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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 The Authors Guild *et al.*,
12 Plaintiff,
13 v.
14 Google Inc.,
15 Defendant.
16

Misc. Docket
(S.D. N.Y. Case No. 05-CV-8136-JES)
(SD. N.Y. Case No. 05-CV-8881-JES)

**THIRD PARTY YAHOO! INC.'S
OBJECTIONS TO GOOGLE
INC.'S THIRD PARTY
SUBPOENA**

17 The McGraw-Hill Companies, Inc. *et al.*,
18 Plaintiff,
19 v.
20 Google Inc.,
21 Defendant.
22

23 Yahoo! Inc. ("Yahoo") hereby responds and objects to the Subpoena *duces tecum* (the
24 "Subpoena") of Google Inc. issued by the Northern District of California on October 3, 2006 in
25 connection with *Authors Guild et al. v. Google Inc.*, Case No. 05-CV-8136-JES, and *The*
26 *McGraw-Hill Companies Inc. et al. v. Google Inc.*, Case No. O5-CV-8881-JES (S.D.N.Y.).
27
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1 On October 17, 2006, Google provided Yahoo with additional time, until November 20,
2 2006, to respond to the Subpoena. Yahoo reserved its rights to object to the Subpoena.

3 **SUMMARY OF YAHOO'S RESPONSE**

4 Google's overbroad and unreasonable attempt to obtain confidential and trade secret
5 documents from one of its chief competitors fails minimally to satisfy the standards set forth in
6 the Federal Rules of Civil Procedure. Yahoo is not a party to the underlying action against
7 Google relating to book scanning, does not have a book scanning program of its own, and has no
8 information that is remotely relevant to the Google Action. Accordingly, the Google Subpoena is
9 objectionable for a host of reasons, which include:

- 10 • First, the Subpoena seeks information that is not relevant to Google's dispute with
11 book publishers or likely to lead to the discovery of admissible evidence. Whether
12 Yahoo may ever have considered developing a "Book Project" or Yahoo's mental
13 impressions about the copyright status of any book is not admissible or relevant
14 with respect to Google's pending dispute with book publishers.
- 15 • Second, even if it sought relevant information (which it does not), Google's
16 Subpoena is impermissibly overbroad, unduly burdensome and oppressive. The
17 Google Subpoena is not restricted to any program actually implemented by Yahoo,
18 and its anticompetitive purpose is evident when it purports to call for "ideas" or
19 "documents" that Yahoo merely considered or discussed internally.
- 20 • Thus, the Subpoena is improper because it seeks (a) "security, access controls, user
21 restrictions or digital rights management controls," (b) internal financial
22 projections that Yahoo may have, and (c) Yahoo's "reasons" for creating a Yahoo
23 Book Project (although none exists). It also impermissibly seeks (d) documents
24 regarding books or portions thereof that Yahoo "plans to provide" to Internet
25 users.
- 26 • Third, the Subpoena imposes an undue and unfair burden on a third party such as
27 Yahoo. For example, Yahoo should not be required to scour its records to see if
28

1 there is any document discussing or mentioning Google’s highly publicized
2 dispute with book publishers.

3 Yahoo has not launched an independent book scanning project or a “Yahoo Book Project”
4 as defined by Google in the Subpoena. Instead, along with over 40 other entities, including
5 public libraries, major colleges and universities and leading Fortune 500 companies, Yahoo has
6 backed a non-profit alliance run by the Open Content Alliance (“OCA”) and Internet Archive to
7 digitize books and make them searchable through any web search engine. Yahoo supports the
8 approach adopted by the OCA which digitizes only text in the public domain or where copyright
9 holders have expressly given permission for such works to be included, and Yahoo exercises no
10 direction and control over the OCA’s operation of its project.

11 Even if Yahoo were not a chief competitor, Google would have no business inquiring
12 about “ideas” that Yahoo employees may have had, or about “user restrictions” or “access
13 controls” that Yahoo has “considered using.” The mental thought processes of Yahoo employees
14 go to the heart of Yahoo’s proprietary trade secrets. The status of a person as a non-party weighs
15 heavily against disclosure. Yahoo is a non-party that should not be subjected to the broad
16 scrutiny of internal records that Google improperly seeks via the Subpoena.

