No. 07-16367

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CARL E. PERSON, Plaintiff – Appellant

v.

GOOGLE, INC., Defendant – Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VOLUME 3 (of 3 volumes)

EXCERPTS OF RECORD

ER 101 through ER 179

CARL E. PERSON
Plaintiff – Appellant, *Pro Se*
325 W. 45th Street - Suite 201
New York NY 10036-3803
212-307-4444

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NOTICE OF MOTION

PLEASE TAKE NOTICE that on June 15, 2007 at 9:00 a.m., or as soon thereafter as counsel may be heard by the above-entitled Court, located at 280 South First Street, Courtroom 3, 5th Floor, San Jose, California, 95113, in the courtroom of the Honorable Jeremy Fogel, defendant Google Inc. will and hereby does move the Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing plaintiff Carl E. Person's Second Amended Complaint ("SAC") in its entirety with prejudice. This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, the Declaration of Sara Ciarelli and the exhibits attached thereto, the pleadings and papers on file herein, and upon such other matters as may be presented to the Court at the time of the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court dismissed Plaintiff's First Amended Complaint (FAC"), including his claims under Section 2 of the Sherman Act, in a detailed 13-page Order entered on March 16, 2007 (the "Order"). The Court's order of dismissal, however, was with leave to amend or replead.

In dismissing the Section 2 claims from the FAC, the Court concluded that Plaintiff had failed to allege a plausible relevant product market, and had failed to allege anticompetitive or exclusionary conduct. Order at 6-8. Plaintiff's SAC, however, suffers from the exact same flaws. Rather than conform to the legal principles this Court articulated, Plaintiff has alleged essentially the same purported relevant markets and challenged essentially the same supposedly exclusionary conduct. Google therefore seeks dismissal largely on the basis of the Court's prior analysis. This time, however, dismissal should be with prejudice.

II. PLAINTIFF'S ALLEGATIONS

A. <u>The Parties</u>

Plaintiff Carl E. Person is an attorney residing in New York, New York. SAC ¶ 3. Although he made no mention of it in his FAC, Person now claims he is in the business of building websites that will sell Internet search advertising features to advertisers, market his candidacy for public office, and market his self-published books. *Id.* ¶ 4. Person alleges that,

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Attorneys for Defendant Google Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CARL E. PERSON, Plaintiff, v. GOOGLE INC., Defendant.	CASE NO.: C 06-7297 JF (RS) DECLARATION OF SARA CIARELLI

I, Sara Ciarelli, declare as follows:

1. I am an associate at the law firm of Wilson Sonsini Goodrich & Rosati, Professional Corporation, attorneys for Defendant Google Inc. I am admitted to practice law in New York State, and the United States District Courts for the Southern and Eastern Districts of New York.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Complaint filed in *Person v. Google,* 06 CV 4683 (RPP) (S.D.N.Y.), filed on June 19, 2006.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Proposed Amended and Supplemental Complaint filed in this action on February 20, 2007.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Second Amended Complaint in this action, filed on April 16, 2007.

5. Attached hereto as Exhibit 4 is true and correct copy of the Court's Order granting Google Inc.'s motion to dismiss with leave to amend, issued on March 16, 2007.

6. Attached hereto as Exhibit 5 is a true and correct copy of the web page www.google.com/services/adsense_tour/index.html, printed from the Internet on April 30, 2007.

7. Attached hereto as Exhibit 6 is a true and correct copy of the web page www.google.com/services/adsense_tour/page2.html, printed from the Internet on April 30, 2007.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed in New York, New York on the 30th day of April, 2007.

Ciarelli

Sara Ciarelli

Google AdSense

AdSense Hc

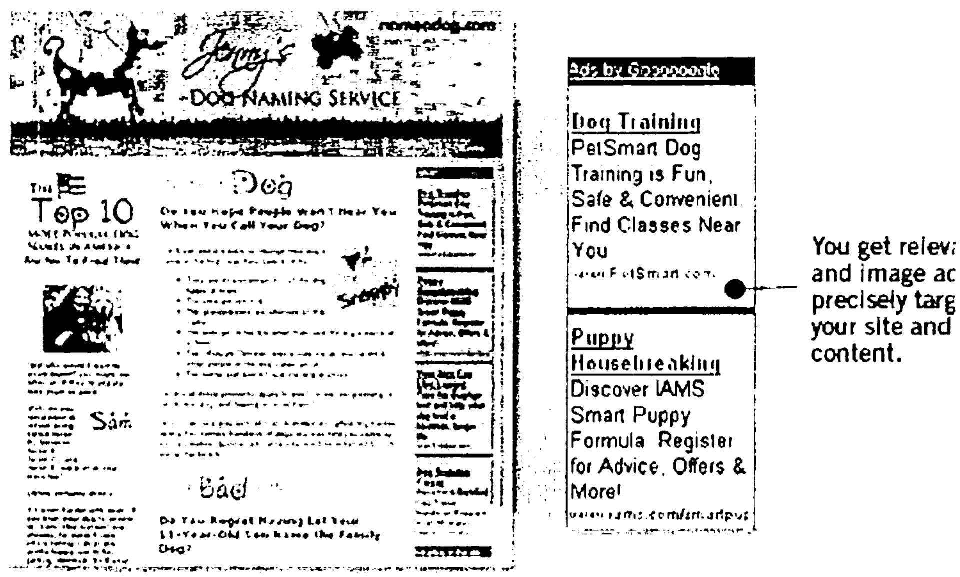
What's AdSense?

1 of 10

What's AdSense?

Google AdSense is the program that can give you advertising revenue from each pag website—with a minimal investment in time and no additional resources.

AdSense delivers relevant text and image ads that are precisely targeted to your site site content. And when you add a Google search box to your site, AdSense delivers r ads that are targeted to the Google search results pages generated by your visitors' s request.



AdSense Home

Apply Now

- ER 104 -

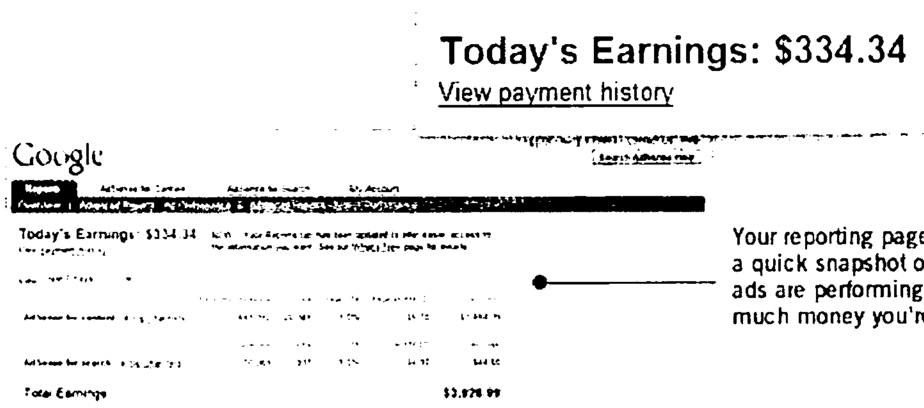
Google AdSense

AdSense Hc

Earn more revenue

Earn more revenue

You can maximize your revenue potential by displaying Google ads on your website. relevant CPC (cost-per-click) and CPM (cost per thousand impressions) ads through auction, and lets them compete against one another. The auction takes place instant and, when it's over, AdSense automatically displays the text or image ad(s) that will g maximum revenue for a page -- and the maximum revenue for you.



Your reporting page gi a quick snapshot of h ads are performing ar much money you're n

AdSense Home

Apply Now

GOCal_mem04_052407B.doc

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CARL E. PERSON, Plaintiff, v. GOOGLE INC., Defendant.	CASE NO.: C 06-7297 JF (RS) **DECLARATION OF CARL E. PERSON IN OPPOSITION TO DEFENDANT GOOGLE'S MOTION TO DISMISS** Date: June 15, 2007 Time: 9:00 a.m. Dept: 3 Before: Hon. Jeremy Fogel

I, **Carl E. Person**, declare as follows:

1. I am the Plaintiff, *pro se*, in the above-captioned action. The following facts are true of my personal knowledge and if called and sworn as a witness, I could and would testify competently to them.

Plaintiff's Status as a Competitor of Google

2. My first community search website, www.myclads.com ("myclads"), became operational during May, 2007. Myclads is a classified advertising website for users to post classified ads of all types, but featuring ads for "tasks" wanted or offered. Thus, the content (the ads) is to be supplied by the users, making the website a "community" website, with a website search facility, comparable to YouTube.com

(owned by Google), myspace.com (licensed by Google), craigslist.com and ebay.com but for traffic. My next community search website to go on line in July, 2007 is scheduled to be www.attydb.com, a website for attorneys to describe, in multiple classified ads by each attorney, the type of legal tasks or services he/she performs or would like to perform for clients.

3. For reasons described in my complaint and in the attached articles (Exhibits A through T), I am unable to fully or effectively monetize my website traffic because Google's search-based AdWords advertising is not made available to me, even though AdWords is making it available to myspace.com, YouTube.com and others under licensing agreements.

4. The other search engines (including Yahoo and MSN Search) do not provide comparable services to Google's AdWords so that I envision great difficulty trying to building traffic for my websites. This is so because Google is charging monopolistic prices to me (50 times or so what it charges to other users for the same key words), and Google is driving out of business its search-advertising competitors (including Yahoo and MSN Search) so that I am left with no effective alternatives.

5. A knowledgeable search advertiser would be unlikely to choose Yahoo, MSN Search over Google's AdWords because AdWords is far superior, has a much greater inventory of searches, and is causing its competitors to steadily diminish in effectiveness in comparison to Google's AdWords.

Articles Attached as Exhibits

6. Annexed as Exhibit A hereto is a copy of a 10/10/06 article published by www.seekingalpha.com entitled "Google + YouTube = Natural Monopoly".

7. Annexed as Exhibit B hereto is a copy of a 10/18/06 *New York Post* article (p. 27) entitled "Semel sees more tough times ahead".

8. Annexed as Exhibit C hereto is a copy of a 10/20/06 *New York Post* article (p. 35) entitled "Google flexes ad muscle yet again".

9. Annexed as Exhibit D hereto is a copy of a 12/11/06 *Business Week* article (p. 28) entitled "The Google/YouTube Come-On".

10. Annexed as Exhibit E hereto is a copy of a 12/15/06 CNNMoney.com article entitled "Can Yahoo catch Google? - The search advertising business is almost - but not quite - locked up. Could Ask.com be the wild card?

11. Annexed as Exhibit F hereto is a copy of a 01/07 Revised 4/20/07 article by T. Goldsmith, Azinet LLC entitled "The Unbreakable Google Monopoly" [Source: http://www.searchenginehonesty.com/Google_Monopoly.pdf].

12. Annexed as Exhibit G hereto is a copy of a 02/05/07 *Business Week* article (p. 40) entitled "Venture Capital 2.0 - Make-Or-Break Time for the Net Newbies - As shakeout fears rise, startups are spending furiously to break from the pack".

13. Annexed as Exhibit H hereto is a copy of a 02/12/07 *Wall Street Journal* article (p. A13) entitled "Google Radio-Ad Heads Quit Amid Skepticism Over Project".

14. Annexed as Exhibit I hereto is a copy of a 02/21/07 *Wall Street Journal* article (p. 1) entitled "Reception Problems - TV Industry Clouds Google's Video Vision - Tensions Are Rising Over YouTube Postings; CBS Talks Go Off Track".

15. Annexed as Exhibit J hereto is a copy of a 03/26/07 article published by Skrentablog.com entitled "How to beat Google, part 1" [source: http://www.skrenta.com/2007/03/how_to_beat_google_part_1.html].

16. Annexed as Exhibit K hereto is a copy of a 04/07 article published by www.paulgraham.com entitled "Microsoft Is Dead" [source: http://www.paulgraham.com/microsoft.html]

17. Annexed as Exhibit L hereto is a copy of a 04/02/07 *Business Week* article (p. 30) entitled "The Internet - Where Is Microsoft Search? - Its stumbles on the Web could open the door for rivals to come after its core business".

18. Annexed as Exhibit M hereto is a copy of a 04/20/07 *New York Post* article (p. 45) entitled "Google's boodle up 69% in Q1".

19. Annexed as Exhibit N hereto is a copy of a 04/30/07 *Business Week* article (p. 30) entitled "Online Ad Wars".

20. Annexed as Exhibit O hereto is a copy of a 05/05/07 *New York Post* article (p. 23) entitled "Yahoo! Stock jumps on Microsoft news".

21. Annexed as Exhibit P hereto is a copy of a 05/16/07 *New York Post* article (p. 35) entitled "Yahoo! Raises Sights - CFO is dealmaker".

22. Annexed as Exhibit Q hereto is a copy of a 05/19/07 *New York Post* article (p. 21) entitled "85% Solution - Microsoft grabs online ad firm aQuantive for $6B".

23. Annexed as Exhibit R hereto is a copy of a 05/21/07 *Business Week* article (p. 46) entitled "Advertising - Behind Those Web Mergers - Marketers want smarter, targeted online ads. That's driving deals".

24. Annexed as Exhibit S hereto is a copy of a 05/23/07 *New York Post* article (p. 37) entitled "Ad & Subtract - Google announces purge of ad-heavy Web sites".

25. Annexed as Exhibit T hereto is a copy of a 05/28/07 *Business Week* article (p. 37) entitled "Human Resources - Even Yahoo! Gets the Blues - CEO Semel's next turnaround task: Boost morale and keep employees from leaving."

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on May 25, 2007 at New York, New York.

By: ______________________
Carl E. Person

Google + YouTube = Natural Monopoly

SEEKINGALPHA.COM

GOOG

Bill Allen submits: In the lesser of the two highly anticipated events of the weekend, Google announced that it will acquire the video sharing community YouTube for $1.6 billion in stock.

No rocket science needed to analyze the deal. Google likely hopes to leverage its advertising client base and technological platform to reach YouTube's 70+ million users who view 100 million videos and post an additional 65,000 new clips every day. Advertisers will now gain access to video media (beyond Google Video clips) in addition to paid-per-click text links on Google's home search page, knowing that the company's proven technology will ensure a good deal of accuracy in placing ads on relevant video clips and thus provide them a respectable return on investment.

Some speculated that one of YouTube's largest investors, Sequoia Capital's Mike Moritz (an original Google investor), would forgo a deal, believing that YouTube could become the next Google. However, today's agreement demonstrates that the firm required Google's ad placement technology and advertiser client base to generate meaningful revenue growth. Although YouTube has begun to build a copyright recognition platform to screen videos, the firm could not easily replicate Google's ad bidding system. So, in joining forces to realize the potential of both companies, one could say that the next Google is likely Google. This isn't an original perspective, but I believe it will be fruitful for investors.

To complete the deal, Google pays nothing in cash, allowing the transaction to remain tax free for YouTube investors and employees and preserving their $10 billion cash reserve. The deal only dilutes the existing shareholder base by about 1.2% (at $430/sh, with 310M diluted shares outstanding, Google will issue 3.72M new shares worth $1.6B). In comparison, Yahoo would have diluted its existing shareholder base by about 4.3%, and has yet to complete its ad placement technology that provides the user base reach (Google performs twice the number of searches as Yahoo each day), breadth of advertiser clients, and the quality of ad placements that Google does.

About a year ago, I noted the decline of the newspaper industry because of the migration of advertising dollars online and the emergence of free classified services such as Craigslist that have crippled newspaper revenue growth. While regional and small town newspapers had formerly been touted as "natural monopolies" because of their gatekeeper role in allowing advertisers to reach the local population, Google has quickly become that type of monopoly. As the company develops a reputation for providing the best, most relevant and useful search results for nearly any subject, it attracts more and more users. Once Google established itself as the dominant place for information, advertisers knew that they had to place their ads on there to reach the most individuals. With Google's ad placement technology, local and global reach, and the ability to target users searching for specific information, advertisers could achieve a much higher return on their ad dollar investment – unlike local newspapers who may have had some demographics from the publisher but nothing to match the specificity and reach of Google's searches.

As Warren Buffett recently remarked, newspapers are in competition with the cemetery for readers. Although he owns the most profitable newspaper in the US, The Buffalo News, he would never make the same purchase in today's climate. He also mentioned what I consider the "2 by 24 problem" -- having 2 eyeballs and only 24 hours a day creates problems for media outlets competing for user/viewer attention in an age of expanding access points (Internet vs. TV). As more people spend their free and work time online, they migrate away from traditional media sources – TV and newspapers – and use the internet for news and entertainment, precipitating the eventual popularity of video. The large TV networks and newspapers must find a way to maintain their audience through online offerings.

The proliferation of wired (DSL, cable modem) and wireless broadband has facilitated the popularity of online video, enabling firms to provide much more data-intensive services that could greatly expand the media types provided in those search results. YouTube demonstrates the potential of video search services in a high-speed data, increasingly internet-focused world. And, like Google in its early existence, YouTube developed a reputation for one of the most comprehensive, interesting libraries of videos that could be readily uploaded, shared and discussed in a community-like environment. That attracted many other users and has become the default location to search for specific video content on the web.

Does this sound familiar? Is this another "natural monopoly?" Time will tell but YouTube's initial popularity remains promising. The firm will of course need to filter and remove copyrighted content, work with copyright holders to license their material, and determine the best method to utilize Google's advertising placement capability into a site that has yet to fully integrate advertising into its (YouTube's) service. Also, sites with large user bases and nascent video services, such as MySpace, could compete for users. But I think that Google and YouTube founders/investors realized that if you could combine one existing natural monopoly with a rapidly developing one, maintain "independence" as a service, and capitalize on the tendency for viewers to prefer one site, the combined firm's future growth could be pretty significant.

I may be too optimistic, but I also think that those expressing pessimism regarding the future of the combined firm and its acquisition price may be underestimating the combined Google-YouTube's ability to competitively challenge MySpace for users. Although MySpace's competitive position seems unbreakable right now, Google's advertising client list and technology seems to be much more difficult to replace. The Wall Street Journal's Kevin Delaney will report tomorrow (reg. required) that News Corp. (Fox) Chairman Rupert Murdoch may have complained to Google execs regarding the acquisition following MySpace's agreement to use Google search technology. Of course he's worried. He doesn't want to compete against a firm whose technology he needs to help him fully monetize MySpace's user traffic, technology that he does not control, cannot develop quickly, and cannot get from Google competitors.

I also think that a lot of "why didn't I think or invest in this first" sentiment currently exists that may be influencing the long term view of the pairing (generated from reports that the founders may each pocket $200M). Ideas and engineering talent are the lifeblood of Silicon Valley, and currently, innovation that can capture an audience of 30 million in 12 months remains in short supply.

As a side note, somewhere, Steve Jobs is smiling – most consumers may watch much of this using their iTV or widescreen video iPod. Google CEO Eric Schmidt recently joined the board of Apple, the current "arms dealer" to the music industry and the likely future one for video.

Thanks again for your time, and I welcome any feedback.

Disclosure: Author is long AAPL

NYP 10/18/06 P.27

Semel sees more tough times ahead

By HOLLY M. SANDERS

Yahoo!, which has already suffered some embarrassing setbacks this year, yesterday reported disappointing third-quarter results and cut its sales forecast for this quarter.

Chief Executive Terry Semel softened the blow and sent the shares higher by disclosing that after a three-month delay, Yahoo! had launched long-awaited improvements to its search advertising system to help it better compete with archrival Google.

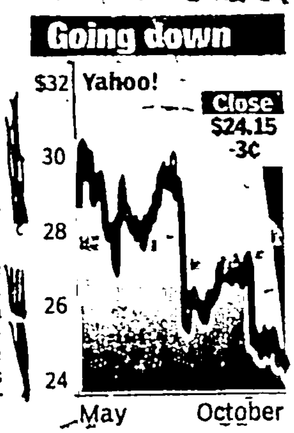
Yahoo! also announced plans to buy back as much as $3 billion in stock over the next five years after its share price declined 38 percent this year.

Yahoo! shares, which closed at $24.15 in regular trading, fell early on in after hours trading, later recouping their losses and bouncing higher.

Semel has been on the defensive since disclosing last month that the company had sold fewer ads in recent weeks than he had expected, largely because of a slowdown in auto and financial advertising.

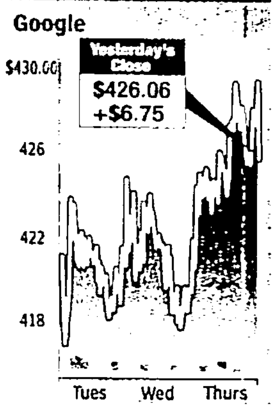
The results fueled the perception that Yahoo!'s lead among big marketers is being eroded by competition from Google and popular newcomers such as MySpace and YouTube. MySpace is part of News Corp., which also owns The Post.

