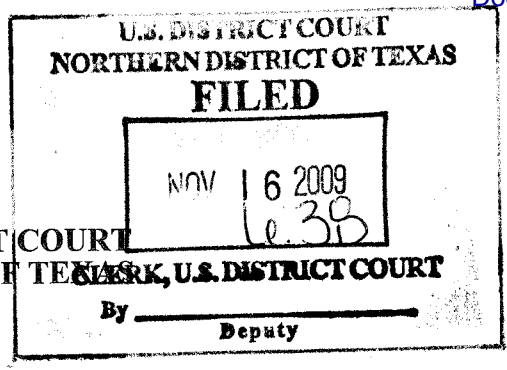


ORIGINAL



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

AMERICAN AIRLINES, INC.,

Plaintiff,

V.

YAHOO! INC., and
OVERTURE SERVICES, INC. d/b/a YAHOO!
SEARCH MARKETING,

Defendants.

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Civil Action No. 4-08-CV-626-A

APPENDIX IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL

EXHIBIT	DOCUMENT	PAGE
A	Excerpts from Derek DeCross Deposition, taken on June 26, 2009	003
B	Expert Report of Daniel L. Jackson, dated August 17, 2009	013
C	November 10, 2009 Letter from D. Rodriguez to J. Stavers	020
D	Excerpts from Donald Broadfield Deposition, taken on July 22, 2009	023
E	November 10, 2009 email chain from J. Stavers to D. Rodriguez	032
F	November 12, 2009 Letter from J. Stavers to D. Rodriguez	036

EXHIBIT	DOCUMENT	PAGE
G	November 6, 2009 Letter from D. Kelly to J. Brandt (Merrill Legal Solutions Court Reporter)	039

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true copy of the foregoing document has been served on counsel of record as follows:

Dee J. Kelly
Dee J. Kelly, Jr.
Lars L. Berg
KELLY HART & HALLMAN, LLP
201 Main Street, Suite 2500
Fort Worth, TX 76102

Via Hand Delivery

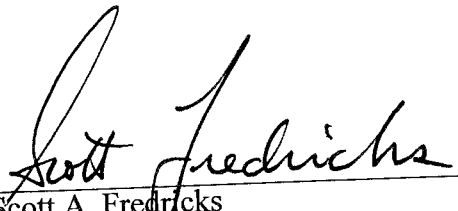
Frederick Brown
George A. Nicoud III
Jason Stavers
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105

Via FedEx

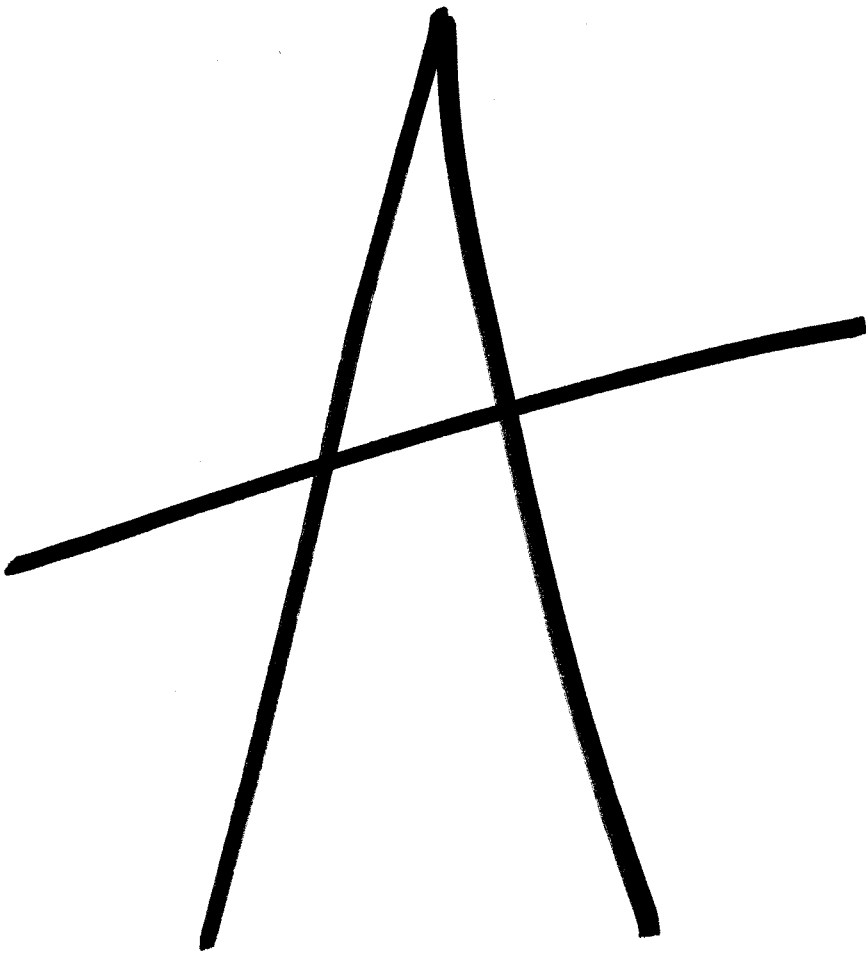
Howard S. Hogan
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Via FedEx

