

# **EXHIBIT 23**

**Bob Kramer**

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**From:** Mehta, Sonal [Sonal.Mehta@weil.com]  
**Sent:** Friday, June 10, 2011 4:26 PM  
**To:** Lindsay Martin  
**Cc:** Yahoo-Eolas; Eolas  
**Subject:** RE: Eolas v. Adobe, et al.: Continue request for LR 7 meet and confer

Lindsay,

The issues identified in your email are not ripe for a LR 7 meet and confer.

With respect to supplemental document productions, Eolas has declined our repeated offers to engage in a meaningful meet and confer on a focused request for documents for which it wants an updated production. That said, Amazon, eBay and Yahoo! will agree to conduct a reasonable search for and supplementation of their document productions. Indeed, we have already done so in the context of the ongoing depositions.

With respect to source code, in Matt's prior correspondence with Andrew as well in our meetings with Eolas's source code reviewers during their last inspection, Eolas indicated that it was looking for the HTML and JavaScript code for eBay's accused websites--that is the code sent to and interpreted by the end-user's browser when visiting various eBay URLs. Your contention, raised for the first time in your email, that such code is "not the source code" thus runs directly counter to what Matt and Eolas's source code reviewers have previously requested. Moreover, as we understand eBay's (as well as Amazon's) technology, the HTML and JavaScript received by the end-user is dynamically generated. As such, a server-side flat file or copy simply does not exist in the ordinary course, so using the "view source" function exemplified by Eolas's infringement contentions is the only way to obtain that code. Accordingly, while it has no obligation to do so, in the spirit of cooperation, eBay identified specifically where in its production and when it had produced the HTML and JavaScript that Eolas was purportedly seeking. Despite having received that production over a year ago, it was only by Matt's May 20th email that Eolas for the first time complained about the production of that code in, as your email likewise acknowledges, OCR'ed searchable text. By definition, as that code was fully OCR'ed and searchable, the information that Eolas's reviewers purported to seek could be found by running a keyword search in the production. Your allegation that there was "obfuscation" therefore is not well taken.

Nevertheless, we attempted to engage Eolas in further dialogue as there appeared to continue to be miscommunication about the production, and further in the spirit of cooperation we offered to provide our prior production in native form. eBay has endeavored to do so expediently in good faith based on Eolas's representation that it would be inspecting that code on June 13th; eBay continues to offer to make that available for inspection, and are disappointed in Eolas's apparent unwillingness to engage in cooperative dialogue.

Finally, to the extent that Eolas is now seeking eBay's server-side code for other sub-domains analogous to that provided for neighborhoods, we do not understand that to be the HTML and JavaScript code that Eolas previously asserted it was looking for, and do not believe that such code is relevant to the issues in this case. Nevertheless in the interest of cooperation, we are willing to consider a reasonable request for such code if Eolas can articulate how it is relevant.

Regards,  
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6/12/2011

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**From:** Lindsay Martin [mailto:lmartin@McKoolSmith.com]  
**Sent:** Friday, June 10, 2011 10:04 AM  
**To:** Lindsay Martin; Mehta, Sonal  
**Cc:** Yahoo-Eolas; Eolas  
**Subject:** RE: Eolas v. Adobe, et al.: Continue request for LR 7 meet and confer

Sonal,

In light of the Court's Order, we would like to get the below issues on the calendar so that they can be included in the June 29 hearing. We still have not received a response to our request for a LR7 meet and confer to occur no later than today. Please provides times that we can have the meet and confer today.

Thanks,  
Lindsay

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**From:** Lindsay Martin  
**Sent:** Wednesday, June 08, 2011 4:41 PM  
**To:** Mehta, Sonal  
**Cc:** Yahoo-Eolas; Eolas  
**Subject:** Eolas v. Adobe, et al.: Continue request for LR 7 meet and confer

Sonal,

### **Refusal to respond to request to supplement production**

We still have not received a response to my below email, despite our requests. We do not know whether your client will supplement its production with documents relevant to the claims and/or defenses in this litigation. Ignoring our requests and refusing to propose times for a LR7 meet and confer does not comport with a party's discovery obligations and runs afoul of the Local Rules. This practice does not seem limited to just Yahoo, and is not limited to just this issue, see below. All three of your clients' productions require supplementation.

- **Yahoo** has produced only **28** documents with a creation date in 2011
- **Amazon** has **not produced ANY** documents created in 2011. The most recent creation date for ANY of Amazon's documents is **August 2010**.
- **eBay** has produced only **18** documents with a creation date in 2011

As a final attempt to either confer with your clients or elicit a response, please provide either of the following: (1) confirm by no later than the close of business Friday, June 10, 2011 that each of your clients will supplement its production with documents relevant to the claims and/or defenses in this litigation and provide a date certain by which the productions will occur; or (2) propose times for a LR7 meet and confer to occur no later than Friday, June 10, 2011.