Google has eclipsed Yahoo! in the rapidly growing Internet ad market, fueled by demand for paid search advertising. Online ad tracker eMarketer estimates Google's ad revenue growth will reach 65 percent this year, compared to 17.5 percent for Yahoo!



NY Post 10/20/06 p. 35

Run up



Google flexes ad muscle yet again

By HOLLY M. SANDERS

Google's profit and sales surged in the third quarter as the Internet giant once again demonstrated its dominance in online advertising.

The company beat analysts' expectations, sending the shares up 7 percent after hours. The stock closed at $426.06 in regular trading before Google reported results.

"Business is very, very good at Google," Chief Executive Eric Schmidt said.

So good, in fact, that one tracking firm, eMarketer, estimates Google will pocket 25 percent of the $16 billion spent on U.S. online advertising this year.

Analysts said Google is stretching its lead over rivals in the lucrative paid search market, while benefiting from the continued boom in Internet advertising.

In a conference call with analysts, Google executives painted the picture of a company firing on all cylinders, from advertising to product innovation to acquisitions.

Profit almost doubled to $733.4 million, or $2.36 a share, compared with the same quarter a year ago. Revenue jumped 70 percent to $2.69 billion, from $1.58 billion a year earlier.

Schmidt singled out a "blizzard of new products" and a string of partnerships with other Internet players, including New Corp.'s MySpace and culminating in the $1.65 billion acquisition of YouTube, as key to future growth.

Google's results contrasted with those of its closest competitor.

On Tuesday, Yahoo! blamed a "glut" of competition and slowing sales in two areas, automotive and financial services, for disappointing third-quarter results.

Exhibit C

MediaCentric
BY JON FINE

The Google/YouTube Come-On

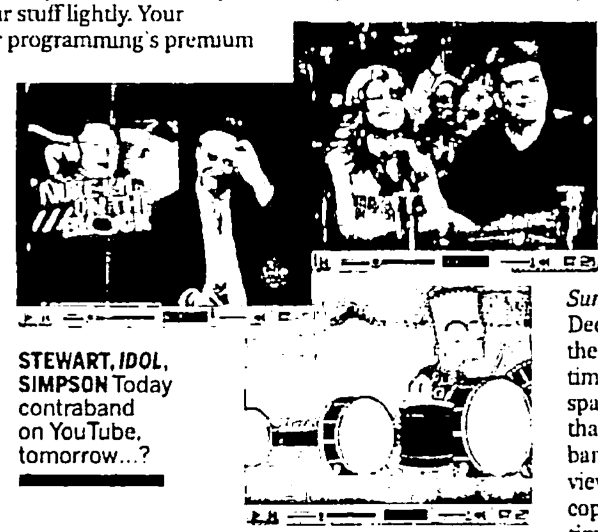
Google and YouTube are dangling nine-figure sums in front of major programming and network players—that is, the Time Warners, News Corps, and NBC Universals of the world. Google calls these monies licensing fees, according to executives who've been involved in the discussions. But some of them characterize the subtext like this: Don't sue us over copyrights. Take this (substantial) payment, and trust us to figure out how we'll all make serious money once we get advertising and revenue sharing worked out.

The offer, and YouTube's rapid rise, force the titans of a time past to make a very big decision quickly. If you're a network, you can't ignore YouTube's reach. (Some 23.5 million unique visitors went there in October.) But if you're a network, you also believe you can't give up your stuff lightly. Your copyrights, and insisting on your programming's premium value, underpin the entire business model.

TO COMPLICATE MATTERS, no publicly traded media company today is in a position simply to dismiss, say, $100 million. Such a sum far exceeds what any single broadcast network can extract from the online world—and drops straight to the bottom line. But taking the dough fortifies an already threatening rival. One executive privy to the discussions says: "The reality is, if they are able to lock in major media [companies] for three years, then by default YouTube is the place to go" for Web video. Such fears may be what's spurred several major media players to mull assembling a cross-company Web video destination—a YouTube killer of their very own.

"The theory is that if you were to aggregate enough exclusive content in one place, you could actually change viewing patterns," says an executive familiar with the cross-company talks. Perhaps anticipating my jumping all over the fallacy of "exclusive" in an open online ecosystem, he concedes "it's really tough," though not impossible.

I will not try to convince anyone that the choices media companies face are easy, but believing that 5 or 10 of them can grind through nightmarish cross-corporate decision-making and emerge with something as simple and compelling as YouTube is nuts. I don't necessarily buy the notion that only outsiders concoct interesting next-generation plays like Google, YouTube, Friendster, and iTunes. But I do know that if I can't spend a half-hour watching live Sex Pistols clips from 1977 on a NewTube—as I just did on YouTube—my interest in it falls off a cliff. (While many existing Web video outfits, from Break.com to Microsoft and Yahoo!, would likely delight in hosting a YouTube rival, bringing them on means another party at the table.)



STEWART, IDOL, SIMPSON Today contraband on YouTube, tomorrow...?

Still, take a moment to appreciate the multiple ironies. You could argue that *Saturday Night Live's* goofy, pretty much perfect mock rap video *Lazy Sunday* made YouTube ultrahot last December. You also could argue that the kindling was in place, and only timing meant *Lazy Sunday* struck the spark and not, say, Lonelygirl15. Or, for that matter, that NBC got promotional bang out of *Lazy Sunday's* multimillion views far outweighing old-school copyright concerns. (It was the first time I'd seen *SNL* in years, and the first time I laughed at it in about 20.) Thus, the YouTube version of the chicken-egg conundrum: Which party needs the other more? One executive's prediction that some licensing deals will get done indicates where the power now lies.

Media execs familiar with the YouTube offer won't discuss it publicly. Neither will Google. But it's interesting that no programming giant has sued YouTube yet. Presumably those guys won't unleash the lawyers until certain talks are played out. Or maybe—indulge me in some crazy dreaming—they know that they can't sue their way out of this. ■

BusinessWeek.com For Jon Fine's blog on media and advertising, go to businessweek.com/innovate/FineOnMedia.

(TOP) PHOTOGRAPH BY ETHAN HILL

Exhibit D

CNNMoney.com

PRINT
Powered by Clickability

Can Yahoo catch Google?

The search advertising business is almost - but not quite - locked up. Could Ask.com be the wild card?

By David Kirkpatrick, Fortune senior editor
December 15 2006: 1:43 PM EST

FORTUNE

NEW YORK (Fortune) -- The real online race is the one for ads, with everybody struggling to catch up to Google. You may think of Google as a search company, but selling and deploying ads is the business that drives its stratospheric stock price.

Google (Charts) now talks internally about building a "global operating system for advertising." It's already - through its AdSense program - selling ad space on many affiliated non-search Web sites and matching their content to ads. And as it adds similar systems to place ads on radio, in print and eventually on TV, Google aims to build an operating system for ads in all media. That is an amazingly ambitious business goal.

Google leads the race, by a mile, to sell ads on affiliated Web sites, though Yahoo (Charts) and Microsoft (Charts) have similar programs. But the real money is in ads aligned with search results. The rate at which viewers click on ads in search results can be as high as 20 percent, and never lower than 10 percent. That's a far better money-making opportunity than selling conventional banner ads, which get clicked at most 1 percent of the time.

Yahoo is hoping to get a bigger piece of that business with the launch of its long-awaited "Panama" advertising system. Finally, Yahoo will have modern software for advertising that compares to Google's.

Yahoo's old ad system, which it acquired when it bought Overture, gave prominence to the advertisers who paid the most. But Google, when it mimicked Overture and created its own system, took the concept a step further - it positioned ads based on the amount of revenue an ad would bring to Google. An ad that costs 15 cents but gets clicked on twice is thus placed more prominently on a search results page than one that costs 29 cents but is only hit once in the same period.

Yahoo's Panama has caught up to that aspect of Google's system. Yahoo Vice President for Product Strategy Brad Horowitz says that up to now Google had what he calls the "second-mover advantage". But Yahoo's new system brings it back in the game, he says: "This encourages the advertiser to create more relevant ads, and it's better for the user who sees more useful ads."

Today Google overwhelmingly dominates the search business. It thus has by far the largest inventory of ad space to sell (especially when you include the non-search AdSense inventory) as well as the largest number of advertisers

Exhibit E

seeking to buy advertising.

The risk for Yahoo and Microsoft, Google's top rivals, is that much as eBay (Charts) has developed the de facto dominant marketplace for buyers and sellers of goods, so Google could start to be seen as the de facto marketplace for ads. Buyers of ad space want to go where there are the most sellers and vice versa. It's what you call a "network effects" business - the more people who go there the more other people want to go there.

Word in the industry is that Yahoo now has about half as many advertisers as Google (neither company will reveal the actual numbers).

Could Yahoo regain strength with Panama? Perhaps. But it has a better chance if it bands together with Google's other rivals to offer an alternative marketplace that is competitive in size.

It's all about traffic. Google, with its affiliates like AOL and Ask.com, commands well over 50 percent of all searches in the U.S. in October, according to numbers compiled by Neilsen NetRatings. The combination of Yahoo, with 23.9 percent of searches, and Microsoft, with 8.8 percent, would be, at about 33 percent, a much more formidable rival than either company can be on its own. (That's why many believe Microsoft will either try to buy Yahoo or else link up in some other way to sell ads collectively.)

The wild card is Ask.com, owned by IAC/Interactive (Charts). Its own site accounts for 2.8 percent of searches, according to Nielsen. But Ask CEO Jim Lanzone explains that if you add in both other search sites Ask operates (like Excite and iWon) as well as other sites that use Ask's search (like Lycos and Infospace), its total volume accounts for more than 10 percent of all searches. Though Ask has its own distinctive (and impressive) search technology, most of the ads on its searches are put there by Google, in a deal that expires at the end of 2007. Expect a hot contest for the deal that succeeds it.

Adding in Ask could bring a Yahoo/Microsoft axis much closer to parity with Google in terms of traffic. (Google would lose the 6-7 percent and Ask's new partner would gain it.) Alternatively, either Yahoo or Microsoft could do a deal with Ask on its own. "We have the opportunity to be a swing state," says Lanzone with relish.

Meanwhile, Ask is slowly but steadily growing its share of search traffic. As it does, it makes itself an even more attractive partner for the next round of matchups when Ask's Google deal expires.

Google won the majority of the lucrative search ad business by creating the search site most people like to use, and by building a wonderfully-efficient engine for placing ads on those searches. But in a business that good, competitors will spend almost any amount of money to compete. Now we'll see if they can succeed.

Diller's bet: Nice Ask

IAC to launch Web-based local info service ■

Find this article at:
http://money.cnn.com/2006/12/15/technology/fastforward_google.fortune/index.htm

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- ER 117 -

The Unbreakable Google Monopoly

T. Goldsmith, Azinet LLC
January 2007 REV 4/20/07

Search Engine Honesty

This paper summarizes the situation regarding the possibility of significant competition for Google search engine and targeted advertising activities and concludes that Google has an unbreakable functional monopoly for the high-quality search business that is similar to and possibly more extensive and disturbing than Microsoft's position regarding operating systems.

In the past, major search engines such as Altavista and Excite seemed to have very dominant positions and were nonetheless subsequently almost completely superseded by newer search services particularly Google. However, the current situation is very different and Google's dominant position regarding high-quality Internet search is very secure because of a number of factors that did not apply to previous search operators including:

- Massive Investment Requirement
- Maturity of Search and Web Technology
- Operations Data
- Economies of Scale
- Tracking Data Volume
- Anti-Competitive Practices
- Declining Captive Audiences

Massive Investment Requirement

Given informed choice, search engine users choose a search service based on the following parameters: (Our poll indicates that the importance is in the stated order.)

- Quality of web sites listed in results[1] (relevance, freedom from spam)
- Freshness of results (speed with which new web information is incorporated into search results)
- Comprehensiveness of results (number of sites and pages that can potentially be found with a search)
- Speed with which results displayed during a search

We can define "search quality" as encompassing all of these parameters. The cost of satisfying each of these parameters is driven by the size of the web, which now encompasses billions of web pages. Where a university project could produce a competitive search product ten years ago, explosive growth in the web has resulted in a

[1] Search Results: Specifically non-sponsored listings as opposed to paid, "sponsored results."

situation in which enormous up-front investment would be required to produce a search service that could plausibly compete with Google in terms of the above parameters.
A search engine must acquire and store all the web data that it covers. A search engine must repeat this acquisition often to achieve freshness. A search engine must be able to search through all this data in fractional seconds. Google is said to have 150,000 computers and massive Internet connectivity.

It is true that a search engine that is superficially similar to Google could be (and has been) produced with vastly fewer resources. Google indexes approximately 10 *billion* web pages and revisits them approximately monthly. (Many pages are visited much more often.) Imagine a search engine that only indexed 10 *million* pages and only visited them every six months. This engine would require about 1,000 times less computational resources and 6,000 times less connectivity, an enormous cost reduction. A search for a popular search term (Britney Spears, hot chicks, MP3 files) might well produce results acceptable to a casual user. However, apparently people (even casual and relatively unsophisticated searchers) want the superior results they can get from a better search service.

Maturity of Search and Web Technology

Search and the underlying Internet web technology including servers and browsers are now relatively well developed. There is little or no chance of a revolutionary new invention or technological breakthrough that would allow a competitive advantage sufficient to override the other factors. Because of the size of the web (number of deployed sites, pages, servers, browsers, etc.) any technological change would tend to spread relatively slowly, allowing Google time to catch up. In the event a new company somehow developed new technology that promised an advantage, Google's enormous market cap would allow it to outbid most, likely all, competitors.

Operations Data

Google Search is based on innovations[2] made by cofounders Brin and Page that produced substantial improvements in search quality. Patents on these and other innovations contribute to Google's monopoly position. These innovations are augmented by years of accumulated data and incremental development resulting from the actual day-to-day operation of the Google system in today's web environment. A competitor with comparable technology and comparable installed computer capacity would still be years behind in the accumulation of this operating data and would likely never catch up.

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[2] *Brin, S. and Page, L.,* *The Anatomy of a Large-Scale Hypertextual Web Search Engine*, Stanford University, 1998

Economies of Scale

Google has more than twice the search traffic[3] of its nearest competitor (Yahoo Search) and more than five times the traffic of its next nearest competitor (MSN Search). Because of the large portion of search system cost represented by "front-end" infrastructure, that is, costs that must be expended regardless of search volume, Google has a major advantage over rivals with lower traffic. Income is proportional to traffic; cost is not.

Tracking Data

Google's large advantage in search traffic and extremely pervasive AdSense advertising placements allow it to acquire *tracking data*[4] on an extremely large number of web users relative to any existing competitor much less any new competitor. This tracking data advantage allows Google to control spam[5] to a much larger degree than otherwise possible and therefore allows Google to deliver results of higher quality than competitors. Web spam has been and continues to be a major problem for all search engines. Because spammers evolve and for other reasons, spam control represents recurring cost.

In addition, the tracking data advantage allows Google to better control click-fraud and other issues that would otherwise very adversely affect its AdSense advertising system. This advantage allows Google to achieve a higher level of automation and therefore lower per-partner-site cost in managing its AdSense advertising partners. Consequently, it is unlikely that any competitor will be able to develop an advertising system with the degree of automated management possessed by the Google AdSense system. Competitor's per-site labor costs will therefore always be higher, limiting their ability to place ads on smaller web sites and eliminating their access to an entire market segment (small web site advertising). Google will therefore retain its substantial monopoly in small web site pay-by-click advertising. Notice the circular situation: Google's *ability* to place ads on small web sites is, in part, enabled by the fact that they *are* placing ads on small sites and therefore possess more tracking data.

Google's advertising system is so effective that Google can economically and effectively display targeted text ads on essentially any web site with apparently zero manual review. No competitor has a similar capability.

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[3] *Search Traffic*: Nielsen//Netratings measured searches performed by U.S. home and work web surfers for July 2006: Google and its partners (AOL Search) using Google data 55.5 percent of searches, Yahoo 23 percent, MSN Search 9.6 percent, Ask 2.6 percent, others 8.5 percent.

[4] *Tracking data*: Data showing the web usage (pages visited, time spent on each page, time-of-day visits were performed, subject matter of pages visited, etc.) of individual web users. Usage patterns of legitimate users differ from click-fraud participants and can also be used to identify spam sites. Tracking data can be obtained anytime a user visits a web site owned by a search engine or one of its advertising partners.

[5] *Spam*: A web site listed in search results that turns out to have little or no useful content or that is not relevant to the subject of the search.

Google's purchase of major web advertising network DoubleClick (if approved by regulators) will increase Google's tracking advantage.

Google Anticompetitive Practices

Google (as well as other search engines) can use *manual censoring*[6] of non-sponsored search results or *site-unique bias*[7] to suppress access by their users to competitive services such as directories. Our studies[8] show that search results pointing to small-business directories are very heavily censored by Google. These techniques[9] can also be used to suppress user access to sites that compete with Google's activities in other areas (selling of things, video, pictures, message boards, etc.) or which compete with Google partners. Manipulation of unpaid (non-sponsored) search results for anti-competitive purposes is currently unregulated.

Declining Captive Audiences

Many MSN users use MSN Search because it has been integrated into MSN as the "default" search service. Similar default settings can be found on ISP supplied browsers and Microsoft Internet Explorer. As the user population becomes more educated and knowledgeable regarding the Internet, fewer will use "beginner" services such as MSN and more will change default settings to use Google. Users will graduate to Internet service providers that provide superior or cheaper Internet access with fewer beginner features such as cable Internet services or telephone company DSL or fiber optic services. Simultaneously, MSN's more sophisticated users will tend to choose Google because of superior performance as opposed to using the "pre-chosen" MSN search service. Similar issues will tend to erode Yahoo's share of the search business. Google's search share will therefore continue to increase.

Conclusion

Google has an effective unbreakable monopoly regarding high-quality Internet search and associated advertising. Google's stock price, relative to Yahoo, suggests that the market has reached a similar conclusion. Because of the factors noted above, it is very unlikely that Yahoo Search, MSN Search, or an emerging competitor would be successful in matching Google in this arena and so potential competitors are likely to expend their resources elsewhere. It is therefore likely that the differences in quality between Google and other search services will increase.

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[6] ***Manual Censoring***: Google admits to manual censoring ("banning") in which individual small-business web sites are excluded from the Google search index and therefore cannot be found in a Google search. Google does not disclose its reasons for censoring a particular site. Small-business directory sites are very heavily censored by Google.

[7] ***Site-Unique bias***: The use of a search engine ranking or depth-of-crawl algorithm that contains or refers to a list of domain names, trademarks, site-unique phrases, or other site-unique information in order to negatively or positively bias search result ranking or page indexing of individual, hand-selected web sites.

[8] ***Case Studies***: See Kinderstart Case, SeekOn Case, Search Engine Censoring of Sites Using ODP Data

[9] Search Engine Bias Issues: *Impact of Search Engine Editorial Policies on Small Business and Freedom of Information*, Azinet LLC, April 2007

Although unsophisticated users and people using search for entertainment can continue to be served by Yahoo search. MSN Search. and other existing or emerging services. Google is the only source of the highest quality search. People who need high-quality search for business, research. and other more serious activities have an increasingly sole-source situation.

There are also freedom-of-information issues associated with a monopoly or even extremely limited competition in high-quality search. Search engines are seen as publishers and therefore currently have total editorial control over the information they "publish" in their non-sponsored search results. They can and do use site-unique bias and outright censoring of search results to impose editorial policies. Other forms of bias including political bias are technically easy to implement and may exist. Disclosure of editorial policies is not required. A single entity controlling such an important information source as world-wide high-quality search is, at the very least, disturbing. Special anti-trust issues surround businesses that control the distribution of information.