Date: November 16, 2009



 Scott A. Fredricks



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 FORT WORTH DIVISION

3 AMERICAN AIRLINES, INC.,)
4 Plaintiff)

4)
5 v.) Civil Action No.
6) 4-08CV-626-A

6 YAHOO! INC. and OVERTURE)
7 SERVICES, INC. d/b/a)
8 YAHOO! SEARCH MARKETING,)
9 Defendants.)

8 *****

9
10 "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY"

11 ORAL AND VIDEOTAPED DEPOSITION OF
12 AMERICAN AIRLINES, INC. REPRESENTATIVE DEREK DeCROSS
13 JUNE 26, 2009

14 *****

15 ORAL AND VIDEOTAPED DEPOSITION OF AMERICAN
16 AIRLINES, INC. REPRESENTATIVE DEREK DeCROSS, produced as
17 a witness at the instance of the DEFENDANTS, and duly
18 sworn, was taken in the above-styled and numbered cause
19 on the 26th day of June, 2009, from 9:08 a.m. to 3:55
20 p.m., before Julie C. Brandt, RMR, CRR, and CSR in and
21 for the State of Texas, reported by machine shorthand,
22 at the offices of Kelly Hart & Hallman, 201 Main Street,
23 Suite 2500, Fort Worth, Texas, pursuant to the Federal
24 Rules of Civil Procedure.

25 COPY

M E R R I L L C O R P O R A T I O N

4144 N. Central Expressway, Suite 850
Dallas, TX 75204

(214) 720-4567 Tel
Defs' Compel Appx. 003

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning. This is
3 June 26, 2009. The time is 9:08 a.m. This is Videotape
4 1 of the deposition of Derek DeCross in the matter of
5 American Airlines, Inc. versus Yahoo!, Inc., et al. in
6 the U. S. District Court for the Northern District of
7 Texas, Fort Worth Division. Case number 4-08CV-626-A.
8 This deposition is located at 201 Main Street, Fort
9 Worth. My name is Debbie Pullen with Merrill Legal
10 Solutions.

11 For the video record, counsel will now state
12 their appearances. Then the witness may be sworn in.

13 MR. BERG: Lars Berg for American
14 Airlines.

15 MR. HOGAN: Howard Hogan for American
16 Airlines.

17 MR. BROADFIELD: Don Broadfield for
18 American Airlines.

19 MR. NICHOLS: Taylor Nichols for American
20 Airlines.

21 MR. CHAPPELL: David Chappell for Yahoo!.

22 MR. RODRIGUEZ: Tony Rodriguez for the
23 Defendant.

24 DEREK DeCROSS,
25 having been first duly sworn, testified as follows:

1 Q. Who was present?

2 A. Lars was present, Howard was present, Don was
3 present, and Dee was present. I believe that was all.

4 Q. Where was that?

5 A. Held on the 25th floor of this building.

6 Q. What else have you done?

7 A. Yesterday, I contacted the two people that
8 produced one of the reports or two of the reports that
9 were responsive to the Yahoo! request to verify where
10 the data came from.

11 Q. Who did you contact?

12 A. Carol Thiel on revenue report, and Lori Sinn
13 for the profitability report.

14 Q. What are their titles?

15 A. I'm not sure of their exact titles.

16 Q. Just describe them as best you can then.

17 A. Okay. Carol is essentially the controller for
18 AA.com and reservations, and Lori is a senior analyst
19 within the financial analysis organization.

