

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC.; APPLE, INC.; eBAY, INC.;
FACEBOOK, INC.; GOOGLE, INC.;
NETFLIX, INC.; OFFICE DEPOT, INC.;
OFFICEMAX, INC., STAPLES, INC.,
YAHOO! INC., AND YOUTUBE, LLC,

Defendants.

Case No.: 2:10-cv-01385-MJP

**DEFENDANT YAHOO! INC.'S
RENEWED MOTION TO
DISMISS OR SEVER FOR
MISJOINDER PURSUANT TO
FED. R. CIV. P. 20 AND 21**

Noted for Consideration: March 25,
2011

ORAL ARGUMENT REQUESTED

Pursuant to Federal Rules of Civil Procedure 20 and 21 ("Rule 20" and "Rule 21"), Defendant Yahoo! Inc. ("Yahoo!"), through its undersigned counsel, respectfully renews its motion to dismiss or sever Yahoo! from the above-captioned action for misjoinder.

I. INTRODUCTION

As with the original complaint, Plaintiff Interval Licensing LLC's ("Interval") First Amended Complaint ("FAC") violates the Federal Rules of Civil Procedure ("Federal Rules") by misjoining together in one action claims against numerous defendants with no allegations that the defendants have worked together to infringe Interval's patents. Indeed, Interval's FAC and infringement contentions do not allege any coordinated action among the Defendants or any right to relief that arises out of "the same transaction, occurrence, or series of transactions or

1 occurrences.” Fed. R. Civ. P. 20(a)(2)(A). Yet, Interval’s FAC improperly joins eleven different
2 entities in a single action for patent infringement that involves four patents, over 65 claims, 175
3 accused instrumentalities, and 145 different websites. In the patent context, courts across the
4 country have found a lack of transactional relatedness, and therefore joinder improper, when, as
5 here, a plaintiff alleges infringement against unrelated defendants based on distinct accused
6 products.

7 The unfair prejudice that Yahoo! faces from misjoinder further supports severance.
8 Before trial, Yahoo!’s ability to present individualized challenges based on non-infringement,
9 invalidity, and claim construction will be severely hindered if Yahoo! is required to limit its
10 disputes and briefing along with ten co-defendants who have differing interests, evidence, and
11 strategies. Yahoo! will be unable to effectively defend itself at trial because the avalanche of
12 evidence and arguments directed at the other Defendants’ numerous websites and
13 instrumentalities will overwhelm Yahoo!’s separate positions and lead to a strong likelihood of
14 jury confusion. Rule 20 is intended to protect against this exact type of fundamental unfairness
15 by limiting permissive joinder of defendants to those sued on claims arising from the same
16 transaction or occurrence or series of transactions or occurrences.

17 Consistent with Rule 20 and Rule 21, Yahoo! respectfully requests that the Court order
18 plaintiff to dismiss Yahoo! without prejudice or sever Interval’s claims against Yahoo! from the
19 case.

20 **II. FACTUAL BACKGROUND**

21 On August 27, 2010, Interval filed a patent infringement complaint against eleven
22 different Defendants: Yahoo!, Google, Inc. (“Google”), AOL, Inc. (“AOL”), Facebook, Inc.
23 (“Facebook”), YouTube, LLC (“YouTube”), Apple, Inc. (“Apple”), eBay, Inc., Netflix, Inc.,
24 Office Depot, Inc., OfficeMax, Inc., and Staples, Inc. (each individually, a “Defendant,” and
25 collectively, the “Defendants”). (Docket Item No. (“D.I.”) 1.) Each of the eleven Defendants
26 offers a wide and unrelated array of products, technologies, and services, from notepads and
27 office furniture to Internet search capabilities. Some of the Defendants are competitors (for
28 example, Yahoo! and Google) and others have entirely different businesses (for example,

1 Facebook and Office Depot, Inc.).

2 Interval's initial Complaint accused Yahoo!, AOL, Apple, and Google of infringing U.S.
3 Patent Nos. 6,263,507 ("the '507 patent"); 6,034,652 ("the '652 patent"); 6,788,314 ("the '314
4 patent"); and 6,757,682 ("the '682 patent") (collectively, the "patents-in-suit"). (*Id.*) The
5 Complaint also alleged that YouTube, eBay, Inc., Netflix, Inc., Office Depot, Inc., OfficeMax,
6 Inc., and Staples, Inc. infringed the '507 and '682 patents, and that Facebook infringed only the
7 '682 patent. (*Id.*)