<u>Search Engine Honesty</u>

VENTURE CAPITAL 2.0

MAKE-OR-BREAK TIME FOR THE NET NEWBIES

As shakeout fears rise, startups are spending furiously to break from the pack

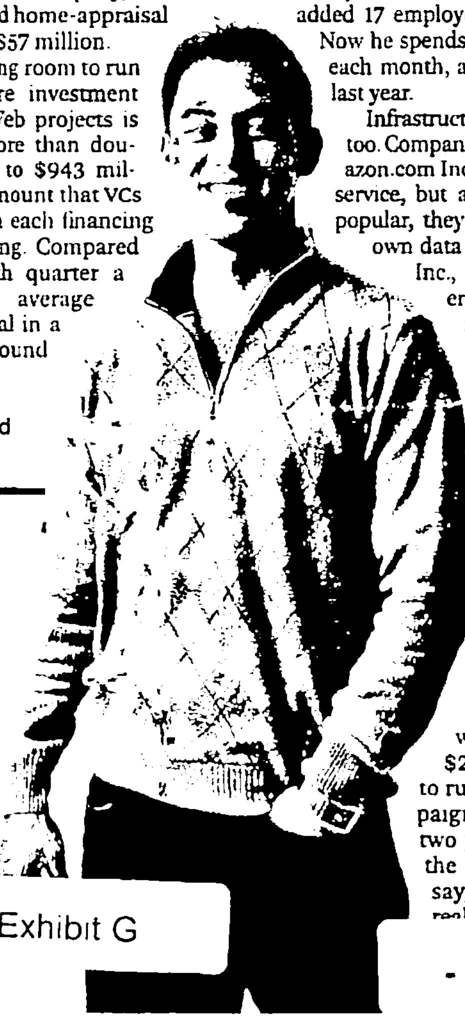
BY HEATHER GREEN

IT'S A FORMULA THAT HAS FIRED up Internet entrepreneurs from Palo Alto to Paris: Start with free software, add falling prices for computing and data storage, toss in ever-cheaper distribution costs, and you can launch an online service for practically nothing. But now that many so-called Web 2.0 outfits have a couple of years under their belts, it's sinking in that it takes real money to turn those ideas into real businesses—to reach a broad audience, scale up operations, and, you know, turn a profit. "It's true that you can do a science experiment more efficiently than you could five years ago," says Rob Shurtleff, managing director at Divergent Ventures, a venture capital firm. "But don't confuse doing the science experiment with building a large enterprise."

For many Web companies, 2007 will be the year that difference becomes painfully obvious. They may have started out with dreams of getting snapped up by the likes of Yahoo! Inc. and Google Inc. But out of scores or even hundreds of startups in any given category, whether it's video sharing or photo slideshows, only a handful will be bought in their first rush of success. The phenomenal triumph of MySpace and YouTube Inc. is the exception, not the rule. To complicate matters, basic expenses such as salaries, marketing, and real estate are on the rise, driven up by the very fact that so many companies were started on a shoestring.

That means raising significant money to spend on nuts and bolts. Web services may cost mere hundreds of thousands of dollars to set up. But turning them into profitable companies could cost $15 million to $25 million, much of which must be spent on distribution, engineering, and infrastructure, says Brad Feld, a managing director at Mobius Venture Capital Inc. Some outfits are raising even more. Brightcove Inc., a video-distribution company, has raised $82 million, and home-appraisal site Zillow has $57 million.

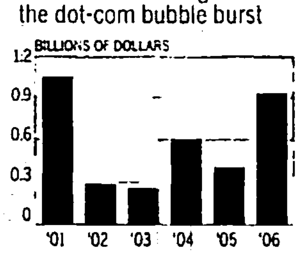
They're getting room to run because venture investment in consumer Web projects is on the rise, more than doubling in 2006, to $943 million. And the amount that VCs are investing in each financing round is growing. Compared with the fourth quarter a year ago, the average amount per deal in a later-stage round has nearly doubled, to $9.2 million. But this rapid rise in funding sets up an inevitable day of reckoning.



FUNDED 4INFO CEO Thet raised $16 million

ONCE AGAIN BETTING BIG

Venture investing in consumer Web outfits is the highest since the dot-com bubble burst



Data: Thomson Financial for PWC/N Money Tree Report

'DARWINISM'

IF THEY CAN'T PROVE their business models or break from the pack, Web companies risk becoming part of a shakeup that observers expect to really get going in 2008. "We're still a year or two away from the bigger market segments like social networking, user-generated video, and vertical search showing real Darwinism," says Todd Dagres, general partner at VC firm Spark Capital. Some winnowing has already begun.

One of the biggest costs of scaling up is adding employees. After launching a startup with two or three friends, founders soon realize that, no matter how much they work, they can't answer all the e-mail or put out all the features they want. So they hire customer service reps and engineers. That's the case at 4INFO, a mobile search service that has raised $16 million to dish up weather updates, sports stats, and local restaurant listings to cell phones. Last year, CEO Zaw Thet added 17 employees, for a total of 31. Now he spends just under $500,000 each month, about 60% more than last year.

Infrastructure can get pricey fast, too. Companies may start with Amazon.com Inc.'s cheap data storage service, but as they become more popular, they must invest in their own data facilities. FeedBurner Inc., which helps publishers distribute and make money from blogs, has spent nearly 20% of its $10 million in funding on upgrading data centers.

Even a search-engine marketing campaign—the most basic means of getting attention—is becoming prohibitive. Ellen Siminoff, CEO of marketing firm Efficient Frontier Inc., estimates that it would cost a startup $20,000 a month now to run a worthwhile campaign, up from $5,000 two years ago. As vets of the dot-com bust might say, welcome to the real world ■

ARTIN KLIMEK; CHART BY LAUREL DAUNIS-ALLEN/BW

Exhibit G

says James Schiro, chief executive officer of Zurich Financial Services AG, which sells microinsurance in four Latin American countries today and is launching a pilot program in South Africa sometime this year.

Ugandan Fred Adriko, 20 years old, didn't know his mother had insurance until she was killed in a car accident in 2005. She had taken out a microloan from Finca to develop a business selling produce and purchased a policy at the same time.

Because of the policy, Mr. Adriko received a payment of about $650, which he can use to take care of his family, he said in an interview through a Finca-provided translator.

AIG knows the benefits of

... since the premiums collected are small by Western standards, the revenues generated by the microinsurance sector also are tiny. While developing markets are profitable for a few companies, insurance executives say they remain unprofitable for many others.

AIG, which does business in about 130 countries, says its microinsurance business is in the black, but total premiums from life insurance sold to microloan recipients in developing markets add up to only about $45 million a year. That's just 0.15% of the $29.4 billion in life-insurance premiums AIG took in world-wide in 2005.

Some insurers are sitting out

... erty-casualty coverage must be generated by rural customers. Rural customers must represent 7% of all life-insurance policies in the insurer's first year, a number that rises to 18% in its fifth year.

In rural India, in addition to using their own agents, both AIG and Aviva typically sell basic life-insurance policies through local women's groups and microlending agencies. This lowers distribution costs because the person processing the loan also sells and processes the insurance policy on the loan.

Finca, which works with AIG in many places but not India, says its local offices keep as much as 25% to 50% of the premiums left over after claims and expenses in some areas. In others, Finca's local offices get nothing.

Some companies working in India say married women are often their best representatives

green lights ... Delhi. It advertises d... cricket TV broadcasts, a... 2005, Aviva paid for more 2,000 airings of TV adve... ments for the Bollywood drama, "Viruddh." The ads ended with the Ind... gastar, Amitabh Bachcha...

WSJ
2/12/07
p A13

Google Radio-Ad Heads Quit Amid Skepticism Over Project

By Shira Ovide
And Riva Richmond

The heads of the radio-advertising firm bought by Google Inc. a year ago have left the company as the Internet giant faces skepticism about its efforts to sell ads on radio stations.

Google confirmed the departures of Chad Steelberg and Ryan Steelberg, brothers who led the radio-ad firm dMarc Broadcasting Inc. and sold it to Google last year for $102 million, plus the potential for $1.1 billion in performance-based payments tied to revenue and ad-inventory targets.

The dMarc acquisition is crucial to Google's ambitions to extend its ad platform into newspapers, television and other media as it seeks to diversify away from Internet search. Google has had limited success so far in translating its efficient and automated online-search methods to the $20 billion annual market for radio advertising.

That fact may have contributed to the Steelbergs' departure. At the same time, dMarc's management turnover may embolden a radio industry that has been resistant to turning over control of advertising time on their stations to Google or other automated ad marketplaces.

"It now seems possible that the management disruption at dMarc could slow the march toward online radio selling," Banc of America Securities radio analyst Jonathan Jacoby said in a research note Friday.

After a lengthy integration period, Google began in early December a test of radio ads with a group of its keyword advertisers. Google has signed on roughly 700 of the more than 12,000 U.S. radio stations to test dMarc's automated system of selling, scheduling and delivering ads—too few to be a major player in radio sales. DMarc also has been selling mostly remnant inventory, or low-priced ad spots sold at the last minute.

Google said it is committed to the audio business and is "happy with the progress to date." It declined to discuss the circumstances of the Steelbergs' exit.

The Steelbergs couldn't be reached to comment.

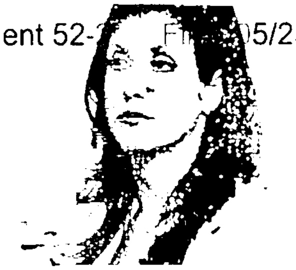
Exhibit H

Yochi Dreazen

D7

Demolition Of
An Iraqi Icon
Raises Alarms

POLITICS & ECONOMICS | A6



ABC Weighs
An 'Anatomy'
Transplant

MARKETPLACE | B1

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Indians in U.S. Find New Sideline: Bollywood Moguls

* * *

They Are Pouring Money Into Mumbai Movies: The Ab King Goes Boxing

By DIYA GULLAPALLI

MUMBAI, India—For years, Renuka Pullat led the life of a wealthy mother in a suburb of San Francisco. She shuttled her two sons to tennis and soccer games, and volunteered for the American India Foundation.

Now, at 38 years old, she has an unusual new occupation: She is one of a wave of Indians in America pouring money into Bollywood movies here in India's film capital. One of her newest projects is about a vengeful wife who kills her cheating husband, featuring song-and-dance scenes. Her first movie, inspired by "A Fish Called Wanda," made it to theaters in 2005. It barely broke even.

Renuka Pullat

In Bollywood, the name commonly associated with Hindi movies made in the former Bombay, even a lavish production that runs three hours can be made for a few million dollars. Some cost a lot less than that.

It's a ... open i... regula... ernme... foreigners to finance movies. It

Please turn to page A18

Exhibit I

RECEPTION PROBLEMS

TV Industry Clouds Google's Video Vision

Tensions Are Rising Over YouTube Postings; CBS Talks Go Off Track

By KEVIN J. DELANEY
And MATTHEW KARNITSCHNIG

Four months after snatching YouTube away from rival suitors for more than $1.7 billion, Google Inc. has encountered a bigger challenge: finding allies in the television industry.

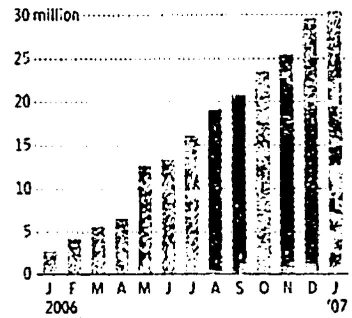
With television executives up in arms about the unauthorized posting of TV shows on the popular online video site, Google is searching for a way to dial down the tension. It sees that task as vital to YouTube's profit potential.

Until about a month ago, Google thought it might get a big boost from CBS Corp. The two companies were closing in on a multiyear deal to let YouTube users watch clips from CBS shows such as "The Late Show with David Letterman" and "CSI," and even to splice those snippets into home-made videos, say people familiar with the matter. The two companies also discussed ways to peddle CBS Radio advertising spots to Google advertisers. Under the deal, Google would have guaranteed ad revenue of more than $500 million for CBS, these people say.

Google, of Mountain View, Calif., wants to continue to grow beyond its roots as a Web search engine and to find more places to sell advertising. YouTube is one such place. Because the site contains so many video clips, it also dovetails with Google's gargantuan stated mission of organizing all the world's information into searchable form. Global consumers are especially hungry for videos, particularly ones from hit TV shows.

Logging On

Monthly visitors to YouTube:



Source: comScore Networks

But Google's relations with the big U.S. TV companies have grown frosty of late. Google was working on a deal last year with entertainment giant Viacom Inc., whose channels include MTV, Nickelodeon and Comedy Central. Now, Viacom has accused Google of copyright infringement and has demanded that YouTube remove some 100,000 clips of Viacom programs such as "The Daily Show."

NBC said last June that it would put promotional clips on YouTube and buy ads on the site. Last week, the general counsel of NBC sent Google a six-page letter demanding that it keep unauthorized content off the site, say people familiar with the matter. In addition, several film studios recently complained that Google runs ads and offers other

Please turn to page A15

Television Industry Clouds Google's

Continued from Page One
support for Web sites that let viewers download movies illegally.

Now, the hoped-for deal with CBS has unraveled as well, say several people knowledgeable about the talks. The two companies couldn't agree on such important issues as how long the deal would run, one of these people says. Although the talks could be revived at some later date, for now Google and CBS intend to work together only on more modest initiatives.

Google's difficulties with television executives are the latest indication that its Web success won't be easy to replicate in media distribution and in TV and radio advertising. Although the current strife might eventually prove to be no more than hard-nosed negotiating, Google's attempt to cut deals with media companies seems to be turning into a long slog.

A YouTube spokeswoman says the company will continue to pursue partnerships. "We respect the rights of content owners and want to work with them to more broadly distribute their content" and to help them make money in the process, she says.

CBS chief Leslie Moonves, left, and Chad Hurley, chief executive of YouTube, at the Consumer Electronics Show in Las Vegas last month.

Sparking Protests

In the first years after its founding in 1998, Google mostly indexed other Web sites, and almost no one complained. But its more recent efforts to expand with initiatives involving news, books and video have sparked protests by many who hold rights to that material.

Google's plan to scan millions of books from university and public libraries into a database, for example, prompted the Authors Guild and five major book publishers to sue it for copyright violation. Google has been sued by several news organizations over its Google News service's use of headlines, article excerpts and photos. Google has said in each case that it has respected copyright laws.

Eric Schmidt

So far, none of the disputes have much slowed Google's growth. The company reaches hundreds of millions of consumers and hundreds of thousands of advertisers around the world. Its core online-advertising business is trouncing rivals, generating more than $10 billion in revenue in 2006. Google reported $3.1 billion in profit last year, and its stock-market valuation soared to more than $140 billion.

For TV executives fretting about the future of their business, YouTube is both fascinating and terrifying. The popular Web site has brought online video to the masses, making it easy for anyone with a computer and an Internet connection to find and view clips ranging from home videos of pet tricks to TV shows like the "The Simpsons," which YouTube users post without permission from anyone.

The way TV executives see it, programming they own has contributed to YouTube's success. Thirteen of the 20 most-viewed YouTube videos in the month ending Feb. 15, for example, were professionally made. They included a clip of Ivanka Trump on ABC's "Jimmy Kimmel Live" and a local TV news report on lock picking.

Copyright law compels YouTube to remove all videos to which it or its users do not hold rights—provided it receives a complaint from the owner. Media companies regularly issue such complaints, and YouTube readily complies with them. But YouTube users often put similar clips back up the next day.

Some TV companies have considered suing Google over copyright infringement, perhaps by arguing that YouTube's removal of the clips doesn't shield Google from liability. It isn't clear how courts would respond to that approach. At present, media companies say they want to keep the conflict from boiling over into a barrage of lawsuits.

"The way to resolve this is not by suing people quickly but working together to create legitimate business models that respect copyrights," says Paul Cappuccio, Time Warner Inc.'s general counsel. "Yet we will sue those who are irresponsible."

Creating a Rival

Major media companies have established their own video sites that offer, free, such popular network shows as "Lost" and "24." But those sites are not nearly as popular as YouTube is for watching videos. In recent months, several media companies, including Viacom, General Electric Co.'s NBC network, and News Corp.'s Fox network, have discussed pooling their content to create a rival to YouTube. Yesterday, Viacom announced an agreement to license hundreds of hours of TV programming to an online video service called Joost, which competes with YouTube.

"The problem the media companies have in dealing with Google is that we're not in a position of strength," acknowledges a senior executive at one of the companies.

Google's difficulties with TV companies began in earnest in January 2005. In an effort to create a searchable database of dialogue and images from TV shows, Google had begun recording TV programming, in some cases without notifying the channels themselves. Executives at CBS, Walt Disney Co.'s ABC and Warner Bros. television, a unit of Time Warner, among others, asked Google to back off, citing possible copyright violations. Google ultimately abandoned the practice.

Over the past year, it has made some headway with media companies. Last summer it announced a deal, which has since expired, to distribute video from Viacom's MTV Networks over the Web. It struck a deal with News Corp. to provide search technology and to broker ad sales for its MySpace site, guaranteeing $900 million in ad revenue for News Corp. over the next three years. It reached agreements with music labels such as Warner Music Group Corp. to license music videos. It is currently working on a deal to offer video from the British Broadcasting Corp., according to people familiar with the matter.

The announcement in October that Google had agreed to buy YouTube rekindled the tension. YouTube had avoided copyright litigation with big media companies, but Google executives decided they needed to sit down with executives at those companies.

Hours after the announcement, Google Chief Executive Eric Schmidt met with Viacom representatives in New York. Later that week, he and Google's vice president for advertising sales, Tim Armstrong, flew to Los Angeles to meet with executives at News Corp.

Google's message: The company is a friend to content owners. Google told media executives it was planning to put in place a digital "fingerprinting" system to identify copyrighted audio and video clips posted on YouTube, and that such a system would enable it to remove material or to share ad revenue with owners.

At the beginning of the Viacom talks, Mr. Schmidt floated the idea that Google might be willing to guarantee as much as $500 million in ad revenue over several years to license Viacom's video, according to three people involved in the talks. Under the terms discussed, Google would pay Viacom about 70% of any advertising revenue generated by Google from Viacom's videos, these people say. In exchange, Viacom would agree not to sue Google over copyright issues.

Google withdrew its almost immediately, ac people close to the Viac com Chief Executive Ph wanted to talk about co tising sales and techni fore negotiating about people say.

Mr. Schmidt visited York offices at least tw other negotiating ses Google executives bac some of his proposals, ple involved in the talks say.

Google changed its position on some issues largely because of financial demands Viacom was making, according to two people familiar with Google's position. At one point, Viacom demanded minimum payment guarantees approaching $1 billion, these people say. A man says the compa such a demand.

Some at Googl whether paying so m made economic sense, people involved in the main value of a deal w tion from copyright la of these people, and th by Viacom might not enough advertising to mum payments. Onlin ing is expected to be lion this year, just a fra all online ad market.

By year's end, disc Google and Viacom ha

Changing C

- The Situation: Googl strike deals with TV co their videos—legally video-sharing site.
- The Background: Un posting of copyrighted YouTube users has bee problem for the enterta
- The Bottom Line: Th and most TV producer able to agree on how n are worth.

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CBS's split from had left it with a te and local TV and ra

As Costs Rise, Government's Role in Paying J

try Clouds Google's Video Vision

ı. left, and Chad Hurley, chief executive of YouTube, at the
ɯ in Las Vegas last month.

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mpanies have estab- ideo sites that offer, r network shows as ut those sites are not r as YouTube is for n recent months, sev- anies, including Via- ectric Co.'s NBC net- Corp.'s Fox network, ooling their content to ouTube. Yesterday, Vi- 1 an agreement to li- f hours of TV program- ıe video service called npetes with YouTube. m the media compa- ling with Google is that sition of strength," ac- senior executive at one ies.

ficulties with TV compa- arnest in January 2005. create a searchable data- me and images from TV le had begun recording ting, in some cases with- g the channels them- tives at CBS, Walt Disney l Warner Bros. television,

a unit of Time Warner, among others, asked Google to back off, citing possible copyright violations. Google ultimately abandoned the practice.

Over the past year, it has made some headway with media companies. Last summer it announced a deal, which has since expired, to distribute video from Viacom's MTV Networks over the Web. It struck a deal with News Corp. to provide search technology and to broker ad sales for its MySpace site, guaranteeing $900 million in ad revenue for News Corp. over the next three years. It reached agreements with music labels such as Warner Music Group Corp. to license music videos. It is currently working on a deal to offer video from the British Broadcasting Corp., according to people familiar with the matter.

The announcement in October that Google had agreed to buy YouTube rekindled the tension. YouTube had avoided copyright litigation with big media companies, but Google executives decided they needed to sit down with executives at those companies.

Hours after the announcement, Google Chief Executive Eric Schmidt met with Viacom representatives in New York. Later that week, he and Google's vice president for advertising sales, Tim Armstrong, flew to Los Angeles to meet with executives at News Corp.

Google's message: The company is a friend to content owners. Google told media executives it was planning to put in place a digital "fingerprinting" system to identify copyrighted audio and video clips posted on YouTube, and that such a system would enable it to remove material or to share ad revenue with owners.

At the beginning of the Viacom talks, Mr. Schmidt floated the idea that Google might be willing to guarantee as much as $500 million in ad revenue over several years to license Viacom's video, according to three people involved in the talks. Under the terms discussed, Google would pay Viacom about 70% of any advertising revenue generated by Google from Viacom's videos, these people say. In exchange, Viacom would agree not to sue Google over copyright issues.

Google withdrew its payment offer almost immediately, according to two people close to the Viacom camp. Viacom Chief Executive Philippe Dauman wanted to talk about control of advertising sales and technical matters before negotiating about money, these people say.

Mr. Schmidt visited Viacom's New York offices at least twice, but during other negotiating sessions, different Google executives backed away from some of his proposals, the three people involved in the talks say.

