

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

I/P ENGINE, INC.,	)	
	)	
Plaintiff,	)	
v.	)	Civ. Action No. 2:11-cv-512
	)	
AOL, INC. et al.,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFF I/P ENGINE, INC.’S RULE 59  
MOTION FOR A NEW TRIAL ON THE DOLLAR AMOUNT OF PAST DAMAGES**

Plaintiff I/P Engine, Inc. (“I/P Engine”) respectfully moves this Court, pursuant to Rule 59 of the Federal Rules of Civil Procedure, to vacate the jury’s responses to question III.C of the verdict form and order a new trial to determine the dollar amount of past damages.

As set forth in the accompanying Memorandum of Law, this Court should order a new trial on the dollar amount of past damages for five reasons. First, the timing and Court implementation of its laches ruling after the close of the parties’ respective cases, and the Court’s forbidding I/P Engine to identify a specific damages amount to the jury, was fundamentally unfair and highly prejudicial to I/P Engine. I/P Engine was precluded from explaining how the evidence supported \$118 million of damages accrued since September 15, 2011. Second, this Court wrongly prevented I/P Engine from introducing evidence of Defendants’ accused revenues, which formed the total revenue base. This evidence also would have enabled I/P Engine to explain the damages amounts from September 15, 2011. Third, the jury’s damages award is internally inconsistent; the jury awarded 35% of I/P Engine’s initial claimed damages

against four defendants, but only 3.5% of I/P Engine's initial claimed damages against Google. Fourth, as set forth in detail in I/P Engine's post-trial motion regarding laches, this Court's exclusion of damages from September 15, 2005 to September 15, 2011 was error. Fifth, applying laches to AOL and Gannett was error, because there was no record evidence that either had indemnification agreements with Google.

Dated: December 18, 2012

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of December, 2012, the foregoing **PLAINTIFF I/P ENGINE, INC.'S RULE 59 MOTION FOR A NEW TRIAL ON THE DOLLAR AMOUNT OF PAST DAMAGES**, was served via the Court's CM/ECF system on the following:

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