20 Q. What did you request and why?

21 A. On the revenue report, I was wanting to know
22 what the source of the data was. And on the cost
23 report, I was wanting to know, again, the source of the
24 information and then some of the accounts that were
25 shown on that report.

1 Q. Did they have the information you requested?

2 A. Yes.

3 Q. What did it confirm or correct?

4 A. I'll start with the revenue report. I don't
5 have it in front of me, but it essentially was showing
6 that it came from our MIRS reporting system, which is
7 the system we use to track revenue.

8 Q. What else did you confirm or have corrected by
9 your calls with these two people?

10 A. Well, then on the cost side, I asked Lori if
11 it had come out of SPARS, and she said yes.

12 Q. What else?

13 A. On the revenue report, I remember asking if an
14 internet agency line contained the various ARC numbers
15 associated with a given OTA. And Carol confirmed that
16 for me.

17 Q. Confirmed that they do?

18 A. That -- that the various OTA's were included
19 on the internet agency line.

20 Q. Okay. What else did you do to prepare for
21 your deposition?

22 A. That's all I can remember.

23 Q. This was all yesterday?

24 A. Yes.

25 Q. Nothing else?

1 American Airlines?

2 A. As far as I'm aware, yes.

3 Q. How is American able to identify the OTA's
4 that go into this internet agency category?

5 A. In the MIRS system, we are able to query an
6 ARC number associated with the given OTA's.

7 Q. The line for internet agency and the
8 historical flown revenue figures, do those figures
9 represent revenue from tickets booked by all OTA's
10 during the time periods shown on this document?

11 A. As far as I'm aware, yes.

12 Q. So not just Orbitz, Expedia, Travelocity, but
13 all OTA's?

14 A. As far as I'm aware, yes.

15 Q. Is this -- are these figures domestic,
16 international, or just total?

17 A. These are total.

18 Q. The system or database you refer to, MIRS?

19 A. MIRS, yes.

20 Q. MIRS. Okay. Spell -- what is that acronym
21 again?

22 A. M-I-R-S. And it stands for marketing
23 information reporting system, I believe.

24 Q. American Airlines uses MIRS to keep track of
25 historical flown revenue by ticketing outlet?

1 A. Yes.

2 Q. And this document reflects data kept in MIRS
3 that American uses for that purpose in its business?

4 A. That's one of the many purposes.

5 Q. The category AA.com, just for the record,
6 please explain what that is referring to?

7 A. That would be revenue booked and ticketed via
8 AA.com for the periods 2002 through April 2009.

9 Q. All right. What about "all other"?

10 A. It's everything else, excluding OTA's and
11 AA.com.

12 Q. Around the world?

13 A. Correct.

14 Q. Phone reservations would be included in "all
15 other"?

16 A. Yes.

17 Q. Walk-up purchases are in "all other"?

18 A. Walk-up purchases at the airport, yes.

19 Q. Okay. What other kind of walk-up purchases
20 are there?

21 A. Day of departure, you could go up to an OTA or
22 AA.com and -- and purchase a fare to fly that day.

23 Q. Okay.

24 A. We would call that a walk-up fare.

25 Q. Got it.

1 If I'm in Manhattan and go to one of the few
2 ticket offices still standing, that's an "all other"?

3 A. Yes, that is correct.

4 Q. Are Hot Wire and Priceline OTA's?

5 A. Yes.

6 Q. Does American Airlines have records that
7 further break down the interagency category by
8 particular OTA's?

9 A. For the revenue information, yes, you could
10 pull that.

11 Q. Like querying based on the ARC number for that
12 particular OTA?

13 A. Correct.

14 Q. Has American ever done so for any particular
15 OTA?

16 A. Yes.

17 Q. Which OTA's and when?

18 A. I think there's been reports that show all
19 OTA's and break them out in -- in what their revenues
20 are.

21 Q. Are those reports regularly created or run?

22 A. I don't see them in my position, so I can't --
23 can't comment on the regularity.

24 Q. The May 2009 box is blank. Is that because
25 those numbers haven't yet been finalized?

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 FORT WORTH DIVISION

3 AMERICAN AIRLINES, INC.,)
4 Plaintiff)
5)
6 v.) Civil Action No.
7) 4-08CV-626-A
8 YAHOO! INC. and OVERTURE)
9 SERVICES, INC. d/b/a)
10 YAHOO! SEARCH MARKETING,)
11 Defendants.)

