

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 THE ORDER ON THE FINAL PRETRIAL CONFERENCE**

In support of their Motion to Seal pursuant to Local Rule 5, and the Protective Order entered in this matter on January 23, 2012 (Dkt. No. 85), 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 Portions of the Order on the Final Pretrial Conference (“Portions of the Final Pretrial Order”).
2. Portions of the Final Pretrial Order contain data that is confidential under the Protective Order.
3. 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 Portions of the Final Pretrial Order contain data that is confidential under the

Protective Order. Defendants specifically state as reasons for sealing the requested pleadings that the Portions of the Final Pretrial Order contain confidential Google technical information and confidential financial that is not generally known, that has economic value, and would cause competitive harm if made public. In particular, proposed Exhibit E contains lengthy descriptions of the operations of the Google accused systems which Google contends are highly confidential for all the reasons set forth in their Motion to Close the Courtroom, and Declarations filed in Support thereof (Dkt. Nos. 346 and 348-351). In addition, the proposed Final Pretrial Order contains third-party information that is confidential. Defendants have made all reasonable efforts to limit their redactions in compliance with the law of this Circuit.

4. *In camera* copies of the Portions of the Final Pretrial Order have been forwarded to the Court. In light of Defendants' concerns and the Protective Order, there appears to be no alternative that appropriately serves Defendants' expressed confidentiality concerns.

5. For the sake of consistency with practices governing the case as a whole, Portions of the Final Pretrial Order 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 the Final Pretrial Order.

DATED: October 8, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 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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