

# EXHIBIT 3

**quinn emanuel trial lawyers | san francisco**

50 California Street, 22nd Floor, San Francisco, California 94111-4788 | TEL: (415) 875-6600 FAX: (415) 875-6700

WRITER'S DIRECT DIAL NO.  
**(415) 875-6316**

WRITER'S INTERNET ADDRESS  
**megkammerud@quinnemanuel.com**

January 8, 2013

Charles Monterio Jr.  
Dickstein Shapiro LLP  
1825 Eye Street NW  
Washington, DC 20006

Re: I/P Engine, Inc. v. AOL, Inc. et al.

Dear Charles:

I write in response to your January 7, 2013 letter concerning Plaintiff's bill of costs. We are disappointed that Plaintiff continues to refuse to withdraw its requests for costs to which it is not entitled or to provide explanation of the necessity of other costs. We began these communications with an eye towards narrowing our disputes to the core issues, and bargaining about costs that are not supported by law is neither productive nor in good faith.

For example, Plaintiff continues to refuse to withdraw its request for \$68,496.61 in costs sought for the preparation and presentation of exhibits by vendor Digital Evidence. The Guidelines expressly prohibit the taxation of the "salaries and time of persons who prepare copies and exhibits," and Plaintiff has provided no justification for the continued demand for such costs. The party seeking costs bears the burden of showing that the requested costs are allowable under § 1920. *Cofield v. Crumpler*, 179 F.R.D. 510, 514 (E.D. Va. 1998). Further, it is inappropriate to predicate the withdrawal of requests for costs to which Plaintiff is unquestionably not entitled on Defendants' agreement with Plaintiff's position as to other, unrelated costs.

Likewise, it is not Defendants' "responsibility" to justify Mr. Kosak's decision to travel by

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business class. Plaintiff bears the burden of demonstrating the necessity of Plaintiff's sought costs. *See, e.g., LaVay Corp. v. Dominion Fed. Savings & Loan*, 830 F.2d 522, 528 (4th Cir. 1987) (costs should be limited to those "reasonably necessary at the time" they were incurred.) No justification for the excessive travel and subsistence costs sought have been tendered. Further, Defendants note that the Local Rules state that "costs of travel shall be limited to what would have been expended if said witness resided within one hundred (100) miles from the place of the trial." L.R. 30(E). Accordingly, no matter how Mr. Kosak or Plaintiff's other witnesses traveled to depositions, under the plain language of the rule, Plaintiff is entitled only to a small portion of their overall travel costs, a portion Plaintiff must calculate and justify to the Court.

Plaintiff's continued insistence on pursuing costs clearly not allowed under the Court's Guidelines or case law demonstrates a failure to meet and confer in good faith, so the parties appear to have reached an impasse. As a result, Defendants intend to file an opposition to Plaintiff's bill of costs on Friday. In addition, Defendants reserve all rights under Local Rule 54(E), which states that "[a]ny party applying for costs which are not recoverable or which are excessive shall be subject to sanction under Fed. R. Civ. P. 11."

To the extent that Plaintiff decides to withdraw its request for any costs or otherwise adjust its demands, please let us know by close of business on Wednesday.

Very truly yours,



Margaret P. Kammerud