10 REPORTER'S CERTIFICATION
11 DEPOSITION OF AMERICAN AIRLINES, INC. REPRESENTATIVE
12 DEREK DeCROSS
13 JUNE 26, 2009

15 I, Julie C. Brandt, Certified Shorthand Reporter in
16 and for the State of Texas, hereby certify to the
17 following:

18 That the witness, DEREK DeCROSS, was duly sworn by
19 the officer and that the transcript of the oral
20 deposition is a true record of the testimony given by
21 the witness;

22 That the deposition transcript was submitted on
23 7/1/09 to the witness or to the attorney
24 for the witness for examination, signature and return to
25 Merrill Legal Solutions by 8/1/09;

Merrill Legal Solutions - Dallas
800-966-4567 www.merrillcorp.com/law

1 That the amount of time used by each party at the
2 deposition is as follows:

3 MR. RODRIGUEZ.....04 HOUR(S):52 MINUTE(S)

4 MR. BERG.....00 HOUR(S):00 MINUTE(S)

5 That pursuant to information given to the
6 deposition officer at the time said testimony was taken,
7 the following includes counsel for all parties of
8 record:

9 FOR THE PLAINTIFF:

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lars.berg@khh.com

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dchappell@canteyhanger.com

AUTHENTIC COPY
The Original Copy
file was electronically signed
using RealLegal technology

That § _____ is the deposition officer's
charges to the Defendants for preparing the original
deposition transcript and any copies of exhibits;
I further certify that I am neither counsel for,
related to, nor employed by any of the parties or
attorneys in the action in which this proceeding was
taken, and further that I am not financially or
otherwise interested in the outcome of the action.

Certified to be true July 1, 2009.

Julie C. Brandt

Julie C. Brandt, CSR, RMR, CRR
Texas CSR No. 4018
Expiration Date 12/31/10

Merrill Legal Solutions
Reg. No. 191
4144 North Central Expressway
Suite 850
Dallas, Texas 75204
800-966-4567

B

recapture rate analysis to account for lower conversion rates for OTAs, the recapture rate would be lower and damages would be higher.

62. I have worked with American Airlines personnel to understand the approximate revenue and variable cost which might be associated with each lost booking. **Attachment 17** summarizes the system-wide passenger and other associated revenue by year, the passenger variable costs by year, and the passengers boarded by year.⁶⁰ **Attachments 17a and 17b** provide detail by expense line item for American Airlines and American Eagle. Based on testimony and documents produced in this case, as well as my conversations with American Airlines personnel, I understand this analysis to represent the contribution margin per segment American Airlines would expect for an incremental passenger.⁶¹

63. I also understand that the contribution by passenger segment can be slightly different for passengers booked on www.aa.com relative to the system-wide averages, owing to both revenue and cost differences. Based on periodic reports produced by American Airlines' marketing department, I understand that revenue per passenger segment is, on average, approximately 25% lower for www.aa.com than the total system per passenger revenue.⁶² Accordingly, as demonstrated in **Attachment 17**, I have adjusted downward the revenue per passenger to reflect the differential in per-passenger revenue for tickets booked on www.aa.com relative to the overall system per-passenger revenue. The result is per-ticket revenue of \$211 to \$283, which is consistent or slightly lower than average air ticket prices as cited by Yahoo! of \$270 to \$300.⁶³

⁶⁰ "Passengers boarded" is a per-segment count of passengers. For example, if a passenger has a connecting flight, he would count as two passengers boarded, one for each segment. Accordingly, calculations made per passenger boarded are actually per passenger per segment.

⁶¹ Deposition of Derek DeCross, June 26, 2009, 17:5-20:16.

⁶² AAY-000619547-568.

⁶³ YAH-AA 0064878.

64. I understand that bookings on www.aa.com can contribute revenue to American Airlines in other ways, such as commissions earned from referring customers for rental cars, cruises, hotels, or travel insurance; upgrade purchases; Admirals Club memberships and day passes; or impressions-based revenue from banner ads.⁶⁴ I also understand that there longer-term benefits to American Airlines of bringing Internet users to www.aa.com for purposes of brand positioning, frequent flier rewards, establishing real-time flight information updates. I understand “[i]t is generally more beneficial for American Airlines when consumers purchase their travel directly through American Airlines. Among other reasons, this is because when consumers book their flights through AA.com, it assists American Airlines in conveying important information to its customers, in developing a direct relationship and future business with its customers, and often minimizing costs associated with various transactions.”⁶⁵ Yahoo! acknowledges that American Airlines’ relationship with its customers can be significantly and permanently altered when Internet users are diverted.⁶⁶ I have not accounted for any of this potential loss of goodwill in my calculations.

