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MORRISON | FOERSTER

425 MARKET STREET
SAN FRANCISCO
CALIFORNIA 94105-2482
TELEPHONE: 415.268.7000
FACSIMILE: 415.268.7522
WWW.MOFO.COM

MORRISON & FOERSTER LLP
NEW YORK, SAN FRANCISCO,
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TOKYO, LONDON, BEIJING
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

October 14, 2009

Writer's Direct Contact
415.268.6052
CMeier@mof.com

By Hand Delivery

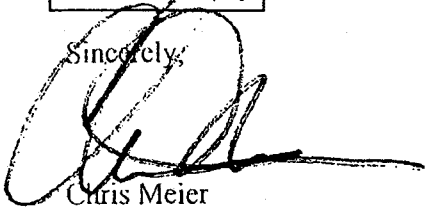
Frederick Brown, Esq.
Jason Stavers, Esq.
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, California

Re: *American Airlines, inc. v. Yahoo! Inc.*

Dear Fred and Jason:

Enclosed please find documents produced by Yahoo! bearing Bates numbers YAH-
AA 4388862 to YAH-AA 4388864, collected from Yahoo! custodians C. Cameron and
R. Ramaswamy.

Sincerely,



Chris Meier
Sr Paralegal

Enclosure

cc w/production: Howard Hogan, Esq.
Dee J. Kelly, Jr., Esq.

8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORTH WORTH DIVISION

--oOo--

AMERICAN AIRLINES, INC.,)
)
Plaintiff,)
)
vs.) No. 4:08-CV-626-A
)
YAHOO! INC. and OVERTURE)
SERVICES, INC., d/b/a YAHOO!)
SEARCH MARKETING,)
)
Defendants.)

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF
RAJ RAMASWAMY

THURSDAY, OCTOBER 15, 2009

REPORTED BY: DIANE M. WINTER, CSR NO. 3186 (423701)

Merrill Legal Solutions
(800) 869-9132

REPLY APP. 36
c20c7fa4-4b7e-438a-ae0b-b89a323f91c0

1 A I can't. 11:33:04
2 Q Do you know why they are there or what they 11:33:05
3 mean? 11:33:09
4 A No. It's some system-generated stuff 11:33:10
5 which -- which -- yeah, I don't know what it means. 11:33:15
6 Q Okay. Have you explained to me so far all 11:33:17
7 of the significant portions of Exhibit 504? 11:33:25
8 A Yes. 11:33:29
9 Q And you said that there was a draft 11:33:30
10 questionnaire, correct? 11:33:32
11 A Yes. 11:33:33
12 Q How many drafts? 11:33:33
13 A I don't remember the exact number of 11:33:37
14 drafts. 11:33:39
15 Q And when was the first time you were asked 11:33:42
16 to produce or provide what's been marked as the 11:33:44
17 portions of Exhibit 503? 11:33:49
18 A I'm not sure I understand the question. 11:33:53
19 Q Sure. At some point you provided Exhibit 11:33:55
20 503 to the lawyers and they gave it to me? 11:33:57
21 A Uh-huh. 11:33:59
22 Q Is that a yes? 11:34:00
23 A That's a yes. 11:34:01
24 Q When was the first time you were asked to 11:34:04
25 give to your lawyers a copy of the Excel 11:34:05

1 spreadsheet, the portions of which are Exhibit 503? 11:34:07
2 A I was asked on Tuesday. 11:34:11
3 Q Tuesday? 11:34:14
4 A Of this week, that would be October. 11:34:15
5 Q 13th? 11:34:16
6 A 13th. 11:34:17
7 Q And before that were you ever asked to 11:34:18
8 provide any information related to the American 11:34:20
9 Airlines versus Yahoo! suit? 11:34:23
10 A No. 11:34:25
11 Q Did you ever receive a document hold notice 11:34:25
12 asking you to retain documents related to the 11:34:28
13 lawsuit? 11:34:31
14 A Yes. 11:34:32
15 Q When? 11:34:32
16 A Uhm, I don't remember the exact date. 11:34:34
17 Q About how long ago? 11:34:38
18 A About maybe a month or so. I mean between 11:34:43
19 three to four weeks probably. 11:34:49
20 Q So within the last 30 days you received for 11:34:51
21 the first time a document hold notice related to the 11:34:53
22 American Airlines versus Yahoo! case? 11:34:56
23 A So I don't understand what the hold notice 11:34:58
24 exactly means or -- 11:35:00
25 Q A letter from the lawyers notifying you of 11:35:02

1 the existence of the lawsuit and asking you to save 11:35:05
2 documents that might be related to the lawsuit? 11:35:09
3 A Okay. Yes. 11:35:12
4 Q And you received such a letter? 11:35:13
5 A I received an e-mail. 11:35:14
6 Q An e-mail? 11:35:16
7 A Yes. 11:35:17
8 Q And when did you receive that e-mail? 11:35:17
9 A Sometime in the last 30 days. 11:35:19
10 Q So sometime after September 15, 2009? 11:35:23
11 A I would have to go back and check. It 11:35:30
12 could be four to five weeks. I don't know for sure. 11:35:32
13 Q Okay. But in that time period? 11:35:34
14 A Yes. 11:35:36
15 Q And were you also asked to produce 11:35:37
16 documents or provide documents to the lawyers? 11:35:40
17 A I wasn't asked to provide anything. 11:35:44
18 Q And did you actually undertake to begin 11:35:46
19 saving documents? 11:35:49
20 A There was -- I mean I had what I had, so 11:35:52
21 there was no -- there was nothing additional I had 11:35:55
22 to do. 11:35:58
23 Q And what did you have? 11:35:59
24 A The documents I've produced in front of 11:36:01
25 you. 11:36:03

1 CERTIFICATE OF REPORTER

2 I, DIANE M. WINTER, a Certified Shorthand
3 Reporter, hereby certify that the witness in the
4 foregoing deposition was by me duly sworn to tell
5 the truth, the whole truth and nothing but the truth
6 in the within-entitled cause;

7 That said deposition was taken in shorthand
8 by me, a disinterested person, at the time and place
9 therein stated, and that the testimony of the said
10 witness was thereafter reduced to typewriting, by
11 computer, under my direction and supervision;

12 That before completion of the deposition,
13 review of the transcript [x] was [] was not
14 requested. If requested, any changes made by the
15 deponent (and provided to the reporter) during the
16 period allowed are appended hereto.

