

**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

**PARTIES' JOINT RESPONSE TO THE COURT'S ORDER REGARDING  
OUTSTANDING MOTIONS TO SEAL CASE DOCUMENTS**

Per the Court's Order Regarding Outstanding Motions to Seal Case Documents ("Order on Outstanding Motions to Seal") (D.N. 886), the parties, I/P Engine, Inc. ("Plaintiff") and AOL Inc., Gannett Co., Inc., Google Inc., IAC Search & Media, Inc., and Target Corporation (collectively, "Defendants"), reviewed all outstanding motions to seal case records, then met and conferred. As ordered by the Court, the parties have identified below all outstanding motions to seal case records that are now moot, may be withdrawn, or otherwise able to be dismissed as well as all outstanding motions to seal case records that still should be resolved by the Court based upon the parties' joint representations and the expectation that both parties may file an appeal in this matter.

In addition to complying with the Court's Order Regarding Outstanding Motions to Seal, the parties have determined that given the presentation of evidence in public during trial, certain individual documents subject to outstanding motions to seal case records that still should be resolved by the Court may be filed publicly or may be filed with less material redacted than originally requested. The parties have identified these exhibits below and will deliver additional

copies to the Court in hard copy and electronic form (on CD-ROM) by Friday, February 22, 2013.

Accordingly, the parties identify the following categories of materials:

1) Motions to seal case records that are now moot, withdrawn, or otherwise able to be dismissed:

<b>Docket Number</b>	<b>Motion Name</b>
355	MOTION to Seal Exhibit 1 to its Memorandum in Support of Plaintiff I/P Engines Daubert Motion, and Fourth Motion in Limine, to Exclude Lyle Ungar's New Theory of Invalidity and Opinions Regarding Claim Construction
346, 412 <sup>1</sup>	MOTION to Seal Documents and Close the Courtroom During Presentation of Confidential Material at Trial Joint MOTION to Amend/Correct 346 MOTION to Seal Documents and Close the Courtroom During Presentation of Confidential Material at Trial Joint Motion and Memorandum in Support of Joint Motion To Amend/Modify Scheduling Order to Provide Briefing Schedule for Motion to Seal and Close Courtroom
436	MOTION to Seal Plaintiff I/P Engine, Inc.'s Opposition to Defendants' Motion in Limine #1 along with Exhibits 5-6 and 11-12
514	MOTION to Seal Exhibits 1 and 2 to its Response to Defendants Motion to Seal Documents and Close the Courtroom During Presentation of Confidential Materials at Trial
687	MOTION to Seal Portions of the Order on the Final Pretrial Conference

2) Motions to seal case records that should be resolved by the Court:

<b>Docket Number</b>	<b>Motion Name</b>	<b>Notes</b>
280	MOTION to Seal Plaintiff I/P Engine, Inc.'s Second Motion for Discovery Sanctions Regarding Untimely Discovery Responses along with Exhibits 2, 4, 5, 7, 8, 9, 13, and 14 in support	
289, 368 (Corrected D.N. 285)	MOTION to Seal [CORRECTED MOTION] Memorandum in Support of Plaintiff I/P Engine, Inc.'s	

<sup>1</sup> Defendants hereby withdraw the Motion to Seal Documents and Close the Courtroom During Presentation of Confidential Material at Trial (D.N. 346, 412) as Moot and request that the Court withdraw the motion and Plaintiff's response thereto (D.N. 516) as well as any supporting documents.