8 On October 18, 2010, Google and YouTube filed a Motion to Sever (D.I. 63) and a
9 Motion to Dismiss Interval's Complaint (D.I. 62). Defendants OfficeMax, Inc., eBay, Inc.,
10 Netflix, Inc., Office Depot, Inc., Staples Inc., Yahoo!, AOL, and Facebook joined the Motion to
11 Dismiss and eBay, Inc., Netflix, Inc., Office Depot, Inc., Staples Inc., Yahoo!, and Facebook
12 joined the Motion to Sever. (D.I. 74, 82-84, 86, 90-92.) Apple also filed separate motions to
13 sever and dismiss. (D.I. 80, 81.) On December 10, 2010, this Court dismissed Interval's original
14 Complaint because the allegations were "spartan" and failed to meet the requirements of the
15 Federal Rules. (D.I. 147 at 2, 7.) In its December 14, 2010 Order Memorializing Scheduling
16 Conference, this Court also "terminate[d] the [severance] motions on the docket without prejudice
17 or ruling" and held that "Defendants may refile the motions or file amended motions to sever
18 after they have reviewed the amended complaint and infringement contentions and met and
19 conferred." (D.I. 149 at 2.)

20 Interval filed its FAC on December 28, 2010, newly accusing Facebook of infringing its
21 '507 patent. (D.I. 153 at 8-9.) Like its initial Complaint, Interval's FAC accuses the same four
22 Defendants, Yahoo!, Google, AOL, and Apple of infringing all four patents. (D.I. 153.) The
23 FAC also asserts the '682 and the '507 patents against all eleven Defendants. (*Id.* at 5-17, 24-33.)
24 On the same day that it filed its FAC, Interval served its Disclosure of Asserted Claims and
25 Infringement Contentions ("Infringement Contentions"). (D.I. 154.) Interval does not allege in
26 its FAC or its Infringement Contentions that any connection or relationship exists among the
27 eleven separate Defendants.

28 The number and types of products accused of infringement varies among the Defendants.

1 For example, Interval accuses 69 websites for just one Defendant on one patent and 43 websites
2 of another Defendant on the same patent. (D.I. 153 at 6-7, 14-15.) Each of Yahoo!’s websites
3 and instrumentalities that are accused of infringing the patents-in-suit significantly differ from
4 those of the other Defendants.

5 Interval makes no allegation that its claims against each of the Defendants arise out of
6 “the same transaction, occurrence, or series of transactions or occurrences.” (D.I. 153.) Nor has
7 Interval alleged that any of the Defendants acted in concert in any way. (*Id.*) On the contrary,
8 Interval alleges independent acts of infringement by each of the Defendants. (*Id.*) Thus, Interval
9 separately alleges that Yahoo! “has infringed and continues to infringe” certain of the patents-in-
10 suit by independently “making, using, selling, distributing, and encouraging customers to use”
11 Yahoo!’s accused websites. (*Id.* at 14-16, 19-20, 23-24, 31-32.)

12 Pursuant to the Court’s December 14, 2010 Order Memorializing Scheduling Conference,
13 Yahoo!’s counsel met and conferred with Interval’s counsel on March 3, 2011.

14 **III. AUTHORITY AND ARGUMENT**

15 **A. Interval’s Joinder of Yahoo! with Unrelated Parties Runs Contrary to** 16 **Rule 20 and Prevailing Case Law**

17 Although the Federal Rules encourage “joinder of claims, parties and remedies,” a
18 plaintiff does not have an unlimited right to join unrelated defendants in a single proceeding. *See*
19 *United Mine Workers v. Gibbs*, 383 U.S. 715, 724 (1966) (*superseded by statute on other*
20 *grounds*). “Joinder is not a substantive right, rather it is a procedural device” *Colt Def. LLC*
21 *v. Heckler & Koch Def., Inc.*, No. 2:04cv258, 2004 U.S. Dist. LEXIS 28690, at *10 (E.D. Va.
22 Oct. 22, 2004). The Federal Rules therefore permit “the broadest possible scope of action
23 *consistent with fairness to the parties.*” *United Mine Workers*, 383 U.S. at 724 (emphasis added).

