

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
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO EXCLUDE
TESTIMONY FROM STEPHEN L. BECKER AND CERTAIN MATERIALS FILED IN
SUPPORT THEREOF**

In support of their Motion to Seal pursuant to Local Rule 5, and the Protective Order [Dkt. No. 85] entered in this matter, Defendants Google Inc., Target Corporation, IAC Search & Media, Inc., Gannett Co., Inc. and AOL Inc. (collectively "Defendants") state the following:

1. Defendants have moved the Court for leave to file under seal (1) Portions of Defendants' Memorandum in Support of Their Motion to Exclude Testimony of Stephen L. Becker ("Portions of Defendants' Motion to Exclude Becker"), (2) Portions of Exhibits 1 through 15 to the Declaration of Emily O'Brien in Support of the Defendants' Motion to Exclude Becker ("Portions of Exhibits 1-15 to the O'Brien Declaration"), (3) Portions of the Declaration of Nicholas Fox in Support of Defendants' Motion to Exclude Becker ("Portions of the Fox Declaration"), and (4) Portions of the Declaration of Bartholomew Furrow in Support of Defendants' Motion to Exclude Becker ("Portions of the Furrow Declaration"). Portions of Defendants' Motion to Exclude Becker, Portions of Exhibits 1-15 to the O'Brien Declaration, Portions of the Fox Declaration and Portions of the Furrow Declaration contain data that is

confidential under the Protective Order entered in this matter on January 23, 2012 (“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 Portions of Defendants’ Motion to Exclude Becker, Portions of Exhibits 1-15 to the O’Brien Declaration, Portions of the Fox Declaration and Portions of the Furrow Declaration *contain confidential material that should be sealed*. Defendants specifically state that as reasons for sealing the requested pleadings that:

- (a) Portions of Defendants’ Motion to Exclude Becker refer to Google’s confidential financial and licensing information and third party confidential licensing information which are not generally known, that have economic value and would cause competitive harm if made public;
- (b) Portions of Exhibit 1 to the O’Brien Declaration contains Google’s confidential financial information, Google’s confidential licensing information, Google’s confidential technical information, and third party confidential licensing information which are not generally known, that have economic value and would cause competitive harm if made public;
- (c) Portions of Exhibit 2 to the O’Brien Declaration contain Google’s confidential financial information, Google’s confidential technical information, and third party confidential licensing information which are not generally known, that have economic value and would cause competitive harm if made public;
- (d) Portions of Exhibits 3, 4 and 5 to the O’Brien Declaration contain Google’s confidential technical information which is not generally known, that has economic value and would cause competitive harm if made public;
- (e) Exhibit 6 to the O’Brien Declaration contains Google’s confidential financial information which is not generally known, that has economic value and would cause competitive harm if made public;

(f) Portions of Exhibit 7 to the O'Brien Declaration contain Google's confidential financial and licensing information which is not generally known, that has economic value and would cause competitive harm if made public;

(g) Exhibits 8 through 13 to the O'Brien Declaration contain Google's confidential financial information which is not generally known, that has economic value and would cause competitive harm if made public; and

(h) Exhibits 14 and 15 to the O'Brien Declaration contain Yahoo's confidential licensing information which is not generally known, that has economic value and would cause competitive harm if made public.

Defendants have made all reasonable efforts to limit their redactions in compliance with the law of this Circuit.

3. *In camera* copies of Portions of Defendants' Motion to Exclude Becker, Portions of Exhibits 1-15 to the O'Brien Declaration, Portions of the Fox Declaration and Portions of the Furrow Declaration are being provided to the Court for review. In light of Defendants' concerns and the Protective Order, there appears to be no alternative that appropriately serves Defendants' expressed confidentiality concerns.

4. For the sake of consistency with practices governing the case as a whole, Defendants believe Portions of Defendants' Motion to Exclude Becker, Portions of Exhibits 1-15 to the O'Brien Declaration, Portions of the Fox Declaration and Portions of the Furrow 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 Portions of Defendants' Motion to Exclude Becker, Portions of Exhibits 1-15 to the O'Brien Declaration, Portions of the Fox Declaration and Portions of the Furrow Declaration.

DATED: September 21, 2012

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 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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