

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

I/P ENGINE, INC.

Plaintiff,

v.

AOL, INC., *et al.*,

Defendants.

Civil Action No. 2:11-cv-512

MEMORANDUM IN SUPPORT OF MOTION TO SEAL PORTIONS OF GOOGLE INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF CUSTODIAL DOCUMENTS; PORTIONS OF THE DECLARATION OF KRISTIN ZMRHAL IN SUPPORT OF GOOGLE INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF CUSTODIAL DOCUMENTS; AND EXHIBITS H, O, Q, R, S AND U TO THE DECLARATION OF EMILY C. O'BRIEN IN SUPPORT OF OPPOSITION

In support of its Motion to Seal pursuant to Local Rule 5, and the Protective Order [Dk. 85] entered in this matter, Google Inc. ("Google") states the following:

1. Google moves the Court for leave to file under seal (1) Portions of Google Inc.'s Opposition to Plaintiff's Motion to Compel Production of Custodial Documents ("Portions of Google's Opposition"); (2) Portions of the Declaration of Kristin Zmrhal in Support of Google Inc.'s Opposition to Plaintiff's Motion to Compel Production of Custodial Documents ("Portions of the Zmrhal Declaration"); and (3) Exhibits H, O, Q, R, S and U to the Declaration of Emily C. O'Brien in Support of Google Inc.'s Opposition to Plaintiff's Motion to Compel Production of Custodial Documents ("Certain Exhibits to the O'Brien Declaration"). Portions of Google's Opposition, Portions of the Zmrhal Declaration and Certain Exhibits to the O'Brien Declaration

contain data that is confidential under the Protective Order entered in this matter on January 23, 2012 (Dkt. No. 85) (“Protective Order”).

2. There are three requirements for sealing court findings: (1) public notice with an opportunity to object; (2) consideration of less drastic alternatives; and (3) a statement of specific findings in support of a decision to seal and rejecting alternatives to sealing. *See, e.g., Flexible Benefits Council v. Feldman*, No. 1:08-CV-371, 2008 U.S. Dist. LEXIS 93039 (E.D. Va. Nov. 13, 2008) (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000)). Google contends that Portions of Google’s Opposition, Portions of the Zmrhal Declaration and Certain Exhibits to the O’Brien Declaration contain data that is and should be kept confidential. *In camera* copies of Portions of Google’s Opposition, Portions of the Zmrhal Declaration and Certain Exhibits to the O’Brien Declaration are being provided to the Court. In light of Google’s concerns and the Protective Order, there appears to be no alternative that appropriately serves Google’s expressed confidentiality concerns.

3. For the sake of consistency with practices governing the case as a whole, Google believes Portions of Google’s Opposition, Portions of the Zmrhal Declaration and Certain Exhibits to the O’Brien Declaration should remain sealed and be treated in accordance with the terms and conditions of the Protective Order.

Accordingly, and in satisfaction of the requirements of Local Rule 5, Google respectfully asks the Court to seal Portions of Google’s Opposition, Portions of the Zmrhal Declaration and Certain Exhibits to the O’Brien Declaration.

DATED: April 20, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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