### **Refusal to produce Source Code**

We are in receipt of your email to Matt Rappaport from June 7 regarding eBay and Amazon's source code production. Please add this item as a topic of our meet and confer, to occur no later than Friday, June 10. During our May 20 meet and confer you stated you refused to meet and confer on this issue, citing the absence of knowledgeable counsel — specifically Andrew Perito. Again, ignoring our requests and refusing to meet and confer in good faith does not comport with a party's discovery obligations and runs afoul of the Local Rules. We expect all necessary personnel will be present to address this issue during the LR 7 meet and confer, to occur no

later than Friday, June 10.

Your email of June 7 makes clear the source code eBay and Amazon intends to produce is merely a "re-download." As our previous requests for sufficient source code production have not been attended to, we now seek to compel production of the source code for each accused eBay and Amazon websites as it is maintained in its native form. As stated in Matt Rappaport's May 20, 2011 email, eBay has already provided a sufficient production for one of the accused eBay websites — neighborhoods.ebay.com. Eolas now seeks to compel the production of source code for the other accused eBay and Amazon sites. The basis for Eolas' request — including the reasons eBay's and Amazon's proposed production is insufficient— are set out in detail in Matt Rappaport's May 20, 2011 email, which you have had for nearly three weeks.

Furthermore, despite your indication otherwise, the code that is sent to the browser and that users can see by using the "view page source" functionality in their browser is not the source code for that website. Source code likewise is not the output of a tiff'ing, ORC'ing, compaction, or obfuscation step. Source code should be provided in a manner that preserves its native folder structure, not as individual files plucked from their directories or created for the purpose of litigation.

Eolas seeks the code for each accused site in the same format (i.e. in its native form) for which it is was produced for neighborhoods.ebay.com. This source code is human-readable and contains comments, meaningful identifiers, whitespace, and indentation. It is provided in its native directory structure.

Please be prepared to state your position as to this source code issue. Please also note that in light of your June 7 email, Eolas will not be conducting a source code review of Ebay/Amazon/Yahoo's source code for the noticed dates of June 13-15. As you note, the code eBay and Amazon intended to produce "is publicly available to and can be downloaded by any public user who visits eBay's websites." A trip across the country to review this insufficient production is an invitation to waste our client's resources, time, and money.

### **LR 7 Meet and Confer**

We look forward to receiving your prompt response to the above issues and to your proposed times for a LR 7 meet and confer to occur no later than Friday, June 10. Should your clients' fail to fulfill their obligations under the Local Rules, our motion for relief and certificate of conference will indicate such.

Best regards,  
Lindsay

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**From:** Lindsay Martin  
**Sent:** Thursday, June 02, 2011 5:15 PM  
**To:** Mehta, Sonal  
**Cc:** Yahoo-Eolas; Eolas  
**Subject:** RE: Tucker documents

Sonal,

It is not Eolas' burden to remind Yahoo of its discovery obligations. Consistent with FRCP 26 and Local Rules, Yahoo has an ongoing obligation to supplement its production with documents relevant to any claim or defense in this litigation. Yahoo identified Ms. Tucker in its Initial Disclosures, served April 28, 2010, as a person having knowledge of relevant facts. Thus, Yahoo anticipates calling Ms. Tucker as a witness at trial. The mere fact that Yahoo collected and produced documents from Ms. Tucker establishes that Ms. Tucker has documents relevant to this litigation (a fact you do not deny). Ms. Tucker's deposition notice was served on April 13, 2011-

6/12/2011

-almost two months ago. If Yahoo now contends that Ms. Tucker does not have knowledge of relevant facts, Yahoo had the obligation to immediately amend its Initial Disclosures. Yahoo has not done so.

Yahoo's suggestion that Eolas provide a "focused request for documents for which it wants an updated production" is unreasonable and denies Eolas the discovery to which Yahoo is obligated to produce.

If Yahoo is now stating that (i) Ms. Tucker's knowledge (or the knowledge of any other individual identified in Yahoo's Initial Disclosures) of relevant facts arbitrarily terminates on November 9, 2010, and that (ii) Ms. Tucker (or any other individual identified in Yahoo's Initial Disclosures) does not possess hard copy and electronic sources maintained in the ordinary course of business that are relevant to any claim or defense involved in this action other than the documents already produced, please explain (i) how an individual's knowledge of relevant facts would cut off on the date of production when Yahoo has clearly continued to conduct its business and Ms. Tucker has continued her employment with Yahoo and (ii) why a litigation hold was not put in place to preserve such relevant documents.

According to Yahoo's response to Interrogatory No. 7, Yahoo allegedly "did not discuss any 'design-arounds' or 'workarounds' for the patents-in-suit." In other words, Yahoo continues to infringe Eolas' patents and Eolas is seeking damages from Yahoo as a result of such infringement. Yahoo has produced only 28 documents with a creation date in 2011. Yahoo is obligated, without prompting from Eolas or "focused requests," to supplement its production.

Should Yahoo persist in its refusal to supplement its production, please propose times for a LR7 meet and confer to occur no later than Tuesday, June 7, 2011.