17 Furthermore, the existence of a Protective Order in the pending cases does not adequately
18 mitigate the potentially severe risks that are posed by producing the confidential, highly sensitive,
19 and proprietary information sought by the Subpoena. No assurances, no promises, and no
20 confidentiality order, can protect Yahoo’s trade secrets from scrutiny and disclosure during the
21 course of discovery and trial. The Protective Order in this case would allow Google’s in-house
22 lawyers (including legal assistants, secretaries and clerks, and copying service personnel) and
23 Google employees “who have a need to know” to have unlimited access to the litany of internal
24 Yahoo documents sought by the Subpoena, including Yahoo internal thoughts, ideas and
25 discussions of issues never implemented. (*See, e.g.*, Protective Order, ¶¶ 2.4-2.5.)

26 Second, the broad Google Subpoena imposes an undue burden on Yahoo without a
27 sufficiently countervailing justification. The net that the Subpoena casts is extensive and
28 unprecedented. There simply is no reason to require Yahoo to search for any documents,

1 including e-mails, that might include an “idea” that a Yahoo employee may have had about any of
2 the various items enunciated in the Subpoena. Yahoo’s non-party status weighs heavily against
3 Google in a burden analysis.

4 **General Objections**

5 In responding herein, Yahoo does not waive, and expressly reserves, its right to seek
6 modifications to the Subpoena, a withdrawal of the document requests in their entirety, or any
7 other relief as Yahoo may deem appropriate with respect to this matter. Yahoo will respond to
8 the Subpoena on the basis of the best information available to it at the time of making this
9 response, within the limitations and subject to the objections set forth below. Yahoo’s
10 willingness to produce documents, if any, does not constitute an admission or acknowledgement
11 that a request is proper, that the documents it requests are relevant or admissible or are within the
12 proper bounds of discovery, including from a third party such as Yahoo, or that requests for
13 similar documents will be treated in a similar fashion.

14 1. The responses herein reflect only the present state of Yahoo’s knowledge or
15 information regarding the documents that Google appears to have requested. Except as otherwise
16 stated below, an objection to a specific request does not imply that the documents responsive to
17 that request exist. Yahoo expressly reserves the right to supplement any response or objection to
18 any of the requests.

19 2. Yahoo expressly reserves, and this response to the Subpoena shall not constitute a
20 waiver of, Yahoo’s right to (a) object on any ground to the use of the documents that are
21 produced in this action, (b) to object on any ground to other discovery requests that involve or
22 relate to the subject matter of this Subpoena, and (c) to revise, correct, supplement or clarify any
23 of the responses set forth herein at any later date. Yahoo does not admit, adopt or acquiesce in
24 any factual or legal contention, assertion or characterization that is contained in the Subpoena (or
25 any particular request therein).

26 3. Yahoo objects to the requests set forth in Attachment A to the Subpoena because
27 they are compound, vague, ambiguous, overbroad, unduly burdensome, irrelevant and/or not
28

1 reasonably calculated to lead to the discovery of admissible evidence. The party serving the
2 subpoena “bears the burden of establishing relevance. And, the burden of establishing relevance
3 is heavier when the disclosure would reveal the protected trade secrets of a non-party. In such
4 cases, the requesting party must show a “substantial need” for the requested information. That
5 burden of showing “substantial need” is especially important where, as here, the third party
6 subpoena seeks documents from a competitor. Google cannot meet that high burden. There
7 simply is no need for Google to be peering into the minds and computers of Yahoo employees.

8 4. Yahoo further objects to the requests set forth in Attachment A to the Subpoena as
9 overbroad, burdensome and not reasonably calculated to lead to the discovery of admissible
10 evidence to the extent that there are no time limits on the requested documents.

11 5. Yahoo objects to the requests set forth in Attachment A to the Subpoena to the
12 extent that they are not limited to documents within Yahoo’s possession, custody or control. The
13 Subpoena attempts to require Yahoo to produce documents created by entities other than Yahoo
14 or which are independent entities. All such requests should be directed to those entities.

15 6. By way of example only, to the extent that, through this Subpoena, Google is
16 asking for information relating to the Open Content Alliance, most of that information can be
17 obtained on the Open Content Alliance website at <http://www.opencontentalliance.org>. Yahoo
18 objects to Google’s Subpoena to the extent that it appears to seek documents that are not in
19 Yahoo’s control. To the extent that Google requests documents regarding the Open Content
20 Alliance website, Google’s Subpoena would require Yahoo to review documents not in its control
21 to determine which documents are responsive to the document requests. Furthermore, the
22 Subpoena would require Yahoo to produce documents of other entities, where Yahoo may not
23 have been given permission to produce such documents.