17 I further certify that I am not of counsel
18 or attorney for either or any of the parties to the
19 said deposition, nor in any way interested in the
20 event of this cause, and that I am not related to
21 any of the parties thereto.

22 DATED: October 26, 2009

23

24

25

DIANE M. WINTER, CSR No. 3186

9

KELLY HART & HALLMAN LLP

201 MAIN STREET, SUITE 2500
FORT WORTH, TEXAS 76102

Telephone: (817) 332-2500
Telecopy: (817) 878-9280
Writer's Direct Dial: (817) 878-3593
Email Address: scott.wiehle@khh.com

301 Congress, Suite 2000
Austin, Texas 78701
1000 Louisiana, Suite 4700
Houston, Texas 77002

October 19, 2009

Via E-mail

Daniel P. Muino
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105-2482

Re: Civil Action No. 4-08-8CV-626-A; *American Airlines, Inc. vs. Yahoo! Inc. and Overture Services, Inc. d/b/a Yahoo Search Marketing*

Dear Dan:

During the depositions of Mr. Luong and Mr. Ramaswamy, Yahoo revealed several persons with relevant information whose custodial files were not produced and/or who were not previously identified by Yahoo as persons with relevant information even though required by multiple, long-outstanding discovery requests and court orders.¹

Please immediately produce documents responsive to American's requests from the custodial files of:

- **Nick Beseabas** - head of Yahoo's Consumer Insights Team;
- **Joshua Grossnickle** - co-author of Money Maker Survey, a portion of which was relied upon by Mr. Ramsawamy for his North Ad Refresh Survey;
- **Sanjay Wahi** - member of the Data Analytics Team who assisted with Money Maker Survey and North Ad Refresh Survey;
- **Mulyadi Kurnaiwan** - assisted with analysis of North Ad Refresh Survey;
- **Sharad Verma** - received copy of North Ad Refresh Survey;
- **Rebecca Sharpe** - received copy of North Ad Refresh Survey;
- **Larry Cornett** - had overall responsibility for the SERP and paid inclusion;
- **Tuoc Luong** - had overall responsibility for the SERP and managed Mr. Cornett;
- **Chi Chao Chang** - member of Sponsored Search Team;
- **David Ku** - head of advertising;
- **Mark Morrissey** - formerly in charge of advertising products;

¹ Although some of these persons were included in a recent request for production, the custodial files for each were responsive to earlier requests and to the already-existing orders. The recent requests named some persons by name so that Yahoo could not argue that they somehow overlooked the relevance of the files controlled by these individuals.

Daniel P. Muino
October 19, 2009
Page 2

- **Nam Nguyen** - responsible for SERP user interface;
- **Tim Mayer** - focused on monetization of search; and
- **Tom Chi** - managed new SERP.

In addition, Yahoo has produced a minimal number of documents for the following custodians, whose positions suggest that **many** more responsive documents exist. Please produce the remaining responsive documents for the following custodians, as required by American's outstanding discovery requests and the Court's orders:

- **Mike Kronthal** (-23 documents produced) - Member of Consumer Insights Team who received copy of North Ad Refresh Survey and other surveys; and
- **Robert Kahn** (-13 documents produced) - Member of Consumer Insights Team.

Mr. Ramsawamy also revealed several consumer surveys that have not been produced to American. Please immediately produce those surveys and all underlying data as well.

Sincerely yours,



Scott Wiehle

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**THE DOCUMENT AMERICAN INTENDS TO BE EX. 10
AND NUMBERED REPLY APP. 43 – 52 IS SUBJECT TO
YAHOO’S CLAIM OF CONFIDENTIALITY. THIS
DOCUMENT HAS BEEN SUBMITTED TO THE COURT
AS AN ATTACHMENT TO YAHOO’S MOTION TO
SEAL. IF THE COURT GRANTS YAHOO’S MOTION,
THE DOCUMENT WILL BE FILED UNDER SEAL. IF
THE COURT DENIES THAT MOTION, AMERICAN
INTENDS TO SUBMIT THE DOCUMENT IN A
SUPPLEMENTAL APPENDIX.**

11

BRADLEY J. KING September 24, 2009
CONFIDENTIAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORTH WORTH DIVISION

--oOo--

AMERICAN AIRLINES, INC.,)
)
) Plaintiff,
)
) vs.) No. 4:08-CV-626-A
)
) Yahoo! INC. and OVERTURE
) SERVICES, INC., d/b/a Yahoo!
) SEARCH MARKETING,
)
) Defendants.)

VIDEOTAPED DEPOSITION OF
BRADLEY J. KING

Thursday, September 24, 2009

Volume I
(Pages 1 - 159)

*** CONFIDENTIAL ***

REPORTED BY: CARLA SOARES, CSR #5908 (01-422938)

Merrill Legal Solutions
(800) 869-9132

REPLY APP. 53
047a4dcd-2543-4c89-b10e-dc56ddd1aa7

1 A. I graduated in December of 1993. 08:20:30
2 MR. BROWN: We're going to mark this 08:20:52
3 Plaintiff's Exhibit 200. 08:20:56
4 (Deposition Exhibit 200 was marked 08:21:13
5 for identification.) 08:21:13
6 MR. BROWN: Q. Plaintiff's Exhibit 200 is 08:21:13
7 a letter from Mr. Muino to me actually dated 08:21:16
8 September 4th, 2009, and it provided to us documents 08:21:18
9 numbered YAH-BK 1 through 40428. 08:21:24
10 At some point, did you provide counsel 08:21:32
11 with documents that had been subject to a subpoena 08:21:35
12 by American Airlines? 08:21:39
13 A. Yes. 08:21:41
14 Q. And in what form did you provide those 08:21:42
15 documents? 08:21:44
16 A. Electronic form. 08:21:45
17 Q. Electronic files? 08:21:47
18 A. Yes, sir. 08:21:48
19 Q. Did you put them on a disk? 08:21:49
20 A. Yes, on a hard drive. 08:21:50
21 Q. On a hard drive? 08:21:53
22 A. Um-hum. 08:21:54
23 Q. Do you have any idea how many pages or 08:21:55
24 documents were on that hard drive? 08:21:57
25 A. I believe it was about ten gigabytes. I 08:22:00