Thanks,  
Lindsay

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**From:** Mehta, Sonal [mailto:Sonal.Mehta@weil.com]  
**Sent:** Thursday, June 02, 2011 10:46 AM  
**To:** Lindsay Martin  
**Cc:** Yahoo-Eolas; Eolas  
**Subject:** RE: Tucker documents

Lindsay,

Consistent with the schedule in the case, we produced Ms. Tucker's documents in November. You confirmed her deposition on May 6. Despite that, you waited until after noon PT/ 2 pm ET yesterday, less than 48 hours before Ms. Tucker's deposition, to request that Yahoo! produce supplemental documents from Ms. Tucker. That demand is not reasonable.

Moreover, your allegations below about Yahoo!'s production are inaccurate. Yahoo! conducted a reasonable search and produced relevant documents from Ms. Tucker. Even a cursory review of that production would confirm that Yahoo! produced numerous documents from Ms. Tucker, including documents relating to consumer marketing and metrics. In making that production, Yahoo! acted fully in compliance with the Discovery Order. Yahoo!'s objection now is to Eolas's suggestion that Yahoo! should collect, review and produce additional documents for Ms. Tucker on the eve of her deposition where those documents relate to the day to days of how Yahoo!'s site is operated and do not add anything relevant or meaningful to the production we made in November. Indeed, after Eolas waited more than 18 months into the case to start deposition discovery and then demanded that we make dozens of witnesses available for deposition immediately, it is hard to see your last-minute demand for wholesale supplemental document productions for Ms. Tucker (or others) as more than another tactic aimed at burdening us with unnecessary discovery and distracting us from preparation of our case at this important juncture.

That said, we reiterate our offer that if Eolas has a focused request for documents for which it wants an updated

production, we are happy to discuss the need for and production of a targeted update to our document production to address a legitimate request.

With respect to Ms. Tucker's deposition, we will make her available on Friday, but reserve all rights with respect to any request to continue that deposition.

Regards,  
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**From:** Lindsay Martin [mailto:lmartin@McKoolSmith.com]  
**Sent:** Wednesday, June 01, 2011 8:02 PM  
**To:** Mehta, Sonal  
**Cc:** Yahoo-Eolas; Eolas  
**Subject:** RE: Tucker documents

Sonal,

Yahoo's refusal to supplement its production of Ms. Tucker's documents and Yahoo's own admission that the current production from Ms. Tucker is incomplete requires an immediate Local Rule 7 meet and confer. Yahoo identified Ms. Tucker in its Initial Disclosures, yet the last production that included documents collected from custodian Ilene Tucker was Nov 9, 2010--seven months ago. From your below email, it appears that Yahoo has unilaterally (and arbitrarily) defined what is relevant to the pleaded claims and defenses in this case. Your email appears to state that Yahoo has withheld from production Ms. Tucker's documents that relate to consumer marketing and Yahoo's use of metrics tracked in the ordinary course of business. Yahoo is refusing to supplement its production from Ms. Tucker, in violation of the Court's Discovery Order, with documents created *prior to* Yahoo's Nov. 9, 2010 production and documents created *after* Yahoo's Nov. 9, 2010 production. On this basis, an immediate Local Rule 7 meet and confer is necessary. Please provide times of lead and local counsel availability tomorrow or Friday. Yahoo's pattern and practice of delaying and denying discovery has forced Eolas into a position where time is of the essence.

We will go forward with the deposition of Ms. Tucker on Friday, June 3. Eolas objects to the current state of Ms. Tucker's incomplete production and reserves all rights with respect to any documents produced after Ms. Tucker's deposition, including the continuation of the deposition and additional deposition time.

Thanks,

Lindsay

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**From:** Mehta, Sonal [mailto:Sonal.Mehta@weil.com]  
**Sent:** Wednesday, June 01, 2011 4:08 PM  
**To:** Lindsay Martin  
**Cc:** Yahoo-Eolas; Eolas  
**Subject:** Tucker documents

Hi Lindsay,

6/12/2011

I wanted to follow-up on your call a little while ago about Ms. Tucker's deposition this Friday and your request for a supplemental production of Ms. Tucker's documents. Yahoo! objects to the request for supplemental documents, especially two days before the deposition and after Eolas has known about the status of Ms. Tucker's production for several months. Moreover, given that we have produced extensive documentation from Ms. Tucker and numerous other custodians about the development, implementation and marketing of the accused features, we do not believe that documents relating to the routine day to days of how Yahoo!'s websites operate is relevant, let alone relevant enough to warrant the burden of collection and production of additional documents at the end of the fact discovery period. For example, many of Ms. Tucker's documents relate to her role in consumer marketing and tracking of metrics related thereto; the day to day reports or communications she has on that are not relevant and indeed are cumulative of the metrics related discovery that we have reached agreement on separately. That said, if Eolas has a focused request for documents for which it wants an updated production, we are happy to discuss the need for and production of a targeted update to our document production to address a legitimate request.

Best,  
Sonal

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