24 7. Yahoo objects to Google’s Subpoena because it purports to seek disclosure of
25 Yahoo’s trade secrets and confidential information to Google. Yahoo is not a party to the
26 Southern District of New York litigation, yet Google seeks Yahoo’s proprietary information,
27 including sales, marketing data, contract terms, negotiations, and internal business discussions
28

1 related to Yahoo. The confidential and sensitive nature of this information outweighs Google's
2 need, if any, for this information.

3 8. Yahoo objects to Google's requests to the extent that they seek the production of
4 documents protected by the attorney-client privilege, the work product doctrine or any other
5 constitutional, statutory, common law or applicable privilege or protection. The existence of a
6 protective order in the pending cases does not adequately mitigate the potentially severe risks that
7 are posed by producing the confidential, highly sensitive, and proprietary information sought by
8 the Subpoena.

9 9. Yahoo objects that the time frame for producing the documents requested is
10 unreasonable and unduly burdensome, and in violation of Rule 45(c)(3)(A)(i) of the Federal
11 Rules of Civil Procedure in that it does not provide adequate time for Yahoo to respond to the
12 Subpoena.

13 10. These General Objections and responses apply to each of the specific responses
14 below whether or not referred to in any specific response or objection provided, and the specific
15 responses set forth below are not a waiver, in whole or part, of any of these objections.

16 **Objections to Definitions & Instructions**

17 1. Yahoo objects that the definitions of "You," "Your" and "Yahoo" are overbroad
18 and renders the requests unduly burdensome. Yahoo further objects that the definition imposes
19 obligations beyond those required by Rule 45, and in particular Yahoo objects to the extent the
20 definition obligates Yahoo to produce documents that are not currently within the jurisdiction of
21 the Northern District of California.

22 2. Yahoo objects that the definition of "Yahoo Book Project" is overbroad and
23 renders each request (because each request includes this term) unduly burdensome. In addition,
24 the use of the term "contemplated" in the definition of the Yahoo Book Project is vague and
25 ambiguous. To the extent that any request is interpreted to seek information relating to Yahoo's
26 involvement with Open Content Alliance, such information is irrelevant to the issues in the
27 pending cases in the Southern District of New York and unlikely to lead to the discovery of
28

1 admissible evidence. Since the definition of “Yahoo Book Project” includes projects that are
2 “contemplated” by someone at Yahoo, requests that seek information regarding a “Yahoo Book
3 Project” are unduly burdensome and would require Yahoo to produce information that is
4 confidential, propriety, and possibly trade secret. Further, Yahoo has not placed the text of books
5 on its Web search engine. Any plans that Yahoo may have to do so would be proprietary.

6 3. Yahoo objects that the definition of “Communication” is overbroad, renders the
7 requests unduly burdensome, and imposes obligations on Yahoo beyond those required by Rule
8 45 or any other applicable rule, law, or regulation.

9 4. Yahoo objects to Google’s definitions and instructions to the extent they seek to
10 impose on Yahoo any obligation in addition to or different from those required by the Federal
11 Rules of Civil Procedure and/or the Local Rules for the Northern District of California.

12 5. These Objections to Definitions and Instructions apply to each of the specific
13 responses below whether or not referred to in any specific response or objection provided, and the
14 specific responses set forth below are not a waiver, in whole or part, of any of these objections.

15 **Specific Objections and Responses**

16 **REQUEST FOR PRODUCTION NO. 1**

17 Documents sufficient to describe the Yahoo Book Project, which should include
18 documents concerning (a) the creation or acquisition of an electronic or digital copy of the book,
19 (b) the creation of an electronic or digital index of each book, (c) the amount of each book Yahoo
20 has made or has plans to make available to the public for searching through an Internet search
21 engine, and (d) the index and search features of the Yahoo Book Project.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1**

23 Yahoo objects to this Request because it is compound, overly broad, unduly burdensome,
24 vague, and ambiguous, including, but not limited to, the term, “Yahoo Book Project.” Yahoo
25 further objects because this request is irrelevant and is not reasonably calculated to lead to the
26 discovery of admissible evidence. Furthermore, this request, and all others that seek information
27 regarding a “Yahoo Book Project,” is unduly burdensome and oppressive in that it purports to
28