24 Federal Rule of Civil Procedure 20(a)(2) imposes several limitations on a plaintiff’s
25 ability to sue multiple defendants in a single suit. It states:

26 Persons . . . may be joined in one action as defendants *if*:

27 (A) any right to relief is asserted against them jointly, severally, or in
28 the alternative with respect to or arising out of the same transaction,
occurrence, or series of transactions or occurrences; *and*

(B) any question of law or fact common to all defendants will arise in the action.

The rule imposes several requirements before multiple defendants can be joined in a single action. First, there must be “the occurrence of some question of fact or law common to all parties” as required by Rule 20(a)(2)(B). *Philips Elecs. N. Am. Corp. v. Contec Corp.*, 220 F.R.D. 415, 417 (D. Del. 2004). Second, there must be “the existence of a right to relief predicated upon or arising out of a single transaction or occurrence or series thereof” as required by Rule 20(a)(2)(A). *Id.* These are separate requirements and “both tests must be satisfied” to permit joinder. *Id.* Third, the complaint must allege a right to relief against all defendants “jointly, severally, or in the alternative,” as required by Rule 20(a)(2)(A).

The Ninth Circuit has interpreted the phrase “same transaction, occurrence, or series of occurrences” to require a degree of factual commonality underlying the claims. *Bravado Int'l Group Merch. Servs. v. Cha*, CV 09-9066-PSG-CW, 2010 U.S. Dist. LEXIS 80361, at *10 (C.D. Cal. June 30, 2010) (citing *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997)); *Insituform Techs., Inc. v. Cat Contracting, Inc.*, 385 F.3d 1360, 1372 (Fed. Cir. 2004) (applying regional circuit law to questions of joinder). As demonstrated below, no such commonality exists here.

“The rule governing misjoinder and nonjoinder of parties expressly provides that the remedy for misjoinder is . . . severance.” 4 *Moore’s Federal Practice* § 20.02[1][a]. Where a party has been misjoined, Rule 21 provides that “[on] motion or on its own, the court may at any time, on just terms, add or drop a party.” Courts have broad discretion to sever under Rule 21. *Golden Scorpio Corp. v. Steel Horse Bar & Grill*, 596 F. Supp. 2d 1282, 1285 (D. Ariz. 2009) (citing *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1297 (9th Cir. 2000)).

B. Misjoined Yahoo! Should Be Severed Because Claims Against Yahoo! and the Other Defendants Do Not Arise Out of the “Same Transaction, Occurrence, or Series of Transactions or Occurrences”

The allegations in the FAC and Infringement Contentions demonstrate that Interval fails to satisfy the transactional-relatedness requirement for permissive joinder under Rule 20(a)(2).¹

¹ In addition, Interval has not met the requirement that the claims seek relief against all defendants “jointly, severally, or in the alternative.” As explained in the concurrently-filed

(Footnote continues on next page.)

1 **1. Interval Does Not Allege Any Coordinated Action Among the**
2 **Defendants**

3 Interval makes no allegation in the FAC that any connection or relationship exists between
4 Yahoo! and any of the ten other Defendants. (D.I. 153.) Yahoo! acts wholly independently of
5 each of the other Defendants. (*Id.*) Each of the Defendants develops its own products and
6 services. None of the other defendants have any role in any of the Yahoo! accused products.

7 In addition, Interval does not assert any connection or relationship between Yahoo!’s
8 alleged acts of infringement and those of the other Defendants. (*Id.*) The FAC also fails to allege
9 that Yahoo! and any other Defendant (let alone all ten other Defendants) are jointly or severally
10 liable, conspired with each other, or acted in concert in any way to infringe the patents-in-suit.
11 (*Id.*) Interval, therefore, fails to allege that its claims against Yahoo! and any of the other ten
12 Defendants arise out of “the same transaction, occurrence, or series of transactions or
13 occurrences.” *Pergo, Inc. v. Alloc, Inc.*, 262 F. Supp. 2d 122, 127-28 (S.D.N.Y. 2003) (“[T]he
14 fact that two parties may manufacture or sell similar products, and that these sales or production
15 may have infringed the identical patent owned by the plaintiffs is not sufficient to join unrelated
16 parties as defendants in the same lawsuit pursuant to Rule 20(a).”).

