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HOLOMAXX TECHNOLOGIES CORPORATION**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

**HOLOMAXX TECHNOLOGIES CORPORATION, a Pennsylvania S Corporation,**  
  
Plaintiff,  
  
v.  
  
YAHOO!, INC., a Delaware corporation,  
  
DEFENDANT.

) **Case No. CV-10-4926-JF**  
)  
) **COMPLAINT**  
)  
) **(1) Violation of 18 U.S.C. §§ 2510 et seq. (The Wiretap Act)**  
) **(2) Violation of 18 U.S.C. §§ 2701 et seq. (The Stored Communications Act)**  
) **(3) Violation of 18 U.S.C. §§ 1030 et seq. (Computer Fraud)**  
) **(4) Intentional Interference with Contract**  
) **(5) Intentional Interference with Prospective Business Advantage**  
) **(6) Violation of California Penal Code §§ 630 et seq. (Wiretapping/Eavesdropping)**  
) **(7) Violation of California Business & Professions Code §§ 17200 et seq.**  
)  
) **JURY TRIAL DEMANDED**  
)  
)

1 Plaintiff HOLOMAXX TECHNOLOGIES CORPORATION (øHOLOMAXXö), a  
2 Pennsylvania S corporation, complains and pleads against Defendant YAHOO!, INC.,  
3 (øYAHOOö or øDEFENDANTö) as follows:

4 **JURISDICTION AND VENUE**

- 5
- 6 1. This action raises federal questions under, *inter alia*, 18 U.S.C. §§ 2510 *et seq.*
  - 7 2. This Court has original jurisdiction over the federal claims herein pursuant to 28 U.S.C.  
8 §§ 1331 and 1332, and has supplemental jurisdiction over the state claims herein pursuant to 28  
9 U.S.C. § 1367.
  - 10 3. This Court has authority to award the requested declaratory relief under, *inter alia*, 28  
11 U.S.C. § 2201 and 18 U.S.C. § 2520, and the requested injunctive relief and damages (including  
12 reasonable attorneysø fees and costs, and punitive damages) under, *inter alia*, 18 U.S.C. § 2520.
  - 13 4. Venue is proper under 28 U.S.C. § 1391 in the Northern District of California because a  
14 substantial part of the actions or omissions giving rise to this case occurred within this District,  
15 and YAHOO maintains its corporate headquarters in this district.
  - 16 5. Pursuant to Civil L.R. 3-2(c), this case is properly assigned to the San Jose Division,  
17 because YAHOO maintains its corporate headquarters in Santa Clara County, California.

18 **PARTIES**

- 19
- 20 6. Plaintiff HOLOMAXX is a Pennsylvania S Corporation, with its principal place of  
21 business in Montgomery County, Pennsylvania.
  - 22 7. Plaintiff HOLOMAXX is informed and believes, and on that basis alleges, that Defendant  
23 YAHOO!, INC. (øYAHOOö) is a corporation duly organized and existing under the laws of the  
24 state of Delaware, with corporate headquarters at 701 First Avenue, Sunnyvale, CA 94089.

25 **INTRODUCTION**

- 26
- 27 8. As detailed below, in this action Plaintiff HOLOMAXX seeks damages and injunctive  
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1 relief against DEFENDANT for its intentional interference with HOLOMAXX's ability to  
2 lawfully and properly send emails via the internet, to YAHOO users who had specifically  
3 requested these emails from HOLOMAXX. By engaging in this conduct, YAHOO disrupted  
4 HOLOMAXX's contractual and business relationships. YAHOO has intentionally and recklessly  
5 disregarded HOLOMAXX's repeated requests to cease their conduct, and DEFENDANT has  
6 refused to provide any information that would permit HOLOMAXX to remedy the situation. To  
7 add insult to injury, YAHOO has informed HOLOMAXX that it will only consider accepting  
8 emails from HOLOMAXX after a six-month waiting period, and only if HOLOMAXX  
9 "significantly changes" its email policies - despite the fact that HOLOMAXX is sending  
10 legitimate email, and YAHOO has explicitly refused to identify any actual problem with any  
11 emails sent by HOLOMAXX. YAHOO's treatment of HOLOMAXX in this regard is in breach  
12 of objective industry standards for email filtering programs and email service provider abuse desk  
13 responses to inquiries by bulk email senders such as HOLOMAXX. The objective industry  
14 standard has been set forth by the Messaging Anti-Abuse Working Group ("MAAWG"), a group  
15 consisting of the largest internet service providers on the planet. YAHOO is a member of the  
16 MAAWG and has approved of the MAAWG's industry standard for abuse desk responses but has  
17 failed to follow the MAAWG evidencing, among other things, a lack of good faith.