Philippe Dauman

Google changed its position on some issues largely because of financial demands Viacom was making, according to two people familiar with Google's position. At one point, Viacom demanded minimum payment guarantees approaching $1 billion, these people say. A Viacom spokesman says the company never made such a demand.

Some at Google questioned whether paying so much to Viacom made economic sense, according to the people involved in the discussions. The main value of a deal was indemnification from copyright lawsuits, says one of these people, and the video provided by Viacom might not have attracted enough advertising to cover the minimum payments. Online-video advertising is expected to be worth $775 million this year, just a fraction of the overall online ad market.

By year's end, discussions between Google and Viacom had stalled. "It just got to the point where it was clear we weren't getting anywhere," says one of the people involved. Contact between the two companies has since been limited to their lawyers, this person says.

Nevertheless, talk of the big numbers Google had originally floated in the Viacom negotiations fueled expectations at other media companies.

By late fall, some Google executives were pursuing a large-scale licensing deal with CBS, in hopes that it would lead to similar partnerships with other media companies, say people familiar with the matter. The new president of CBS's Interactive division, Quincy Smith, had worked closely with Google and Mr. Schmidt in his previous job as an Allen & Co. banker.

CBS's split from Viacom last year had left it with a television network and local TV and radio stations. With the broadcast-television business flat and radio declining, CBS chief Leslie Moonves was eager to shake up the company's old-media image. In October, CBS had struck an agreement to make some CBS video available on YouTube, in exchange for a share of ad revenue.

Changing Channels

- **The Situation:** Google is trying to strike deals with TV companies to carry their videos—legally—on its YouTube video-sharing site.
- **The Background:** Unauthorized posting of copyrighted material by YouTube users has been a persistent problem for the entertainment industry.
- **The Bottom Line:** Thus far, Google and most TV producers haven't been able to agree on how much such rights are worth.

Large-Scale Deal

CBS and Google began discussing a more sweeping video-licensing deal. They also kicked around an idea for Google to sell CBS Radio ads to Google's advertiser clients.

Mr. Schmidt made plans to fly to Las Vegas for the Consumer Electronics Show in early January, where he hoped to join Mr. Moonves onstage to announce a deal, according to one person aware of the plan. The Saturday before the show, Mr. Moonves was presented with an outline for an agreement, but he said he could not sign off on it, according to several people familiar with the matter. Mr. Schmidt canceled his trip, and YouTube Chief Executive Chad Hurley appeared with Mr. Moonves, announcing an online contest with CBS pegged to the Super Bowl.

Negotiations continued, but the two companies couldn't agree on a number of crucial matters, according to several people knowledgeable about the talks. For example, Google was pushing for a five-year deal, while CBS wanted a shorter one, one of these people says. In addition, some CBS division heads were reluctant to sign off on a deal, this person says. The discussions stalled, although the two companies have continued talking about smaller-scale initiatives, say the people familiar with the talks.

Media companies have grown impatient with Google for not fully implementing its "fingerprinting" system to identify copyrighted work. But Google sees the technology as imperfect and worries that rolling it out now would be problematic, says one person familiar with the matter.

"Of course there are copyright concerns there," said Mr. Schmidt last month. "But we have answered those by saying we're working very hard on fingerprinting technologies." Putting the technology to use, he said, is "a hard problem."

Earlier this month, after Viacom demanded the removal of more than 100,000 video clips from YouTube, its chief executive, Mr. Dauman, said: "We have been quite indulgent to this point. We cannot continue to allow YouTube or Google to continue to profit from our content without a reasonable commercial agreement."

Media companies have also complained that Google accepts online advertising from sites that allow users to illegally download films. Two weeks ago, Google told the companies that it would take measures to halt that, say people familiar with the matter. But, as of yesterday, a Google search for "download movies" prompted ads for sites that offer access to illegal downloads.

Mr. Schmidt said late last month that he was sure Google "will eventually do some very significant deal" with TV companies, but suggest that none were imminent. "I'm not i great hurry on this issue," he said. "I more important to get it right."

Skrentablog

« Inevitable gunk creep | Main | Adding people makes all software better »

How to beat Google, part 1

Our entire industry is scared witless by Google's dominance in search and advertising. Microsoft and Yahoo have been unsuccessful at staunching the bleeding of their search market share. VCs parrot the Google PR FUD machine that you need giant datacenters next to hydroelectric dams to compete. They spout nonsense about how startups should just use Alexa's crawl and put some ajax on top of it. Ye gods.

Grow a spine people! You have a giant growing market with just one dominant competitor, not even any real #2. You're going to do clean-tech energy saving software to shut off lightbulbs in high-rises instead? Pfft. Get a stick and try to knock G's crown off.

So here are my tips to get started. These are all about competing with Google's search engine. Of course G is big business now and does a lot of different things. Their advertising business is particularly strong, and exhibits some eBay-like network effects that substantially enhance its defensibility. Still, even if you're going to take that on too, you have to start with a strong base of search driven traffic.

1. A conventional attack against Google's search product will fail. They are unassailable in their core domain. If you merely duplicate Google's search engine, you will have nothing. A copy of their product with your brand has no pull against the original product with their brand.
2. Duplicating Google's engine is uninteresting anyway. The design and approach were begun a decade ago. You can do better now.
3. You need both a great product and a strong new brand. Both are hard problems. The lack of either dooms the effort. "Strong new brand" specifically excludes "search.you.com". The branding and positioning are half the battle.
4. You need to position your product to sub-segment the market and carve out a new niche. Or better, define an entirely new category. See Ries on how to launch a new brand into a market owned by a competitor. If it can be done in Ketchup or Shampoo, it can be done in search.
5. Forget interface innovation. The editorial value of search is in the index, not the interface. That's why google's minimalist interface is so appealing. Interface features only get in the way.
6. Forget about asking users to do anything besides typing two words into a box.
7. Users do not click on clusters, or tags, or categories, or directory tabs, or pulldowns. Ever. Extra work from users is going the wrong way. You want to figure out how the user can do even less work.
8. Your results need to be in a single column. UI successes like Google and blogging have shown that we don't want multiple columns. Distractions from the middle with junk on the sides corrupt your thinking and drive users away.
9. Your product must look different than Google in some way that is deliberately incompatible with their UI, for two reasons. One, if you look the same as them, consumers can't tell how you're different, and then you won't pull any users over. Two, if your results are shown in the

SEARCH

Search this blog:

Search

ABOUT

This page contains a single entry from the blog posted on March 26, 2007 1:27 PM.

The previous post in this blog was Inevitable gunk creep.

The next post in this blog is Adding people makes all software better.

Many more can be found on the main index page or by looking through the archives.

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Exhibit J

same form as Google's. they will simply copy whatever innovations you introduce. You need to do something they can't copy, not because they're not technically capable of doing so, but because of the constraints of their legacy interface on Google.com.

10. Your core team will be 2-3 people, not 20. You cannot build something new and different with a big team. Big teams are only capable of duplicating existing technology. The sum of 20 sets of vision is mud.

11. Search is more about systems software than algorithms or relevance tricks. That's why Google has all those OS programmers. You need a strong platform to win, you can't just cobble it together as you go like other big web apps.

12. Do not fear Google's vast CapEx. You should wish maintenance of that monster on your worst enemies. Resource constraints are healthy for innovation. You're building something new and different anyway.

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» The Google Killer from JasonKolb.com
What will kill Google? I surely donâ€™t think they will dominate the Internet forever, and I think anyone who does is ignoring history. Thereâ€™s an interesting thread about this very topic over at Skrentablog, with some interesting comments as well. [Read More]

Tracked on March 27, 2007 6:36 PM

» htbg, notes from Skrentablog
no this isn't part II yet. just some random thoughts I had this morning. i'm on vacation this week so no polish, sorry. :-) 13. Both personalization and natural language approaches to search seem to mainly be about disambiguation. I've... [Read More]

Tracked on April 13, 2007 1:03 PM

» Top 17 Search Innovations outside of Google from The Software Abstractions Blog
digg_url =
'http://blog.softwareabstractions.com/the_software_abstractions/2007/05/top_17_search_i.html';
There is an abundance of new search engines (100 at last count) - each pioneering some innovation in search technology. Here is a list of the to... [Read More]

Tracked on May 6, 2007 11:26 PM

Comments (41)

Jeff Croft·

This is a great post with some great ideas. Well done.

I do have to ask, though: wouldn't you say number five, "forget about interface innovation," files in the face of number six, seven, eight, and nine -- which seem to be all about interface innovation? :)

Other than that seeming inconsistency, I love this post. Great job.

Home
Essays
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Books
News
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School
Lisp
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Spam
FAQs
RAQs
Quotes
RSS
Bio
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Index

Microsoft is Dead

New: Y Combinator Startup News.

April 2007

A few days ago I suddenly realized Microsoft was dead. I was talking to a young startup founder about how Google was different from Yahoo. I said that Yahoo had been warped from the start by their fear of Microsoft. That was why they'd positioned themselves as a "media company" instead of a technology company. Then I looked at his face and realized he didn't understand. It was as if I'd told him how much girls liked Barry Manilow in the mid 80s. Barry who?

Microsoft? He didn't say anything, but I could tell he didn't quite believe anyone would be frightened of them.

Microsoft cast a shadow over the software world for almost 20 years starting in the late 80s. I can remember when it was IBM before them. I mostly ignored this shadow. I never used Microsoft software, so it only affected me indirectly—for example, in the spam I got from botnets. And because I wasn't paying attention, I didn't notice when the shadow disappeared.

But it's gone now. I can sense that. No one is even afraid of Microsoft anymore. They still make a lot of money—so does IBM, for that matter. But they're not dangerous.

When did Microsoft die, and of what? I know they seemed dangerous as late as 2001, because I wrote an essay then about how they were less dangerous than they seemed. I'd guess they were dead by 2005. I know when we started Y Combinator we didn't worry about Microsoft as competition for the startups we funded. In fact, we've never even invited them to the demo days we organize for startups to present to investors. We invite Yahoo and Google and some other Internet companies, but we've never bothered to invite Microsoft. Nor has anyone there ever even sent us an email. They're in a different world.

What killed them? Four things, I think, all of them occurring simultaneously in the mid 2000s.

The most obvious is Google. There can only be one big man in town, and they're clearly it. Google is the most dangerous company now by far, in both the good and bad senses of the word. Microsoft can at best limp along afterward.

When did Google take the lead? There will be a tendency to push it back to their IPO in August 2004, but they weren't setting the terms of the debate then. I'd say they took the lead in 2005. Gmail was one of the things that put them over the edge. Gmail showed they could do more than search.

Gmail also showed how much you could do with web-based software, if you took advantage of what later came to be called "Ajax." And that was the second cause of Microsoft's death: everyone can see the desktop is over. It now seems inevitable that applications will live on the web—not just email, but everything, right up to Photoshop. Even Microsoft sees that now.

Ironically, Microsoft unintentionally helped create Ajax. The x in Ajax is from the XMLHttpRequest object, which lets the browser communicate with the server in the background while displaying a page. (Originally the only way to communicate with the server was to ask for a new page.) XMLHttpRequest was created by Microsoft in the late 90s because they needed it for Outlook. What they didn't realize was that it would be useful to a lot of other people too—in fact, to anyone who wanted to make web apps work like desktop ones.

The other critical component of Ajax is Javascript, the programming language that runs in the browser. Microsoft saw the danger of Javascript and tried to keep it broken for as long as they could. [1] But eventually the open source world won, by producing Javascript libraries that grew over the brokenness of Explorer the way a tree grows over barbed wire.

The third cause of Microsoft's death was broadband Internet. Anyone who cares can have fast Internet access now. And the bigger the pipe to the server, the less you need the desktop.

The last nail in the coffin came, of all places, from Apple. Thanks to OS X, Apple has come back from the dead in a way that is extremely rare in technology. [2] Their victory is so complete that I'm now surprised when I come across a computer running Windows. Nearly all the people we fund at Y Combinator use Apple laptops. It was the same in the audience at startup school. All the computer people use Macs or Linux now. Windows is for grandmas, like Macs used to be in the 90s. So not only does the desktop no longer matter, no one who cares about computers uses Microsoft's anyway.

And of course Apple has Microsoft on the run in music too, with TV and phones on the way.

I'm glad Microsoft is dead. They were like Nero or Commodus—evil in the way only inherited power can make

- ER 131 -

you. Because remember, the Microsoft monopoly didn't begin with Microsoft. They got it from IBM. The software business was overhung by a monopoly from about the mid-1950s to about 2005. For practically its whole existence, that is. One of the reasons "Web 2.0" has such an air of euphoria about it is the feeling, conscious or not, that this era of monopoly may finally be over.

Of course, as a hacker I can't help thinking about how something broken could be fixed. Is there some way Microsoft could come back? In principle, yes. To see how, envision two things: (a) the amount of cash Microsoft now has on hand, and (b) Larry and Sergey making the rounds of all the search engines ten years ago trying to sell the idea for Google for a million dollars, and being turned down by everyone.

The surprising fact is, brilliant hackers—dangerously brilliant hackers—can be had very cheaply, by the standards of a company as rich as Microsoft. They can't hire smart people anymore, but they could buy as many as they wanted for only an order of magnitude more. So if they wanted to be a contender again, this is how they could do it:

1. Buy all the good "Web 2.0" startups. They could get substantially all of them for less than they'd have to pay for Facebook.

2. Put them all in a building in Silicon Valley, surrounded by lead shielding to protect them from any contact with Redmond.

I feel safe suggesting this, because they'd never do it. Microsoft's biggest weakness is that they still don't realize how much they suck. They still think they can write software in house. Maybe they can, by the standards of the desktop world. But that world ended a few years ago.

I already know what the reaction to this essay will be. Half the readers will say that Microsoft is still an enormously profitable company, and that I should be more careful about drawing conclusions based on what a few people think in our insular little "Web 2.0" bubble. The other half, the younger half, will complain that this is old news.

See also: Microsoft is Dead: the Cliffs Notes

Notes

[1] It doesn't take a conscious effort to make software incompatible. All you have to do is not work too hard at

fixing bugs—which, if you're a big company, you produce in copious quantities. The situation is analogous to the writing of "literary theorists." Most don't try to be obscure; they just don't make an effort to be clear. It wouldn't pay.

[2] In part because Steve Jobs got pushed out by John Sculley in a way that's rare among technology companies. If Apple's board hadn't made that blunder, they wouldn't have had to bounce back.

Y Comment on this essay.

- Portuguese Translation

- ER 133 -

THE INTERNET

WHERE IS MICROSOFT SEARCH?

Its stumbles on the Web could open the door for rivals to come after its core business

BY JAY GREENE

ISTVAN BANYAI

TIME HAS ALWAYS SEEMED to be Microsoft Corp.'s ally. In the company lore, the software giant takes three cracks at a market before establishing supremacy. The Windows operating system stumbled for years before achieving domination; so did Microsoft's server software.

But when it comes to developing a viable Internet strategy, Microsoft may be running out of time. It has long trailed Web leaders Google Inc. and Yahoo! Inc., in the use of its search engine and in search-ad sales. Now it's losing ground. In February, 2005, Microsoft's MSN Search accounted for nearly 14% of all Web searches, compared with a 46% share for search leader Google, according to research firm Nielsen//NetRatings. Just two years later, Microsoft's rebranded Windows Live Search has a 9.6% share, compared with Google's nearly 56%. That amounts to nearly 300 million lost searches per month. The sense that Microsoft is slipping was reinforced with a recent shuffling of top executives.

Microsoft's search problems present it with a huge quandary. The company's revenue from online advertising is relatively small—just $836 million in the first six months of the fiscal year ending in June, vs. $5.9 billion in sales of the Windows PC operating system. But the Web is increasingly the place where computing gets done. Everything from e-mail to customer-relationship management applications is moving from programs on a PC to services on the Net. Meanwhile search advertising is exploding: Piper Jaffray & Co. says it should hit $44.5 billion by 2011, up from $15.8 billion in 2006.

If Microsoft can't keep pace, it risks seeing its Windows and Office software franchises erode as Google and others launch Web-based rivals. "It behooves Microsoft to be there," says Charles Di Bona, an analyst with Sanford C. Bernstein & Co. "If they don't get there, it gives others a platform from which to attack Microsoft's core business."

Just as troubling, Microsoft's search problem reflects its approach to new markets in general. It spends little time focusing on tiny, emerging niches that generate little, if any, sales. But those are precisely the markets that can quickly

Exhibit L

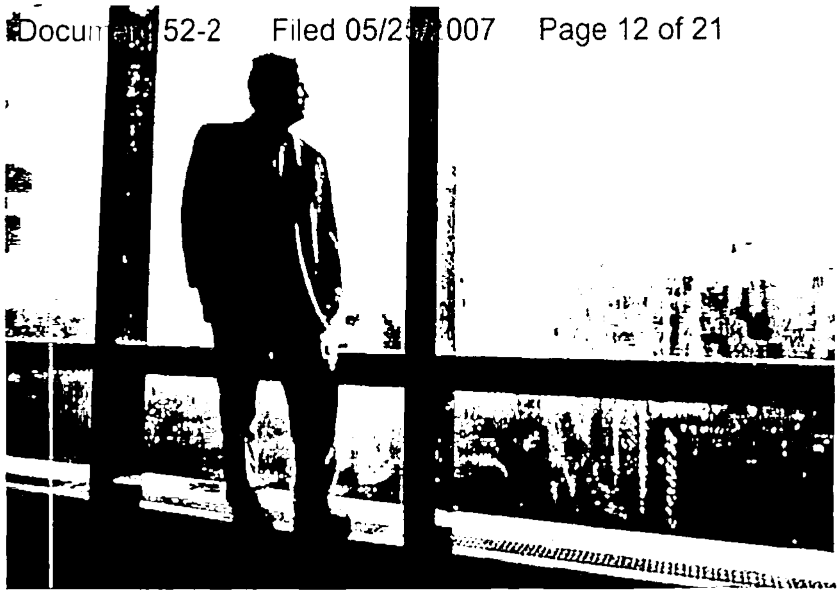

Google
Google Search
I'm Feeling Lucky
YAHOO!
Maps
Airline reservation
Books
American

blossom on the Net into meaningful businesses. "Bill [Gates] and Steve [Ballmer] and the leadership don't understand the value of small things," says Robert Scoble, a former Microsoftie whose blog recently took the company to task for its Web missteps. "That cripples their entire Internet strategy from the start."

Microsoft has already squandered much of the time it spent developing the search business. Until February, 2005, it licensed search technology from two companies, Overture and Inktomi. Then it launched a homegrown search engine, saying at the time that it would win over Web searchers with results that were more relevant than Google's. Last fall, Microsoft Chief Executive Steven A. Ballmer told *BusinessWeek* editors and reporters: "I think in the next three years, people will say, 'Hey, these guys are really a major player in online consumer and advertising.'"

There are a number of reasons that hasn't happened yet. First, Google has performed near flawlessly. Early on, Google used its simple Web site to cement the impression that to search is to "Google." And because more people search there, Google has more data with which to target relevant ads. The result: By some estimates, Google nets at least 50% higher revenue per search than No. 2 Yahoo and other search sites—allowing Google to keep investing more in improvements. For instance, on Mar. 21 it revealed a new program to give advertisers the opportunity to pay only when someone responds to an ad—by purchasing a product, filling out a form, or some other action—rather than merely when they click on it. That may be more attractive to advertisers who want concrete results.

Meanwhile, Microsoft has managed to confuse searchers. It elbowed into the search business on the back of its MSN franchise, a modestly successful online services business known mostly for its dial-up Internet access operation. Then Microsoft muddled its message in November, 2005, when it launched the "Live" initiative designed to turbocharge Web services, including search, with programs running on PCs. But Microsoft continued to use the MSN prefix on some Web sites, such as its portal and shopping page, while using Windows Live for its e-mail and search services. "You've got people who know Microsoft really well who don't know what Live means," says Danny Sullivan, editor-in-chief of searchengineland.com, which covers the business.



OUTSIDE HELP Berkowitz was hired to rev up Microsoft's Web business

For its part, Microsoft says Windows Live services are those users can personalize, while MSN ones are preprogrammed content. Concedes Microsoft spokesman Adam Sohn: "We could have been a little crisper." Steve Berkowitz, who was hired last May to rev up the Web business as senior vice-president for Microsoft's Online Services Group, declined to comment.

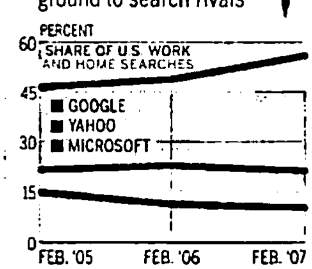
EXECUTIVE SHUFFLE

WITH PRODUCT challenges comes the inevitable Microsoft executive shuffle. Blake Irving, vice-president of the Windows Live Platform group, sent out an e-mail to his colleagues on Mar. 5 announcing plans to leave the company later this year to travel the world. Three days later, Christopher Payne, vice-president of Windows Live Search, who spearheaded search development efforts, announced he would be leaving to launch his own company.

