

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FUNCTION MEDIA, L.L.C.,)(
)(CIVIL DOCKET NO.
)(2:07-CV-279-CE
VS.)(MARSHALL, TEXAS
)(
GOOGLE, INC., AND)(JANUARY 12, 2010
YAHOO, INC.)(1:30 P.M.

MOTIONS HEARING

BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: (See Attorney Sign-In Sheet)

FOR THE DEFENDANTS: (See Attorney Sign-In Sheet)

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(Proceedings recorded by mechanical stenography,
transcript produced on a CAT system.)

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<p style="text-align: right;">Page 3</p> <p>COURT SECURITY OFFICER: All rise.</p> <p>THE COURT: Please be seated. I've got a motions hearing set in Function Media versus Google. It's 2:07-CV-279. What says the plaintiff?</p> <p>MR. TRIBBLE: Your Honor -- Your Honor, good afternoon, Max Tribble for the plaintiff. Plaintiff is ready.</p> <p>THE COURT: For the defendant?</p> <p>MR. GILLAM: Gil Gillam, Charlie Verhoeven, and Amy Candido for Google. We're ready.</p> <p>THE COURT: All right. Several matters to take up today. The first one is the motion to seal and close the courtroom. Tell me -- the way this is ordinarily handled is that if there's some portion that comes up during the trial of the case that is -- you feel is necessary to close the courtroom, bring it to my attention, I'll do it. I'll give you a certain amount of time to, you know, identify those portions of the record that need to be maintained under seal once -- once you get your copies of the record, as well as whatever exhibits. I'll have the clerk, you know, hold the exhibits and not release the exhibits to the public for a certain after the trial, but what's the matter with that procedure?</p>	<p style="text-align: right;">Page 5</p> <p>together with the other side, I don't anticipate any problem with -- the procedure Your Honor has outlined works fine for us.</p> <p>MR. TRIBBLE: Your Honor, I have to correct something that -- that counsel said. There is no agreement that we're going to identify which exhibits we're going to use on direct examination. The agreement is that we will disclose the night before demonstratives that would be used on direct examination. But there's no agreement that the parties identify either direct or cross real exhibits that have been admitted into evidence or otherwise.</p> <p>But we're perfectly in agreement with the procedures that the Court has outlined.</p> <p>THE COURT: Well --</p> <p>MR. VERHOEVEN: I thought I was looking at an e-mail just today that said that that was agreed, Your Honor. I can double check that if you'd like. But in principle, Your Honor, the notion that we would work together and if there's something specific, we have no intention of broad objections. But if there's something specific and Your Honor will take it up and we can make a showing, then that would satisfy us.</p> <p>MR. TRIBBLE: I -- I have the e-mail printed right here, and I can -- it says -- specifically the</p>								

1 agreement says no exchange of exhibits for any witness
2 or demonstratives for cross witnesses.

3 THE COURT: Well...

4 MR. VERHOEVEN: I'm going to have to read
5 this, Your Honor. I -- there may be a mistake. I
6 thought we had reached agreement on that, but I think
7 that's sort of a side issue --

8 THE COURT: Well --

9 MR. VERHOEVEN: Don't need to take Your
10 Honor's time on that. If we need to, we can address the
11 efficient handling of exhibits -- hopefully the parties
12 can work out an arrangement there. But what Your Honor
13 has suggested in terms of handling what we believe to be
14 trade secret information -- to protect Google's trade
15 secret information, we would suggest would work.

16 THE COURT: Well, that's -- that's the
17 procedure I'm going to adopt. And if it for some reason
18 becomes unworkable during the course of the trial for
19 whatever reason, lack of agreement as to how to
20 implement it or whatever, I'll deal with that during the
21 course of the trial.

22 So I guess for the purposes of the record,
23 the motion is granted in part and denied in part to the
24 extent I've just outlined.

25 Next issue that I've got on my plate is

1 the -- let's take up this -- the motion to strike the
2 errata sheets and supplement to that. I -- I've read
3 the papers. I need to know from Google what authority
4 exists that I can extend this deadline in -- in the
5 manner that you've wanted me -- that you want me to
6 extend it. Okay. I -- I've read your papers, and I've
7 got a Fifth Circuit case that's staring me in the face
8 that says that the rule is to be strictly enforced.

9 I've read Judge Schell's opinion as well in
10 which he said under certain circumstances, namely where
11 you disclosed what the errata was going to be and the
12 other side didn't have an objection to it under those
13 circumstances, that it would be inequitable not to
14 extend the time under those circumstances. I don't have
15 those circumstances here, so I need to know what -- what
16 authority do you have that I can extend the -- the
17 deadline?

18 MS. CANDIDO: Your Honor, I don't think we
19 have an authority that is directly on point to this
20 situation. However, as we -- we read the case that
21 plaintiff has cited, it's not a hard and fast rule that
22 there can never be extensions. And we believe in this
23 case that it's -- with respect to Mireya Bravomalo's
24 errata, it's essentially one business day extension
25 because we were unable to obtain her physical signature

1 because it was the holiday, December 31st, and we
2 provided Function Media with the errata in question that
3 were relevant to the hearing on January 5th, on the
4 31st. And they're not prejudiced by that -- that
5 one-day delay.

6 THE COURT: Well...

7 MS. CANDIDO: So I don't have a case
8 directly on point, but I believe that the equities of
9 the situation support Google's position.

10 THE COURT: Okay. What -- here -- here's my
11 biggest concern is that you did -- you did supply them
12 with certain erratas that you intended to make to her
13 deposition testimony. I'm inclined to allow you to --
14 to use those in the case -- I mean, those that you had
15 identified to them. But, you know, absent some
16 authority where I can go beyond that and allow her to --
17 to then change other portions of -- of her testimony,
18 that's what I'm -- that's -- that's my real concern
19 here, so it's -- and I've got a -- like I said at the
20 outset, I've got this Circuit decision. It's a
21 published decision, but it says what it says.

22 And so I mean, I don't -- I feel I'm bumping
23 up against the line allowing you to use the erratas --
24 those portions of the testimony that you did outline to
25 the plaintiff even though they had an objection to, you

1 know, providing the signature page. That's -- I mean, I
2 feel I'm pushing the envelope --

3 MS. CANDIDO: Yeah.

4 THE COURT: -- doing that and I need you to
5 tell me what case authority there is out there that
6 would let me go farther than that.

7 MS. CANDIDO: Your Honor, I -- I believe the
8 authority or the principle that we would appeal to is --
9 is the fact that these sort of discovery matters are in
10 Your Honor's discretion.

11 THE COURT: Which is my innate sense of
12 fairness, right? I -- I --

13 MS. CANDIDO: You're right. I mean, on the
14 31st, we provided the errata that were within the
15 portions of the deposition that plaintiff has designated
16 from. We would have gladly provided them all of them,
17 but we provided them the portion that they said was the
18 reason why they would not grant the additional extension
19 which was that they needed to know what they were for
20 the hearing on January 5th.

21 And in truth this all in a sense boils down
22 to much ado about nothing insofar as the issue here
23 is -- I have a copy of it. It's a giant spreadsheet
24 that was shown to Mireya. I'll grab it for a second.

25 It's this gigantic spreadsheet with line