mwe.com"><u>swallman@mwe.com</u></a>
	Brett E. Bachtell	<a href="mailto:bbachtell@mwe.com"><u>bbachtell@mwe.com</u></a>
	J. Thad Heartfield	<a href="mailto:thad@jth-law.com"><u>thad@jth-law.com</u></a>
<b>Perot Systems Corp.</b>	<b>Barton E. Showalter</b> <b>Baker &amp; Botts</b> <b>2001 Ross Ave.</b> <b>Suite 600</b> <b>Dallas, TX 75201</b>  <b>Lead Counsel for Perot Systems Corp.</b>	<a href="mailto:bart.showalter@bakerbotts.com"><u>bart.showalter@bakerbotts.com</u></a>
	Douglas Mark Kubehl David O. Taylor	<a href="mailto:DLEolasTeam@bakerbotts.com"><u>DLEolasTeam@bakerbotts.com</u></a>
	Deron R. Dacus	<a href="mailto:ddacus@rameyflock.com"><u>ddacus@rameyflock.com</u></a>
<b>Playboy Enterprises International</b>	<b>Avelyn Marie Ross</b> <b>Vinson &amp; Elkins</b> <b>2801 Via Fortuna</b> <b>Suite 100</b> <b>Austin, TX 78746</b>  <b>Lead Counsel for Playboy Enterprises International</b>	<a href="mailto:aross@velaw.com"><u>aross@velaw.com</u></a>
	Gentry C. McLean David B. Weaver	<a href="mailto:Playboy-Eolas@velaw.com"><u>Playboy-Eolas@velaw.com</u></a>
<b>Staples, Inc.</b>	<b>Michael Ernest Richardson</b> <b>Beck Redden &amp; Secret</b> <b>1221 McKinney</b>	<a href="mailto:mrichardson@brsfirm.com"><u>mrichardson@brsfirm.com</u></a>

Defendant	Counsel	E-mail
	<b>Suite 4500 Houston, TX 77010</b>  <b>Lead Counsel for Staples, Inc.</b>	
	Alexandra McTague	<a href="mailto:alexandra.mctague@wilmerhale.com">alexandra.mctague@wilmerhale.com</a>
	Donald R. Steinberg	<a href="mailto:don.steinberg@wilmerhale.com">don.steinberg@wilmerhale.com</a>
	Mark Matuschak	<a href="mailto:mark.matuschak@wilmerhale.com">mark.matuschak@wilmerhale.com</a>
	Daniel V. Williams	<a href="mailto:daniel.williams@wilmerhale.com">daniel.williams@wilmerhale.com</a>
	Kate Hutchins	<a href="mailto:Kate.Hutchins@wilmerhale.com">Kate.Hutchins@wilmerhale.com</a>
<b>Sun Microsystems, Inc.</b>	<b>Eric Hugh Findlay Findlay Craft 6760 Old Jacksonville Highway Suite 101 Tyler, TX 75703</b>  <b>Lead Counsel for Sun Microsystems, Inc.</b>	<a href="mailto:efindlay@findlaycraft.com">efindlay@findlaycraft.com</a>
	William G. Goldman	<a href="mailto:bill.goldman@dlapiper.com">bill.goldman@dlapiper.com</a>
	Mark D. Fowler	<a href="mailto:mark.fowler@dlapiper.com">mark.fowler@dlapiper.com</a>
	Kathryn B. Riley	<a href="mailto:kathryn.riley@dlapiper.com">kathryn.riley@dlapiper.com</a>
<b>Texas Instruments, Inc.</b>	<b>Carl R. Roth The Roth Law Firm 115 N. Wellington Suite 200 P.O. Box 876 Marshall, TX 75671</b>  <b>Lead Counsel for Texas Instruments, Inc.</b>	<a href="mailto:cr@rothfirm.com">cr@rothfirm.com</a>
	Amanda Aline Abraham	<a href="mailto:aa@rothfirm.com">aa@rothfirm.com</a>
	Brendan Clay Roth	<a href="mailto:br@rothfirm.com">br@rothfirm.com</a>
<b>Yahoo! Inc.</b>	<b>Douglas E. Lumish Weil Gotshal &amp; Manges 201 Redwood Shores Parkway Redwood City, CA 94065</b>  <b>Lead Counsel for Amazon.com, eBay Inc., and Yahoo! Inc.</b>	<a href="mailto:doug.lumish@weil.com">doug.lumish@weil.com</a>
	Matthew Douglas Powers Christian J. Hurt Jared B. Bobrow Joseph H. Lee	<a href="mailto:Yahoo-Eolas@weil.com">Yahoo-Eolas@weil.com</a>
	Deborah J Race	<a href="mailto:drace@ickl.com">drace@ickl.com</a>



Defendant	Counsel	E-mail
	Otis W Carroll, Jr.	<a href="mailto:fedserv@ickl.com">fedserv@ickl.com</a>