	<p>Third Motion for Discovery Sanctions Regarding Untimely Discovery Responses along with Exhibits 1, 4, 5, 6, 7, in support</p> <p>Sealed Memorandum in Support of THIRD 285 MOTION to Seal Memorandum in Support of Plaintiff I/P Engine, Inc.'s Third Motion for Discovery Sanctions Regarding Untimely Discovery Responses along with Exhibits 1, 4, 5, 6, 7, in support</p>	
296	MOTION to Seal Portions of Defendants' Memorandum in Support of Motion in Limine No. 3 to Exclude Marketing and High-Level Non-Technical Matters Related to Historical Click-Through Rate, and Exhibits F, H, I and J to the Declaration of Joshua L. Sohn in Support of the Defendants' Various Motions in Limine	
312	MOTION to Seal Exhibit 3 to the Memorandum in Support of Plaintiff I/P Engine's First Motion in Limine to Exclude Inadmissible Evidence	
316	MOTION to Seal Portions of Memorandum in Support of Defendants' Motion to Exclude Testimony from Stephen L. Becker and Certain Materials Filed in Support Thereof	
324	MOTION to Seal Portions of Memorandum in Support of Defendants' Motion to Preclude Dr. Ophir Frieder from Testifying Regarding Untimely Opinions that were Not Disclosed in his Original Expert Report and Opinions that he Now Concedes are Incorrect, and Certain Materials Filed in Support Thereof	
331	MOTION to Seal the Memorandum in Support of Plaintiff I/P Engine, Inc.'s Second Motion in Limine to Preclude Non-Comparable License Agreements along with Exhibits 1 and 2	
338	MOTION to Seal the Memorandum in Support of Plaintiff I/P Engine, Inc.'s Motion to Exclude Opinions and Testimony of Keith R. Ugone along with Exhibits 1 and 2	
343	MOTION to Seal Portions of the Declaration of Michael Hochberg in Support of Plaintiff's and Defendants' Motions to Seal	Not affected by limitations <sup>2</sup>
425	MOTION to Seal its Opposition to Defendants Motion for Summary Judgment along with Exhibits 8, 11-19, 22-24, 27-32, 34-39, 45, 53-54, 56	

<sup>2</sup> Documents subject to motions with this annotation are not included in the charts below, and therefore should be decided in full as originally filed.

429	MOTION to Seal (1) Portions of Defendants' Opposition to Plaintiff I/P Engine's First Motion in Limine to Exclude Inadmissible Evidence; (2) Portions of Defendants' Opposition to Plaintiff I/P Engine's Second Motion in Limine to Preclude License Agreements, and (3) Exhibits E and K to the Declaration of Margaret P. Kammerud in Support of Defendants' Opposition to Plaintiff's Motions in Limine	
441	MOTION to Seal Plaintiff I/P Engine, Inc.'s Opposition to Defendants' Motion in Limine #2 along with Exhibits 1 and 2	
445	MOTION to Seal Plaintiff I/P Engine, Inc.'s Opposition to Defendants' Motion in Limine #3 along with Exhibits 3-11	
449	MOTION to Seal Plaintiff I/P Engine, Inc.'s Opposition to Defendants' Motion in Limine #4 along with Exhibits 1 and 2	
453	MOTION to Seal Plaintiff I/P Engine, Inc.'s Opposition to Defendants' Motion in Limine #5 along with Exhibits 1 and 2	
457	MOTION to Seal Plaintiff I/P Engine, Inc.'s Opposition to Defendants' Motion to Exclude the Testimony of Stephen L. Becker along with Exhibits 1-5, 7-8, and 10-11	
462	MOTION to Seal Plaintiff I/P Engine, Inc.'s Opposition to Defendants Motion to Preclude Dr. Frieder from Testifying Regarding Untimely Opinions along with Exhibits 1-3 and 5	
465	MOTION to Seal Defendants' Memorandum in Support of Their Opposition to Plaintiff I/P Engine, Inc.'s Motion to Exclude Opinions and Testimony of Keith R. Ugone	
508	MOTION to Seal (1) Portions of Defendants' Opposition to Plaintiff's Daubert Motion, and Fourth Motion in Limine, to Exclude Lyle Ungar's New Theory of Invalidity and Opinions Regarding Claim Construction and (2) Exhibits 10 and 12 to the Declaration of Howard Chen in Support of Defendants' Memorandum in Opposition to Plaintiff's Daubert Motion, and Fourth Motion in Limine, to Exclude Lyle Ungar's New Theory of Invalidity and Opinions Regarding Claim Construction	
517	MOTION to Seal (1) Portions of Defendants' Memorandum in Opposition to Plaintiff's Second Motion for Discovery Sanctions; (2) Portions of	

