IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

e360 INSIGHT, LLC, an Illinois Limited Liability Company, and DAVID LINHARDT, an individual,	)	
Plaintiffs,	)	Case No. 06 C 3958
v.	)	District Judge Charles P. Kocoras Magistrate Judge Geraldine Soat Brown
THE SPAMHAUS PROJECT, a company limited by guarantee and organized under the laws of England, a/k/a THE SPAMHAUS PROJECT, LTD.,	)	
Defendant.	)	

DEFENDANT THE SPAMHAUS PROJECT'S
STATUS REPORT AND SUGGESTIONS FOR FURTHER PROCEEDING

Defendant The Spamhaus Project ("Spamhaus") respectfully submits this status report and suggestions for further proceeding in light of the Court's directive on October 30, 2008 that the parties return for a "definitive final schedule for the resolution of this case." (10/30/08 Tr. at 6.)

1. Status.

As Your Honor knows, this case is before the Court for prove-up of damages on the default finding of liability entered by the Court. Between November 2007 and December 1, 2008, Spamhaus diligently pursued the fact discovery necessary to defend that damages claim against dilatory and contemptuous conduct by the Plaintiffs. In the process of fact discovery, the Court granted two motions to compel against Plaintiffs, and awarded Spamhaus its fees for bringing a motion to dismiss after Plaintiffs defaulted on the second order compelling production. Spamhaus finally was able to take the deposition of David Linhardt and the Rule

30(b)(6) deposition of plaintiff e360 Insight LLC on November 10 and 11, 2008. The deadline for plaintiffs to identify expert witnesses passed on April 28, 2008, with no reports served, and the only "expert" identified was the individual plaintiff himself, David Linhardt. No deadline was set for Spamhaus to identify its expert witnesses, as the Court preferred to allow the parties to determine whether that was necessary. Fact discovery in this case has now closed.

2. Spamhaus' Suggestions For Proceeding.

Spamhaus respectfully suggests that this case can and should be resolved in its favor on motion, without the need for a live evidentiary hearing. Spamhaus' suggestion is based on the following discrete facts that are not in any dispute:

- Plaintiffs do not claim any liquidated or out-of-pocket damages.
- Plaintiffs' damages claims are all purportedly based on estimated future lost revenues and their purported effect on business value, all of which must be proven to a "reasonable certainty."
- The only support for Plaintiffs' future lost revenues and business value claim is the testimony of individual plaintiff David Linhardt.
- Linhardt admitted at his deposition that he is ***not*** an expert on legal damages, on projecting lost profits, or on company valuations.
- Linhardt also admitted at his deposition that he considered the $11.7 million damages request to not be "accurate" (11/10/08 Tr. at 258-59), but relied on a subsequent method he used to arrive at a number exceeding $136 million, even though the Court has barred that subsequent method and higher damages number for discovery defaults under Rule 37.

Consequently, Spamhaus believes that the admissions at Linhardt's deposition preclude him from offering expert testimony on damages under Federal Rule of Evidence 702, and without that testimony, Plaintiffs have no proof of damages.

In light of these facts, Spamhaus suggests the following schedule to resolve the issue on the papers or, if the Court deems it necessary, by evidentiary hearing:

December 9, 2008	Spamhaus to file motion to exclude all testimony regarding damages by Linhardt under Rule 37 and Federal Rule of Evidence 702 and motion for summary judgment
January 5, 2009	Plaintiffs to respond to Spamhaus motions
January 19, 2009	Spamhaus to make Rule 26(a)(2) expert disclosure
January 26, 2009	Spamhaus to reply in support of motions
February 28, 2009	Plaintiffs to complete deposition of Spamhaus expert(s)
April 1, 2009	Pretrial order due (if the Court desires)
April 2009 or after	Damages hearing at the Court's convenience (if necessary)

Respectfully submitted,

THE SPAMHAUS PROJECT

Dated: December 1, 2008

By: s/ David Jiménez-Ekman

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CERTIFICATE OF SERVICE

I, Chad Emerson Bell, an attorney, hereby certify that I served the foregoing **Defendant The Spamhaus Project's Status Report and Suggestions for Further Proceeding** upon:

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by electronic mail and hand-delivery on this 1st day of December 2008.

s/ Chad Emerson Bell
Chad Emerson Bell