17 **2. Overwhelming Authority From Numerous Jurisdictions Does Not**
18 **Support Interval’s Improper Joinder**

19 Interval’s FAC fails to demonstrate how “the infringing conduct of different defendants
20 with different products, acting separately, can involve or arise out of ‘the same transaction,
21 occurrence, or series of transactions or occurrences[.]’ which [Rule] 20(a)(2) states is a

(Footnote continued from previous page.)

22 Defendants Ebay Inc., Netflix, Inc., Office Depot, Inc., and Staples, Inc.’s Renewed Motion to
23 Sever Or Dismiss for Misjoinder Pursuant to Fed. R. Civ. P. 20 and 21, mere allegations that two
24 defendants inflicted the same *type* of harm are not sufficient to satisfy Rule 20. (D.I. 192.)
25 Interval must allege that the Defendants caused the *same* harm for which Defendants are liable
26 jointly, severally or in the alternative. *See Arista Records LLC v. Does 1-4*, 589 F. Supp. 2d 151,
27 155 (D. Conn. 2008) (“Further, as the Magistrate Judge noted, because Plaintiffs did not allege
28 that the Doe Defendants caused the same harm (rather than the same type of harm), joinder is
improper . . .”). Yet, Interval’s FAC does not assert that any of the Defendants share liability
for the *same* harm or injury, either jointly, severally, or in the alternative. Instead, Yahoo!’s
liability would be separate and independent, not shared (whether joint or several or alternative)
with another Defendant. Yahoo! hereby joins and incorporates by reference the arguments set
forth in eBay’s concurrently-filed Motion to Sever (D.I. 192).

1 precondition for the permissive joinder of defendants.” *WIAV Networks LLC v. 3COM Corp.*,
2 No. C 10-03448 WHA, 2010 WL 3895047, at *3 (N.D. Cal. Oct. 1, 2010).

3 All in all, [plaintiff] cannot escape the fact that it is suing unrelated
4 and competing defendants for their own independent acts of patent
5 infringement. In such situations, numerous courts have found that
6 “joinder is often improper where [multiple] competing businesses
7 have allegedly infringed the same patent by selling different
8 products.”

9 *Id.* at 19 (citing *Spread Spectrum Screening, LLC v. Eastman Kodak Co.*, No. 10 C 1101, 2010
10 WL 3516106, at *2 (N.D. Ill. Sept. 1, 2010)); *Golden Scorpio*, 596 F. Supp. 2d at 1285 (“The
11 authority from other courts provides that allegations against multiple and unrelated defendants for
12 acts of patent . . . infringement do not support joinder under Rule 20(a).”).

13 In *San Francisco Tech*, the district court confronted a similar inquiry and concluded that
14 “there simply [wa]s no basis to join these [types of] defendants in a single suit” because “the only
15 commonality among the Defendants [wa]s that each of them [wa]s alleged to have violated 35
16 U.S.C. § 292.” *San Francisco Tech, Inc. v. Glad Prods. Co.*, No. 10-CV-00966, 2010 U.S. Dist.
17 LEXIS 83681, at *15-18 (N.D. Cal. July 19, 2010) (quoting *Technology, Inc. v. Adobe Sys. Inc.*,
18 No. 10-01652 RS, 2010 WL 1640397, at *2 (N.D. Cal. Apr. 19, 2010); *Reid v. Gen. Motors*
19 *Corp.*, 240 F.R.D. 260, 263 (E.D. Tex. 2007) (“Allegations of infringement against two unrelated
20 parties based on different acts do not arise from the same transaction. . . .”); *Pergo*, 262 F. Supp.
21 2d at 128 (“[T]he fact that two parties may manufacture or sell similar products, and that these
22 sales or production may have infringed the identical patent owned by the plaintiffs is not
23 sufficient to join unrelated parties as defendants in the same lawsuit pursuant to Rule 20(a).”);
24 *New Jersey Mach. Inc. v. Alford Indus., Inc.*, No. 89-1879(JCL) 1991 WL 340196, at *2 (D.N.J.
25 Oct. 7, 1991), (“Infringement of the same patent by different machines and parties does not
26 constitute the same transaction or occurrence to justify joinder of the new defendants”), *aff’d*, 983
27 F.2d 1087 (Fed. Cir. 1992).