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20  
21 9. The MAAWG sets forth an objective industry standard protocol by which its members  
22 should respond to blocked senders, such as HOLOMAXX, requesting unblocking. The MAAWG  
23 protocol states that "the simplest option would be to grant unblocking when it is requested. This  
24 alleviates the necessity of judgment calls, arguments with senders or time-consuming research.  
25 The overwhelming majority of the vote was for this approach because if the sender had not fixed  
26 the issue that caused the block it would be reinstated quickly, so damage would be theoretically  
27 minimal." In this case, YAHOO has breached this provision of the MAAWG in that, with regard  
28

1 to HOLOMAXX and YAHOO's blocking of HOLOMAXX's emails, YAHOO refuses to  
2 unblock HOLOMAXX's emails.

3 10. The MAAWG provides for a second, less preferred, abuse desk protocol. This option  
4 would address the difficulty of making judgment calls by keeping a history of a sender's  
5 behavior, including blocks and unblocking requests. This would enable less-experienced staffers  
6 to have the security of a written record to refer to and evidence to present to the sender if a  
7 conversation is needed. YAHOO, in its dealing with HOLOMAXX, breached this industry  
8 standard because it did not employ staffers to keep and analyze HOLOMAXX's history nor did  
9 YAHOO make available to HOLOMAXX staff members to discuss and review the evidence  
10 relating to blocking and/or unblocking of HOLOMAXX emails. In fact, YAHOO refused to  
11 discuss the details of its blocking with HOLOMAXX.

12  
13  
14 11. The MAAWG provides for a third, less accepted abuse desk protocol. This third option is  
15 to use Non-Delivery Reports to resolve a block in various ways. One is to include a Frequently  
16 Asked Question for an automated removal process in the Non-Delivery Report or a link to it. The  
17 second is to allow non-customers a limited number of daily removals, with the instructions  
18 enclosed in the Non-Delivery Report. The third is to include the reason for the block in the Non-  
19 Delivery Report with a phone number for eventual resolution. YAHOO, in its dealings with  
20 HOLOMAXX, provided none of the above options. YAHOO failed to provide HOLOMAXX  
21 with a Frequently Asked Question link in a Non-Delivery Report, failed to provide non-customers  
22 a limited number of daily removals, with instructions enclosed in the Non-Delivery Report, and  
23 failed to provide a reason for the block in a Non-Delivery Report with a phone number for  
24 resolution.

25  
26 12. The MAAWG provides for a transparent process for resolving abuse desk and  
27 blocking/unblocking issues connected to the sending of bulk commercial email. YAHOO has  
28

1 breached every one of the standards set forth by the MAAWG in its dealings with HOLOMAXX.  
2 In fact, YAHOO's abuse desk and blocking/unblocking practices are not transparent and are more  
3 akin to a stonewall/black box approach. This practice is unfair under California Business and  
4 Professions Code Section 17200 as it is unethical, oppressive, unscrupulous and substantially  
5 injurious to consumers. It also evidences a lack of good faith by YAHOO.  
6

7 13. In addition, DEFENDANT intentionally intercepted and obtained information from  
8 HOLOMAXX's private communications with its clients. By engaging in the foregoing wrongful  
9 conduct, DEFENDANT has exceeded its authorization to access facilities through which  
10 electronic communication services are provided, and to access computers used for interstate and  
11 foreign communications and commerce, and have obtained information thereby.  
12

