

# **EXHIBIT D**

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**SENT VIA EMAIL AND FACSIMILE**

November 29, 2006

Robert J. Siegel  
Merkle Siegel & Friedrichsen, P.C.  
1325 Fourth Avenue, Suite 940  
Seattle, WA 98101

**Re: Gordon v. Virtumundo, Inc., d/b/a Adknowlegemail.com,**  
**United States District Court, W. Dist. Wa., Case No.**  
**CV06-0204JCC**

Dear Bob:

Earlier today, we received your correspondence enclosing a CD with “an updated, and more comprehensive collection of the offending emails in this lawsuit.” Your production of thousands of emails at this late date, only thirteen (13) business days before the document production cutoff causes substantial prejudice to Defendants in this case.

We note that the date of your letter is November 14, 2006 and the date of “supplemental discovery” exhibit page is September 27, 2006. More importantly, the CD contains files indicating that it was last modified on September 27, 2006 and the Eudora archive files on the CD were last modified on September 9 and September 13. It appears that you were aware, as of September, that you intended to produce supplemental emails and that you had already created the CDs with the emails. However, we did not receive your letter until today, November 29, 2006. Please explain the reason for the delay in producing a file created in September.

The cost and prejudice to our clients in your delayed production has been substantial. We have had a team of seven lawyers working long days and weekends to review and index emails since November 16. Had we had the comprehensive collection at the outset, the review of all emails would have been vastly more efficient. It is nearly impossible for them to sort through the recently produced emails and determine which emails were produced for the first time.

Complicating this matter is the fact that the emails are now organized in a new manner. Your original production included all of the emails in four (4) mailboxes. It appears that many emails from the prior production were moved from one Eudora mailbox into other Eudora mailboxes.

*Robert J. Siegel*  
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The emails produced to date have been sloppy and disorganized. By our count, there are at least 9,000 duplicate emails produced. These duplicates are emails with the same sender, recipient and content. Many of the emails have no relationship to any defendant in the lawsuit. After shifting the burden to us to sort through your sloppy production, you now send us another mass production of all your client's emails. It is unfair to again shift the burden to us to sort through your mess. It is unreasonable for you to hold relevant emails for two months at the end of the discovery cutoff and to produce them in a rearranged and commingled form.

Furthermore, on September 26, 2006 you advised, via letter, that you intended to utilize Eudora files in this litigation. We relied upon that representation and managed our document review and indexing based upon your requirements and your form of production. While, at one time, we suggested that the parties rely upon Bates stamped documents in PDF format, you rejected that suggestion because the emails in question are "electronic files, not paper documents." In a thoughtful and thorough analysis of the subject, you suggested that the "simplest way" to manage the emails is in their original form. Your letter closed noting that Bates stamping would be a waste of time and energy. We concluded that your letter was the last word on this subject and that your position on the form of the emails would stay consistent. We reasonably relied upon your representation and shifting the form of the emails now would cause substantial prejudice to our clients.

We request that you produce a CD with mailboxes for each defendant containing only the new emails not later than Monday, December 4. Unless we timely receive a production of only a single copy of each new email, then we will move the Court to require that you produce only a copy of the new emails or, in the alternative, to dismiss any claims based upon the newly produced emails. If this approach is not agreeable to you, please so advise not later than tomorrow, Thursday, November 30.

As always, please do not hesitate to contact Derek or me with any questions or comments.

Regards,

**NEWMAN & NEWMAN,  
ATTORNEYS AT LAW, LLP**



Roger M. Townsend