Then on Mar. 21, Microsoft created a job at the same level as Berkowitz' to oversee the search and Web ad business. The idea is to increase the urgency of search by moving it up in the organizational structure. Satya Nadella, a vice-president who just six months ago took over the company's small-business software unit, will run the combined group, reporting directly to Kevin Johnson, president of Microsoft's platform and services division.

WEB WOES

Microsoft keeps losing ground to search rivals



Data: Nielsen//NetRatings MegaView Search

There's plenty of pressure to make this fix stick. Last May, Microsoft launched adCenter, a technology that takes demographic data (gender, age, Zip Code) of Web surfers who sign up for various MSN and Windows Live services and lays it over their search queries. That lets advertisers tailor ads to specific types of customers and should allow Microsoft to charge more. But the strategy packs a punch only if Microsoft boosts its share of search.

Microsoft could still do that. It is betting search will move beyond the all-purpose Web site where users plug in a query for any bit of information. That's not a bad idea; many analysts believe the search world will fragment into vertical sites that focus on niches. The eye-popping success of YouTube Inc., now owned by Google, is one example. More than just a place to show off your creations, YouTube has become a place to search for videos. Microsoft announced plans in February to buy Medstory Inc., a health-care search engine for consumers. And on Mar. 14 it said it would buy Tellme Networks Inc. for what one analyst estimated to be more than $1 billion. Tellme should give Microsoft a leg up in the emerging market for voice-activated search over a mobile phone.

Microsoft is also trying to nudge its massive customer base over to its search engine. On Mar. 13 it struck a deal with PC maker Lenovo Group to preload machines with the Windows Live toolbar, which leads users into its search engine. Microsoft also launched a "trial program" where it offers some large businesses service and training credits—from $2 to $10 per computer—to get employees to use Windows Live Search.

Sure, that amounts to buying business. But with all it has at stake in search, Microsoft will take it any way it can. ■

–With Robert D. Hof in San Mateo, Calif.

PHOTOGRAPH BY ROBERT CAPLIN/POLARIS; CHART BY LAUREL DAUNIS-ALLEN/BW

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NYP p. 45 4/20/07 Fri

Google's boodle up 69% in Q1

By PAUL THARP

Even as Eric Schmidt, Google's ew chairman, spoke for just an our about its profit juggernaut, hareholders got $2.8 billion richer.

Google said earnings jumped an nexpected 69 percent in its first uarter, largely from its huge online dvertising business. The surge ushed up shares $12 in after-market rading.

Schmidt, the CEO who also was publicly elevated yesterday to the chairman's post as well, picked up his own ersonal windfall of $189 million on his stock sales in the past three months.

But Schmidt gushed only about his company's gains. "We are ecstatic about our financial results this past quarter," Schmidt said. "Our core business is very strong. It is the core business that is driving our success."

Google's profit rose to $1 billion, or $3.18 per share, from the year-earlier $592 million, or $1.95 a share. Wall Street had expected about $2.91 a share.

Sales also soared, rising 63 percent to $3.66 billion, including traffic acquisition costs of $1.13 billion that it paid to affiliated Web sites serving as billboards for Google ads.

Analysts also had high praise.

"Definitely impressive. They crushed the earnings number despite hiring more aggressively than we thought," said Piper Jaffray analyst Gene Munster. "The bottom line is it was a great quarter in all metrics."

Excluding stock-option expenses, profit was $3.68 per share, up from the $2.29 a year earlier. Google closed yesterday at $471.65, off $4.36 in trading ahead of the report.

ERIC SCHMIDT
$189M in 3 months.

Exhibit M

TheBusinessWeek

NEWS YOU NEED TO KNOW EDITED BY HARRY MAURER

PRIVATE EQUITY NABS SALLIE

It's hard to keep up with Sallie Mae. Just three years ago the nation's largest student lender was a quasi-government enterprise. Now the public company is going private in a $25 billion deal led by a consortium of two buyout firms, J.C. Flowers and Friedman Fleischer & Lowe, and two investment banks, JPMorgan Chase and Bank of America. Sallie Mae recently settled with New York State Attorney General Andrew Cuomo in the still-unfolding student loan investigation, pledging to stop proffering perks to college financial-aid officers.

The Sallie Mae deal, which was announced on Apr. 16, faces plenty of scrutiny from regulators. Some 85% of the company's business is guaranteed by the government. Nonetheless, Sallie's suitors are arriving at a good time. Both the Bush Administration and the Democratic-led Congress have been clamoring to cut the subsidies that have made Sallie so profitable over the years. If Sallie's federal funding or access to capital dries up, the buyers' deep pockets and $200 billion in backup financing will help ensure it can keep making those low-cost loans.

ONLINE *"Sallie Mae's suitors," www.businessweek.com/go/tbw*

Online Ad Wars

Google's blitzkrieg isn't slowing down. On Apr. 13 the search king announced it will buy online ad placement firm DoubleClick for $3.1 billion, giving it a chance to expand beyond search ads to online display ads. Microsoft and AT&T cried foul and said they'd push for antitrust review. On Apr. 16, Google struck again, signing a deal with Clear Channel to place ads on 675 radio stations. Rivals aren't standing still: Yahoo! on Apr. 16 added five newspaper publishers, including McClatchy and E.W.Scripps, to an ad-revenue sharing partnership, though a grim first-quarter earnings report on Apr. 17 renewed speculation that CEO Terry Semel's job may be in jeopardy.

ONLINE *"Google: The ad dominator?" and "Yahoo's next search: A new CEO?" www.businessweek.com/go/tbw*

New Suitors for ABN?

London-based Barclays and ABN Amro of the Netherlands are holding hands, but will a trio tear them apart? The two are close to an $80 billion to $90 billion deal that would create the world's fifth-largest bank, said a source close to ABN on Apr. 18. Meanwhile, Royal Bank of Scotland, Spain's Santander, and Belgian-Dutch Fortis have written to ABN requesting access to its books. Analysts say that by dividing up the bank among themselves, these three could afford to bid more than Barclays. ABN is skeptical but will likely sit down with them soon.

Inflation Watch

Flaring gasoline prices (up nearly 11%) caused inflation to heat up in March, but other prices were blessedly cool, according to figures released by the Labor Dept. on Apr. 17. Among the items that got cheaper in March: Fruits and vegetables, lodging, apparel, used cars and trucks, and medical-care products. Core consumer prices excluding food and energy rose just 0.1% and over the past half-year are up at an annual rate of 1.9%.

ONLINE *"March CPI won't sway inflation-wary Fed," www.businessweek.com/go/tbw*

BlackBerry Breakdown

"Crackberry" addicts across North America went cold turkey for several long hours late on Apr. 17-18 when Research in Motion's popular BlackBerry service stopped sending and receiving e-mails. RIM did not have an immediate explanation for its 8 million customers. Its shares tumbled on Apr. 18 in early trading before recovering.

Vonage in Peril

More bad signals from Vonage: The Internet phone outfit said on Apr. 12 that CEO Michael Snyder is leaving immediately.

CAROL T. POWERS/BLOOMBERG NEWS

Exhibit N

NYPost 5/5/07 p. 23

Yahoo! stock jumps on Microsoft news

By PETER LAURIA and ZACHERY KOUWE

Yahoo! investors traded roughly $7.5 billion of market value in the Internet company's shares yesterday as news of deal talks with Microsoft put it in play.

Yahoo! shares jumped as much as 18 percent during the day but gave back some of those gains to end the trading session up 10 percent, or $2.80, to $30.98.

Twenty percent of the company's total outstanding shares traded hands yesterday, as volume spiked from an average of 23.2 million trades to more than 245 million trades on news first reported in The Post that Microsoft had re- d talks with Yahoo! a merger or combination that would help both compete with Google.

BILL'S HARD DRIVE

Microsoft eyes search giant in proposed takeover

EXCLUSIVE

CALLED IT: How the Post broke the news yesterday.

Sources said the talks with Microsoft are wide-ranging and include everything from an outright acquisition to the purchase of an equity stake to a joint venture setup.

While Microsoft and Yahoo! have discussed a deal in the past, sources said there is a renewed urgency on the part of both companies to keep pace with rival Google.

"There are so few meaningful Internet assets out there now that if these two companies don't link up somehow, what's left for them to do," said one banking source rhetorically.

News of Microsoft's interest in Yahoo! sparked speculation on Wall Street over who else might make a bid for the company.

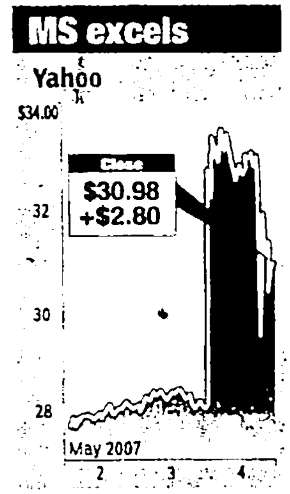
In addition to AOL, rumors that General Electric's NBC, cable operator Comcast and AT&T have eyed Yahoo! have swirled for weeks.

Of these possible suitors, sources said AT&T likely has the most interest in Yahoo!

The company, which is in an intense battle with cable and satellite operators as well as traditional competitor Verizon, may want to acquire Yahoo! and add it to its offering of phone, video and broadband services.

AT&T and Yahoo! have an existing agreement that expires in 2008.

Yahoo! is under intense pressure from some of its largest shareholders to boost its stock price, and



that pressure likely intensified yesterday as hedge funds piled into the stock.

peter.lauria@nypost.com

Exhibit O

35
New York Post, Wednesday, May 16, 2007 nypost.com

YAHOO! RAISES SIGHTS

CFO is dealmaker

By ZACHERY KOUWE and PETER LAURIA

Yahoo! hired veteran dealmaker Blake Jorgensen to be its new chief financial officer yesterday in a sign the struggling Internet titan may be looking for its own deals, despite overtures from software giant Microsoft.

Jorgensen, who co-founded tech-focused investment bank Thomas Weisel Partners in 1998, replaces Susan Decker, who was promoted last December to oversee advertising sales in a management shake-up.

Jorgensen has previously served as an adviser on some of Yahoo!'s biggest deals, including the $300 million acquisition of Inktomi in 2002 and the $4.5 billion deal for GeoCities in 1999, according to data provider Capital IQ.

Since then Yahoo!, whose shareholders are upset at its stagnant stock price, has struggled on the acquisition front, losing DoubleClick to Google and flirting with — but unable to seal a deal for — social networking site Facebook.

Losing DoubleClick actually helped propel Yahoo!'s most recent deal, last month's $680 million purchase of the 80 percent of online ad exchange Right Media that it didn't already own.

"Blake has a strong track record of building and running a successful investment-banking franchise serving many clients in the Internet and technology industries," Yahoo! chief Terry Semel said in a statement.

"His broad financial, operating and strategic experience, which complements the deep financial expertise of our existing team, will make him a valuable addition to Yahoo!'s senior management."

Toby Coppel, who previously led Yahoo!'s mergers-and-acquisitions team, was appointed managing director of Europe. The company's deal team will now report directly to Jorgensen.

"The industry has evolved so dramatically that there's a much larger opportunity to pair up solid businesses with one another," Jorgensen told Bloomberg News yesterday.

"We're seeing much, much better opportunities than existed back in the bubble days of 2000."

Earlier this month, The Post reported that Microsoft has stepped up its efforts to acquire Yahoo!, going so far as to make an informal offer over dinner three months ago that Yahoo! executives rejected outright.

And while sources say Microsoft is still interested in a deal, Yahoo! executives are content to see how its new search-advertising platform, Project Panama, performs over the next quarter or two before revisiting the idea of such a transformative deal.

"Investors are looking for Yahoo! to execute on Panama to close the monetization gap with Google," said UBS analyst Ben Schachter.

While Yahoo! cofounder Jerry Yang declined to comment on any deal negotiations with Microsoft, he did acknowledge in an interview with The Post earlier this month that Yahoo! investors are clamoring for the company to do something to jumpstart its moribund stock price.

"Obviously, there ... are short-term shareholders out there that are unhappy, and we agree that the company has to show better performance, but it's going to take time," Yang said.

"We are focused on executing our strategic plan and we're gaining momentum. We think our longer-term investors understand that."

zachery.kouwe@nypost.com

Exhibit P

Business

Nasdaq Comp. Up 19.07 2,558.45

NYPost 5/19/07 p.21

85% SOLUTION

Microsoft grabs online ad firm aQuantive for $6B

By HOLLY M. SANDERS

Martin Sorrell's WPP just bid for 24/7 Real Media, now Bill Gates (right) and Microsoft are in the race with its purchase of aQuantive.

Post photo composite

Companies	Google/DoubleClick	Yahoo!/Right Media	WPP/24-7 Real Media	Microsoft/aQuantive
Date	4/14/07	4/30/07	5/17/07	5/18/07
Price	$3.1B	$680M	$649M	$6B

Afraid of being left behind in the online ad race, Microsoft ponied up $6 billion in cash for Web ad firm aQuantive — the biggest acquisition in its history — to catch up to Google and other rivals.

Determined not to be outbid this time, Microsoft paid $66.50 a share for aQuantive, a whopping 85 percent premium over the company's closing price of $35.87.

The rich price — especially for a company that has avoided big deals — underscores the frustration and urgency for Microsoft after it lost to Google in a heated bidding war for DoubleClick.

"It is certainly a significant transaction and large in the context of what we have done historically, but we think entirely appropriate in terms of looking forward rather than backward," Yusuf Mehdi, Microsoft's chief advertising strategist, said on a conference call to discuss the deal.

Microsoft continues to trail Google in the search ad business with its share of the market steadily declining. The software giant is in danger of falling further behind Google, which is pushing deep into display advertising with its $3.1 billion purchase of DoubleClick.

The threat of "Google-Click" sent competitors off on a mad dash for the remaining online ad firms, prompting Yahoo!'s $680 million purchase of Right Media and WPP Group's $649 million takeover of 24/7 Real Media. The frenzied dealmaking and the scarcity of Web ad firms with significant size put aQuantive on the acquisition short list.

Seattle-based aQuantive offers an array of online ad services and boasts good relationships with advertisers, ad agencies and Web publishers. Its proximity to Microsoft in neighboring Redmond, Wash., made it even more attractive.

AQuantive's system, Atlas, competes directly with DoubleClick in serving up and tracking ad campaigns. Its Avenue A/Razorfish division also creates ads and Web sites.

With the acquisition, Microsoft is reaching well beyond its own network of online properties, such as MSN and Xbox Live, into selling and delivering advertising to Web sites across the Internet.

U.S. spending on Internet advertising is expected to hit $20 billion this year as companies shift more ad dollars online, according to eMarketer.

The purchase also means that Microsoft will be running an ad agency — not an obvious fit for a technology company. Roughly two-thirds of aQuantive's revenue comes from that side of the business. Microsoft said it has no plans to sell it off.

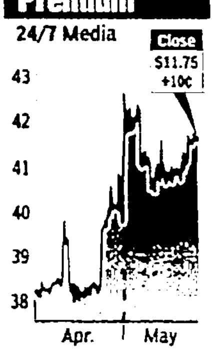
Microsoft is also aiming to bulk up its capabilities for delivering ads through online videos, podcasting and e-mail messenger services.

"Digital advertising is no longer just search," said Kevin Lee, chairman of Internet ad firm Did-It. "It's going to include all those other touch points that are digital."

Microsoft is also looking to the future when the big Internet players will be able to deliver individual, relevant TV ads to people's homes through their cable set-top boxes.

holly.sanders@nypost.com

Premium



Sorrell may have to pay more for 24/7

After a flurry of rich deals for Web ad firms, some investors are betting that ad giant WPP Group will have to sweeten its initial takeover offer for online ad services 24/7 Real Media.

WPP chief Martin Sorrell, considered one of the savviest dealmakers in the ad industry, is hoping to snap up 24/7 Real Media in a deal valued at $649 million.

The $11.75-a-share price represents a relatively small 4.4 percent premium, but 24/7 Real Media's stock had already risen nearly 40 percent before the deal since The Post first reported that WPP was eyeing the company. It closed yesterday at $11.75, up 10 cents.

WPP announced the deal on Thursday, a day before Microsoft acquired online ad services firm aQuantive for $6 billion, nearly an 85 percent premium over the share price. Microsoft was also a contender for 24/7 Real Media but passed it over for aQuantive.

After the deal was announced yesterday, shares of 24/7 Real Media traded at or above the $11.75 deal price for much of the day, indicating that some investors believe a higher bid is still a possibility.

Some investors have also wondered whether another bidder might still emerge before the deal is completed. WPP's Sorrell declined to say during a conference call with analysts whether there were other bidders.

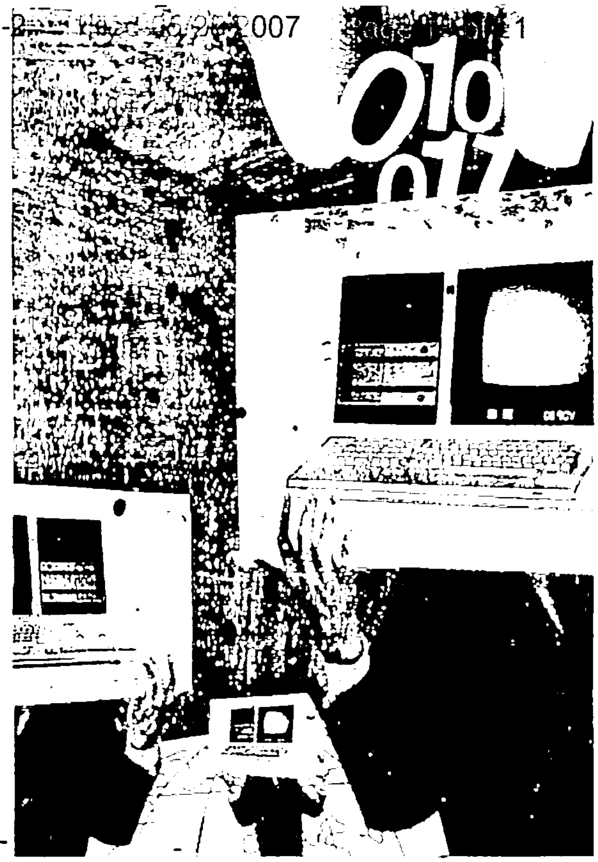
"There's a possibly that either shareholders are not happy or someone else might come back with a higher offer," said one 24/7 Real Media shareholder.

If a better offer came along, 24/7 Real Media would have to pay a modest breakup fee of $24 million.

With fewer firms remaining and prices for online ad firms skyrocketing, WPP is trying to get the deal done in a hurry by launching a cash tender offer for 24/7 Real Media in which shareholders swap their stock for cash.

Holly M. Sanders

Exhibit Q



ADVERTISING

BEHIND THOSE WEB MERGERS

Marketers want smarter, targeted online ads. That's driving deals

BY ROBERT D. HOF AND CATHERINE HOLAHAN

FORD'S RECENT MARCHING order for its media buys sounded more like a personals ad than a marketing campaign: Find us women online age 25 to 54 who are independent and business-minded. The prize for delivering this special group of potential buyers? Ford Motor Co. would pay big bucks to run more than 200 million ads for its Lincoln Mercury line over three weeks on thousands of Web sites. So Specific Media Inc., an online ad-targeting network, dove into its massive data troves, which contain anonymous Web-browsing profiles of 95% of the U.S. online population.

Starting Apr. 1, anyone whose Web profile made them appear female and interested in business—such as those who had visited both allrecipes.com and CareerBuilder.com—was served a Lincoln Mercury ad when she surfed to a Specific Media network site, such as Merriam-Webster. Specific Media sold ad space to Ford for a good deal more than Specific paid for it—in one case, 62% more. And Ford got a higher number of people requesting dealer locations and price quotes than if it had simply blanketed random Web sites with ads. Says Larry Carney, digital group director for WPP Group-owned Team Detroit, which hired Specific Media: "You want to know that every dollar you're spending has a return on investment."

Indeed. And that demand for better returns on ad spending is helping to drive a new spate of Internet mergers and acquisitions. They're all aimed at least in part at amassing better online data to help divine consumer interests and intentions, enabling Web sites to serve up more relevant ads—and charge more for them. In a deal that shook both Madison Avenue and Silicon Valley, search giant Google Inc. said in early April that it will spend $3.1 billion to buy DoubleClick Inc., one of the largest collectors of demographic consumer data on the Web. A few weeks later, Yahoo! Inc. paid $680 million for the remaining 80% it didn't already own of Right Media Inc.