13 14. As a direct result of DEFENDANT's conduct, HOLOMAXX has suffered, and continues  
14 to suffer, direct and consequential damages in an excess of the jurisdictional limit of this court, in  
15 an amount to be proven at trial. In addition, HOLOMAXX has suffered, and continues to suffer,  
16 irreparable harm to its reputation and ongoing business relationships. Because DEFENDANT's  
17 conduct has already damaged HOLOMAXX as described herein, and because their continuing  
18 conduct threatens to cause HOLOMAXX irreparable injury, HOLOMAXX has had no choice but  
19 to file this action.  
20

21 15. Furthermore, YAHOO is a direct competitor with HOLOMAXX in the marketplace for  
22 consumer email and internet advertising revenue. To this end, YAHOO serves its email users  
23 with advertising for the same products and services that HOLOMAXX advertises. YAHOO  
24 derives millions (and possibly billions) of yearly revenue from such advertising. For example,  
25 YAHOO sends emails to YAHOO users advertising: work from home opportunities; online  
26 dating; special offers/coupons; consumer products; educational services and colleges; consumer  
27 loans; and internet auction services. YAHOO provides email advertising to its users advertising  
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1 the same or similar services that HOLOMAXX advertises. HOLOMAXX charges advertisers  
2 significantly less money for each email advertisement than does YAHOO. As such, YAHOO has  
3 instituted wholesale blocking of HOLOMAXX commercial emails so that YAHOO can shut  
4 HOLOMAXX out of the market and prevent consumers requesting advertisements from  
5 HOLOMAXX from receiving such advertisements. HOLOMAXX's advertisers are prevented  
6 from reaching YAHOO's users and must either pay YAHOO's higher advertising fees or be shut  
7 out of the market. HOLOMAXX is paid by its advertisers for each email that gets through to the  
8 consumer requesting said email. Therefore, YAHOO, by shutting HOLOMAXX out of the  
9 market, is engaging in unfair, wrongful and anti-competitive business practices designed to  
10 prevent HOLOMAXX from making revenue in the market and ensuring that HOLOMAXX goes  
11 out of business. YAHOO's filtering actions, as stated herein, evidence a complete lack of good  
12 faith. This practice is unfair under California Business and Professions Code Section 17200 as it  
13 is unethical, oppressive, unscrupulous and substantially injurious to consumers.  
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16 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

17 **A. Parties**

18  
19 **A. HOLOMAXX is a highly-esteemed email service provider, with an**  
20 **excellent reputation for sending legitimate, non-spam email on behalf of**  
21 **commercial clients since its founding in 2000.**

22  
23 **16.** HOLOMAXX is an ecommerce business development company, providing a full range of  
24 services ranging from website development to creative media since its founding in 2000. Among  
25 other things, HOLOMAXX contracts with commercial clients to provide a fully-managed email  
26 marketing service, including everything from creating advertisements to maintaining data for its  
27 clients' customer lists. HOLOMAXX began providing these email marketing services in 2002.  
28

1 17. In its role as an email service provider, HOLOMAXX enters into contracts with  
2 commercial clients, pursuant to which HOLOMAXX sends marketing emails on its clients'  
3 behalf. Because these contracts generally provide that HOLOMAXX will be paid a fixed amount  
4 per email sent, HOLOMAXX's profits - as well as its business relationships and future economic  
5 viability - depend on HOLOMAXX's proven track record of delivering emails to its clients day in  
6 and day out. HOLOMAXX's clients, in turn, rely on HOLOMAXX to ensure that their  
7 customers - who, as described below, have specifically *elected* to receive their emails - receive  
8 creative and valuable marketing information, direct to their email inbox on a timely basis.