1 require Yahoo to produce information that is confidential, proprietary, and/or trade secret
2 information protected from disclosure, by seeking documents regarding any “Yahoo Book
3 Project,” including projects that may be “contemplated” by someone at Yahoo. Any such “plans”
4 that Yahoo is “contemplating” are protected from disclosure as confidential, proprietary and/or
5 trade secrets even ignoring that Google is a direct competitor of Yahoo. Yahoo further objects to
6 this Request on the grounds that it seeks confidential, proprietary and/or trade secret information
7 regarding information or documents that Yahoo “has plans to make available” to the public.

8 Further, Yahoo has not placed the text of books on its Web search engine. Any “plans”
9 that Yahoo may have to do so would be proprietary. Accordingly, no documents will be
10 produced in response to this request.

11 **REQUEST FOR PRODUCTION NO. 2**

12 Documents sufficient to show the title, author, copyright status, and copyright owners (a)
13 of books currently available to the public through the Yahoo Book Project, and (b) of books that
14 Yahoo has plans to make available to the public through the Yahoo Book Project before
15 December 31, 2009.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2**

17 Yahoo objects to this Request because it is compound, overly broad, unduly burdensome,
18 vague, and ambiguous, including, but not limited to, the term, “Yahoo Book Project.” This
19 request, and all others that seek information regarding a “Yahoo Book Project,” is unduly
20 burdensome and oppressive in that it purports to require Yahoo to produce information that is
21 confidential, proprietary, and/or trade secret information protected from disclosure, by seeking
22 documents regarding any “Yahoo Book Project,” including projects that may be “contemplated”
23 by someone at Yahoo. Yahoo further objects because this request is irrelevant and is not
24 reasonably calculated to lead to the discovery of admissible evidence. This request also imposes
25 an undue burden on Yahoo by asking it to produce documents “sufficient to show” the “copyright
26 status” and the “copyright owners” of such books. To the extent that Google requests “books
27 currently available to the public,” Google can independently gather this information.
28

1 Further, Yahoo has not placed the text of books on its Web search engine. Any “plans”
2 that Yahoo may have to do so would be proprietary. Accordingly, no documents will be
3 produced in response to this request.

4 **REQUEST FOR PRODUCTION NO. 3**

5 For each book in the Yahoo Book Project that you have included in the Yahoo Book
6 Project or that You plan to include in the Yahoo Book Project before December 31, 2009,
7 documents sufficient to show you possess the legal right to include each book in the Yahoo Book
8 Project, including all licenses.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3**

10 Yahoo objects to this Request because it is compound, overly broad, unduly burdensome,
11 vague, and ambiguous, including, but not limited to, the term, “Yahoo Book Project.” Yahoo
12 further objects because this request is irrelevant and is not reasonably calculated to lead to the
13 discovery of admissible evidence. Furthermore, this request, and all others that seek information
14 regarding a “Yahoo Book Project,” is unduly burdensome and oppressive in that it purports to
15 require Yahoo to produce information that is confidential, proprietary, and/or trade secret
16 information protected from disclosure, by seeking documents regarding any “Yahoo Book
17 Project,” including projects that may be “contemplated” by someone at Yahoo. This request also
18 imposes an undue burden on Yahoo by asking it to produce documents “sufficient to show” that
19 “you possess the legal right” to include the book. Yahoo further objects that, to the extent this
20 request seeks to require Yahoo to produce documents reflecting or concerning future business
21 plans, such information is highly proprietary and competitively sensitive.

22 Further, Yahoo has not placed the text of books on its Web search engine. Any “plans”
23 that Yahoo may have to do so would be proprietary. Accordingly, no documents will be
24 produced in response to this request.