On May 4 the possibility of a far larger, multibillion-dollar merger, Microsoft Corp. and Yahoo, was the talk of Wall Street until it turned out that discussions involving a purchase of Yahoo had ended months ago. Nonetheless, some people think data could be a prime motive behind any partnership that may yet emerge: Microsoft's valuable demographic data provided by users of its Hotmail, MSN, and other services combined with data from Yahoo's array of personalized services could offer a credible challenge in ad targeting to Google's highly relevant search ads.

In other words, the rest of online advertising, from banner ads to video spots to pop-up ads, is getting Googlified. Google made the business of selling ads against search results a runaway success—in the process making display ads less attractive to advertisers. Not only can advertisers target just the right customers based on search terms they type in, no guessing required, but those advertisers also can track exactly how many people click on the ad and whether they bought something as a result.

THE STAT

32%

Google's expected share of total Internet advertising dollars in 2007

Data: eMarketer Inc.

MEASURABILITY MINDSET

NOW MARKETERS are spoiled. And as big-brand advertisers move online in greater force, they're demanding the ability to apply the same kind of targeting and measurability they get from paid search to all the other ads they run. "Everybody's got the mindset that everything should be measurable," says Erik Qualman, head of North America marketing for travel site Travelzoo Inc. One reason: While targeted ads online may cost about twice as much as untargeted ads, they can produce twice the return on investment. As a result, says David R. Verklin, chief executive of Carat Americas, the agency that buys online ads for the likes of Pfizer Inc., "data and data analytics are the next big battleground in marketing."

And on the Internet. Ad networks such as Specific Media, Blue Lithium, and 24/7 Real Media appear to be on the short list for acquisition by major media and tech companies. In fact, analysts believe 24/7 Real Media already has been courted by Microsoft and WPP. ■

—With Burt Helm in New York

ILLUSTRATION BY MARIO WAGNER/AGOODSON.COM

Exhibit R

- ER 142 -

NY Post 5/23/07 p. 37

AD & SUBTRACT

Google announces purge of ad-heavy Web sites

By HOLLY M. SANDERS

Google is trying to clean up its search results by cracking down on dubious Web sites that contain little content but lots of ads.

The search giant has notified a number of Web publishers in the last few days that they will be dropped from its popular "AdSense" program starting June 1.

The cut-off notices jolted the online ad world, where hundreds of thousands of people make money in exchange for allowing Google to place ads on their Web sites.

Google's AdSense software has made it easy for advertisers to piggyback on any Web site — no matter how obscure — that attracts an audience.

For example, on a travel Web site Google's AdSense will automatically serve up relevant travel-related ads on that site. Web site publishers then get paid each time a visitor clicks on one of the ads supplied by Google.

The easy money has led to a rise in "made-for-AdSense" Web pages that critics say clutter up the Internet and divert online searches. These content-free sites, which often are nothing more than links to other sites and a bunch of Google ads, exist solely to exploit AdSense.

"The economy has built up to game the Google system," said Darren Chervitz, the director of research for Jacob Asset Management.

Google is sending cease and desist orders to companies that buy ads tied to Web searches — but then yank users to sites with no relevant content.

Web site publishers do it by pocketing the difference between what they pay Google to drive traffic to their site and the amount they get for running Google ads.

For instance a publisher can bid on a cheap search term, say "purple rain coat," so that its site purporting to be about rain gear is displayed each time someone searches for the term on Google.

The publisher may pay a nickel to Google each time someone clicks on the link to their Web site, which may be nothing more than a picture of a purple raincoat.

The publisher makes money if, on average, they collect a dime each time a user then clicks on one of the Google-supplied AdSense ads.

Although Google still makes money off of these sites, they don't like them because they hurt the quality of search results and reduce the "click through" rate for advertisers.

"If advertisers get a bad return on their investment, they will stop spending money," said Jeremy Schoemaker, an AdSense expert who runs the popular ShoeMoney.com blog.

Search experts said Google routinely cuts off publishers who run afoul of AdSense rules but they believe this latest round of notices was a more widespread effort to clean up its ad network.

"I don't really remember where this many people reported it at one time," said Chris Winfield, president of Internet search marketing firm 10e20.

Google confirmed that it had sent out notices, but characterized it as part of an ongoing review.

"In some cases violations of our program policies will result in termination from AdSense," Google said in a statement.

holly.sanders@nypost.com

More on Google page 38.

Outback founders raise steaks to get deal OK

By ZACHERY KOUWE

Outback Steakhouse's founders and their private-equity backers juiced their $3.2 billion takeover offer yesterday following an outcry from shareholders, who threatened to kill the deal.

...are said to support the new offer, especially in light of declining sales in the restaurant sector. Sources familiar with Outback, the largest U.S. steak chain, said the company will likely announce another month of declining same-store sales...

Exhibit S

[redacted]

OSI Restaurant Partners

$41.00 40.80 Close $40.94

harshly criticized by shareholders for pushing Out-...

- ER 143 -

...pany's directors recently paid $4 million to settle a lawsuit brought by a group...

HUMAN RESOURCES

EVEN YAHOO! GETS THE BLUES

CEO Semel's next turnaround task: Boost morale and keep employees from leaving

BY ROBERT D. HOF

IT WAS A BIT OF GOOD NEWS THAT Yahoo Chief Executive Terry Semel really needed: Following a lengthy search, the Internet company on May 15 hired a new chief financial officer to succeed Susan Decker, now head of Yahoo's key advertising group. But the appointment of Blake Jorgensen, co-founder of investment bank Thomas Weisel Partners Group Inc., also fueled renewed speculation that Yahoo! Inc. might be seeking to shed assets or even get acquired as it struggles to catch up with runaway rival Google Inc. Yahoo's stock fell 1.7% on an up day for the market.

The reaction was emblematic of the pall over Yahoo that its leaders seem unable to lift. On May 4, reports that Microsoft might buy Yahoo sent the latter's stock soaring—and Yahoo résumés flying to companies such as Google and Apple—before it turned out the buyout talks were long cold. That followed a disappointing 11% drop in first-quarter earnings on Apr. 17, with revenue growth of 7% badly trailing Google's 63% sales jump. Yahoo's stock plunged 12% the next day, prompting speculation that Semel was vulnerable.

Now, as a steady stream of Yahoos, from vice-presidents to engineers, continues to seek greener stock options at Google and innumerable Web startups, people close to the company worry that a crisis of morale could cripple its efforts to turn itself around. "Morale is really down," says one active recruiter, who's talking to a "C-level" Yahoo exec about jobs elsewhere. One vice-president who left last year had to stop using Yahoo's instant-messaging service for six months after being inundated with e-mails from former colleagues seeking a job or career advice.

The biggest concern, according to some former Yahoos: The departed now include more people who have been with the company for six or more years of its 13-year existence—not the very top execs, but the seasoned middle managers Yahoo needs to carry out its ambitious turnaround plans. "The last wave is folks who have been there a long time," says former Yahoo Vice-President Teresa Phillips, co-founder and CEO of stealth startup Graspr, who left last year on good terms.

SOUL-SEARCHING

Three signs of Yahoo!'s malaise:

Veterans are bailing, taking with them institutional knowledge.

A legacy of bureaucracy still delays product launches.

Dispirited troops want more passion from Semel.

DANIEL ACKER/BLOOMBERG NEWS

SEMEL He rescued Yahoo in 2001. Can he do it again?

"Now it's the people who have the institutional knowledge who are leaving." Some recent departees worry that if the company can't soon create more excitement around its products—and its stock—the steady trickle of attrition could become a flood and include senior executives.

Yahoo says that it's not having more trouble with hiring or attrition and that some of the departures are a natural result of the restructuring. "You want to mix things up, you want to reshuffle the deck a bit," says Jeff Weiner, executive vice-president of Yahoo's Network Div., which includes media, search, and other services. Nonetheless, Yahoo says headcount grew by 16% in the past year, and 90% of job offers are accepted. And it says "regrettable attrition"—people it didn't want to lose—is down.

The company also points to progress since a reorganization last December. It got its long-delayed new search-ad service, Panama, out the door in February to generally positive reviews, though it has yet to boost the bottom line. Yahoo inked ad deals with Comcast and Viacom, and on Apr. 30 snapped up the rest of online ad exchange Right Media for $680 million. At the same time it has cut redundant operations, for instance axing Yahoo Photos in favor of its photo-sharing site, Flickr. So in some Yahoo quarters, at least, things are improving, helping revive the morale of the people involved.

The question in the minds of many people close to the company is whether all this is too little, too late. The key problem, according to many former Yahoos, is an organizational structure that still requires multiple division heads to sign off on big projects, sometimes delaying them for months. The result, they say: While Yahoo has managed to produce some successful new services, such as Yahoo! Answers, it doesn't boast world-beating services such as MySpace and Facebook.

Now people inside and outside Yahoo again are asking a question that has come up over and over in the past year: Can Semel, who saved Yahoo from dot-com oblivion after he arrived in 2001, do it again? "I think Terry is an asset," says a former Yahoo who notes that the company needs a seasoned media exec in charge. "The question is: Is he the right guy to rally the people?" Clearly, many of Yahoo's 11,700 employees think so. Problem is, many others keep voting with their feet. ■

Exhibit T

CERTIFICATE OF SERVICE

I, Carl E. Person, declare:

I am the plaintiff in this action and fully familiar with the facts stated herein, and make this declaration to certify that on May 25, 2007, I served on

David H. Kramer, Esq.
Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto CA 94304-1050

by mail addressed as per above and by facsimile the following document:

DECLARATION OF CARL E. PERSON
IN OPPOSITION TO DEFENDANT
GOOGLE'S MOTION TO DISMISS

Executed under the penalty of perjury.

Dated: May 25, 2007

Carl E. Person

GOCal_mem04_052307A.doc

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CARL E. PERSON, Plaintiff, v. GOOGLE INC., Defendant.	CASE NO.: C 06-7297 JF (RS) **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT GOOGLE'S MOTION TO DISMISS** Date: June 15, 2007 Time: 9:00 a.m. Dept: 3 Before: Hon. Jeremy Fogel

I. CONCLUSION

For the reasons set forth above, it is respectfully requested that defendant's motion to dismiss under Rule 12(b)(6) be denied in its entirety and that the Plaintiff be granted leave to file a further amended complaint to the extent such amendments are determined by the Court to be non-futile.

Dated: New York, New York
May 25, 2007

Respectfully submitted,

Carl E. Person

Carl E. Person
Plaintiff, Pro Se
325 W. 45th Street - Suite 201
New York NY 10036-3803
Tel. (212) 307-4444; Fax (212) 307-0247
Email: carlpers@ix.netcom.com

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CARL E. PERSON,	)	C-06-7297-JF
PLAINTIFF,	)	JUNE 15, 2007
V.	)	
GOOGLE, INC.,	)	PAGES 1-17
DEFENDANT.	)	

COPY

THE PROCEEDINGS WERE HELD BEFORE

THE HONORABLE UNITED STATES DISTRICT

JUDGE JEREMY FOGEL

A P P E A R A N C E S:

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NEW YORK, NEW YORK 10019

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

SAN JOSE, CALIFORNIA JUNE 15, 2007

P R O C E E D I N G S

(WHEREUPON, COURT CONVENED AND THE FOLLOWING PROCEEDINGS WERE HELD:)

THE COURT: PERSON VERSUS GOOGLE.

MR. JACOBSON: GOOD MORNING, YOUR HONOR. JONATHAN JACOBSON FOR THE DEFENDANT.

MR. KRAMER: HI, YOUR HONOR. DAVE KRAMER FOR THE DEFENDANT.

MR. PERSON: CARL PERSON PRO SE.

THE COURT: GOOD MORNING. THANK YOU FOR YOUR ADDITIONAL BRIEFING.

I GUESS, MR. PERSON, I WANT TO START WITH YOU AND I WANT TO MAKE SURE THAT I, THAT I UNDERSTAND YOUR ARGUMENT FULLY WITH REGARD TO THE RELEVANT MARKET? YOU'RE STILL CONTENDING, ARE YOU NOT, THAT THE SEARCH AD MARKET IS A DEFINABLE RELATIVE MARKET.

MR. PERSON: I AM, YOUR HONOR, WITH A BUILT IN --

THE COURT: WHICH IS THE INTERNET AD MARKET ITSELF.

MR. PERSON: THE INTERNET AD MARKET WHEN IT COMES TO ADVERTISING COMMUNITY RESEARCH WEB SITES.

THE COURT: AND LET ME PURSUE YOUR ALTERNATIVE FOR A SECOND.

HOW, HOW -- THAT, THAT -- THE INTERNET AD MARKET IS VAST. I MEAN, AS BIG AND POWERFUL AS GOOGLE IS I DON'T THINK IT COULD BE, IT COULD BE SERIOUSLY ALLEGED THAT THEY MONOPOLIZED THE ENTIRE INTERNET AD MARKET.

SO WHAT YOU'RE SAYING IS THAT YOU'RE STILL TALKING ABOUT A PORTION OF THE, OF THE INTERNET ADVERTISING MARKET WHICH IS DEFINED AS, AS COMMUNITY SEARCH WEB SITES WHICH ARE MONETIZED.

MR. PERSON: YOUR HONOR, THAT'S A HUGE MARKET AND U2 AND MY SPACE ARE THE PRIME EXAMPLES AND PEOPLE ARE LOOKING TO GO INTO THAT MARKET FOR THE REASON THAT, THAT CONTENT THAT IS PUT ON BY THE COMMUNITY IS, IS VAST. EIGHTY MILLION PEOPLE HAVE, HAVE WEB SITES ON, ON MY SPACE. AND, AND YOU NEED A SEARCH ENGINE IN ORDER TO GET AT THAT.

IF ON THE OTHER HAND SOMEBODY WRITES THE MATERIAL THEMSELVES, THEY PROVIDE THEIR OWN MEANS OF ACCESS WITH THE MATERIAL THAT THEY PUT ON.

BUT A COMMUNITY WEB SITE IS SPRAWLING. YOU NEED A SEARCH ENGINE AND WHEN YOU HAVE A SEARCH ENGINE, IT IS IDEAL FOR USE OF SEARCH ADVERTISING TO MONETIZE THE WEB SITE.

SO MY SPACE, THE OWNER, THEY'RE PUSHING THAT. THEY'RE ANGRY THAT U2 WAS BOUGHT BY GOOGLE BECAUSE THEY'RE COMPETING WITH THEM AND OTHERS, OTHERS ARE VIACOM IS GOING INTO THAT.

PEOPLE ARE HEADING THERE. I'M HEADING THERE MYSELF. I SEE THAT AS A VERY LUCRATIVE MARKET, ONE WHERE YOU HAVE THE PUBLIC PUTTING IN THE, IN THE WEB SITE MATERIAL, NEEDING A SEARCH AND MONETIZING IT.

IF YOU LOOK AT THE DOLLAR AMOUNT IN THAT MARKET, GOOGLE BY FAR IS, IS A MONOPOLY, IF YOU'RE LOOKING AT DOLLAR AMOUNT OF THE MARKET, YOUR HONOR.

THE COURT: OKAY. SO I THINK I UNDERSTAND.

MR. PERSON: YES, YES.

THE COURT: LET ME MAKE SURE I DO. THAT A COMMUNITY WEB SITE AND YOU BELIEVE THAT CAN BE DEFINED, THE COMMUNITY WEB SITE CAN BE DEFINED SPECIFICALLY ENOUGH IN THE EXAMPLES YOU HAVE GIVEN BETWEEN MY SPACE AND YOU SAYING THAT GOOGLE HAS, HAS YOUR ARGUMENT IS THAT THAT IS A RELEVANT MARKET AND GOOGLE EXERCISES UNDUE POWER BECAUSE OF ITS MARKET SHARE.

MR. PERSON: BY REASON OF THE DOLLAR AMOUNT INVOLVED. YOU CAN'T JUST LOOK AT THE NUMBER

OF SEARCHES. YOU LOOK AT THE DOLLAR AMOUNT AND THEIR DOLLAR AMOUNT HAS GOT TO BE IN THE MONOPOLIZING AREA.

THE COURT: THE DOLLAR AMOUNT OF WHAT?

MR. PERSON: OF THE MONEY THAT, THAT THEY OBTAINED THROUGH THE --

THE COURT: THROUGH THE ADVERTISING.

MR. PERSON: THROUGH THE ADVERTISING, YES.

THE COURT: THANK YOU, MR. PERSON. I APPRECIATE THAT. LET ME HEAR A RESPONSE FROM GOOGLE'S COUNSEL.

MR. JACOBSON: YOUR HONOR, THE ASPECTS OF COMMUNITY SEARCH WEB SITES ARE NOT REALLY DEFINED IN THE COMPLAINT. THEY ARE SET FORTH AT PAGE 12 OF MR. PERSON'S BRIEF.

AND HE DEFINES THEM AS USERS CREATING CONTENT; SECOND, THE RANGE OF CONTENT THAT THE USERS CREATE IS BROAD; AND, THREE, A WEB SITE SEARCH FACILITY IS NEEDED TO SEARCH THAT CONTENT.

WHAT HE DOESN'T ALLEGE IS THAT GOOGLE IS; GOOGLE IS IN THE, IN THE COMMUNITY WEB SITE BUSINESS ITSELF. HE SAYS THAT THAT IS, THAT IS OTHER, OTHER CITES SUCH AS MY SPACE.

HE IS, HE IS NOT ALLEGING, ALLEGING A, A

MONOPOLY OF THAT MARKET. HE'S ALLEGING A, A MARKET, A MARKET IN, IN WHICH GOOGLE IS ALLEGED TO BE MONOPOLIZING AS A RESULT OF THE MONETIZING OF REVENUE FROM THAT SITE.

WHAT THE COMPLAINT DOES NOT EXPLAIN IS HOW MONETIZING THESE COMMUNITY SEARCH SITES IS IN ANY WAY DIFFERENT FROM THE PERSPECTIVE OF THE MONETIZING COMPETITION FROM OTHER WEB SITES SUCH AS AMAZON OR OTHER FORMS OF, OF, OF ADVERTISING AT ALL.

THERE IS NOTHING IN THE COMPLAINT TO, TO DISTINGUISH FROM, FROM THE MONETIZING PERSPECTIVE, WHICH IS, WHICH IS THE MARKET THAT GOOGLE IS ACCUSED OF MONOPOLIZING, COMMUNITY SEARCH FROM ANYTHING ELSE.

IT'S JUST ONE, ONE ASPECT OF THIS, OF THIS OVERALL MARKET THAT WAS ALLEGED THE LAST TIME AROUND OF MONETIZING REVENUE FROM THE INTERNET.

AND THERE'S NO DISTINCTION ALLEGED IN THE COMPLAINT AND THERE'S NO WAY TO ARTICULATE THIS SENSIBLY AS A RELEVANT MARKET SUBJECT TO MONOPOLIZATION FOR ANY.

THE COURT: LET ME MAKE SURE I UNDERSTAND THIS BECAUSE IT GETS COMPLICATED BUT, BUT SAY YOU COULD COME UP WITH A WORKABLE DEFINITION OF A

COMMUNITY WORK WEB SITE.

MR. JACOBSON: CORRECT.

THE COURT: IF ONE SEARCH ENGINE DERIVES 99 PERCENT OF THE REVENUE, THE ADVERTISING REVENUE FROM LINKING YOU TO THAT WEB SITE, WHY WOULDN'T THAT BE AN ANTITRUST PROBLEM?

MR. JACOBSON: WELL, IT WOULD ONLY BE AN ANTITRUST PROBLEM IF THERE WAS EXCLUSIONARY CONDUCT.

THE COURT: WHICH IS ANOTHER PIECE BUT I'M STILL BACK ON RELEVANT MARKET.

MR. JACOBSON: BECAUSE THE QUESTION WOULD BE COULD YOU INCREASE THE PRICE OF, OF MONETIZING THOSE WEB SITES THROUGH YOUR SEARCH FACILITIES SIGNIFICANTLY WITHOUT ATTRACTING COMPETITION FROM OTHER MEANS OF MONETIZING THOSE WEB SITES AND THERE'S NO ALLEGATION IN THE COMPLAINT TO THAT.

THE COURT: THE FACT THAT GOOGLE MAY BE THE MEANS BY WHICH, BY WHICH MOST OF THE WORLD LINKS TO THESE WEB SITES IS NOT, IS NOT, IS NOT ILLEGAL.

MR. JACOBSON: IT'S NOT ILLEGAL BUT FOR THESE PURPOSES IT DOESN'T DEFINE A MARKET BECAUSE THERE ARE OTHER WAYS OF MONETIZING YOUR WEB SITE.

