

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
DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR
DISCOVERY SANCTIONS AND VARIOUS EXHIBITS TO THE DECLARATION OF
EMILY O'BRIEN IN SUPPORT THEREOF**

In support of its Motion to Seal pursuant to Local Rule 5, and the Protective Order [Dk. 85] entered in this matter, Defendants, Google Inc., IAC Search & Media, Inc., Gannett Co., Inc. and Target Corporation ("Defendants") state the following:

1. Defendants have moved the Court for leave to file under seal (1) Portions of Defendants' Brief in Opposition To Plaintiff's Motion For Discovery Sanctions ("Defendants' Opposition Brief") and (2) Exhibits M and N to the Declaration of Emily O'Brien in Support thereof ("Certain Exhibits to the O'Brien Declaration"). Defendants' Opposition Brief 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)). Defendants contend that Defendants' Opposition Brief and Certain Exhibits to the O'Brien Declaration contain data that is and should be kept confidential. *In camera* copies of Defendants' Opposition Brief and Certain Exhibits to the O'Brien Declaration are being provided to the Court. In light of the Defendants' concerns and the Protective Order, there appears to be no alternative that appropriately serves Defendants expressed confidentiality concerns.

3. For the sake of consistency with practices governing the case as a whole, Defendants believe Defendants' Opposition Brief 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, Defendants respectfully ask the Court to seal Defendants' Opposition Brief and Certain Exhibits to the O'Brien Declaration.

DATED: August 17, 2012

/s/ Stephen E. Noona

Stephen E. Noona
Virginia State Bar No. 25367
KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624.3000
Facsimile: (757) 624.3169
senoona@kaufcan.com

David Bilsker
David A. Perlson
QUINN EMANUEL URQUHART &

SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, California 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700
davidbilsker@quinnemanuel.com
davidperlson@quinnemanuel.com

*Counsel for Defendants GOOGLE INC., IAC SEARCH
& MEDIA, INC., TARGET CORP., AND GANNETT
CO., INC.*

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 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:

Jeffrey K. Sherwood
Kenneth W. Brothers
DICKSTEIN SHAPIRO LLP
1825 Eye Street NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201
sherwoodj@dicksteinshapiro.com
brothersk@dicksteinshapiro.com

Donald C. Schultz
W. Ryan Snow
Steven Stancliff
CRENSHAW, WARE & MARTIN, P.L.C.
150 West Main Street, Suite 1500
Norfolk, VA 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735
dschultz@cwm-law.com
wrsnow@cwm-law.com
sstancliff@cwm-law.com

Counsel for Plaintiff, I/P Engine, Inc.

Stephen E. Noona

Virginia State Bar No. 25367
KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3000
Facsimile: (757) 624-3169
senoona@kaufcan.com

*Counsel for Google Inc.,
Target Corporation,
IAC Search & Media, Inc., AOL Inc. and
Gannet Co., Inc.*

Robert L. Burns
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
Two Freedom Square
11955 Freedom Drive
Reston, VA 20190
Telephone: (571) 203-2700
Facsimile: (202) 408-4400

Courtney S. Alexander
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
3500 SunTrust Plaza
303 Peachtree Street, NE
Atlanta, GA 94111
Telephone: (404) 653-6400
Facsimile: (415) 653-6444
Counsel for Defendant AOL Inc.

/s/ Stephen E. Noona

Stephen E. Noona
Virginia State Bar No. 25367
KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624.3000
Facsimile: (757) 624.3169
senoona@kaufcan.com