65. Additionally, I understand that certain variable costs for www.aa.com as a distribution channel are lower than other channels. For example, tickets booked on www.aa.com do not incur agency commissions or booking (GDS) fees. I have not adjusted for this cost differential, however, as the fixed and variable portions of such expenses were not readily available by distribution channel. If I had made such an adjustment, damages would be higher.

⁶⁴ Deposition of Alice Curry, April 24, 2008 (American Airlines, Inc. v Google, Inc.), 26:20-27:6 and Exhibit 12.

⁶⁵ Complaint, paragraph 31.

⁶⁶ “If you choose not to purchase your brand terms you allow travel aggregators the opportunity to win the sale and relationship (in perpetuity).” Email from Peter Hagerty of Yahoo! dated May 3, 2006 (YAH-AA 0788520-521).

American Airlines, Inc. v. Yahoo! Inc., and Overture Services, Inc. d/b/a Yahoo! Search Marketing
 Lost Profits Relating to Diverted Clicks - Category C Only

	December 19-31, 2002	2003	2004	2005	2006	2007	2008	January 1 - May 31, 2009	Total
Clicks from category "C" accounts ¹	19,780	1,123,293	1,640,050	1,703,483	1,103,207	79,892	272,872	21,803	5,964,380
Less: Excluded clicks ²	1,199	71,800	66,288	15,476	9,378	1,046	5,111	1,196	171,494
Diverted clicks	18,581	1,051,493	1,573,762	1,688,007	1,093,829	78,846	267,761	20,607	5,792,886
Conversion rate ³	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%
Potential bookings resulting from diverted clicks	984	55,729	83,409	89,464	57,972	4,178	14,151	1,092	307,022
Less: bookings assumed to be recaptured									
Recapture rate ⁴	28.7%	27.8%	27.4%	29.8%	31.6%	33.7%	32.4%	32.3%	
Less: Recaptured bookings in proportion with market share	283	15,493	22,855	26,661	18,320	1,408	4,598	353	89,971
Lost bookings	701	40,236	60,554	62,803	39,652	2,770	9,593	759	217,048
Contribution margin per booking ⁵	\$ 209.21	\$ 240.35	\$ 244.72	\$ 249.77	\$ 268.37	\$ 274.65	\$ 291.75	\$ 279.76	
Lost profits relating to diverted clicks	\$ 146,658.67	\$ 9,670,827	\$ 14,818,937	\$ 15,686,549	\$ 10,641,447	\$ 760,781	\$ 2,798,759	\$ 206,742	\$ 54,730,700

Notes:

- 1) See Attachment 8.
- 2) See Attachment 10.
- 3) See Attachment 11. Assumes one round-trip ticket per conversion.
- 4) See Attachment 13.
- 5) See Attachment 17.

American Airlines, Inc. v. Yahoo! Inc., and Overture Services, Inc. d/b/a Yahoo! Search Marketing
 Lost Profits Relating to Diverted Clicks - Categories C and F

	December 19-31, 2002	2003	2004	2005	2006	2007	2008	January 1 - May 31, 2009	Total
Clicks from category "C" and "F" accounts ¹	20,659	1,138,833	1,718,833	1,781,790	1,129,577	82,499	281,836	27,541	6,181,568
Less: Excluded clicks ²	1,199	71,800	66,288	15,476	9,378	1,046	5,111	1,196	171,494
Diverted clicks	19,460	1,067,033	1,652,545	1,766,314	1,120,199	81,453	276,725	26,345	6,010,074
Conversion rate ³	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%
Potential bookings resulting from diverted clicks	1,031	56,552	87,584	93,614	59,370	4,317	14,666	1,396	318,533
Less: bookings assumed to be recaptured									
Recapture rate ⁴	28.7%	27.8%	27.4%	29.8%	31.6%	33.7%	32.4%	32.3%	
Less: Recaptured bookings in proportion with market share	296	15,722	23,999	27,897	18,761	1,455	4,752	451	93,333
Lost bookings	735	40,830	63,585	65,717	40,609	2,862	9,914	945	225,197
Contribution margin per booking ⁵	\$ 209.21	\$ 240.35	\$ 244.72	\$ 249.77	\$ 268.37	\$ 274.65	\$ 291.75	\$ 279.76	
Lost profits relating to diverted clicks	\$ 153,771.93	\$ 9,813,597	\$ 15,560,691	\$ 16,414,390	\$ 10,898,278	\$ 786,049	\$ 2,892,411	\$ 264,372	\$ 56,783,560

Notes:

- 1) See Attachment 8.
- 2) See Attachment 10.
- 3) See Attachment 11. Assumes one round-trip ticket per conversion.
- 4) See Attachment 13.
- 5) See Attachment 17.