AMAZON, FOR EXAMPLE, IS MONETIZING ITS

WEB SITE BY SELLING GOODS. SO THERE ARE INFINITE WAYS OF MONETIZING WEB SITES. THERE'S NOTHING UNIQUE HERE ABOUT COMMUNITY WEB SITES OF THE SORT THAT MR. PERSON DEFINES THAT, THAT MAKES THIS A MARKET SUSCEPTIBLE TO MONOPOLIZATION.

THE COURT: MY SPACE COULD START SELLING GOODS.

MR. JACOBSON: CORRECT.

THE COURT: OTHER SEARCH ENGINES THAT SELL ADVERTISING COULD, COULD EQUALLY GET YOU TO MY SPACE.

MR. JACOBSON: THAT'S THE POINT. AND WHAT IS, WHAT IS IMPORTANT IS THAT, IS THAT THERE IS NOTHING IN THE COMPLAINT THAT WOULD ALLOW YOU, ALLOW YOU TO SEPARATE THAT, THAT MONETIZING FUNCTION FROM, FROM THE INFINITE NUMBER OF OTHER MONETIZING FUNCTIONS AVAILABLE. SO WE DO NOT HAVE ALLEGATIONS THAT ARE SUFFICIENT TO STATE A RELEVANT MARKET UNDER THE LAW.

THE COURT: WHAT YOU'VE GOT, IF I'M HEARING YOU CORRECTLY, IS THAT YOU HAVE ONE SEARCH ENGINE THAT HAPPENS TO BE THE WAY THAT MOST PEOPLE CAN GET THERE.

MR. JACOBSON: YES, BUT THERE IS NOTHING TO SAY THAT THERE ARE AN INFINITE NUMBER OF OTHER

MEANS AND IT'S OBVIOUS THAT THERE ARE.

THE COURT: RIGHT. GO AHEAD, AND I'LL HEAR FROM MR. PERSON.

MR. JACOBSON: I'D LIKE TO TALK ABOUT CONDUCT BECAUSE I THINK THAT AN EASY WAY TO, TO DISMISS THE CASE WITH PREJUDICE, WHICH IS APPROPRIATE AT THIS STAGE, IS TO FOCUS ON THE CONDUCT ALLEGATIONS BECAUSE THOSE ARE PLAINLY INSUFFICIENT AND IRRESPECTIVE OF WHATEVER MARKET IS DEFINED BECAUSE THOSE CONDUCT ALLEGATIONS ARE SO PLAINLY INSUFFICIENT THE CASE SHOULD NOT BE ALLOWED TO PROCEED FURTHER.

NOW, THERE ARE FOUR CONDUCT ALLEGATIONS BASICALLY, YOUR HONOR.

THEY ARE, ONE, THE HIGH AND DISCRIMINATORY PRICING. YOU HAVE ALREADY DEALT WITH THAT IN YOUR INITIAL DECISION. THERE'S NOTHING IN THE SECOND AMENDED COMPLAINT THAT ADDRESSES THE ISSUES THAT, THAT YOU, THAT YOU COMMENTED ON IN YOUR OPINION.

THE SECOND, THE SECOND, THE SECOND ALLEGATION IS, IS THAT GOOGLE DENIES MR. PERSON THE ABILITY TO ACCESS CERTAIN KEY WORDS AND, AND THE SECOND AMENDED COMPLAINT DOESN'T MENTION THE KEY WORDS THAT HE'S TALKING ABOUT BUT HE DID MENTION IT

IN HIS FIRST AMENDED COMPLAINT AND IN THE PROPOSED COMPLAINT THAT, THAT WAS SUBMITTED BUT NOT FILED THE LAST TIME AROUND, AND I THINK IT'S APPROPRIATE FOR THE COURT TO LOOK AT THOSE AS JUDICIAL ADMISSIONS.

AND THE WORDS, THERE ARE A FEW OF THEM BUT THE ONES THAT ARE TYPICAL ARE BUSY BODY, MUSTACHE, JELLY BEAN, AND BARE HUG.

NOW, THERE IS NOTHING, NOTHING IN ANY OF MR. PERSON'S WEB SITES THAT IS, THAT IS REMOTELY RELEVANT TO ANY, TO ANY OF THOSE WORDS.

AND TO SAY THAT IT'S EXCLUSIONARY CONDUCT TO, TO DENY ACCESS, AND BY DENYING ACCESS HE DOESN'T MEAN DENYING ACCESS. WHAT HE MEANS IS THAT THE COST IS HIGHER IN THE AD WORDS PROGRAM. YOU HAVE TO PAY MORE TO GET THOSE WORDS, WORDS AS PART OF YOUR, PART OF YOUR, YOUR -- THE WAY AD WORDS WORKS IS THAT YOU PLUG IN A WORD AND, AND INTO A SEARCH TERM IN GOOGLE AND THEN POPS UP ON THE RIGHT SIDE WITH THE ADS.

AND GOOGLE DOESN'T BAR USE OF THOSE WORDS BUT IT MAKES YOU PAY MORE TO GET THOSE ADS. AND, AND IT'S CLEARLY RATIONAL AND NOT EXCLUSIONARY FOR GOOGLE TO SAY, WELL, THESE WORDS HAVE ABSOLUTELY NOTHING TO DO WITH HIS WEB SITE.

NOT ONLY IS IT NOT EXCLUSIONARY, YOUR HONOR, BUT TO THE EXTENT THAT RIVALS WANT TO COMPETE AGAINST GOOGLE, IT INVITES COMPETITION BECAUSE RIVALS CAN, IN FACT, MAKE, MAKE THOSE KEY WORDS AVAILABLE IN, IN THEIR PROGRAMS AND THAT WOULD ATTRACT NEW COMPETITION. SO IT'S NOT ONLY NOT EXCLUSIONARY, IT'S THE OPPOSITE.

THE, THE THIRD OF THE FOURTH OF THE, OF THE FOUR ALLEGATIONS IS THAT AD WORDS IS AN ESSENTIAL FACILITY. WE HAVE DEALT WITH THAT IN THIS CASE BEFORE. THERE'S CLEARLY NOTHING IN THE COMPLAINT TO SUGGEST THAT AD WORDS IS BEING USED TO ELIMINATE COMPETITION IN AN ADJACENT MARKET THE WAY THE ALASKA AIRLINES CASE REQUIRES.

BUT, BUT I WANT TO MAKE THE POINT THAT IF YOU LOOK AT THE AD CENTS PROGRAM, WHICH YOU'RE ENTITLED TO DO BECAUSE IT'S REFERENCED IN THE COMPLAINTS, HE'S NOT EXCLUDED FROM AD WORDS AT ALL. ALL HE NEEDS TO DO THROUGH THE AD CENTS PROGRAM IS TO PUT GOOGLE SEARCH ON HIS WEB SITES, WHICH HE'S PERFECTLY ENTITLED TO DO, AND THEN TO THE EXTENT THAT PEOPLE USE THE SEARCH ON HIS WEB SITE AND WHEN THEY DO THAT SEARCH ADS POP UP ON THE RIGHT-HAND SIDE, WHEN PEOPLE CLICK ON THOSE ADS HE GETS MONEY. SO HE'S NOT EXCLUDED FROM AD WORDS AT ALL. THIS

WOULD NOT BE EXCLUSIONARY TO BEGIN WITH BUT THE COURT IS ENTITLED TO TAKE NOTICE OF THE FACT THAT THIS IS NOT REMOTELY EXCLUSIONARY UNDER ANY CONCEIVABLE POSSIBILITY.

THE LAST, THE LAST SET OF ALLEGATIONS, AND THIS IS NEW TO THE SECOND AMENDED COMPLAINT IS THE ALLEGATIONS OF ACQUISITIONS.

THOSE, THOSE ARE, ARE DEFICIENT FOR, FOR TWO SIGNIFICANT REASONS. ONE, THERE IS NO EXPLANATION OF HOW, HOW ANY OR ALL OF THESE ACQUISITIONS IS, IS, IN FACT, EXCLUSIONARY.

HIS, HIS BRIEF MAKES CLEAR THAT THESE ARE NOT ACQUISITIONS OF SIGNIFICANT COMPETITORS. THERE'S NO EFFORT TO ACQUIRE YAHOO OR MSM. WHAT HIS BRIEF MAKES CLEAR IS THAT THESE ACQUISITIONS WERE DESIGNED TO MAKE GOOGLE MORE EFFICIENT TO GIVE IT ADDITIONAL CAPABILITIES THAT IT DID NOT HAVE AND, AND TO MAKE ITS CAPABILITIES, THEREFORE, MORE USEFUL TO, TO CONSUMERS AND ITS CUSTOMERS.

THAT, THAT DOES NOT ALLEGE IN AN ANTITRUST VIOLATION. IT ALLEGES THE OPPOSITE.

SECOND, EVEN IF, IF THERE WERE AN ALLEGATION THAT, THAT ANY OF THESE ACQUISITIONS, SUCH AS THE PENDING DOUBLE CLICK ACQUISITION WERE, WERE REMOTELY ILLEGAL, THERE'S NO ALLEGATION OF, OF

HOW THEY, THEY INJURED HIM. THERE'S NO, THERE'S NO ALLEGATION OF, OF, FOR EXAMPLE, THAT HE WAS A CUSTOMER OF DOUBLE CLICK AND THAT, AND THAT THE RESULT OF THE DOUBLE CLICK ACQUISITION IS TO RAISE THE PRICE THAT HE WAS PAYING TO DOUBLE CLICK. THERE'S NO ALLEGATION TO THE FACT, TO THAT EFFECT AND NOR COULD THERE BE.

YOUR HONOR, THERE IS ONE CASE ON THIS SUBJECT. IT'S 20 YEARS OLD. IT'S A DISTRICT COURT CASE. IT'S CITED IN OUR BRIEFS. IT'S O'NEILL AGAINST COCA COLA. IT WAS A CASE I WORKED ON A LONG TIME AGO AND IN THAT CASE COKE WAS BUYING A COUPLE OF ITS BOTTLERS AND THERE WAS A CONSUMER CASE FILED AND THE COURT SAID THAT CONSUMERS ARE ABSOLUTELY THE INTENDED BENEFICIARIES OF THE ANTITRUST LAWS BUT YOU DON'T EXPLAIN IN YOUR COMPLAINT AND MR. PERSON DOES NOT EXPLAIN IN HIS HOW THESE ACQUISITIONS CAN CAUSE YOU ANY INJURY AT ALL.

SO, YOUR HONOR, BOTH ON THE CONDUCT SIDE AS WELL AS THE MARKET SIDE THERE IS NO BASIS FOR THIS CASE TO CONTINUE.

THE COURT: THANK YOU VERY MUCH.

MR. PERSON, YOU CAN HAVE A MINUTE OR TWO TO REPLY AND THEN I'D LIKE TO JUST ASK IF YOU HAVE

ANY ADDITIONAL FACTS THAT YOU COULD ASSERT.

MR. PERSON: OKAY. ONE ADDITIONAL FACT IMMEDIATELY IS THAT I'M TRYING IN NEW YORK CITY TO PASS A BALLOT INITIATIVE BY VOTERS AND HAVING, HAVING GOOGLE WITH ITS 50 CENTS AD CLICK IS PROHIBITIVE OF THE CIVIC NONPROFIT MATTER OF TRYING TO DO A BALLOT INITIATIVE WHEN E-BAY IS PAYING A PENNY FOR THESE CHARGES TO HAVE CIVIC MINDED VOTERS CHARGE $0.50 A CLICK WHICH IS WHAT THEY WERE CHARGING ME WHEN I STOPPED IS THEN AS OUTRAGE AND THAT'S ONE OF THE EVILS OF THE MONOPOLY THAT THEY HAVE.

SELLING BOOKS ON AMAZON IS NOT THE KIND OF MONOPOLIZATION OF TRAFFIC THAT I'M ALLEGING. I'M SAYING WEB SITE TRAFFIC WHEN IT COMES IN WHETHER IT BUYS OR NOT AT AMAZON OR ANY OTHER WEB SITE IS MONETIZED BY AD WORDS AND THE STANDARD IS, IS EASY THAT I, THAT I ALLEGE IN THE COMPLAINT THAT, THAT YOU CAN SHOW THAT THAT IF GOOGLE RAISES ITS PRICE, ITS OWN FIGURES WILL SHOW THAT, PEOPLE DON'T DROP OFF AND GO TO A COMPETING SEARCH ENGINE BECAUSE THEY HAVE A MONOPOLY.

THERE'S TOO MUCH THAT YOU NEED OUT OF GOOGLE FOR YOU TO BE, TO BE TURNED OFF BECAUSE THEY RAISE IT FROM A PENNY TO $0.02 TO $0.05 TO $0.10 TO

$0.20 TO $0.50.

THEY DON'T LOSE TRAFFIC THAT WAY. THEY GAIN -- AND THAT'S WHERE THEY ARE GAINING THEIR INCOME BECAUSE THEY DON'T LOSE PEOPLE. THEY HAVE A MONOPOLY. EVEN THE PEOPLE IN BANNER ARE ADVISING ARE DEMANDING A SEARCH ASPECT TO IT.

AND GOOGLE IS NOW USING ITS SEARCH MONOPOLY TO ACQUIRE THE REST OF IT AND UNLESS IT IS RECOGNIZED THAT SEARCH IS THE MONOPOLY AND THAT'S BEFORE THE MONEY COMES FROM, THAT'S WHERE THEY MAKE THE ACQUISITIONS AND NOW THEY'RE MOVING INTO THE NONSEARCH MARKET LIKE GANGBUSTERS PROBABLY TELL THE FTC THAT IT'S AN OVERALL, THEY'RE PROBABLY TELLING THE FTC THAT THE SEARCH MARKET IS DIFFERENT THAT THEY'RE REALLY NOW ACQUIRING IN THE BANNER MARKET BECAUSE THEY HAVE NO PRESENCE THERE.

I THINK WE OUGHT TO SEE AT LEAST WHAT GOOGLE IS TELLING THE FTC. I THINK IT HAS TO BE INCONSISTENT WITH WHAT THEY'RE MAINTAINING HERE.

THEY HAVE ACQUIRED THEIR MONOPOLY AND I HAVE ALLEGED THAT, THAT THE, THAT THEY HAVE, THEY HAVE NOT BUILT IN HOUSE THE TECHNOLOGY THAT HAS GIVEN THEM THEIR TECHNOLOGY. THEY HAVE GONE THROUGH A SERIES OF ACQUISITIONS. I HAVE IDENTIFIED 40 SOME ODD OR SO OF THE ACQUISITIONS

THAT ARE TECHNOLOGICAL IN NATURE AND THAT CONTRIBUTED TO THEIR MONOPOLY.

SO I'M NOT SAYING THAT THEY ACQUIRED COMPANIES WITH MARKET SHARE. THEY ACQUIRED TECHNOLOGY AND, AND THAT, AND THAT IS ALSO PROHIBITED BY THE ANTITRUST LAWS.

THEY'RE NOT JUST A COMPANY THAT DEVELOPED IT. THEY DID DEVELOP SOMETHING BUT THEY ACQUIRED THEIR TECHNOLOGY BY ACQUISITION AND GAVE THEMSELVES A MONOPOLY AND, AND WHEN THAT OCCURS, THEY AREN'T ALLOWED TO DISCRIMINATE IN PRICE AT THAT POINT. I THINK THAT THEY HAVE TO OPEN UP AND BE LIKE A PATENT WHERE THEY HAVE TO TREAT ALL PEOPLE EQUALLY AND THEY'RE NOT DOING THAT AND THAT'S ESSENTIALLY MY ARGUMENT.

THE COURT: ANY ADDITIONAL FACTS YOU WOULD ALLEGE? YOU MENTIONED SOMETHING ABOUT A BALLOT INITIATIVE?

MR. PERSON: THAT'S NOT IN THERE.

THE COURT: THAT'S WHAT I'M GETTING AT.

MR. PERSON: I'M IN A BALLOT INITIATIVE NOW. WE'RE GETTING READY TO SET UP THE PETITION. WE'RE LOOKING TO SET IT UP IN NEW YORK CITY WITH A SUBPOENA POWER TO INVESTIGATE 911 AND ALSO TO APPOINT ME AS NEW YORK CITY ATTORNEY GENERAL FOR

THE PURPOSE OF BEING THE LEGAL ARM TO THE COMMISSION AND, AND ALSO ACTING AS AN ATTORNEY GENERAL FOR NEW YORK CITY IN HELPING, HELPING TO TRY TO PREVENT JOBS FROM LEAVING AND AIR QUALITY AND THINGS LIKE THAT.

THE COURT: I'M TRYING TO GET A SENSE OF WHETHER THERE ARE ADDITIONAL FACTS GERMANE TO THE COMPLAINT.

MR. PERSON: I THINK THIS IS GERMANE, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH. MATTER IS SUBMITTED. I'LL GET A DECISION OUT VERY SHORTLY.

MR. JACOBSON: THANK YOU.

THE COURT: AND I'M GOING TO DEFER THE CMC UNTIL I ISSUE THE DECISION. THANK YOU VERY MUCH.

MR. PERSON: THANK YOU.

(WHEREUPON, THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE, INCLUSIVE, CONSTITUTED A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED TRANSCRIPTION TO THE BEST OF MY ABILITY.

Irene Rodriguez

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER CSR 8074

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BY FEDERAL EXPRESS

June 18, 2007

Honorable Jeremy Fogel
United States District Judge
United States Courthouse
280 South First Street
San Jose, CA 95113

Re: *Person v. Google*
Case No: C 06-7297 JF (RS)
Error in 2nd Amended Complaint

Dear Judge Fogel:

I am the Plaintiff, *pro se*, and am writing this letter to advise the Court and opposing party that paragraph 49-A of my 2nd Amended Complaint has an erroneous paragraph reference to the list of technology-company acquisitions I mentioned during the argument last Friday

At page 21, paragraph 49-A, of my 2nd Amended Complaint, the phrase "¶¶ 49-A and 49-B below" should be changed to read "¶¶ 99-A and 99-B below".

I apologize for the error.

Very truly yours,

Carl E. Person
Plaintiff *Pro Se*, CP 7637

Cc:

Jonathan M. Jacobson, Esq.
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12 E. 49th St. - 30th Floor
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BY FAX and EMAIL

212-999-5899, and 650-493-6811

E-Filed 6/25/2007

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CARL E. PERSON, Plaintiff, v. GOOGLE, INC., Defendant.	Case Number C 06-7297 JF (RS) JUDGMENT[1]

The motion to dismiss filed by defendant Google, Inc. ("Google") having been granted without leave to amend. IT IS HEREBY ORDERED, DECREED, AND ADJUDGED that Plaintiff take nothing from Google.

DATED: June 25, 2007

JEREMY FOGEL
United States District Judge

[1] This disposition is not designated for publication and may not be cited

This Order has been served upon the following persons:

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CARL E. PERSON, Plaintiff, v. GOOGLE INC., Defendant.	CASE NO.: C 06-7297 JF (RS) NOTICE OF APPEAL

Notice is hereby given that Carl E. Person, plaintiff, *pro se*, in the above named case, hereby appeals to the United States Court of Appeals for the 9th Circuit from the final judgment entered in this action on the 25th day of June, 2007. This appeal is being taken against Google Inc.

Dated: New York, NY
July 23, 2007

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

	ECM FILING
CARL E. PERSON, Plaintiff, v. GOOGLE INC., Defendant.	CASE NO.: C 06-7297 JF (RS) CERTIFICATE OF SERVICE

I, Carl E. Person, declare:

I am the plaintiff in the above action and on July 23, 2007, I served:

Notice of Appeal dated 7/23/07 (the "Document")

On the following attorneys for Defendant, Google Inc., by mailing a copy of the Document securely wrapped in an envelope on July 23, 2007, addressed as set forth below, depositing the envelopes in a mail box maintained by the United States Postal Service; and on February 16, 2007 (at approximately 1:00 a.m. EST) by emailing a copy of the Document to the attorneys at their respective email addresses, as set forth below:

David H. Kramer, Esq.
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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on July 23, 2007 at New York, New York.

By: Carl E. Person
Carl E. Person

ADRMOP, APPEAL, CLOSED, E-Filing, ENE, RELATE

U.S. District Court
California Northern District (San Jose)
CIVIL DOCKET FOR CASE #: 5:06-cv-07297-JF

Person v. Google Inc.
Assigned to: Hon. Jeremy Fogel
Referred to: Magistrate Judge Richard Seeborg
Demand: $10,000,000
Cause: 15:15 Antitrust Litigation

Date Filed: 11/27/2006
Date Terminated: 06/25/2007
Jury Demand: Plaintiff
Nature of Suit: 410 Anti-Trust
Jurisdiction: Federal Question

Plaintiff

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V.