9  
10 18. HOLOMAXX's clients include 42 PX Marketing Services, Wow Offers, LLC, MediaSoft,  
11 True.com, and Swipe Auctions. These clients advertise consumer financial products, online  
12 auctions, online dating, educational services, consumer products, employment opportunities and  
13 coupons. YAHOO advertises these same good and services. YAHOO's blocking/filtering has  
14 damaged HOLOMAXX by preventing HOLOMAXX from delivering its clients' emails.  
15 Because HOLOMAXX is prevented from delivering its clients' emails to consumers requesting  
16 such emails, HOLOMAXX has lost revenue in a sum of over \$700,000 because HOLOMAXX is  
17 paid per email that reaches the requesting consumer.

18  
19 19. HOLOMAXX's client companies all have an existing list of customers who have  
20 expressly elected to receive correspondence; these clients simply do not want to deal with the  
21 technical challenges commonly associated with deploying and managing an email campaign. In  
22 order to protect its own reputation, HOLOMAXX requires that its clients acquire their list  
23 subscribers in accordance with the Can-Spam Act (103 U.S.C. §§ 7701 et seq.), which provides  
24 federal standards for commercial email, in addition to adhering to Holomaxx's own privacy  
25 policy, which has been in effect since 2000, with revisions from time to time. ("Privacy Policy,"  
26 at <http://www.holomaxx.com/privacy.html>.) Holomaxx also provides services to marketing firms  
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1 who acquire opt-in leads via co-registration. These clients are accepted on a case-by-case basis,  
2 based on evidence that they maintain high standards and use legitimate, straightforward (and Can-  
3 Spam compliant) practices to build their subscriber lists. Among other things, HOLOMAXX's  
4 clients must typically require that subscribers provide their name, postal address, email and phone  
5 number. In order to prevent false registrations, subscriber registrations are then commonly  
6 confirmed via email; the client companies building these subscriber lists may also employ IP  
7 filtering, geo-location and CAPTCHA technologies: IP filtering prevents multiple registrations  
8 from the same IP address; geo-location ensures that the registration is geographically located in  
9 the area of the address entered by the user; and CAPTCHA prevents automated submissions  
10 commonly used by spammers.

12 20. In short, HOLOMAXX has been a legitimate email service provider (including email to  
13 YAHOO users) since 2002. HOLOMAXX takes a straightforward approach to mailing and (as  
14 described in detail below), does not use many of the methods commonly employed by other email  
15 marketers.

17 21. The volume of email that HOLOMAXX sends varies with the needs of the client and the  
18 size of the client's subscriber lists; however, in an average busy month HOLOMAXX may send  
19 10 million emails per day, including an estimated 6 million emails to YAHOO users worldwide.  
20 Both HOLOMAXX and its clients are rightly wary of being treated as spam, by customers,  
21 regulators, or internet service providers (ISPs). HOLOMAXX therefore guards its reputation  
22 carefully, adhering scrupulously to industry best practices for sending protocols and customer list  
23 management, and monitoring its clients to ensure that they do the same.

25 22. HOLOMAXX emails are not harassing under any definition. HOLOMAXX does not  
26 repeatedly email consumers requesting commercial email. HOLOMAXX typically limits email  
27 to one email per day per consumer/subscriber and no more than three emails per week per  
28

1 consumer/subscriber. Within the commercial email industry, harassing emails are considered to  
2 be emails sent multiple times per day (eight to fifteen) or week to the same email address. In  
3 addition, each HOLOMAXX email contains an unsubscribe button that allows any recipient the  
4 opportunity to instantly elect to never receive another HOLOMAXX email. Thus, HOLOMAXX  
5 email cannot rightly be classified as harassing under either an objective or subjective standard.  
6 Whether or not a particular email could conceivably be considered harassing would be a  
7 subjective factual question for the intended recipient to answer.

