

Honorable Marsha J. Pechman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED STATES DISTRICT COURT
FOR THE 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.

Civil Case No. 2:10-CV-01385-MJP

**DEFENDANT YAHOO! INC.'S
NOTICE OF JOINDER IN
DEFENDANTS GOOGLE INC. AND
YOUTUBE, LLC'S REPLY IN
SUPPORT OF THEIR MOTION TO
DISMISS FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF
CAN BE GRANTED PURSUANT TO
FED. R. CIV. P. 12(B)(6)**

Noted for consideration on:
November 12, 2010

ORAL ARGUMENT REQUESTED

PLEASE TAKE NOTICE that defendant Yahoo! Inc. ("Yahoo!") joins in defendants Google Inc. ("Google") and YouTube, LLC's ("YouTube") reply in support of their motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6), for all the reasons therein.

Additionally, Plaintiff Interval Licensing LLC ("Interval") does not seriously challenge the fact that its infringement allegations are so vague that Yahoo! cannot implement an appropriate document hold notice. Indeed, Interval actually concedes that Yahoo! need not impose a document hold at this time in light of the lack of specificity in the

1 complaint. (Dkt. No. 123 at 10-11 fn. 2). Interval’s concession speaks volumes – Interval
2 implicitly acknowledges its complaint’s deficiencies, only hoping to “cure” with later-
3 served infringement contentions. This pleading tactic ignores the requirements of the
4 Federal Rules of Civil Procedure and it should not be condoned.

5 For this reason, and for all of the other reasons stated in Google and Youtube’s
6 motion to dismiss, reply, and supporting papers, Yahoo! respectfully requests an order
7 dismissing the complaint for failure to state a claim upon which relief can be granted
8 pursuant to Fed. R. Civ. P. 12(b)(6).
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 Dated: November 12, 2010

Respectfully submitted,

2
3 By: /s/ Mark P. Walters

4 Mark P. Walters (WSBA #30819)
5 Dario A. Machleidt (WSBA #41860)
6 FROMMER LAWRENCE & HAUG LLP
7 1191 Second Avenue Suite 2000
8 Seattle, WA 98101
9 Tel: 206-336-5684
10 Fax: 212-588-0500
11 mwalters@flhlaw.com
12 dmachleidt@flhlaw.com

13 and

14 *Admitted Pro Hac Vice*

15 Michael A. Jacobs
16 Matthew I. Kreeger
17 Richard S.J. Hung
18 Francis Ho
19 Eric W. Ow
20 MORRISON & FOERSTER LLP
21 425 Market Street
22 San Francisco, California 94105-2482
23 Tel: 415-268-7000
24 Fax: 415-268-7522

Attorneys for Defendant YAHOO! INC.

CERTIFICATE OF SERVICE

I, Mark P. Walters, hereby certify that on November 12, 2010, I caused the foregoing
DEFENDANT YAHOO! INC.'S NOTICE OF JOINDER IN DEFENDANTS
GOOGLE INC. and youtube, LLC's REPLY IN SUPPORT OF their MOTION TO
DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE
GRANTED PURSUANT TO FED. R. CIV. P. 12(B)(6) to be served on the following
 parties as indicated below:

<p>Justin A. Nelson Matthew R. Berry SUSMAN GODFREY 1201 Third Ave., Suite 3800 Seattle, WA 98101 <i>Attorneys for Plaintiff Interval Licensing LLC</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] jnelson@susmangodfrey.com mberry@susmangodfrey.com</p>
<p>Max L. Tribble SUSMAN GODFREY 1000 Louisiana St., Suite 5100 Houston, TX 77002 <i>Attorneys for Plaintiff Interval Licensing LLC</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] mtribble@susmangodfrey.com</p>
<p>Eric J. Enger Michael F. Heim Nathan J. Davis HEIM PAYNE & CHORUSH, LLP 600 Travis Street, Suite 6710 Houston, TX 77002 <i>Attorneys for Plaintiff Interval Licensing LLC</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] eenger@hpcllp.com mheim@hpcllp.com ndavis@hpcllp.com</p>

<p>1 Cortney S. Alexander FINNEGAN HENDERSON FARABOW 2 GARRETT & DUNNER LLP (GA) Suntrust Plaza 3 303 Peachtree Street NE Ste 3500 4 Atlanta, GA 30308 404-653-6409</p> <p>5 <i>Attorneys for Defendant AOL Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] cortney.alexander@finnegan.com</p>
<p>6 Elliott C. Cook Robert L. Burns FINNEGAN HENDERSON FARABOW 7 GARRETT & DUNNER LLP (VA) Two Freedom Square 8 11955 Freedom Drive Reston, VA 20190-5675 9 571-203-2738</p> <p>10 <i>Attorneys for Defendant AOL Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] elliot.cook@finnegan.com <u>robert.burns@finnegan.com</u></p>
<p>11 Gerald F. Ivey FINNEGAN HENDERSON FARABOW 12 GARRETT & DUNNER (DC) 901 New York Avenue NW 13 Washington, DC 20001-4413 202-408-4110</p> <p>14 <i>Attorneys for Defendant AOL Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] <u>gerald.ivey@finnegan.com</u></p>
<p>15 Brian M. Berliner Neil L. Yang 16 O'MELVENY & MYERS LLP 400 South Hope Street, Suite 1050 17 Los Angeles, CA 90071</p> <p>18 <i>Attorneys for Defendant Apple Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] bberliner@omm.com nyang@omm.com</p>