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Date Filed	#	Docket Text
11/27/2006	1	CASE TRANSFERRED in from United States District Court for the Southern District of New York (Foley Square); Case Number 1:06-CV-04683-RPP. Original File with Documents Numbered 1-29, Certified Copy of Transfer Order & Docket Sheet Received. Filed by Pro se Plaintiff Carl E. Person. (tn, COURT STAFF) (Filed on 11/27/2006) (Entered: 11/29/2006)
11/27/2006	2	ADR SCHEDULING ORDER: Case Management Statement due 2/23/2007 & Initial Case Management Conference set for 3/2/2007 at 1:30 P.M.. (tn, COURT STAFF) (Filed on 11/27/2006) (Entered: 11/29/2006)
12/18/2006	3	Declination to Proceed Before a U.S. Magistrate Judge by Carl E. Person. (sis, COURT STAFF) (Filed on 12/18/2006) (Entered: 12/19/2006)
12/20/2006	4	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (gba, COURT STAFF) (Filed on 12/20/2006) (Entered: 12/22/2006)
12/21/2006		Case Reassigned to Judge Susan Illston. Judge Joseph C. Spero no longer assigned to the case. Signed by Executive Committee on 12/21/06. (mab, COURT STAFF) (Filed on 12/21/2006) (Entered: 12/21/2006)
12/21/2006	5	ORDER REASSIGNING CASE to Judge Susan Illston. Judge Joseph C. Spero no longer assigned to the case. (gba, COURT STAFF) (Filed on 12/21/2006) (Entered: 12/22/2006)
12/27/2006	6	CLERK'S NOTICE Initial Case Management Conference set for

		3/2/2007 02:00 PM. (ys, COURT STAFF) (Filed on 12/7/2006) (Entered: 12/28/2006)
01/02/2007	7	MOTION to Transfer Case *Defendant Google Inc.'s Administrative Motion for Transfer to San Jose Division* filed by Google Inc.. (Attachments: # 1 Proposed Order)(Kramer, David) (Filed on 1/2/2007) (Entered: 01/02/2007)
01/02/2007	8	Declaration of David H. Kramer in Support of 7 MOTION to Transfer Case *Defendant Google Inc.'s Administrative Motion for Transfer to San Jose Division* filed byGoogle Inc.. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E)(Related document(s) 7) (Kramer, David) (Filed on 1/2/2007) (Entered: 01/02/2007)
01/02/2007	9	CERTIFICATE OF SERVICE by Google Inc. re 7 MOTION to Transfer Case *Defendant Google Inc.'s Administrative Motion for Transfer to San Jose Division*. 8 Declaration in Support. (Kramer, David) (Filed on 1/2/2007) (Entered: 01/02/2007)
01/03/2007	10	***DUPLICATE OF #7**8MOTION to Transfer Case to San Jose Division filed by Google Inc.. (ys, COURT STAFF) (Filed on 1/3/2007) (Entered: 01/04/2007)
01/03/2007	11	***DUPLICATE OF #8*** Declaration of David H. Kramer in Support of [10] MOTION to Transfer Case filed byGoogle Inc.. (Related document(s)[10]) (ys, COURT STAFF) (Filed on 1/3/2007) Modified on 1/11/2007 (ys, COURT STAFF). (Entered: 01/04/2007)
01/03/2007		Proposed Order re [10] MOTION to Transfer Case by Google Inc.. (ys, COURT STAFF) (Filed on 1/3/2007) (Entered: 01/04/2007)
01/05/2007	15	ORDER RELATING CASES.. Signed by Judge Jeremy Fogel on 1/5/07. (dlm, COURT STAFF) (Filed on 1/5/2007) (Entered: 01/09/2007)
01/08/2007	12	Memorandum in Opposition re 7,[10] *Defendant Google Inc.'s Administrative Motion for Transfer to San Jose Division* filed byCarl E. Person. (ys, COURT STAFF) (Filed on 1/8/2007) (Entered: 01/08/2007)
01/08/2007	13	DECLARATION of Carl E. Person in Opposition to 7, [10] *Defendant Google Inc.'s Administrative Motion for Transfer to San Jose Division* filed byCarl E. Person. (Related document(s)7, [10]) (ys, COURT STAFF) (Filed on 1/8/2007) (Entered: 01/08/2007)
01/08/2007		Proposed Order denying defendant Google Inc.'s Administrative Motion to transfer case to San Jose Division by Carl E. Person. (ys, COURT STAFF) (Filed on 1/8/2007) (Entered: 01/08/2007)
01/08/2007	14	CERTIFICATE OF SERVICE by Carl E. Person re [13] Declaration in Opposition, [12] Memorandum in Opposition , *proposed order.* (ys, COURT STAFF) (Filed on 1/8/2007) (Entered: 01/08/2007)
01/09/2007		Pursuant to Related Case Order (15) Case Reassigned to District Judge Jeremy Fogel for all further proceedings and Magistrate Richard Seeborg for Discovery Matters. Judge Susan Illston no longer assigned to the

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		case. (srm, COURT STAFF) (Filed on 1/9/2007) (Entered: 01/09/2007)
01/18/2007	16	CLERK'S NOTICE Case Management Conference set for 3/2/2007 10:30 AM. (jfsec, COURT STAFF) (Filed on 1/18/2007) (Entered: 01/18/2007)
01/25/2007	17	MOTION to Dismiss *Defendant Google Inc.'s Notice of Motion and Motion to Dismiss the Complaint; Memorandum of Points and Authorities* filed by Google Inc.. Motion Hearing set for 3/2/2007 09:00 AM in Courtroom 3, 5th Floor, San Jose. (Attachments: # 1 Proposed Order)(Kramer, David) (Filed on 1/25/2007) (Entered: 01/25/2007)
01/25/2007	18	Declaration of David H. Kramer in Support of 17 MOTION to Dismiss *Defendant Google Inc.'s Notice of Motion and Motion to Dismiss the Complaint; Memorandum of Points and Authorities* filed byGoogle Inc.. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E# 6 Exhibit F# 7 Exhibit G)(Related document(s)17) (Kramer, David) (Filed on 1/25/2007) (Entered: 01/25/2007)
01/25/2007	19	CERTIFICATE OF SERVICE by Google Inc. re 17 MOTION to Dismiss *Defendant Google Inc.'s Notice of Motion and Motion to Dismiss the Complaint; Memorandum of Points and Authorities*, 18 Declaration in Support. (Kramer, David) (Filed on 1/25/2007) (Entered: 01/25/2007)
02/09/2007	21	MOTION for Leave to File First Amended Complaint filed by Carl E. Person. (gm, COURT STAFF) (Filed on 2/9/2007) (Entered: 02/12/2007)
02/09/2007	22	Declaration of Carl E. Person in Support of [21] MOTION for Leave to File First Amended Complaint filed byCarl E. Person. (Related document (s)[21]) (gm, COURT STAFF) (Filed on 2/9/2007) (Entered: 02/12/2007)
02/09/2007	23	MEMORANDUM in Support re [21] MOTION for Leave to File First Amended Complaint filed byCarl E. Person. (Related document(s)[21]) (gm, COURT STAFF) (Filed on 2/9/2007) (Entered: 02/12/2007)
02/09/2007		Received Order re [21] MOTION for Leave to File First Amended Complaint by Carl E. Person. (gm, COURT STAFF) (Filed on 2/9/2007) (Entered: 02/12/2007)
02/09/2007	24	CERTIFICATE OF SERVICE by Carl E. Person re [23] Memorandum in Support, [22] Declaration in Support, Received Order, [21] MOTION for Leave to File (gm, COURT STAFF) (Filed on 2/9/2007) (Entered: 02/12/2007)
02/12/2007	20	STIPULATION *and [Proposed] Order for Plaintiff Carl E. Person to File Documents Using ECF* by Google Inc.. (Kramer, David) (Filed on 2/12/2007) (Entered: 02/12/2007)
02/12/2007	25	Memorandum in Opposition re [21] MOTION for Leave to File *Defendant Google Inc.'s Opposition to Plaintiff Person's Administrative Motion for Leave to File a First Amended Complaint and 3-Week Extension of Time to Respond to Defendant's Motion to Dismiss* filed byGoogle Inc.. (Attachments: # 1 Proposed Order)(Kramer, David) (Filed on 2/12/2007) (Entered: 02/12/2007)

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02/12/2007	26	Declaration of David H. Kramer in Support of 25 Memorandum in Opposition, filed byGoogle Inc.. (Attachments: # 1 Exhibit A# 2 Errata B# 3 Errata C# 4 Exhibit D# 5 Exhibit E)(Related document(s)25) (Kramer, David) (Filed on 2/12/2007) (Entered: 02/12/2007)
02/12/2007	27	CERTIFICATE OF SERVICE by Google Inc. re 25 Memorandum in Opposition,, 26 Declaration in Support (Kramer, David) (Filed on 2/12/2007) (Entered: 02/12/2007)
02/13/2007	28	ORDER GRANTING STIPULATED REQUEST FOR PLAINTIFF TO E-FILE re 20 Stipulation filed by Google Inc.,. Signed by Judge Jeremy Fogel on 2/13/07. (jfsec, COURT STAFF) (Filed on 2/13/2007) (Entered: 02/13/2007)
02/13/2007	29	ORDER by Judge Jeremy Fogel granting in part and denying in part [21] Motion for Administrative Relief (jflc1, COURT STAFF) (Filed on 2/13/2007) (Entered: 02/13/2007)
02/13/2007		CLERK'S NOTICE re Inclusion of Case Into E-Filing Program (gm, COURT STAFF) (Filed on 2/13/2007) (Entered: 02/13/2007)
02/13/2007		Set/Reset Hearings: Motion Hearing re-set for 3/9/2007 09:00 AM. (dlm, COURT STAFF) (Filed on 2/13/2007) (Entered: 02/28/2007)
02/14/2007	30	ADR Clerks Notice re: Non-Compliance with Court Order. (tjs, COURT STAFF) (Filed on 2/14/2007) (Entered: 02/14/2007)
02/15/2007	31	ADR Certification (ADR L.R. 3-5b) of discussion of ADR options (Kramer, David) (Filed on 2/15/2007) (Entered: 02/15/2007)
02/15/2007	32	STIPULATION and Proposed Order selecting Early Neutral Evaluation by Google Inc. (Kramer, David) (Filed on 2/15/2007) (Entered: 02/15/2007)
02/20/2007	34	MEMORANDUM in Opposition re 17 MOTION to Dismiss *Defendant Google Inc.'s Notice of Motion and Motion to Dismiss the Complaint; Memorandum of Points and Authorities* filed byCarl E. Person. (Related document(s)17) (gm, COURT STAFF) (Filed on 2/20/2007) (Entered: 02/21/2007)
02/20/2007	35	DECLARATION of Carl E. Person in Opposition to 17 MOTION to Dismiss *Defendant Google Inc.'s Notice of Motion and Motion to Dismiss the Complaint; Memorandum of Points and Authorities* filed byCarl E. Person. (Related document(s)17) (gm, COURT STAFF) (Filed on 2/20/2007) (Entered: 02/21/2007)
02/20/2007		Received Order denying re 17 MOTION to Dismiss *Defendant Google Inc.'s Notice of Motion and Motion to Dismiss the Complaint; Memorandum of Points and Authorities* by Carl E. Person. (gm, COURT STAFF) (Filed on 2/20/2007) (Entered: 02/21/2007)
02/20/2007	36	CERTIFICATE OF SERVICE by Carl E. Person re Received Order, [34] Memorandum in Opposition,, [35] Declaration in Opposition. (gm, COURT STAFF) (Filed on 2/20/2007) (Entered: 02/21/2007)

02/21/2007	33	ORDER REFERRING THE MATTER TO ENE re 32 Stipulation and Proposed Order selecting Early Neutral Evaluation filed by Google Inc... Signed by Judge Jeremy Fogel on 2/16/07. (jfsec, COURT STAFF) (Filed on 2/21/2007) (Entered: 02/21/2007)
02/21/2007	37	STIPULATION *and [Proposed] Order to Adjourn Case Management Conference to March 9, 2007 at 2:00pm* by Google Inc.. (Kramer, David) (Filed on 2/21/2007) (Entered: 02/21/2007)
02/22/2007	38	ADR Clerk's Notice Setting ADR Phone Conference on Wednesday, March 7, 2007 at 10:30 a.m. PST. ADR Unit will initiate the call. (af, COURT STAFF) (Filed on 2/22/2007) (Entered: 02/22/2007)
02/27/2007	39	Reply Memorandum re 17 MOTION to Dismiss *Defendant Google Inc.'s Notice of Motion and Motion to Dismiss the Complaint; Memorandum of Points and Authorities* filed byGoogle Inc.. (Kramer, David) (Filed on 2/27/2007) (Entered: 02/27/2007)
03/01/2007	40	ORDER CONTINUING CASE MANAGEMENT CONFERENCE DATE re 37 Stipulation filed by Google Inc., Initial Case Management Conference set for 3/9/2007 10:30 AM.. Signed by Judge Jeremy Fogel on 3/1/07. (jfsec, COURT STAFF) (Filed on 3/1/2007) (Entered: 03/01/2007)
03/07/2007		ADR Remark: ADR Phone Conference conducted on 3/7/2007 by RWS. (af, COURT STAFF) (Filed on 3/7/2007) (Entered: 03/08/2007)
03/09/2007	41	Minute Entry: Motion Hearing held on 3/9/2007 before Judge Jeremy Fogel (Date Filed: 3/9/2007) re 17 MOTION to Dismiss filed by Google Inc. and [21] MOTION for Leave to File filed by Carl E. Person. The motions are taken under submission. The Case Management Conference is not held. (Court Reporter Irene Rodriguez.) (dlm, COURT STAFF) (Date Filed: 3/9/2007) (Entered: 03/12/2007)
03/14/2007	42	NOTICE of Appearance by Carl E. Person , *Pro Se [for ECF filings]* (Person, Carl) (Filed on 3/14/2007) (Entered: 03/14/2007)
03/16/2007	43	ORDER by Judge Jeremy Fogel granting 17 Motion to Dismiss with leave to amend. (jflc1, COURT STAFF) (Filed on 3/16/2007) (Entered: 03/16/2007)
03/21/2007	44	CLERK'S NOTICE Case Management Conference set for 5/18/2007 10:30 AM. (dlm, COURT STAFF) (Filed on 3/21/2007) (Entered: 03/21/2007)
04/16/2007	45	AMENDED COMPLAINT *(2nd Amended Complaint, split into 2 files)* against Google Inc.. Filed byCarl E. Person. (Attachments: # 1 Exhibit 2nd half of 2nd Amended Complaint, with Exhibits A and B)(Person, Carl) (Filed on 4/16/2007) (Entered: 04/16/2007)
04/30/2007	46	MOTION to Dismiss *Defendant's Google Inc.'s Notice of Motion and Motion To Dismiss the Second Amended Complaint; Memorandum of Points and Authorities* filed by Google Inc.. Motion Hearing set for 6/15/2007 09:00 AM in Courtroom 3, 5th Floor, San Jose. (Jacobson,

		Jonathan) (Filed on 4/30/2007) (Entered: 04/30/2007)
04/30/2007	47	Declaration of Sara Ciarelli in Support of 46 MOTION to Dismiss *Defendant's Google Inc.'s Notice of Motion and Motion To Dismiss the Second Amended Complaint; Memorandum of Points and Authorities* filed byGoogle Inc.. (Attachments: # 1 Exhibit 1# 2 Exhibit 2 (Part 2 of 2)# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit 6# 7 Exhibit 2 (Part 1 of 2))(Related document(s)46) (Jacobson. Jonathan) (Filed on 4/30/2007) (Entered: 04/30/2007)
04/30/2007	48	CERTIFICATE OF SERVICE by Google Inc. re 46 MOTION to Dismiss *Defendant's Google Inc.'s Notice of Motion and Motion To Dismiss the Second Amended Complaint; Memorandum of Points and Authorities*, 47 Declaration in Support, (Jacobson, Jonathan) (Filed on 4/30/2007) (Entered: 04/30/2007)
05/09/2007	49	STIPULATION *AND PROPOSED ORDER TO ADJOURN CASE MANAGEMENT CONFERENCE TO JUNE 15, 2007* by Carl E. Person. (Person. Carl) (Filed on 5/9/2007) (Entered: 05/09/2007)
05/11/2007	50	ORDER GRANTING STIPULATED REQUEST TO CONTINUE CASE MANAGEMENT CONFERENCE re 49 Stipulation filed by Carl E. Person. Initial Case Management Conference set for 6/15/2007 09:00 AM. Signed by Judge Jeremy Fogel on 5/10/07. (jfsec. COURT STAFF) (Filed on 5/11/2007) (Entered: 05/11/2007)
05/25/2007	51	Plaintiff's Memorandum of Points and Authorities in Opposition to Defendant's Google's Motion To Dismiss re 46 filed by Carl E. Person. (Person. Carl) (Filed on 5/25/2007) Text modified on 5/29/2007 to conform to document caption post by counsel (bw. COURT STAFF). (Entered: 05/25/2007)
05/25/2007	52	Declaration of Carl E. Person in Opposition to Defendant Google's Motion to Dismiss re 46 filed by Carl E. Person. (Attachments: # 1 Exhibits I-T annexed to Person Declaration)(Person, Carl) (Filed on 5/25/2007) Text modified on 5/29/2007 to conform to document caption post by counsel (bw, COURT STAFF). (Entered: 05/25/2007)
06/01/2007	53	Defendant's Google Inc.'s Reply Memorandum of Points and authorities in Suport of Motion to Dismiss the Second Amended Complaint re 46 51 , 47 filed by Google Inc.. (Jacobson, Jonathan) (Filed on 6/1/2007) Text modified on 6/5/2007 to conform to document caption post by counsel (bw, COURT STAFF). (Entered: 06/01/2007)
06/01/2007	54	Proof of Service via U.S. MAIL . re 53 (Jacobson, Jonathan) (Filed on 6/1/2007) Modified on 6/5/2007 (bw, COURT STAFF). (Entered: 06/01/2007)
06/15/2007	55	Minute Entry: Motion Hearing held on 6/15/2007 before Judge Jeremy Fogel (Date Filed: 6/15/2007) re 46 MOTION to Dismiss. The motion is taken under submission. (Court Reporter Irene Rodriguez.) (dlm. COURT STAFF) (Date Filed: 6/15/2007) (Entered: 06/18/2007)

06/25/2007	56	ORDER by Judge Jeremy Fogel granting 46 Motion to Dismiss without leave to amend. (jflc1, COURT STAFF) (Filed on 6/25/2007) (Entered: 06/25/2007)
06/25/2007	57	JUDGMENT in favor of Defendant. Signed by Judge Jeremy Fogel on 6/25/2007. (jflc1, COURT STAFF) (Filed on 6/25/2007) (Entered: 06/25/2007)
06/26/2007	58	Letter from Carl E. Person dated 6/18/07 re: 45 2nd amended complaint has erroneous paragraph.. (cv, COURT STAFF) (Filed on 6/26/2007) (Entered: 06/29/2007)
07/24/2007	59	NOTICE OF APPEAL as to 57 Judgment, 56 Order on Motion to Dismiss by Carl E. Person. Filing fee $ 455.00, receipt number 5461101390. (gm, COURT STAFF) (Filed on 7/24/2007) Additional attachment(s) added on 8/14/2007 (gm, COURT STAFF). (Entered: 07/25/2007)
07/25/2007		Copy of Notice of Appeal and Docket sheet mailed to all counsel (gm, COURT STAFF) (Filed on 7/25/2007) (Entered: 07/25/2007)
07/25/2007		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 59 Notice of Appeal (gm, COURT STAFF) (Filed on 7/25/2007) (Entered: 07/25/2007)
08/06/2007	60	TRANSCRIPT REQUEST by Carl E. Person for proceedings held on 3/9/2007 and 6/15/2007 before Judge Jeremy Fogel, re 59 Notice of Appeal Transcript due by 8/20/2007. (gm, COURT STAFF) (Filed on 8/6/2007) (Entered: 08/07/2007)
09/18/2007	61	TRANSCRIPT of Proceedings held on 6/15/2007 before Judge Jeremy Fogel. Court Reporter: Irene Rodriguez.. (gm, COURT STAFF) (Filed on 9/18/2007) (Entered: 09/19/2007)
09/18/2007	62	TRANSCRIPT of Proceedings held on 3/9/2007 before Judge Jeremy Fogel. Court Reporter: Irene Rodriguez.. (gm, COURT STAFF) (Filed on 9/18/2007) (Entered: 09/19/2007)
09/19/2007	63	Certificate of Record Mailed to USCA re appeal 59 Notice of Appeal : (gm, COURT STAFF) (Filed on 9/19/2007) (Entered: 09/19/2007)

CERTIFICATE OF SERVICE

I certify that on this 31st day of October, 2007, I caused to be served via U.S. mail one true and correct copy of the foregoing **Excerpts of Record - Volume II -** properly addressed to the following:

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