9 23. HOLOMAXX makes use of a simple formula that is  $\text{Subscriber List Size} / 7$  to  
10 calculate how many emails should be sent for a particular campaign in one day. This limits  
11 HOLOMAXX's daily volume and limits the amount of email sent to any single email address.  
12 HOLOMAXX's database does not allow an email address to exist more than one time.  
13 HOLOMAXX, unlike many commercial emailers, does not store duplicate email addresses within  
14 its database in order to ensure that each list of consumers/subscribers is comprised entirely of  
15 unique email addresses. This enables HOLOMAXX to ensure its self-imposed sending volume  
16 limitations of one per day and three per week.

18 24. Among other things, to maintain its high standards and reputation, HOLOMAXX takes  
19 the following precautions in accordance with the Can-Spam Act:

- 21 a. All emails sent by HOLOMAXX contain clear and accurate transmission and header  
22 information. All email sent by HOLOMAXX originates from the same set of servers, all  
23 ending with `.holomaxx.net.` HOLOMAXX does not make any attempt to disguise or hide  
24 itself; indeed, all email sent by HOLOMAXX has the same reply-to address, making it easy to  
25 identify HOLOMAXX as the source. All outgoing email is validated by multiple domain-  
26 identification services: It is signed with DKIM (*i.e.*, DomainKeys Identified Mail, a service  
27 validating the sender's domain-name identification), and HOLOMAXX's server supports  
28

1 both SPF (Sender Policy Framework) and SenderID for verification purposes. (SPF and  
2 SenderID are both trade names for email authentication technology protocols that - like  
3 DKIM - verify the domain name from which e-mail messages are sent.)

4 b. In addition, HOLOMAXX sends all of its email from a relatively small number of IP  
5 addresses (less than 100), whereas it is still commonplace in the industry for emailers to use  
6 multiple entire blocks (256 or more) of IP addresses. HOLOMAXX does not òturn and burnö  
7 ranges of IP addresses; rather, it sends email from the same addresses, without ever jumping  
8 around to different blocks in an attempt to avoid blacklists. In other words, HOLOMAXX  
9 does not register hundreds of throwaway domains and switch them with each email campaign.  
10 To the contrary, HOLOMAXX has been using the same IP addresses and datacenter since  
11 2004.

12 c. In accord with HOLOMAXX's Privacy Policy (and the Can-Spam Act), HOLOMAXX's  
13 Anti-Spam policy tolerates only permission-based email. All emails sent by HOLOMAXX  
14 (except for transactional emails: e.g., important account notifications and billing information)  
15 contain a link permitting recipients to òopt outö of receiving further email messages, as well  
16 as a clear and conspicuous explanation of how the recipient can opt out of getting future email  
17 from HOLOMAXX. (This option is also made available when a subscriber first signs up for  
18 the email list.) In addition, subscribers can unsubscribe by emailing HOLOMAXX directly at  
19 [support@holomaxx.com](mailto:support@holomaxx.com); or, if they believe that they have received unsolicited commercial  
20 email from HOLOMAXX, they can report it at [abuse@holomaxx.net](mailto:abuse@holomaxx.net). Furthermore, in every  
21 email sent by HOLOMAXX, the links (including the reply-to email address) all use the same  
22 domain.

23 d. HOLOMAXX has also registered its domains and IP addresses with all available feedback  
24 loops (including YAHOO's), allowing HOLOMAXX to process email that recipients have  
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1 marked as "junk" by clicking a button on their email interface (as opposed to clicking the  
2 "Unsubscribe" link provided within the email). The email from the feedback loop is  
3 processed automatically and is treated the same as an unsubscribe request. All email which is  
4 marked as "undeliverable" is also processed automatically and treated as an unsubscribe  
5 request.