<p>1 2 3 4 5</p> <p>David S. Almeling George A Riley O'MELVENY & MYERS (SF) Two Embarcadero Center, 28th Floor San Francisco, CA 94111-3823</p> <p><i>Attorneys for Defendant Apple Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] dalmeling@omm.com griley@omm.com</p>
<p>6 7 8 9</p> <p>Jeremy E. Roller Scott T. Wilsdon YARMUTH WILSDON CALFO PLLC 818 Stewart Street, Suite 1400 SEATTLE, WA 98101</p> <p><i>Attorneys for Defendant Apple Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] jroller@yarmuth.com swilsdon@yarmuth.com</p>
<p>10 11 12 13 14</p> <p>Arthur W. Harrigan , Jr. Christopher T Wion DANIELSON HARRIGAN LEYH & TOLLEFSON 999 Third Avenue, Suite 4400 Seattle, WA 98104 206-623-1700</p> <p><i>Attorneys for Defendant eBay Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] arthurh@dhl.com chrisw@dhl.com</p>
<p>15 16 17 18 19</p> <p>J. Christopher Carraway John D. Vandenberg KLARQUIST SPARKMAN (OR) 121 SW Salmon Street, Suite 1600 Portland, OR 97204-2988</p> <p><i>Attorneys for eBay, Inc., Netflix, Inc., Office Depot, Inc., and Staples, Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] chris.carraway@klarquist.com John.vandenberg@klarquist.com</p>
<p>20 21 22 23 24</p> <p>Aneelah Afzali Scott A. W. Johnson Shannon M. Jost STOKES LAWRENCE 800 5th Avenue, Suite 4000 Seattle, WA 98104-3179</p> <p><i>Attorneys for Defendants Google Inc. and YouTube LLC</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] aneelah.afzali@stokeslaw.com sawj@stokeslaw.com shannon.jose@stokeslaw.com</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p>	<p>Christopher B. Durbin COOLEY LLP 719 Second Avenue, Suite 900 Seattle, WA 98104-1732 206-452-8700</p> <p><i>Attorneys for Defendant Facebook Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] cdurbin@cooley.com</p>
<p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p>	<p>Christen M. R. Dubois Elizabeth L. Stameshkin Heidi L. Keefe Mark R. Weinstein COOLEY LLP 3175 HANOVER STREET PALO ALTO, CA 94304-1130 650-843-5000</p> <p><i>Attorneys for Defendant Facebook Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] cdubois@cooley.com lstameshkin@cooley.com hkeefe@cooley.com mweinstein@cooley.com</p>
<p>11</p> <p>12</p> <p>13</p> <p>14</p>	<p>Michael G Rhodes COOLEY LLP (SF) 101 California Street 5th Floor San Francisco, CA 94111-5800 415-493-2181</p> <p><i>Attorneys for Defendant Facebook Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] mrhodes@cooley.com</p>
<p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p>	<p>Dimitrios T. Drivas John Handy Kevin X. McGann Aaron Chase WHITE & CASE 1155 Avenue of the Americas New York, NY 10036</p> <p><i>Attorneys for Defendants Google Inc., and YouTube LLC</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] ddrivas@whitecase.com jhandy@whitecase.com kmcgann@whitecase.com aaron.chase@whitecase.com</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

<p>1 Warren S. Heit 2 WHITE & CASE 3 3000 El Camino Real 4 Bldg. 5, 9th Floor 5 Palo Alto, CA 94306 6 <i>Attorneys for Defendants Google Inc., and</i> 7 <i>YouTube LLC</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] wheit@whitecase.com</p>
<p>6 Wendi R. Schepler 7 WHITE & CASE LLP 8 3000 El Camino Real 9 5 Palo Alto Square, 9th Floor 10 Palo Alto, CA 94306 11 650-213-0323 12 <i>Attorneys for Defendants Google Inc., and</i> 13 <i>YouTube LLC</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] wschepler@whitecase.com</p>
<p>10 Kevin C. Baumgardner 11 Steven W. Fogg 12 CORR CRONIN MICHELSON 13 BAUMGARDNER & PREECE 14 1001 4th Ave., Suite 3900 15 Seattle, WA 98154-1051 16 <i>Attorneys for Defendant OfficeMax Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] kbaumgardner@corrchronin.com sfogg@corrchronin.com</p>
<p>14 Jeffrey D. Neumeyer 15 OFFICEMAX INCORPORATED 16 1111 West Jefferson Street 17 PO Box 50 18 Boise, ID 83728 19 <i>Attorneys for Defendant OfficeMax Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] JeffNeumeyer@officemax.com</p>
<p>18 Eric W. Ow 19 Francis Ho 20 Matthew I. Kreeger 21 Michael A. Jacobs 22 Richard S. J. Hung 23 MORRISON & FORESTER 24 425 Market Street San Francisco, CA 94105-2482 <i>Attorneys for Defendants Yahoo! Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel] eow@mofo.com fho@mofo.com mkreeger@mofo.com mjacobs@mofo.com rhung@mofo.com</p>

<p>1 Douglas S. Rupert John S. Letchinger 2 WILDMAN, HARROLD, ALLEN & DIXON LLP 3 225 West Wacker Drive, Suite 2800 4 Chicago, ILL 60606 5 <i>Attorneys for Defendant OfficeMax Inc.</i></p>	<p>[] By United States Mail [] By Legal Messenger [X] By Electronic CM/ECF [] By Overnight Express Mail [] By Facsimile [] By Email [by agreement of counsel] rupert@wildman.com <u>letchinger@wildman.com</u></p>
---	---

6
7 DATED: November 12, 2010

8 /s/ Mark P. Walters
9 for Mark P. Walters, WSBA No. 30819
10 Dario A. Machleidt, WSBA No. 41860
11 FROMMER LAWRENCE & HAUG LLP