1 couldn't tell you the number of pages or number of 08:22:02
2 documents. 08:22:05
3 Q. And from where did you get those 08:22:11
4 electronic documents? Where were they just before 08:22:13
5 you transferred them on this hard drive? 08:22:16
6 A. They're on a hard drive of mine at home. 08:22:19
7 Q. A hard drive separate from the computer or 08:22:22
8 in a laptop or a desktop? 08:22:24
9 A. Separate from the computer. 08:22:26
10 Q. Separate from the computer. And what 08:22:27
11 documents -- what kinds of documents did you have on 08:22:32
12 that hard drive that you had at home? 08:22:35
13 A. A lot of personal documents. I also use 08:22:37
14 that as a mechanism to back up the computer that I 08:22:40
15 have at home now, a Macintosh laptop, and for a 08:22:45
16 time, I was using it to back up my PC that I was 08:22:51
17 issued from -- by Yahoo!. 08:22:55
18 Q. Did you have particular files of 08:23:04
19 Yahoo!-related documents on the backup hard drive? 08:23:08
20 A. I just would back up the entire hard drive 08:23:13
21 of my laptop onto this, so I didn't pick and choose 08:23:18
22 files. I would just do a general backup every two 08:23:22
23 to three months. 08:23:24
24 Q. When you transferred the approximately ten 08:23:25
25 gigabytes of electronic information to Yahoo!'s 08:23:27

1 CERTIFICATE OF REPORTER

2 I, CARLA SOARES, a Certified Shorthand
3 Reporter, hereby certify that the witness in the
4 foregoing deposition was by me duly sworn to tell
5 the truth, the whole truth, and nothing but the
6 truth in the within-entitled cause;

7 That said deposition was taken in
8 shorthand by me, a disinterested person, at the time
9 and place therein stated, and that the testimony of
10 the said witness was thereafter reduced to
11 typewriting, by computer, under my direction and
12 supervision;

13 That before completion of the deposition,
14 review of the transcript [] was [x] was not
15 requested if requested, any changes made by the
16 deponent (and provided to the reporter) during the
17 period allowed are appended hereto.

18 I further certify that I am not of counsel
19 or attorney for either or any of the parties to the
20 said deposition, nor in any way interested in the
21 event of this cause, and that I am not related to
22 any of the parties thereto.

23 DATED: _____, 2009

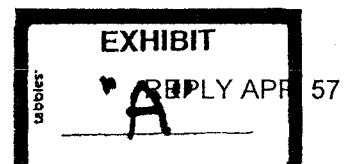
24 _____
CARLA SOARES, CSR No. 5908

25

12

Agenda: ~~ESI~~ MEETING WITH Yahoo, August 25, 2009

- Discussion of Yahoo's Declarations re restoring backup tapes to readily accessible data
 - Yahoo's experience in restoring large data sets from tape to live databases for business or litigation purposes?
 - Why hasn't Yahoo added dedicated personnel?
 - Why hasn't Yahoo added more equipment or outsourced the project?
 - Has Yahoo purchased, rented or secured more equipment for this restoration? Need documents.
 - How many LT02 drives and Filers does Yahoo own/use for its on going business v. being used for this restoration?
 - Why hasn't Yahoo added more Filers or LT02 drives?
 - When did Yahoo begin the restoration?
 - What is the average hourly labor cost of the technicians Yahoo has assigned to the restoration?
 - Total estimated restoration cost to restore data on schedule and with resources proposed by Yahoo? Documents.
 - What data sources feed the SAGE Data Warehouse? Need flowchart.
 - What databases take data from the Sage Data Warehouse? Need flowchart.
 - How do Edwards 1 and 2, ORACLE Financials, RQCC, Account Monitoring, Grid, Project Apax, MRP, AD UI, SS Offers feed or source the Sage Data Warehouse?
 - Need Wilco, Backbone Nevault, Filer, Warehouse Replication, Myna and Net APP Filer, Edwards 1 and 2, ORACLE Financials, RQCC, Account Monitoring, Grid, MRP, AD UI, SS Offers and Project Apax manuals.
 - What data does Wilco select for backup and deletion— need details?
 - What data was deleted from Sage and not backed up?
 - What data remains on Sage that was not deleted from January to September 2007?
 - How long is data kept on Net APP filers?
 - Need deletion or backup schedules for all databases.
 - When did Yahoo stop deleting the Requested Data?
 - When did Yahoo begin its restoration efforts?
 - Why wasn't the Court and AA informed immediately about the missing data?
 - When did Mr. Garg authorize the deletion of data from Sage?
 - Who was informed of the deletion?
 - What documents support the deletion?
 - When was Mr. Garg and those reporting to him provided a document retention notice?
 - What is the reporting chain from Mr. Garg to the CTO.
 - Who in that chain received a document retention notice? When?
 - Other - See questions inserted in declaration.
- Other missing data
 - Ad text for approximately 8.6 million of the 19.5 million clicks identified is missing (the "Creative Description"). We are also missing the "Creative



Title" for 1.5 million clicks, the " Creative Short Description" for 12.2 million clicks, and the display UKL for 1.5 million clicks.

Data for 1.3 million clicks also omit information from the field identifying whether the click was a result of Yahoo's sponsored search or content match programs.