28 Nevertheless, Interval overlooks its failure to comply with Rule 20(a)(2) and improperly
throws Yahoo! “into a mass pit with [the other Defendants] to suit [plaintiff’s] convenience.”
WiAV Networks, 2010 WL 3895047, at *20; *Multi-Tech Sys., Inc. v. Net2Phone, Inc.*, No. 00-346,

1 2000 U.S. Dist. LEXIS 22683, at *22 (D. Minn. June 26, 2006) (“[W]here patent infringement
2 claims are brought against multiple, unrelated defendants, courts have held joinder to be
3 inappropriate pursuant to Rule 20.”); *Verve L.L.C. v. Hypercom Corp.*, No. A-04-CA-062-LY,
4 slip op. at 3-4 (W.D. Tex. Dec. 29, 2004) (holding that allegations that defendants have
5 committed similar acts of infringement do not meet” the “transaction test” set out in Rule 20(a));
6 *Colt Def.*, 2004 U.S. Dist. LEXIS 28690, at *13 (“allegations against multiple and unrelated
7 defendants for independent acts of patent . . . infringement do not set forth claims arising from the
8 same transaction or occurrence within the meaning of Rule 20(a)”).

9 Interval previously argued that joinder was proper by noting the likelihood that
10 Defendants will “challenge the validity of the patents in suit.” (D.I. 122 at 5.) Under Rule
11 20(a)(2)(A), however, joinder must arise out of a plaintiff’s “rights to relief” against multiple
12 defendants – not the defendants’ overlapping affirmative defenses. *See MLR, LLC v. U.S.*
13 *Robotics Corp.*, No. 02-c-2898, 2003 U.S. Dist. LEXIS 2827, at *9 (N.D. Ill. Feb. 25, 2003)
14 (“Rule 20(a) . . . requires that a *claim* asserted against the Defendants arise out of the same
15 transaction or occurrence.”).

16 Yahoo! is a misjoined party, and the claims against Yahoo! should be severed from
17 Interval’s claims against the other ten Defendants pursuant to Rule 21. *Philips*, 220 F.R.D. at 418
18 (granting defendant’s motion to sever in a patent infringement case because the only connection
19 between defendants was that they infringed the same patents, “which is an insufficient basis to
20 join unrelated parties as defendants in the same lawsuit”).

21 **C. Interval’s Improperly Joined Claims Against Yahoo! Are Unfairly Prejudicial**

22 Even if joinder had been proper under Rule 20, this Court should still sever Yahoo! from
23 the case under Rule 21, which allows a court to “sever any claim against a party” “on its own . . .
24 at any time, [and] on just terms.” The district court may sever the trial in order to avoid
25 prejudice. *See Fed. R. Civ. P. 21; Coleman*, 232 F.3d at 1296-97 (upholding severance in part
26 because the district court “weighed the interests of judicial efficiency and found them outweighed
27 by the potential prejudice”).

1 Interval asserts 63 claims against Yahoo!. (D.I. 167 at 2.) Interval's allegations of
2 infringement, whether or not they rest on theories that can be characterized as "similar" to
3 Interval's theories against other defendants, are directed to Yahoo! websites and functions that are
4 necessarily subject to evidence specific to Yahoo!. The problems posed by multiple parties and
5 unrelated websites and instrumentalities are multiplied by the assertion of over 65 different claims
6 in four patents. As Judge Alsup noted in *WiAV*, a case in which fewer patents and claims were
7 asserted, this creates a "monumental mess."

8 Compounding the problem is the fact that the two asserted patents
9 contain 34 claims. While counsel for plaintiff represented at the
10 case management conference that only "around ten" claims would
11 actually be litigated, various combinations of these claims could
12 nevertheless be asserted against different defendants and their
13 accused products, thereby guaranteeing a monumental mess.

14 See *WIAV Networks*, 2010 WL 3895047, at *22. This monumental mess poses an unreasonable
15 burden on Yahoo!, the Court and the jury.

16 Yahoo! will be unfairly prejudiced both before and during trial by being lumped in with
17 all the other ten Defendants who will "surely have competing interests and strategies," (*id.* at 16)
18 and thus, should be "entitled to present *individualized* assaults on questions of non-infringement,
19 invalidity, and claim construction." *Id.* ("whatever common issues may exist from device to
20 device will be overwhelmed by the individual issues of claim construction, damages, willfulness,
21 and discovery supervision.") (*id.* at 22) (emphasis added).

