

# **EXHIBIT 28**

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**From:** "Tom Fasone III" <tfasone@McKoolSmith.com>  
**To:** <sonal.mehta@weil.com>  
**Cc:** <aaron.huang@weil.com>; <andrew.perito@weil.com>; "Eolas" <Eolas@McKoolSmith.com>; <ebay-eolas@weil.com>  
**Sent:** Thursday, May 12, 2011 6:43 AM  
**Subject:** Eolas/eBay: Source Code -- Request for LR-7 Meet and Confer

Sonal,

I write to follow up on our meet and confer of Tuesday evening (May 10) concerning the scope of eBay's source code production in this matter. In a good faith effort to resolve this matter, I went back to our team to "run the traps" on eBay's source code production, as I indicated that I would during our meet and confer on Tuesday evening.

It is my understanding that our experts have performed a review of eBay's source code several times. As a result of this review, printouts bearing bates labels EBAY-SC00000001 to EBAY-SC00001217 are now in Eolas' possession. These pages are the printouts from the source code that eBay has made available to date. This is not additional code, it is simply the portions of the code that eBay has made available that Eolas chose to print. Eolas is not in receipt of any other source code that eBay claims to have produced (e.g., code that eBay made available only in printed form and provided to Eolas). If eBay believes that it sent such source code directly to Eolas in printed form, we have not yet received it and no effort to identify it has been made by eBay.

Further, it is my understanding that Eolas addressed the deficiencies in eBay's source code on site with Andrew Perito of your firm. Eolas' technical consultants explained to Andrew that the only complete production for the accused websites was the production for the site neighborhoods.eBay.com. Eolas' technical consultants showed the directory structure for the other accused sites, comparing to to the directory structure of neighborhoods.eBay.com. This demonstrated the deficiencies in the other websites' source code production. Andrew offered no explanation as to why the source code was not there for sites other than neighborhoods.eBay.com site -- he simply stated that it was all there. Moreover, because of the deficiencies in eBay's production Eolas' technical consultants actually cut their review a day short and headed home early.

The foregoing issues are detailed in numerous correspondence from Eolas to eBay, which are in your possession. Eolas has expended a substantial amount of time and effort to work with eBay to resolve the deficiencies in eBay's source code production; however, despite its efforts, it appears that eBay remains unwilling to cooperate by producing complete source code. Given that opening expert submissions are due May 25, Eolas is left with no choice but to seek the Court's intervention, on an expedited basis, in order to resolve this matter.

Please let us know when your local and lead counsel are available for an LR-7 meet and confer. We suggest addressing this topic during the same LR-7 meet and confer previously requested by Lindsay in her correspondence to you this week.

We look forward to hearing from you soon.

Thank you.

Tom

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