- We have no data on landing URL fields.
 - We are missing bid information for 11.4 million of the 19.5 million clicks in Yahoo's Generation V search data.
 - Yahoo has not produced any information about bids on non-clicked keywords and/or advertisements.
 - Data related to the placement of advertisements on a search results page. All Yahoo has provided is the "rank" in which each clicked-on ad appeared on the page, but has not provided any DUDE data or other information that would allow us to calculate where each ad appeared on the page. Data missing from Yahoo's Generation IV and V set that had been reported in Yahoo's Generation I or II data. .
- Quality Index Score. Yahoo has not produced any data related to the "quality" of each sponsor result even though they boast of the ability to track and improve advertisers' quality scores.
- Share of Voice data.
 - Impressions and click through rates. The closest we have is YAH-AA 454823-825, but it is for 2008 and 2009 only, it is not clear if "bidded results" can be equated to "impressions"; and it is by canon search term, not advertiser, so there is no way to gauge either click through rate or impressions for any particular ads.

We are missing partner serve URLs for 1.7 million of the 19.5 million clicks in Gen 5

Yahoo has produced no html code, screen shots, or other ways to see what each page displayed in response to a search for AA Mark or Confusingly Similar term actually looked like when presented to consumers.

- Measures of which terms are most "confusingly similar to" the AA Marks.
- Missing data identified in Dan Jackson's report
- Data from additional fields recorded by Yahoo and identified in August 20 letter to Yahoo

13

Scott R. Wiehle

From: Jacobs, Michael A. [MJacobs@mofo.com]
Sent: Monday, October 19, 2009 11:19 PM
To: Brown, Frederick
Cc: Dee Kelly 2; Lars Berg; Scott R. Wiehle; Hogan, Howard S.; Stavers, Jason B.; Beard, Brooks M.; Rodriguez, D. Anthony; Muino, Daniel P.; David Chappell; Scott Fredricks
Subject: RE: Motion for Sanctions

Fred,

Here is how we see it:

American filed its motion for sanctions without undertaking a meaningful effort at meeting and conferring -- at rationally resolving disagreements through a concerted effort at understanding the underlying facts and seeking compromise -- as required by the Federal Rules, ND Texas Local Rules, and Judge McBryde's orders.

We nonetheless initiated a meet and confer before we filed Yahoo!'s response and laid out why we thought your motion was misplaced, and offered you an opportunity to withdraw American's motion. American refused.

We then filed our response (at quite considerable expense), laying out Yahoo!'s response in writing with supporting documents and declarations.

Having now heard from Yahoo! orally and in writing, if American now believes that its motion should be withdrawn there is no reason that a meet and confer needs to occur -- simply tell us and the Court that you desire to withdraw the motion.

Yahoo! is always willing to seek ways of resolving discovery disputes without court intervention. Unfortunately, in this instance American chose to seek the harshest sanctions -- in order, we believe, to attempt to gain advantage that it cannot obtain by litigating the merits of the case, and for that very reason did not engage in a substantive meet and confer before filing. I simply don't know what is left to confer about. Your email gives no indication that American is seeking this meeting in good faith. If there is more you wish to convey to demonstrate that your email is not merely an effort to clean up a record of inadequate *pre-filing* efforts to resolve disagreements, we are all ears.

Michael

From: Brown, Frederick [mailto:FBrown@gibsondunn.com]
Sent: Monday, October 19, 2009 5:03 PM
To: Jacobs, Michael A.; Beard, Brooks M.; Rodriguez, D. Anthony; Muino, Daniel P.; David Chappell; Scott Fredricks
Cc: dee.kelly.2@khh.com; Lars Berg; Scott R. Wiehle; Hogan, Howard S.; Stavers, Jason B.; Brown, Frederick
Subject: Motion for Sanctions

Dear Michael

Yahoo's opposition to American's motion for sanctions argues that American failed to meet its meet and confer obligations as to that motion. American believes Yahoo's assertion was wrong and that no further discussions are required; however, as American informed Yahoo in a telephone conference on October 12 the day after Yahoo first made that accusation, American is open to further negotiations on its motion. Please let me know your availability for an in person meeting on the sanctions issues. American believes that lead counsel should attend this meeting. I am available to meet in San Francisco on Tuesday afternoon after 3, or any time Wednesday or Thursday of this week. We can meet in my office since we met in your office for our last negotiations on discovery issues.

REPLY APP. 59

10/28/2009

Fred

Frederick Brown | Gibson, Dunn & Crutcher LLP | 555 Mission Street, Suite 3000, San Francisco, CA 94105 | 415-393-8204 (O) | 415-374-8420 (F) | 510-414-3456 (C)

=====
This message may contain confidential and privileged information. If it has
been sent to you in error, please reply to advise the sender of the error and
then immediately delete this message.
=====

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attachments), such advice is not intended or written to be used, and cannot be used, for the purpose of (i)
avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another
party any transaction or matter addressed herein.

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<http://www.mofo.com/Circular230.html>

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reply e-mail @mofo.com, and delete the message.

REPLY APP. 60

10/28/2009

14

**THE DOCUMENT AMERICAN INTENDS TO BE EX. 14
AND NUMBERED REPLY APP. 61 – 72 IS SUBJECT TO
YAHOO’S CLAIM OF CONFIDENTIALITY. THIS
DOCUMENT HAS BEEN SUBMITTED TO THE COURT
AS AN ATTACHMENT TO YAHOO’S MOTION TO
SEAL. IF THE COURT GRANTS YAHOO’S MOTION,
THE DOCUMENT WILL BE FILED UNDER SEAL. IF
THE COURT DENIES THAT MOTION, AMERICAN
INTENDS TO SUBMIT THE DOCUMENT IN A
SUPPLEMENTAL APPENDIX.**

15

STANDSTILL AGREEMENT

This Agreement is effective as of December ¹⁹ 2006 (the "Effective Date"), by and between American Airlines, Inc. ("AA"), a Delaware corporation having its principal business address at 4333 Amon Carter Boulevard, Fort Worth, TX 76155, and Yahoo! Inc. ("Yahoo!"), a Delaware corporation having its principal business address at 701 First Avenue, Sunnyvale, CA 94089 (collectively, the "Parties").