22 Recognizing the unwieldy size and complexity of this case, the Court recently issued a
23 Scheduling Order that puts the case on two "tracks." (D.I. 178.) The Court's Order places
24 Interval's claims related to the '652 and the '314 patents together onto the first track and the
25 remaining claims related to the '682 and the '507 patents onto the second track. (*Id.*) Notably,
26 despite the placement of the case onto two separate tracks, all eleven Defendants are joined
27 together on the second track because all defendants are accused of infringing the '682 and the
28 '507 patents. (*Id.*)

On each track, Defendants are grouped together and subject to certain limitations with
respect to claim construction, depositions, discovery, and briefing. (*Id.*) Requiring Yahoo! to

1 coordinate and share limited space and time with the other Defendants, who will likely disagree
2 on several points, prejudices Yahoo!'s ability to fully pursue its own individualized defenses. For
3 example, on the second track, all eleven Defendants are grouped together for claim construction
4 and limited to 10 total claim terms to construe for all four patents-in-suit, and "40 pages maximum
5 for opening and responsive briefing." (D.I. 178 at 4.) Because Yahoo!'s products differ from
6 those of the other defendants, it is quite likely Yahoo! may choose to focus on different claim
7 terms from the other defendants.

8 Yahoo! will also suffer unfair prejudice at trial. Without any showing that Defendants'
9 websites operate in the same manner or are subject to overlapping evidence, Interval suggests that
10 it will try to prove its case against one website or service, and then attempt to argue that every
11 other purportedly "similar" accused instrumentality infringes for the same reasons. (D.I. 167
12 at 10.) This approach is improper and highly prejudicial to Defendants because a jury could
13 become confused by a proceeding involving a multitude of unrelated products, infringement
14 theories, and defenses. *Cf. Coleman*, 232 F.3d at 1296 (holding that in granting severance, the
15 "district court properly considered the potential prejudice . . . and the possibility of factual and
16 legal confusion on the part of the jury"). This likelihood of confusion and prejudice is precisely
17 the reason why Rule 20 requires "transactional relatedness" for joinder of unrelated defendants.
18 Accordingly, Yahoo! should be dismissed from this case, or the claims against it should be
19 severed.

20 **D. Efficiency May Be Achieved After Severance**

21 Given the straightforward analysis set forth in Rule 20(a), there is no basis to permit
22 misjoinder for the sake of "efficiency." *See id.* at 1297 (upholding severance in part because the
23 district court "weighed the interests of judicial efficiency and found them outweighed by the
24 potential prejudice"); *Colt*, 2004 U.S. Dist. LEXIS, at *16 ("[T]o the extent that considerations of
25 judicial economy can factor into the court's decision whether to sever the claims against [the
26 defendant], they do so only after the plaintiff has first satisfied the requirements of Rule 20(a).").

27 This Court has the ability to achieve efficiency objectives without condoning the
28 misjoinder of claims arising out of different transactions and occurrences. Federal Rule of Civil

1 Procedure 42(a), permitting a court to consolidate cases to the extent they present a common
2 question of law or fact, is available to consolidate claim construction and any overlapping
3 dispositive motions concerning invalidity. *Cf. Paine, Webber, Jackson & Curtis, Inc. v. Merrill*
4 *Lynch, Pierce, Fenner & Smith, Inc.*, 564 F. Supp. 1358, 1370 (D. Del. 1983) (distinguishing
5 between Rule 42(a)'s requirement only of a common question of law or fact and Rule 20(a)'s
6 additional requirement that the claims arise out of the same transaction or occurrence). Other
7 tools, such as coordination or consolidation of discovery, particularly as it relates to claim
8 construction and/or invalidity of the patents-in-suit, may also be employed to preserve judicial
9 efficiency and party resources.

10 Finally, the Court has the inherent power to control its docket. For example, the Court
11 could set simultaneous scheduling for dispositive motion deadlines or even stay one case pending
12 the outcome of another case – as long as in achieving efficiency and judicial economy, the
13 fundamental right of a party to defend itself is not sacrificed. *See United Mine Workers*, 383 U.S.
14 at 724.

15 **IV. CONCLUSION**

16 For the foregoing reasons, and those briefed in eBay, Inc., Netflix, Inc., Office Depot,
17 Inc., and Staples, Inc.'s concurrently filed Motion to Sever, Yahoo! respectfully requests that the
18 Court dismiss Yahoo! from this case, or sever the claims against it, because joinder of Defendants
19 here is improper.
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1 Dated: March 3, 2011

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 3, 2011, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system which will send notification of such filing to the
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