6  
7 e. HOLOMAXX honors all opt-out requests (as described above in subparagraphs (c) and  
8 (d), above) within 10 business days. HOLOMAXX does not charge any fee to unsubscribe,  
9 does not require recipients to provide any personally identifying information beyond an email  
10 address, and does not make the recipient take any steps other than sending a reply email or  
11 visiting a single page on an Internet website as a condition for honoring an opt-out request.  
12 The reply address or other opt-out mechanism provided is always valid for at least 30 days  
13 after the email is sent. HOLOMAXX's "unsubscribe" function operates in real-time and has a  
14 "global" effect, meaning that if someone chooses to unsubscribe, that email address will not  
15 receive any future email from HOLOMAXX even if their email address appears on another  
16 HOLOMAXX client's subscriber list. Once a recipient has opted out, HOLOMAXX does not  
17 sell or transfer their email addresses, even in the form of a mailing list, except that  
18 HOLOMAXX may on occasion transfer the addresses to another company hired solely for the  
19 purpose of complying with the Can-Spam Act.

20  
21  
22 f. All emails sent by HOLOMAXX contain clear and accurate subject headings that  
23 accurately reflect the content of the message. All advertising emails sent by HOLOMAXX  
24 are clearly and conspicuously identified as such.

25  
26 g. All emails sent by HOLOMAXX include the current physical postal address of either  
27 HOLOMAXX or the client for whom HOLOMAXX is sending the email. (Where an email  
28 contains the client's physical address, the client forwards the few unsubscribe requests that it

1 receives by ðsnail mailö to HOLOMAXX for processing on a monthly basis.)

2 h. HOLOMAXX monitors its clientsøemail lists and practices, requiring that they maintain  
3 compliance with HOLOMAXXø privacy policies and the Can-Spam Act.

4 25. As a result of the foregoing, since it began keeping track of complaints in 2002,  
5 HOLOMAXX has maintained a complaint rate of between 0.1% and 0.3%; i.e., fewer than 3 in  
6 every 1,000 emails sent by HOLOMAXX is routed to an invalid address or results in a subscriber  
7 opt-out. YAHOOø feedback loop data also shows an aggregate complaint rate of consistently at  
8 or below 0.1%.

9  
10 **B. YAHOO is an Internet Service Provider and competitor of**  
11 **HOLOMAXX in the internet advertising market.**

12 26. YAHOO is an internet service provider (øISPö). Among its other services, YAHOO  
13 hosts email accounts; in fact, YAHOO offers one of the largest (if not *the* largest) email services  
14 in the world. YAHOO improperly relies on a faulty automated spam filter (øSpamGuardö) and  
15 third-party evaluation services to determine whether incoming email is spam keeping legitimate  
16 competitors like HOLOMAXX out of the marketplace for internet advertising to YAHOO email  
17 users. Unfortunately, SpamGuard has been programmed to identify spam based on certain  
18 mailing characteristics, without reference to whether the email in question actually violates the  
19 Can-Spam Act. The effect is that SpamGuardø determinations are often incorrect, leading  
20 YAHOO - as in this case - to label legitimate email as spam and prevent it from reaching end  
21 users.  
22

23  
24 27. To make matters worse, once SpamGuard has wrongly determined that a sender is sending  
25 spam, YAHOO will not reverse this determination, will not remedy the situation (including  
26 permitting the sender to send any other email to its users), and will not provide any information  
27 that would permit a user to change its sending practices to fall within SpamGuardø guidelines.  
28

1 This violates accepted industry standards set forth by the MAAWG and evidences a lack of good  
2 faith by YAHOO.

3  
4 **C. Cisco Ironport Systems, LLC is a self-described provider of “sender  
5 reputation services”; it profits from offering senders’ purported “Reputation  
6 Scores” to ISPs and other third parties, whether those scores are right or  
7 wrong.**

8  
9 28. Cisco Ironport Systems, LLC (‘‘CISCO’’) is a wholly-owned subsidiary of Cisco, one of  
10 the world’s largest technology corporations. CISCO provides ‘‘sender reputation’’ services to  
11 ISPs and other third parties, including an email monitoring service known as SenderBase which  
12 purports to identify organizations that send spam email. CISCO claims that SenderBase is ‘‘the  
13 world’s largest email and Web traffic monitoring network, . . . collect[ing] nowadays data on  
14 more than 25 percent of the world’s email traffic.’’

