

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 (1) PORTIONS OF DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR POST-JUDGMENT ROYALTIES, (2) PORTIONS OF THE DECLARATION OF KEITH UGONE, PH.D., IN SUPPORT OF DEFENDANTS' OPPOSITION, (3) CERTAIN EXHIBITS TO THE DECLARATION OF MARGARET KAMMERUD IN SUPPORT OF DEFENDANTS' OPPOSITION, AND (4) PORTIONS OF THE DECLARATION OF BARTHOLOMEW FURROW IN SUPPORT OF DEFENDANTS' OPPOSITION**

In support of their Motion to Seal pursuant to Local Rule 5, and the Protective Order entered in this matter on January 23, 2012 (Doc. 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 (1) Portions of Defendants' Memorandum In Opposition To Plaintiff's Motion For Post-Judgment Royalties ("Portions of Defendants' Opposition"), (2) Portions of the Declaration of Keith Ugone, Ph.D. ("Ugone Declaration"), (3) Exhibits 2-21 to the Declaration of Margaret Kammerud ("Certain Exhibits to the Kammerud Declaration") and (4) Portions of the Declaration of Bartholomew Furrow in Support of Defendants' Opposition ("Furrow Declaration").

2. Portions of Defendants' Opposition, the Ugone Declaration, Certain Exhibits to the Kammerud Declaration, and the Furrow Declaration contain data that is confidential under the Protective Order.

3. There are three requirements for sealing court filings: (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 Defendants' Opposition, the Ugone Declaration, Certain Exhibits to the Kammerud Declaration, and the Furrow Declaration contain data that is confidential under the Protective Order. Defendants specifically state as reasons for sealing the requested pleadings that: Portions of Defendants' Opposition, the Ugone Declaration, Certain Exhibits to the Kammerud Declaration, and the Furrow Declaration contain confidential financial information, information regarding confidential third party agreements, sensitive, confidential technical information relating to Google's technology, and sensitive, confidential technical information relating to an alternative construction of the accused system, all of which are not generally known, have economic value, and the disclosure of which would cause competitive harm if made widely public.

Defendants have made all reasonable efforts to narrowly limit their redactions in compliance with the law of this Circuit.

4. *In camera* copies of Portions of Defendants' Opposition, the Ugone Declaration, Certain Exhibits to the Kammerud Declaration, and the Furrow Declaration have been forwarded to the Court. The Court also finds that by filing narrowly redacted public pleadings, the

Defendants have made all reasonable efforts to limit their redactions in compliance with the law of this Circuit.

5. For the sake of consistency with practices governing the case as a whole, Portions of Defendants' Opposition, the Ugone Declaration, Certain Exhibits to the Kammerud Declaration, and the Furrow Declaration 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 Defendants' Opposition, the Ugone Declaration, Certain Exhibits to the Kammerud Declaration, and the Furrow Declaration.

DATED: May 13, 2013

/s/ Stephen E. Noona

Stephen E. Noona  
Virginia State Bar No. 25367  
KAUFMAN & CANOLES, P.C.  
150 West Main Street, Suite 2100  
Norfolk, VA 23510  
Telephone: (757) 624-3000  
Facsimile: (757) 624-3169  
senoona@kaufcan.com

David Bilsker  
David A. Perlson  
QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
50 California Street, 22nd Floor  
San Francisco, California 94111  
Telephone: (415) 875-6600  
Facsimile: (415) 875-6700  
davidbilsker@quinnemanuel.com  
davidperlson@quinnemanuel.com

*Counsel for Google Inc., Target Corporation,  
IAC Search & Media, Inc., and Gannett Co., Inc.*

/s/ Stephen E. Noona

Stephen E. Noona  
Virginia State Bar No. 25367  
KAUFMAN & CANOLES, P.C.  
150 W. Main Street, Suite 2100  
Norfolk, VA 23510  
Telephone: (757) 624-3000  
Facsimile: (757) 624-3169  
senoona@kaufcan.com

Robert L. Burns  
FINNEGAN, HENDERSON, FARABOW, GARRETT &  
DUNNER, LLP  
Two Freedom Square  
11955 Freedom Drive  
Reston, VA 20190  
Telephone: (571) 203-2700  
Facsimile: (202) 408-4400

Cortney S. Alexander  
FINNEGAN, HENDERSON, FARABOW, GARRETT &  
DUNNER, LLP  
3500 SunTrust Plaza  
303 Peachtree Street, NE  
Atlanta, GA 94111  
Telephone: (404) 653-6400  
Facsimile: (415) 653-6444

*Counsel for Defendant AOL Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 13, 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:

Jeffrey K. Sherwood  
Kenneth W. Brothers  
DICKSTEIN SHAPIRO LLP  
1825 Eye Street NW  
Washington, DC 20006  
Telephone: (202) 420-2200  
Facsimile: (202) 420-2201  
sherwoodj@dicksteinshapiro.com  
brothersk@dicksteinshapiro.com

Donald C. Schultz  
W. Ryan Snow  
Steven Stancliff  
CRENSHAW, WARE & MARTIN, P.L.C.  
150 West Main Street, Suite 1500  
Norfolk, VA 23510  
Telephone: (757) 623-3000  
Facsimile: (757) 623-5735  
dschultz@cwm-law.com  
wrsnow@cwm-law.com  
sstancliff@cwm-law.com

*Counsel for Plaintiff, I/P Engine, Inc.*

/s/ Stephen E. Noona  
Stephen E. Noona  
Virginia State Bar No. 25367  
KAUFMAN & CANOLES, P.C.  
150 West Main Street, Suite 2100  
Norfolk, VA 23510  
Telephone: (757) 624-3000  
Facsimile: (757) 624-3169  
senoona@kaufcan.com

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