WHEREAS, AA ^{ALLEGED DSW/AA} has notified Yahoo! that a potential dispute may exist between AA and Yahoo! relating to Yahoo!'s use of AA's trademarks (the "Dispute"); and

WHEREAS, the Parties believe that they may benefit from informal and detailed discussions in an effort to reach an amicable settlement of the Dispute;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth and to facilitate such discussions, AA and Yahoo! hereto agree as follows:

1. Yahoo! agrees that it shall not file any lawsuit against AA relating to the Dispute for ninety-seven (97) days after this Agreement is executed. AA agrees that it shall not file any lawsuit against Yahoo! relating to the Dispute for ninety (90) days after this Agreement is executed. During the time that this Agreement is in force in accordance with Paragraph 4 below, the Parties agree to engage in good faith efforts to reach a mutually agreeable business resolution to the Dispute.

2. The running of all Limitations Periods applicable to any Claim that either Party may have against the other Party will be interrupted, suspended, and deemed to have been tolled as of the Effective Date of this Agreement for a period of ninety-seven (97) days. Any Limitations Period applicable to any Claim that either Party may have against the other Party, which has not run, elapsed, or expired prior to the Effective Date, shall resume running (unless otherwise interrupted, suspended, or tolled by operation of law) upon termination of this Agreement in accordance with Paragraph 4 below.

3. The Parties agree that they will preserve the confidentiality of all communications relating to this Standstill Agreement, the Dispute and the Claims raised by AA to the full extent of the law. Neither Party shall, in any manner, under any circumstances and without the prior written consent of the other Party, disclose or make available to any third-party, except counsel for a Party or as required by law, any information relating to this Standstill Agreement, the Dispute or the Claims raised by AA, including but not limited to the fact that AA contacted Yahoo! to alert Yahoo! of a possible dispute, the fact that the Parties are engaging in negotiations relating to AA's trademarks, and the existence of this Standstill Agreement. If either Party receives a subpoena, or discovery request that seeks production of documents or information relating to this Standstill Agreement, the Dispute or the Claims raised by AA, it will promptly inform the other Party of such a subpoena or request, will cooperate fully with the other Party in asserting all applicable rights, privileges, protections and immunities, in response thereto, and will not produce any such materials in response thereto unless or until: (1) it is directed to do so by a final order of a court of competent jurisdiction; or (2) such disclosure is authorized in writing by the producing Party.

4. This Agreement shall continue in full force and effect for ninety-seven (97) days until 12 noon Eastern Standard Time on March 26, 2007, at which time it shall terminate of its own accord.

5. This Agreement shall not operate to revive any Claim that as of the Effective Date was already barred by any Limitations Period.

6. Except as otherwise provided herein, this Agreement shall not constitute a waiver or release of any rights, claims or defenses by either Party hereto. Nothing herein shall constitute or be deemed to constitute an admission, acknowledgement, waiver or election by or on behalf of either Party as to any liability or the applicability or expiration of any Limitations Period.

7. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

8. Capitalized terms in this Agreement shall have the following meanings:

- a. "American Airlines, Inc." and "AA" mean American Airlines, Inc., AMR Corporation, and their parents, subsidiaries, and affiliated companies.
- b. "Yahoo! Inc." and "Yahoo!" mean Yahoo! Inc. and its parents, subsidiaries, and affiliated companies.
- c. "Claim" and "Claims" mean any and all causes of action, at law or in equity, arising from or relating in any way to the Dispute.
- d. "Limitations Period" means any statute of limitations, statute of repose, period of prescription, laches, and any other rule or doctrine, at law or in equity, relating to the timeliness of Claims.
- e. "Party" means AA or Yahoo!

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10. This Agreement constitutes the entire and integrated agreement of the Parties with respect to the subject matters hereof, and may not be altered, modified or amended, except in writing signed by the Parties hereto.


11. This Agreement shall bind and inure to the benefit of each Party and their respective affiliates, subsidiaries, successors and assigns.

12. Each of the persons executing this document represents and warrants that he has the full legal power, capacity and authority to bind the Party on behalf of whom he is acting and that this Agreement constitutes a legal, binding, obligation of the Party, enforceable in accordance with its terms. Each Party represents and warrants by its execution hereof that it has the right, power, legal capacity and authority to enter into and perform all of its obligations

arising under this Agreement and has conferred with legal counsel of its choosing as to the significance and legal effect of this Agreement.

13. The Parties agree that no adequate remedy at law exists for the enforcement of this Agreement, and therefore either Party is entitled to an order granting specific performance of this Agreement—either through a declaration or an injunction—in the event that this Agreement is breached or threatened to be breached.

IN WITNESS HEREOF, the parties have caused this Agreement to be duly executed on this 12/19/06 day of December, 2006.


Name: DARLEN S. WEINGARD
Title: SENIOR LEGAL DIRECTOR
Yahoo! Inc.


Gary F. Kennedy
General Counsel
American Airlines, Inc.

160131212_2.DOC

16

MORRISON | FOERSTER

425 MARKET STREET
SAN FRANCISCO
CALIFORNIA 94105-2482
TELEPHONE: 415.268.7000
FACSIMILE: 415.268.7522
WWW.MOFO.COM

MORRISON & FOERSTER LLP
NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.
DENVER, NORTHERN VIRGINIA,
ORANGE COUNTY, SACRAMENTO,
WALNUT CREEK, CENTURY CITY
TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

October 30, 2009

Writer's Direct Contact
415.268.6124
HBobkova@mofo.com

By Hand Delivery

Frederick Brown, Esq.
Jason Stavers, Esq.
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, California

Re: *American Airlines, Inc. v. Yahoo! Inc.*

Dear Fred and Jason:

Enclosed please find documents produced by Yahoo! bearing Bates numbers YAH-AA 4628385 to YAH-AA collected from Yahoo! custodians Allan Chuate, Brian Kearns, Brian Lynch, Bill Watkinsd, Christy Cormier, David Lake, Douglas Smith, Gita Bhatia, Chip Jessopp, Carmen Palmer, Greg Archibald, Holly Bowyer, Jennifer Fernandez, Jared Luskin, Karla Rowland, Kris Thoren, Michael Kane, Peter Cornell, Peter Hagerty, Sarah Cole, Stacy Davis, Tim Wasemiller, Veronica Gutierrez, Wendi Sturgis, Yuri Kavka, Ann Aman, Adrienne Butler, Cheng Butler, Adam Chandler, Carrie Lippis, Christina Wong, Denise Miller, Julie Cheng, Jim Stothard, Kelly Graziadez, Kimi Helton, Kimon Roufas, Lindell Bennett Matt Comstock, Matt Lillig, Michael McMeekin, Max Steelman, Nitin Kumar, Reggie Davis, Simon Wong, Tommy Lee, Tracy Moon, Nam Nguyen and Michael Wehn.