25 **REQUEST FOR PRODUCTION NO. 4**

26 With respect to each publisher and copyright owner identified in response to Request No.
27 2, all contracts executed between Yahoo and each such Person, or if no contract has been
28

1 executed, all communications reflecting the proposal to have the books of such publisher or
2 copyright owner included in the Yahoo Book Project.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4**

4 Yahoo objects to this Request because it is compound, overly broad, unduly burdensome,
5 vague, and ambiguous, including, but not limited to, the term, "Yahoo Book Project." Yahoo
6 further objects because this request is irrelevant and is not reasonably calculated to lead to
7 discovery of admissible evidence. Furthermore, this request, and all others that seek information
8 regarding a "Yahoo Book Project," is unduly burdensome and oppressive in that it purports to
9 require Yahoo to produce information that is confidential, proprietary, and/or trade secret
10 information protected from disclosure, by seeking documents regarding any "Yahoo Book
11 Project," including projects that may be "contemplated" by someone at Yahoo. The request is
12 also objectionable in that it asks for confidential and proprietary information regarding "all
13 communications" that Yahoo may have had with any person regarding the possibility of having a
14 book included in the Yahoo search engine. Whatever "communications" that Yahoo may have
15 had with any person on this subject is a trade secret that should not be disclosed to a competitor,
16 such as the requesting party here.

17 Further, Yahoo has not placed the text of books on its Web search engine. Any plans that
18 Yahoo may have to do so would be proprietary. Accordingly, no documents will be produced in
19 response to this request.

20 **REQUEST FOR PRODUCTION NO. 5**

21 Documents sufficient to show the amount of a book You provide or plan to provide to an
22 Internet user of the Yahoo Book Project, including documents sufficient to explain the reasons for
23 selecting that amount of the book.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5**

25 Yahoo objects to this Request because it is compound, overly broad, unduly burdensome,
26 vague, and ambiguous, including, but not limited to, the term, "Yahoo Book Project." Yahoo
27 further objects because this request is irrelevant and is not reasonably calculated to lead to the
28 discovery of admissible evidence. To the extent that this request seeks information regarding the

1 “amount of a book,” it is repetitive of Request for Production No. 1. Furthermore, this request,
2 and all others that seek information regarding a “Yahoo Book Project,” is unduly burdensome and
3 oppressive in that it purports to require Yahoo to produce information that is confidential,
4 proprietary, and/or trade secret information protected from disclosure, by seeking documents
5 regarding any “Yahoo Book Project,” including projects that may be “contemplated” by someone
6 at Yahoo. The request is also objectionable in that it asks for confidential and proprietary
7 information regarding the books that Yahoo “plan[s] to provide” to Internet users. Whatever
8 Yahoo may plan to make available is a trade secret that should not be disclosed to a competitor,
9 such as the requesting party here. This request is further objectionable and also imposes an undue
10 burden on Yahoo by asking it to produce documents “sufficient to explain the reasons for
11 selecting that amount of the book.” Any “reasons” that Yahoo may have for making any
12 information available to the public are also proprietary and should not be disclosed to a
13 competitor.

14 Further, Yahoo has not placed the text of books on its Web search engine. Any “plans”
15 that Yahoo may have to do so would be proprietary. Accordingly, no documents will be
16 produced in response to this request.

17 **REQUEST FOR PRODUCTION NO. 6**

18 Documents sufficient to show the security, access controls, user restrictions or digital
19 rights management controls You have used or that you have considered using in connection with
20 the Yahoo Book Project to prevent a piracy of a copyright book.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6**

22 Yahoo objects to this Request because it is compound, overly broad, unduly burdensome,
23 vague, and ambiguous, including, but not limited to, the term, “Yahoo Book Project.” Yahoo
24 further objects because this request is irrelevant and is not reasonably calculated to lead to the
25 discovery of admissible evidence. Furthermore, this request, and all others that seek information
26 regarding a “Yahoo Book Project,” is unduly burdensome and oppressive in that it purports to
27 require Yahoo to produce information that is confidential, proprietary, and/or trade secret
28 information protected from disclosure, by seeking documents regarding any “Yahoo Book

1 Project,” including projects that may be “contemplated” by someone at Yahoo. The request is
2 also objectionable in that it asks for confidential and proprietary information that Yahoo has
3 “considered using” to prevent piracy. Whatever Yahoo has “considered using” would be a trade
4 secret that should not be shared with a competitor, such as the requesting party here.

5 Further, Yahoo has not placed the text of books on its Web search engine. Any plans that
6 Yahoo may have to do so would be proprietary. Accordingly, no documents will be produced in
7 response to this request.