American Airlines, Inc. v. Yahoo! Inc., and Overture Services, Inc. d/b/a Yahoo! Search Marketing
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	December 19-31, 2002	2003	2004	2005	2006	2007	2008	January 1 - May 31, 2009	Total
Clicks from category "C" accounts ¹	19,780	1,123,293	1,640,050	1,703,483	1,103,207	79,892	272,872	21,803	5,964,580
Less: Excluded clicks ²	1,199	71,800	66,288	15,476	9,378	1,046	5,111	1,196	171,494
Diverted clicks	18,581	1,051,493	1,573,762	1,688,007	1,093,829	78,846	267,761	20,607	5,792,886
Conversion rate ³	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%
Potential bookings resulting from diverted clicks	1,393	78,861	118,032	126,600	82,037	5,913	20,082	1,545	434,466
Less: bookings assumed to be recaptured									
Recapture rate ⁴	28.7%	27.8%	27.4%	29.8%	31.6%	33.7%	32.4%	32.3%	
Less: Recaptured bookings in proportion with market share	400	21,924	32,341	37,727	25,924	1,993	6,507	500	127,316
Lost bookings	993	56,937	85,691	88,873	56,113	3,920	13,575	1,045	307,147
Contribution margin per booking ⁵	\$ 209.21	\$ 240.35	\$ 244.72	\$ 249.77	\$ 268.37	\$ 274.65	\$ 291.75	\$ 279.76	
Lost profits relating to diverted clicks	\$ 207,749.01	\$ 13,684,956	\$ 20,970,530	\$ 22,198,154	\$ 15,059,102	\$ 1,076,629	\$ 3,960,508	\$ 292,348	\$ 77,449,976

Notes:

- 1) See Attachment 8.
- 2) See Attachment 10.
- 3) See Attachment 11. Assumes one round-trip ticket per conversion.
- 4) See Attachment 13.
- 5) See Attachment 17.

American Airlines, Inc. v. Yahoo! Inc., and Overture Services, Inc. d/b/a Yahoo! Search Marketing
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	December 19-31, 2002	2003	2004	2005	2006	2007	2008	January 1 - May 31, 2009	Total
Clicks from category "C" and "F" accounts ¹	20,659	1,138,833	1,718,833	1,781,790	1,129,377	82,499	281,856	27,541	6,181,568
Less: Excluded clicks ²	1,199	71,800	66,288	15,476	9,378	1,046	5,111	1,196	171,494
Diverted clicks	19,460	1,067,033	1,652,545	1,766,314	1,120,199	81,453	276,725	26,345	6,010,074
Conversion rate ³	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%
Potential bookings resulting from diverted clicks	1,459	80,027	123,940	132,473	84,014	6,108	20,754	1,975	450,755
Less: bookings assumed to be recaptured									
Recapture rate ⁴	28.7%	27.8%	27.4%	29.8%	31.6%	33.7%	32.4%	32.3%	
Less: Recaptured bookings in proportion with market share	419	22,248	33,960	39,477	26,549	2,059	6,725	638	132,075
Lost bookings	1,040	57,779	89,980	92,996	57,465	4,049	14,029	1,337	318,675
Contribution margin per booking ⁵	\$ 209.21	\$ 240.35	\$ 244.72	\$ 249.77	\$ 268.37	\$ 274.65	\$ 291.75	\$ 279.76	
Lost profits relating to diverted clicks	\$ 217,582.04	\$ 13,887,333	\$ 22,020,146	\$ 23,227,971	\$ 15,421,940	\$ 1,112,059	\$ 4,092,962	\$ 374,038	\$ 80,354,031

Notes:
 1) See Attachment 8.
 2) See Attachment 10.
 3) See Attachment 11. Assumes one round-trip ticket per conversion.
 4) See Attachment 13.
 5) See Attachment 17.