

CTJRM/T
ORIGINAL

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

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION

2009 AUG 28 PM 3: 28

CLERK OF COURT

AMERICAN AIRLINES, INC.,

Plaintiff,

-v.-

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

Defendants.

Case No. 4:08-CV-626-A

**DEFENDANTS' RESPONSE TO STATEMENT OF AMERICAN AIRLINES
CONCERNING THE RESTORATION OF ELECTRONICALLY STORED
INFORMATION**

Despite this Court's order requiring technical experts from both sides to discuss the feasibility of restoring the subject data, American Airlines has refused to enter a cooperative dialog on the subject. At the court-ordered meeting in Seattle, American did nothing more than question Yahoo!'s declarants on the subject matter of their declarations and attempt to use the meeting to informally depose these technical experts on the subject of other discovery disputes not presently before this Court.¹ At no time in the meeting did American propose alternative strategies to speed up, or lower the cost of, the process. American did not disclose its technician's view of the problem and proposed solution until after the joint report was filed with the Court yesterday. Accordingly, only now are Yahoo!'s technicians able to begin an evaluation of the proposals made by American.

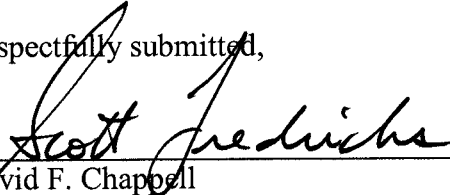
¹ As shown by the Agenda prepared by American for the meeting (Exhibit A to the Joint Report filed 8/27/09 – Doc. No. 80), fully half of the subjects covered had nothing to do with the January-September 2007 data that is the subject of American's motion to compel and the Court's orders on the matter.

Yahoo! believes that American's conduct violates the spirit, if not the letter, of the Court's order requiring the parties to engage their respective technical experts to cooperatively evaluate the technical challenges posed by the restoration project and to productively discuss potential solutions. Because a true meet-and-confer has yet to occur, Yahoo! asks the Court to order American to appear for such. As Yahoo! traveled to the home office of American's technicians for the first meeting in Seattle, Yahoo! would ask that the second meeting be ordered to occur in Los Angeles, where Yahoo!'s technicians reside and the restoration project would take place.

Alternatively, or in addition, Yahoo! proposes that the Court appoint an independent technical expert in the field of database restoration to independently gather facts and make a report to the Court on the technical difficulties and the positions taken by the two parties. As everyone recognized in the telephone conference held August 11th, the issue at hand presents unique technical questions that very few people in the country are equipped to evaluate. Moreover, even American's technician acknowledges that undertaking the restoration project will cost in excess of \$350,000 in equipment expense alone. Yahoo! believes that an independent expert would be a valuable resource to assist the Court in making an appropriate decision and is warranted by the scope of the project that everyone acknowledges.

For the foregoing reasons, Yahoo! respectfully requests that the Court order American (and its technicians) to appear for a meet-and-confer in Los Angeles to cooperatively discuss and evaluate proposals for the backup process. Alternatively, or in addition, Yahoo! requests the appointment by the Court of an independent database and restoration expert to assist the Court in gathering facts and making a ruling on the question at hand.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on Defendants' counsel, as indicated below, on the 28th day of August 2009:

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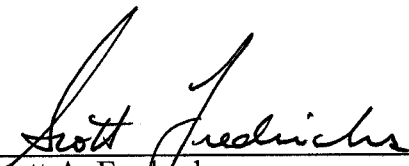
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