

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 EXHIBIT 1 TO THE O'BRIEN DECLARATION IN SUPPORT OF  
DEFENDANTS' MOTION FOR SANCTIONS AND TO STRIKE PORTIONS OF DR.  
FRIEDER'S SECOND UPDATED EXPERT REPORT**

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 Exhibit 1 to the O'Brien Declaration in Support of Defendants' Motion for Sanctions and to Strike Portions of Dr. Frieder's Second Updated Expert Report ("Portions of O'Brien Dec. Ex. 1").

2. Portions of O'Brien Dec. Ex. 1 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 (4<sup>th</sup> Cir. 2000)). Defendants contend that Portions of O'Brien Dec. Ex. 1 contain data that is confidential under the Protective Order. Defendants specifically state as reasons for sealing the requested pleadings that the Portions of O'Brien Dec. Ex. 1 contain confidential Google technical information that is not generally known, that has economic value, and would cause competitive harm if made public. In particular, proposed O'Brien Dec. Ex. 1 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 (D.N. 346 and 348-351). 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 O'Brien Dec. Ex. 1 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 O'Brien Dec. Ex. 1 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 O'Brien Dec. Ex. 1

DATED: October 14, 2012

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## **CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 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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