	Defendants' Memorandum in Opposition to Plaintiff's Third Motion for Discovery Sanctions; (3) Portions of the Declaration of Margaret Kammerud in Support of Defendants' Opposition to Plaintiff's Third Motion for Discovery Sanctions; (4) Portions of Exhibits A-E, G, I-K to the Declaration of Jennifer Ghaussy in Support of Defendants' Opposition to Plaintiff's Second Motion for Discovery Sanctions; and (5) Exhibits L-Q to the Declaration of Margaret Kammerud in Support of Defendants' Opposition to Plaintiff's Third Motion for Discovery Sanctions	
524	MOTION to Seal Portions of the Reply in Support of Defendants' Motion for Summary Judgment, and Exhibits 34 and 36 to the Declaration of Joshua L. Sohn in Support of Defendants' Reply in Support of Defendants' Motion for Summary Judgment	
561	MOTION to Seal (1) Portions of Defendants' Reply Brief in Support of Their Motion to Preclude Dr. Ophir Frieder from Testifying Regarding Untimely Opinions that were not Disclosed in his Original Expert Report and Opinions that he Now Concedes are Incorrect; (2) Portions of Defendants' Reply Brief in Support of their Motion to Exclude the Testimony of Stephen L. Becker; and (3) Portions of Exhibit I to the Declaration of Howard Chen in Support of Defendants' Reply Brief in Support of their Motion to Preclude Dr. Ophir Frieder	
567	MOTION to Seal Plaintiff I/P Engine, Inc.'s Reply in Further Support of its Motion to Exclude Opinions and Testimony of Keith R. Ugone along with Exhibits 1-3	
647	MOTION to Seal Plaintiff I/P Engine, Inc.'s Reply in Further Support of its Third Motion for Discovery Sanctions along with Exhibits 1 and 2	
684	MOTION to Seal Exhibits 1 and 4 to its Opposition to Defendants Motion to Dismiss All Claims Against AOL, Inc., Gannett Co., Inc., IAC Search & Media, Inc., and Target Corporation	
706	MOTION to Seal Portions Of Exhibit 1 To The OBrien Declaration In Support Of Defendants Motion For Sanctions And To Strike Portions Of Dr. Frieder's Second Updated Expert Report	Not affected by limitations
802	MOTION to Seal and Redact Portions of Trial Record	Not affected by limitations
828	MOTION to Seal (1) Portions Of Defendants Memorandum In Support Of Renewed Motion For	Not affected by limitations

	Judgment As A Matter Of Law On Non-Infringement Or New Trial; (2) Portions Of Defendants' Memorandum In Support Of Renewed Motion For Judgment As A Matter Of Law On Damages Or New Trial; And (3) Certain Exhibit To The Declaration Of Joshua L. Sohn In Support Of Defendants Renewed Motions For Judgment As A Matter Of Law On Damages, Invalidity And Non-Infringement Or New Trial	
866	MOTION to Seal Portions of Defendants' Memorandum in Opposition to Plaintiff's Rule 59 Motion for a New Trial on the Dollar Amount of Damages and Exhibit 2 to the Declaration of Margaret P. Kammerud Filed in Support Thereof	Not affected by limitations
873	MOTION to Seal Plaintiff I/P Engine, Inc.'s Opposition to Defendants Renewed Motion for Judgment as a Matter of Law on Non-Infringement or New Trial	Not affected by limitations

3) Documents subject to motions to seal case records that should be resolved by the Court that may be filed publicly:

<b>Docket Number of Motion to Be Ruled Upon</b>	<b>Docket Number of Document at Issue</b>	<b>Document Description</b>
280	278, 342	Plaintiff's Memorandum in Support of Second motion for Sanctions
280	278-14, 366	Exhibit 14 to Plaintiff's Memorandum in Support of Second motion for Sanctions
289, 368 (Corrected D.N. 285)	283	Plaintiff's Memorandum in Support of Third Motion for Sanctions
289, 368 (Corrected D.N. 285)	283-4, 370	Exhibit 4 to Plaintiff's Memorandum in Support of Third Motion for Sanctions
289, 368 (Corrected D.N. 285)	283-5, 371	Exhibit 5 to Plaintiff's Memorandum in Support of Third Motion for Sanctions
296	304, 380	Defendants' Memorandum in Support of Motion in Limine 3
296	310-6, 381	Exhibit F to Defendants' Memorandum in Support of Motion in Limine 3
296	310-8, 382	Exhibit H to Defendants' Memorandum in Support of Motion in Limine 3
296	310-9, 383	Exhibit I to Defendants' Memorandum in Exhibit I to Support of Motion in Limine 3