We are also responding to your correspondence of October 29, 2009, identifying certain documents produced by Yahoo! that may have been inadvertently included in the production. We have reviewed the documents listed in your letter and have determined that some of those documents should have been withheld from production because they contain information that is protected by the attorney-client privilege and/or work product doctrine. Pursuant to the Confidentiality Agreement, we request that you cease any review of these documents and destroy all copies. We have provided, together with our production today, a replacement CD that includes revised records for these inadvertently produced documents. The specific bates numbers of these documents are listed in Appendix A hereto. Please confirm in writing once you have destroyed these documents.

MORRISON | FOERSTER

Frederick Brown, Esq.
October 30, 2009
Page Two

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Bobkova". The signature is written in a cursive, flowing style with some overlapping letters.

Heather Bobkova

Enclosures

cc w/production: Howard Hogan, Esq.
Dee J. Kelly, Jr., Esq.

Frederick Brown, Esq.
October 30, 2009
Page Three

APPENDIX A

YAH-AA 4389578 TO YAH-AA 4389578
YAH-AA 4389579 TO YAH-AA 4389582
YAH-AA 4389583 TO YAH-AA 4389583
YAH-AA 4389584 TO YAH-AA 4389588
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YAH-AA 4627526 TO YAH-AA 4627529
YAH-AA 4627530 TO YAH-AA 4627530

17

1 HIGHLY CONFIDENTIAL
 2
 3 THIS IS AN UNCERTIFIED ROUGH-DRAFT TRANSCRIPT AND
 4 CANNOT BE QUOTED IN ANY PLEADINGS OR FOR ANY OTHER
 5 PURPOSE AND MAY NOT BE FILED WITH ANY COURT. ANY
 6 PUNCTUATION ERRORS OR OMISSIONS, UNTRANSLATED
 7 SHORTHAND SYMBOLS, OR REPORTER'S NOTES WILL BE
 8 CORRECTED IN THE FINAL CERTIFIED TRANSCRIPT.
 9
 10 THE VIDEOGRAPHER: Here begins volume I,
 11 videotape number 1 in the deposition of David Pann
 12 in the matter of American Airlines, Incorporated,
 13 vs. Yahoo Incorporated and Overture Services,
 14 Incorporated, doing business as Yahoo Search
 15 Marketing, in the United States District Court for
 16 the Northern District of Texas, Fort Worth Division,
 17 Case Number 4:08-CV-626-A.
 18 Today's date is October 30th, 2009. Time
 19 on the video monitor is 9:14 a.m. My name is David
 20 Osgood. I'm a notary public contracted by Merrill
 21 Legal Solutions of San Francisco. This deposition
 22 is taking place at 755 Page Mill Road, in Palo Alto,
 23 California.
 24 Counsel, would you please identify
 25 yourselves and state whom you represent.

1

1 MR. BROWN: My name is Fred Brown. I
 2 represent the plaintiff in this case, American
 3 Airlines.
 4 MR. BEARD: I'm Brooks Beard, representing
 5 Yahoo and Overture, the defendants. And we will
 6 designate this transcript highly confidential.
 7 THE VIDEOGRAPHER: Thank you. The court
 8 reporter today is John Wissenbach of Merrill Legal
 9 Solutions. Would the reporter please swear in the
 10 witness.
 11 BY MR. BROWN:
 12 Q. Mr. Pann, good morning.
 13 A. **Good morning.**
 14 Q. My name is Fred Brown. I'm going to ask
 15 you some questions today.
 16 A. **Sure.**
 17 Q. First question is, what is your full name,
 18 home and work address, and your current employer.
 19 A. **David Richard Pann, home address is 1232**
 20 **Thorpe court, Los Altos, California. My work**
 21 **address is 701 first street, Sunnyvale. My employer**
 22 **is Yahoo.**
 23 Q. What position do you currently hold?
 24 A. **Vice president and general manager, search**
 25 **advertising for the North America region.**

2

1 Q. How long have you held that position?
 2 A. **A little over a year now.**
 3 Q. What was your position previous to that?
 4 A. **Vice president, search and display**
 5 **advertising.**
 6 Q. How long did you hold that position?
 7 A. **Approximately another year.**
 8 Q. What position did you have before that?
 9 A. **Vice president of product management.**
 10 Q. What product were you managing?
 11 A. **The sponsored search product.**
 12 Q. How long did you have that position?
 13 A. **Approximately two years.**
 14 Q. What position did you have before that?
 15 A. **For a different company, I was the vice**
 16 **president and general manager of a voice-over IP**
 17 **business unit for a company called NetIQ.**
 18 Q. When did you move from NetIQ to Yahoo?
 19 A. **January 2006.**
 20 Q. How long were you at NetIQ?
 21 A. **Approximately three years.**
 22 Q. What did you do previous to NetIQ?
 23 A. **I was the vice president of marketing for a**
 24 **start-up company called IQ Labs.**
 25 Q. How long were you at IQ Labs?