8 **REQUEST FOR PRODUCTION NO. 7**

9 Documents created by Yahoo, or that Yahoo has received, on or after January 1, 2003
10 sufficient to show (a) financial projections and performance for the Yahoo Book Project,
11 including revenues, costs, and contributions to Yahoo’s earnings or losses of the Yahoo Book
12 Project, (b) data and analyses concerning the effect the Yahoo Book Project has had or is
13 expected to have on book sales, and (c) Your belief, if any, of benefits or possible benefits to
14 authors, publishers, copyright owners and the public from the Yahoo Book Project, and (d) Your
15 belief, if any, of harms or possible harms to authors, publishers, copyright owners and the public
16 from the Yahoo Book Project.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7**

18 Yahoo objects to this Request because it is compound, overly broad, unduly burdensome,
19 vague, and ambiguous, including, but not limited to, the term, “Yahoo Book Project.” Yahoo
20 further objects because this request is irrelevant and is not reasonably calculated to lead to the
21 discovery of admissible evidence. Furthermore, this request, and all others that seek information
22 regarding a “Yahoo Book Project,” is unduly burdensome and oppressive in that it purports to
23 require Yahoo to produce information that is confidential, proprietary, and/or trade secret
24 information protected from disclosure, by seeking documents regarding any “Yahoo Book
25 Project,” including projects that may be “contemplated” by someone at Yahoo. The request is
26 also objectionable in that it asks for confidential and proprietary information regarding “financial
27 projections and performance” and the effect that an activity is “expected to have” on book sales.
28 Any financial projections that Yahoo may have made are proprietary information that should not

1 be disclosed to a competitor, such as the requesting party here. This request is further
2 objectionable and imposes an undue burden on Yahoo by asking it to produce documents
3 “sufficient to show” the “beliefs” that Yahoo has regarding “possible harms” or “possible
4 benefits” of certain activities to a number of third parties, including “the public.”

5 Further, Yahoo has not placed the text of books on its Web search engine. Any plans that
6 Yahoo may have to do so would be proprietary. Accordingly, no documents will be produced in
7 response to this request.

8 **REQUEST FOR PRODUCTION NO. 8**

9 A list showing each public library, research library, university library, and other library
10 with whom you have entered into contractual discussions to have their library contents included
11 in the Yahoo Book Project.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8**

13 Yahoo objects to this Request because it is compound, overly broad, unduly burdensome,
14 vague, and ambiguous, including, but not limited to, the term, “Yahoo Book Project,” “research
15 library,” and “other library.” Yahoo further objects because this request is irrelevant and is not
16 reasonably calculated to lead to the discovery of admissible evidence. Furthermore, this request,
17 and all others that seek information regarding a “Yahoo Book Project,” is unduly burdensome and
18 oppressive in that it purports to require Yahoo to produce information that is confidential,
19 proprietary, and/or trade secret information protected from disclosure, by seeking documents
20 regarding any “Yahoo Book Project,” including projects that may be “contemplated” by someone
21 at Yahoo. The request is also objectionable in that it asks for confidential and proprietary
22 information regarding “contractual discussions” that Yahoo may have had with third parties. Any
23 contractual discussions that Yahoo may have had would be proprietary information that should
24 not be disclosed to a competitor, such as the requesting party here. To the extent that this request
25 is simply asking for a list of contributors to Open Content Alliance, Google can find this
26 information on the Open Content Alliance website at
27 <http://www.opencontentalliance.org/contributors.html>.

1 Further, Yahoo has not placed the text of books on its Web search engine. Any plans that
2 Yahoo may have to do so would be proprietary. Accordingly, no documents will be produced in
3 response to this request. To the extent that this request is asking Yahoo to create “a list” of some
4 type, it is not a proper document request and is objected to on that basis.

5 **REQUEST FOR PRODUCTION NO. 9**

6 With respect to each library identified in response to Request No. 8, all contracts executed
7 between Yahoo and each library.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9**

9 As noted in the Response to Request No. 8, that Request is objectionable. To the extent
10 that Google is asking Yahoo to create “a list” of some type, it is not a proper document request.
11 Moreover, any contracts that Yahoo may have executed with a “library” would be proprietary
12 information that should not be disclosed to a competitor, such as the requesting party here.

13 Further, Yahoo has not placed the text of books on its Web search engine. Any plans that
14 Yahoo may have to do so would be proprietary. Accordingly, no documents will be produced in
15 response to this request.