316	323-2, 387	Exhibit 2 to O'Brien Declaration in Support of Defendants' Motion to Exclude Becker
316	323-13, 398	Exhibit 13 to O'Brien Declaration in Support of Defendants' Motion to Exclude Becker
316	321, 402	Fox Declaration in Support of Defendants' Motion to Exclude Becker
324	329-8, 379	Exhibit H to Defendant's Motion to Exclude Frieder
338	341, 420	Plaintiff's Memorandum in Support of Motion to Exclude Ugone
425	427-19	Exhibit 45 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-29	Exhibit 56 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
429	439	Defendants' Opposition to Plaintiff's Motion in Limine 1
445	447	Plaintiff's Opposition to Defendants' Motion in Limine 3
445	447-3	Exhibit 3 to Plaintiff's Opposition to Defendants' Motion in Limine 3
445	447-4	Exhibit 4 to Plaintiff's Opposition to Defendants' Motion in Limine 3
445	447-7	Exhibit 7 to Plaintiff's Opposition to Defendants' Motion in Limine 3
445	447-8	Exhibit 8 to Plaintiff's Opposition to Defendants' Motion in Limine 3
445	447-9	Exhibit 9 to Plaintiff's Opposition to Defendants' Motion in Limine 3
445	447-10	Exhibit 10 to Plaintiff's Opposition to Defendants' Motion in Limine 3
445	447-11	Exhibit 11 to Plaintiff's Opposition to Defendants' Motion in Limine 3
449	451	Plaintiff's Opposition to Defendants' Motion in Limine 4
449	451-2	Exhibit 2 to Plaintiff's Opposition to Defendants' Motion in Limine 4
453	455	Plaintiff's Opposition to Defendants' Motion in Limine 5
453	455-2	Exhibit 2 to Plaintiff's Opposition to Defendants' Motion in Limine 5
457	460	Plaintiff's Opposition to Defendants' Motion to Exclude Becker
457	460-1	Exhibit 1 to Plaintiff's Opposition to Defendants' Motion to Exclude Becker
457	460-4	Exhibit 4 to Plaintiff's Opposition to Defendants' Motion to Exclude Becker

457	460-11	Exhibit 11 to Plaintiff's Opposition to Defendants' Motion to Exclude Becker
462	464	Plaintiff's Opposition to Defendants' Motion to Exclude Frieder
462	464-1	Ex. 1 to Plaintiff's Opposition to Defendants' Motion to Exclude Frieder
462	464-5	Ex. 5 to Plaintiff's Opposition to Defendants' Motion to Exclude Frieder
508	511	Defendants' Opposition to Plaintiff's Motion to Exclude Ungar
508	512-10	Exhibit 10 to Defendants' Opposition to Plaintiff's Motion to Exclude Ungar
517	522-9	Exhibit I to Ghaussy Declaration in Support of Defendants' Opposition to Plaintiff's Second Motion for Sanctions
517	522-10	Exhibit J to Ghaussy Declaration in Support of Defendants' Opposition to Plaintiff's Second Motion for Sanctions
517	523	Kammerud Declaration in Support of Defendants' Opposition to Plaintiff's Third Motion for Sanctions
517	523-1	Exhibit L to Kammerud Declaration in Support of Defendants' Opposition to Plaintiff's Third Motion for Sanctions
517	523-3	Exhibit N to Kammerud Declaration in Support of Defendants' Opposition to Plaintiff's Third Motion for Sanctions
524	528-1	Exhibit 34 to Defendants' Reply in Support of Motion for Summary Judgment
567	568	Plaintiff's Reply in Support of Motion to Exclude Ugone

4) Documents subject to motions to seal case records that should be resolved by the Court that may be filed with less material redacted than originally requested:

<b>Docket Number of Motion to Be Ruled Upon</b>	<b>Docket Number of Document at Issue</b>	<b>Document Description</b>
280	278-7, 362	Exhibit 7 to Plaintiff's Memorandum in Support of Second motion for Sanctions
289, 368 (Corrected D.N. 285)	283-1, 369	Exhibit 1 to Plaintiff's Memorandum in Support of Third Motion for Sanctions
289, 368 (Corrected)	283-6, 372	Exhibit 6 to Plaintiff's Memorandum in Support



