

HON. 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

**DEFENDANTS EBAY INC., NETFLIX,
INC., OFFICE DEPOT, INC., AND
STAPLES, INC.'S NOTICE OF
JOINDER IN DEFENDANTS GOOGLE
INC. AND YOUTUBE, LLC'S REPLY
IN SUPPORT OF MOTION TO
DISMISS OR SEVER FOR
MISJOINDER PURSUANT TO FED. R.
CIV. P. 20 AND 21, AND SUPPLEMENT
THERE TO**

**Oral Argument Requested
Noted on Motion Calendar:
November 12, 2010**

Defendants eBay Inc., Netflix, Inc., Office Depot, Inc., and Staples, Inc. hereby join
Defendants Google Inc. and YouTube, LLC's Reply in support of Motion to Dismiss or Sever
for Misjoinder (Docket No. 129) pursuant to Fed. R. Civ. P. 20 and 21, and the arguments and
authorities found therein.

1 Section (a)(2)(A) of Fed. R. Civ. P. 20 requires of claims asserted against joined
 2 defendants two types of commonality – one concerning the asserted theory of liability (“any right
 3 to relief is asserted against them jointly, severally, or in the alternative”) and the other
 4 concerning the underlying facts (“with respect to or arising out of the same transaction,
 5 occurrence, or series of transactions or occurrences”). The first is seldom contested or discussed
 6 in the cases, but it is recognized as a separate requirement. *Compare* 7 Wright, Miller, Kane,
 7 Federal Practice and Procedure (2001) § 1654 (“Several and Alternative Joinder”) *with id.* §
 8 1653 (“The Transaction and Common-Question Requirements”); *cf. Tapscott v. MS Dealer*
 9 *Service Corp.*, 77 F.3d 1353, 1360 (11th Cir. 1996) (“Joinder of defendants under Rule 20
 10 requires: (1) a claim for relief asserting joint, several, or alternative liability and arising from the
 11 same transaction, occurrence, or series of transactions or occurrences, and (2) a common
 12 question of law or fact. Fed. R. Civ. P. 20(a). The district court correctly found no allegation of
 13 joint liability or any allegation of conspiracy”).

14 Here, Google noted in its opening brief that “Interval does not – and cannot – allege that
 15 any of the named defendants are jointly or severally liable, conspired with each other, or acted in
 16 concert in any way.” (Dkt. No. 65 at 2:11-12.) Interval has no response.

17 For the reasons briefed by Google, including that Interval asserts no theory of joint,
 18 several, or alternative liability against the defendants, the defendants are misjoined.

19
 20 DATED this 12th day of November, 2010.

21 KLARQUIST SPARKMAN, LLP

22
 23 By: /s/ Kristin L. Cleveland
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 25 John D. Vandenberg, WSBA NO. 38445
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27 EBAY, NETFLIX, OFFICE DEPOT AND
 STAPLES: NOTICE OF JOINDER IN REPLY IN
 SUPPORT OF MOTION TO DISMISS OR SEVER
 PURSUANT TO FED. R. CIV. P. 20 AND 21
 (2:10-cv-01385-MJP)

-2 -

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7 *Attorneys for Defendants eBay Inc., Netflix, Inc.,*
8 *Office Depot, Inc., and Staples, Inc.*

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing on all counsel who are deemed to have consented to electronic service.

By: /s/ Kristin L. Cleveland
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