16 **REQUEST FOR PRODUCTION NO. 10**

17 Documents sufficient to show your reasons for creating, developing, and maintaining the
18 Yahoo Book Project.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10**

20 Yahoo objects to this Request because it is compound, overly broad, unduly burdensome,
21 vague, and ambiguous, including, but not limited to, the term, “Yahoo Book Project.” Yahoo
22 further objects because this request is irrelevant and is not reasonably calculated to lead to the
23 discovery of admissible evidence. Furthermore, this request, and all others that seek information
24 regarding a “Yahoo Book Project,” is unduly burdensome and oppressive in that it purports to
25 require Yahoo to produce information that is confidential, proprietary, and/or trade secret
26 information protected from disclosure, by seeking documents regarding any “Yahoo Book
27 Project,” including projects that may be “contemplated” by someone at Yahoo. Documents
28 “sufficient to show” Yahoo’s “reasons for creating, developing, and maintaining” any part of its

1 business would be confidential and proprietary information, including possibly trade secrets, that
2 should not be disclosed to a competitor, such as the requesting party here.

3 Further, Yahoo has not placed the text of books on its Web search engine. Any plans that
4 Yahoo may have to do so would be proprietary. Accordingly, no documents will be produced in
5 response to this request.

6 **REQUEST FOR PRODUCTION NO. 11**

7 All documents (including without limitation communications between Yahoo and each of
8 the entities, including their legal counsel, identified in Schedule C) concerning the Lawsuits or
9 allegations against Google of copyright infringement in connection with the Google Book Search
10 Library Project.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11**

12 This request is vague and overly broad. As phrased, it would include any communication,
13 including e-mails, concerning the underlying lawsuits and allegations against Google. This
14 would include any e-mail between Yahoo employees who may have read or heard about the
15 lawsuits. For this reason, this request would subject Yahoo to an undue burden. Moreover, this
16 Request asks for any communication that any of Yahoo's employees may have had with any
17 person outside of Yahoo, including the numerous different entities regarding the pending lawsuits
18 against Google. Because those lawsuits have generated national publicity, it is quite possible that
19 some Yahoo employee may have communicated with someone inside or outside of Yahoo.
20 However, to search for any such communication would be enormously burdensome. Moreover,
21 an e-mail from a Yahoo employee to an employee of another company that might ask, "Have you
22 heard about the suit filed against Google?" would not be relevant to the underlying proceedings or
23 reasonably calculated to lead to the discovery of admissible evidence.

24 Furthermore, as phrased, the Request would even include communications between
25 Yahoo and its legal counsel regarding the underlying complaints against Google. Thus, the
26 Request seeks documents protected by the attorney-client privilege and work product doctrine.

27 For all of these reasons, no documents will be produced in response to this request.
28

1 **REQUEST FOR PRODUCTION NO. 12**

2 All public statements you have made regarding the Yahoo Book Project.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12**

4 Yahoo objects to this Request because it is compound, overly broad, unduly burdensome,
5 vague, and ambiguous, including, but not limited to, the terms “Yahoo Book Project” and “public
6 statements.” Yahoo further objects because this request is irrelevant and is not reasonably
7 calculated to lead to the discovery of admissible evidence. Furthermore, this request, and all
8 others that seek information regarding a “Yahoo Book Project,” is unduly burdensome and
9 oppressive in that it may require Yahoo to produce information that is confidential, proprietary,
10 and/or trade secret information protected from disclosure, by seeking documents regarding any
11 “Yahoo Book Project,” including projects that may be “contemplated” by someone at Yahoo.
12 This request is also vague and overly broad and would subject Yahoo to an undue burden in that
13 it asks for “all public statements” that Yahoo (including former officers or directors) may have
14 made regarding the broadly defined “Yahoo Book Project.” Thus, Yahoo is being asked to
15 produce any document containing a “public statement” made by any present or former officer or
16 director regarding actual “or contemplated” projects to index books on an Internet search engine.
17 To the extent that Yahoo can even understand what is being requested, it would require a
18 monumental expenditure of time and money to provide the information requested. To the extent
19 that the requesting party is asking for statements that were made to the media, that information
20 can be obtained by the requesting party through a search of media files.

1 Further, Yahoo has not placed the text of books on its Web search engine. Any plans that
2 Yahoo may have to do so would be proprietary. For all of these reasons, no documents will be
3 produced in response to this request.
4

5 Dated: November 20, 2006

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8 By: _____
9 Arturo J. González
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