3

1 A. **One and a half years.**
 2 Q. Where were you before that?
 3 A. **I was at a -- I was vice president of**
 4 **marketing at a company called Aceva Technologies.**
 5 Q. And what is Aceva Technologies?
 6 A. **Aceva Technologies was an online transaction**
 7 **processing company, small start-up, as well.**
 8 Q. Prior to Aceva, what did you do?
 9 A. **Prior to Aceva, I was at a company called**
 10 **Mambo.com.**
 11 Q. Monlo?
 12 A. **Mambo.**
 13 Q. Mambo. What did Mambo do?
 14 A. **Online invites and payment systems.**
 15 Q. How long were you there?
 16 A. **Approximately eight months.**
 17 Q. What did you do before mambo?
 18 A. **Prior to that, I worked for a company**
 19 **called Netscape. And I was there for approximately**
 20 **four years.**
 21 Q. And what did you do for Netscape?
 22 A. **Initially I was hired as a product manager**
 23 **for their server business, and then spent about two**
 24 **years doing that, then moved over to help run their**
 25 **portal business for approximately two years.**

REPLY APP. 79

4

1 MR. BEARD: Objection. To the extent that,
 2 to answer that question, it would require you to
 3 reveal a communication you had with an attorney, I'm
 4 going to instruct you not to answer it. If you can
 5 answer it without doing so, you may.
 6 THE WITNESS: I can't.
 7 BY MR. BROWN:
 8 Q. Did you believe that you had relevant and
 9 meaningful information to provide to the Court?
 10 MR. BEARD: Objection; vague, calls for a
 11 legal conclusion.
 12 THE WITNESS: I don't know.
 13 BY MR. BROWN:
 14 Q. Did you believe that you were providing the
 15 Court with information that would be helpful to the
 16 Court in deciding issues related to the lawsuit
 17 between American Airlines and Yahoo?
 18 MR. BEARD: Objection; lack of foundation,
 19 calls for speculation, calls for a legal conclusion.
 20 MR. BROWN: I'm ask what his beliefs were
 21 when he signed the declaration. That's what I'm
 22 asking.
 23 MR. BEARD: Same objection.
 24 Without -- again, without revealing any
 25 communications you had with an attorney, if you can

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1 answer the question without that, you may.
 2 THE WITNESS: I can't.
 3 BY MR. BROWN:
 4 Q. Are you refusing to answer the question?
 5 A. Without my attorney, who is -- participated
 6 in the discussion, I can't answer the question.
 7 Q. So you're not willing to tell us today
 8 whether you believed that the information that you
 9 were providing to the Court would be helpful to the
 10 Court in deciding issues related to the American
 11 Airlines versus Yahoo lawsuit?
 12 MR. BEARD: Same objections as before.
 13 And, again, if you feel that you cannot
 14 answer that question without revealing communication
 15 you had with an attorney, I'm going to instruct you
 16 not to answer. If you can answer it without
 17 revealing such a communication, you may do so.
 18 THE WITNESS: I can't, because it was in --
 19 with a -- a communication with an attorney.
 20 BY MR. BROWN:
 21 Q. And which attorney was that?
 22 A. Lavra Covington.
 23 Q. Mr. Pann, your documents from your
 24 custodial files have not been produced in this
 25 litigation. You're not identified in any of Yahoo's

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1 submissions, in interrogatory answers or in case
 2 management statements to the Court and to American,
 3 as a person with relevant information.
 4 Did you at any time turn over your
 5 electronic, hard-copy files, or any other files, in
 6 any shape or form that you have had, to your counsel
 7 for production and review in this case?
 8 A. Yes.
 9 Oh.
 10 MR. BEARD: I --
 11 BY MR. BROWN:
 12 Q. When did you do that?
 13 MR. BEARD: You're fine. I was just going
 14 to say, just limit your answer to "yes" and "no" for
 15 now.
 16 BY MR. BROWN:
 17 Q. When did you do that?
 18 MR. BEARD: You may answer.
 19 THE WITNESS: Can I answer when?
 20 MR. BEARD: You may.
 21 THE WITNESS: Last week. Oh, wait, no.
 22 Sorry. Take that back. This week.
 23 BY MR. BROWN:
 24 Q. When this week?
 25 A. Can I look at my calendar?

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1 Q. Yes,
 2 A. Wednesday of this week.
 3 Q. Am I correct that at no time before
 4 Wednesday of this week did you turn over your files
 5 to counsel for review and production in this
 6 litigation.
 7 Let me ask the question --
 8 A. I don't believe so.
 9 Q. Okay.
 10 Have you at any time received a -- a notice
 11 to you that the litigation between American Airlines
 12 and Yahoo required you to preserve documents for the
 13 purposes of this litigation?
 14 MR. BEARD: And, again, please limit -- at
 15 this point please limit your answer to yes or no,
 16 because privilege concerns.
 17 THE WITNESS: Yes.
 18 MR. BEARD: But you may answer.
 19 THE WITNESS: Yes.
 20 BY MR. BROWN:
 21 Q. When is the first time that you received
 22 such a notice?
 23 A. I don't recall.
 24 Q. Was it sometime in the summer or later?
 25 A. I just -- I don't recall.

REPLY APP. 80

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1 Q. You have no idea whatsoever?
 2 A. No, because I get periodic emails.
 3 Q. Okay. Have you been interviewed at any
 4 point in time, putting aside the declaration, by
 5 counsel or any representative of Yahoo to determine
 6 whether you had relevant information responsive to
 7 American Airlines' request for information in your
 8 possession, custody, or control?
 9 And, again, I want to put aside anything to
 10 do with your declaration?
 11 MR. BEARD: Hold on for just a moment. Let
 12 me just review this question.
 13 Again, for privilege reasons, please
 14 limit -- limit your answer at this point to "yes" or
 15 "no."
 16 BY MR. BROWN:
 17 Q. Also put aside any discussions you had
 18 concerning the -- this deposition in preparation for
 19 your deposition.
 20 A. I'm trying -- can you give me an example
 21 what you mean by "interviewed"?
 22 Q. Yes. Did anyone talk to you about what
 23 information you might have had, that you may have,
 24 concerning the issues that have arisen between
 25 American Airlines and Yahoo in this litigation,

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1 particularly with a focus on what documents in paper
 2 copy or electronic copy you may have that are
 3 relevant to American Airlines' requests for
 4 information from Yahoo.
 5 A. I don't believe anyone interviewed me.
 6 Q. Did anyone write to you and ask you what
 7 information you may have had, in terms of data,
 8 documents, hard copy or electronic, related to
 9 American Airlines' request for information in this
 10 case?
 11 And, again, I want you to put aside
 12 anything related to your signing of the declaration
 13 in October of this year and your preparation for
 14 this litigation.
 15 MR. BEARD: And, again, please limit your
 16 answer at this point to "yes" or "no."
 17 THE WITNESS: No.
 18 BY MR. BROWN:
 19 Q. I want to ask you about the screen shot
 20 that you have identified in paragraph 3, and which
 21 is included on page 3 of your declaration.
 22 A. This one here?
 23 Q. It's -- yes. You identify it in paragraph
 24 3.
 25 You say, "This screen shot, which I have