D.N. 285)		of Third Motion for Sanctions
289, 368 (Corrected D.N. 285)	283-7, 373	Exhibit 7 to Plaintiff's Memorandum in Support of Third Motion for Sanctions
296	310-10, 384	Exhibit J to Defendants' Memorandum in Support of Motion in Limine 3
312	315-3, 416	Exhibit 3 to Plaintiff's Memorandum in Support of Motion in Limine 3
316	320, 385	Defendants' Memorandum in Support of Motion to Exclude Becker
316	323-1, 386	Exhibit 1 to O'Brien Declaration in Support of Defendants' Motion to Exclude Becker
324	328, 375	Defendants' Memorandum in Support of Motion to Exclude Frieder
324	329-2, 377	Exhibit B to Defendants' Memorandum in Support of Motion to Exclude Frieder
331	334, 417	Plaintiff's Motion in Limine 2
331	334-1, 418	Exhibit 1 to Plaintiff's Motion in Limine 2
331	334-2, 419	Exhibit 2 to Plaintiff's Motion in Limine 2
338	341-1, 421	Exhibit 1 to Plaintiff's Motion to Exclude Ugone
338	341-2, 422	Exhibit 2 to Plaintiff's Motion to Exclude Ugone
425	427	Memorandum in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-2	Exhibit 3 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-2	Exhibit 4 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-2	Exhibit 5 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-2	Exhibit 8 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-5	Exhibit 19 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-5	Exhibit 11 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-5	Exhibit 14 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-5	Exhibit 17 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-5	Exhibit 18 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-8	Exhibit 22 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-8	Exhibit 23 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment

425	427-8	Exhibit 24 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-11	Exhibit 27 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-11	Exhibit 29 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
425	427-27	Exhibit 54 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment
441	443	Plaintiff's Opposition to Defendants' Motion in Limine 2
441	443-1	Exhibit 1 to Plaintiff's Opposition to Defendants' Motion in Limine 2
441	443-2	Exhibit 2 to Plaintiff's Opposition to Defendants' Motion in Limine 2
449	451-1	Exhibit 1 to Plaintiff's Opposition to Defendants' Motion in Limine 4
457	460-5	Exhibit 5 to Plaintiff's Opposition to Defendants' Motion to Exclude Becker
457	460-7	Exhibit 7 to Plaintiff's Opposition to Defendants' Motion to Exclude Becker
462	464-2	Exhibit 2 to Plaintiff's Opposition to Defendants' Motion to Exclude Frieder
465	466	Defendants' Opposition to Plaintiff's Motion to Exclude Ugone
465	468-4	Exhibit D to Defendants' Opposition to Plaintiff's Motion to Exclude Ugone
465	468-5	Exhibit E to Defendants' Opposition to Plaintiff's Motion to Exclude Ugone
508	512-12	Exhibit 12 to Declaration of Howard Chen in Support of Defendants' Opposition to Plaintiff's Motion to Exclude Ungar
517	522-7	Exhibit G to Ghaussy Declaration in Support of Defendants' Opposition to Plaintiff's Second Motion for Sanctions
517	521	Defendants' Opposition to Plaintiff's Third Motion for Sanctions
517	523-2	Exhibit M to Kammerud Declaration in Support of Defendants' Opposition to Plaintiff's Third Motion for Sanctions
517	523-4	Exhibit O to Kammerud Declaration in Support of Defendants' Opposition to Plaintiff's Third Motion for Sanctions
517	523-5	Exhibit P to Kammerud Declaration in Support of Defendants' Opposition to Plaintiff's Third Motion for Sanctions
517	523-6	Exhibit Q to Kammerud Declaration in Support

		of Defendants' Opposition to Plaintiff's Third Motion for Sanctions
524	527	Defendants' Reply in Support of Motion for Summary Judgment
561	571-1	Exhibit I to Defendants' Reply in Support of Motion to Exclude Frieder
567	569-1	Exhibit 1 to Plaintiff's Reply in Support of Motion to Exclude Ugone
567	569-2	Exhibit 2 to Plaintiff's Reply in Support of Motion to Exclude Ugone
647	651-2	Exhibit 2 to Plaintiff's Reply in Support of Third Motion for Sanctions
684	686-1	Exhibit 1 to Plaintiff's Opposition to Defendants' Motion to Dismiss Claims against AOL, Gannett, IAC, and Target
684	686-4	Exhibit 4 to Plaintiff's Opposition to Defendants' Motion to Dismiss Claims against AOL, Gannett, IAC, and Target

To streamline the Court's efforts in resolving the pending motions to seal, the parties propose delivering to the Court in hard copy and in electronic form (on CD-ROM) the referenced now public and lesser redacted documents by Friday, Feb. 22, 2013. Should the Court deem the lesser redacted documents appropriate, the parties will work with the clerk's office to substitute or refile those exhibits and public versions of the exhibits in category three above. The parties attach a Proposed Order for the Court's consideration as **Exhibit 1**.

Dated: February 19, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 19, 2013, 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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