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1 been informed was captured on September 26, 2009."
 2 Do you see that?
 3 A. Yes.
 4 Q. Who so informed you?
 5 A. Legal counsel.
 6 Q. Which legal counsel?
 7 A. I believe it was Laura Covington.
 8 Q. What did she tell you?
 9 MR. BEARD: Please do not answer that
 10 question. That would call you to reveal a
 11 privileged communication.
 12 BY MR. BROWN:
 13 Q. Did she -- the screen shot that you have
 14 presented to the Court is not a screen shot from the
 15 current search engine results page as currently
 16 displayed on Yahoo, is it?
 17 MR. BEARD: Just one moment.
 18 Calls for speculation.
 19 THE WITNESS: This -- this doesn't look
 20 like the newer search results page.
 21 Q. When was the new search engine results page
 22 used by Yahoo?
 23 A. I believe we started rolling that out --
 24 when did we start rolling that out?
 25 I don't -- it was sometime in Q3. But I

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1 don't know what -- what was the date.
 2 Q. How would you determine the date of when
 3 Yahoo rolled out its new search engine results page?
 4 A. I'd have to ask someone in the -- in Tuoc's
 5 organization.
 6 Q. And the new search engine results page has
 7 a different display than the one shown in your
 8 declaration in paragraph 3; am I correct?
 9 A. It does. But I don't know if this was the
 10 whole page, or was it just a portion of the page
 11 that was -- so I don't know. I don't know
 12 whether -- you know, whether it's the old or the
 13 new.
 14 Q. So you can't advise the Court whether what
 15 you have presented is the current form of the search
 16 engine results page; is that right?
 17 A. This is a -- a version of the search
 18 results page. If --
 19 Q. Yeah. And you don't know whether this one
 20 has been cut off or presented in full, do you?
 21 A. Well, I'm assuming -- to be quite frank,
 22 I'm assuming it's cut off, because it's -- it's only
 23 showing a handful of algo results. So --
 24 Q. I'm talking about on the left-hand side,
 25 where your new search engine results page is

REPLY APP. 81
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OCT29ROUGHarena1

** ROUGH DRAFT - NOT CERTIFIED **

1 LOS ANGELES, CALIFORNIA;
2 THURSDAY, OCTOBER 29, 2009;
3 ^ Time

4
5 THE VIDEOGRAPHER: Here begins Volume Number
6 2 videotape number 1 in the deposition of Carmen
7 Arenal. Today's date is October 29, 2009. The time
8 on the video monitor is 9:367. The video operator
9 today is Jemal Judkins, contracted by Merrill Legal
10 solutions at 20750 Ventura Boulevard Suite 205
11 Woodland Hills, California. Counsel, please
12 voice-identify yourselves and state whom you
13 represent.

14 MR. BROWN: My name is Fred Brown and I
15 represent the plaintiffs -- the plaintiff in this
16 case, American Airlines.

17 MR. MUINO: Daniel Muino of Morrison
18 Foerster for Defendants Yahoo and Overture and also
19 for the witness.

20 THE VIDEOGRAPHER: would the reporter please
21 swear in the witness.
22 Sworn sworn.

23 THE VIDEOGRAPHER: Please begin.

24 BY MR. BROWN:

25 Q. Good morning.

1

** ROUGH DRAFT - NOT CERTIFIED **

1 A. Good morning.

2 Q. we are at the second deposition. we visited

Page 1

REPLY APP. 82

11 litigation which was December 19th, 2006. so I only
12 want to ask about employees who left Yahoo after
13 December 19, 2006.

14 which of the employees listed in paragraph 9
15 that left Yahoo's employment after December 19th,
16 2006, did Yahoo image their laptops?

17 MR. MUNO: objection calls for speculation.

18 THE WITNESS: I don't believe that we imaged
19 any of the laptops.

20 BY MR. BROWN:

21 Q. Okay. Take a look at paragraph 14. In
22 paragraph 14 is a listing of various studies that
23 yahoo had done over time and Yahoo's efforts in its
24 view to search for data that supported these various
25 studies.

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** ROUGH DRAFT - NOT CERTIFIED **

1 Let's look at the fourth study down and it
2 says "North Ad [Click] Survey Refresh." Do you see
3 that?

4 A. Yes.

5 Q. And the north ad click survey refresh you
6 represent was Mr. Michael Kronthal was the dustodian
7 of that document do you see that?

8 A. Yes.

9 Q. Did Yahoo at any point in time look to see
10 if the north add click suffer refresh was found in
11 the custodial files of any person at Yahoo other than
12 Michael Kronthal?

13 A. I don't know if we did.

14 Q. when yahoo was producing the various studies

15 listed here, did Yahoo look for a copy of that study
16 in the files of more than the single custodian that's
17 identified in paragraph 14?

18 A. Can you repeat that question.

19 Q. Yes. when Yahoo first produced the studies
20 that are identified in paragraph 14, did Yahoo look
21 for copies of those studies other than in the
22 custodian -- custodians that are identified in each
23 of these sub paragraphs as the custodian for that
24 particular study?

25 A. I don't know.

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** ROUGH DRAFT - NOT CERTIFIED **

1 Q. Do you know if Yahoo looked for the data
2 that supported each of these studies in the files of
3 any persons other than the person that is identified
4 as the custodian for that particular study in your
5 paragraph 14?

6 A. I don't think we did but I'm not sure.

7 Q. okay. where did you get the information
8 that's in paragraph 14?

9 A. I got it from outside counsel.

10 Q. okay. You don't know this, what's in
11 paragraph 14 personally?

12 A. I don't know what do you mean, I don't know
13 what's in it? Do.

14 A. I know what it says.

15 Q. You know what it says?

16 A. Yes.

17 Q. But is that information that you personally
18 have or is that information that simply reflects that