15  
16 29. In connection with its SenderBase services, CISCO develops a reputation score  
17 (‘‘Reputation Score’’) for Internet IP addresses. It then publishes this Reputation Score, and  
18 related information, to third parties through, *inter alia*, its [www.senderbase.org](http://www.senderbase.org) website. As  
19 stated at [www.senderbase.org](http://www.senderbase.org), ‘‘SenderBase can be used like a ‘credit reporting service’ for email,  
20 providing comprehensive data that ISPs and companies can use to differentiate legitimate senders  
21 from spammers and other attackers . . . .’’ In other words, CISCO intends that ISPs and other  
22 companies will rely on its Reputation Scores to determine whether email senders are sending  
23 spam, or legitimate email.

24  
25 30. HOLOMAXX is informed and believes, and based thereon alleges, that CISCO  
26 intercepted emails sent by HOLOMAXX in order to calculate HOLOMAXX’s Reputation Score.  
27 Among other things, CISCO owns SpamCop, a free spam reporting service which allows email  
28

1 recipients to report spam to, *inter alia*, the senders' ISPs. SpamCop then uses these reports to  
2 compile a blacklist of computers sending spam. HOLOMAXX is informed and believes, and  
3 based thereon alleges, that CISCO uses information from SpamCop in connection with its  
4 SenderBase service. HOLOMAXX is also informed and believes, and based thereon alleges, that  
5 CISCO solicits ISPs to intercept emails and provide them to CISCO to include in its SenderBase  
6 data, and that YAHOO has intercepted and forwarded emails sent by HOLOMAXX, to CISCO  
7 for this purpose.  
8

9 31. Like YAHOO's automated SpamGuard service, SenderBase's algorithms often result in  
10 an incorrect determination. Also like SpamGuard, SenderBase is a "black-box" service: *i.e.*,  
11 once a sender has been identified as a spammer, CISCO refuses to provide any information that  
12 would allow the sender to change policies and reverse the determination.  
13

14  
15 **B. DEFENDANT' Wrongful Conduct Has Caused HOLOMAXX Damages, and Their**  
16 **Continuing Wrongful Conduct Threatens to Cause HOLOMAXX Irreparable**  
17 **Injury.**

18  
19 **A. HOLOMAXX began sending emails from new IP addresses to YAHOO users**  
20 **on about June 7, 2010.**  
21

22 32. HOLOMAXX rarely changes its IP addresses; however, in about May 2010,  
23 HOLOMAXX was able to acquire its own dedicated IP block: *i.e.*, 256 IP addresses within the  
24 same address range. HOLOMAXX made this change to avoid improperly being associated with  
25 other email senders, who might maintain lesser standards. Before making the change,  
26 HOLOMAXX had faced service issues, and its IP addresses had had their "reputations" affected,  
27 when spammers sent email from non-HOLOMAXX addresses within the shared block.  
28

1 33. As a consequence of acquiring its own IP block, and as part of the process of renumbering  
2 all of its network resources, HOLOMAXX replaced the IP addresses which it had previously been  
3 using to send emails to YAHOO users (and which it had previously registered with YAHOO),  
4 with new IP addresses in the range from 209.124.88.200 to 209.124.88.219 (the "IP Addresses").

5  
6 34. On or about May 27, 2010, HOLOMAXX submitted an online bulk mail application form  
7 (the "Application") seeking to register the IP Addresses for bulk email use. The form stated that  
8 "[the IP Addresses] will be replacing our old IPs which are currently registered with you."

9 35. HOLOMAXX began to send email (the "Email") to YAHOO users from the IP Addresses  
10 on about June 7, 2010.

11  
12 **B. YAHOO has intercepted all emails sent by HOLOMAXX to its clients'**  
13 **YAHOO-based customers since about June 7, 2010, thereby violating federal**  
14 **law and interfering with HOLOMAXX's contractual and business**  
15 **relationships.**  
16

17 36. Upon information and belief, Immediately after HOLOMAXX began sending emails to  
18 YAHOO users from the IP Addresses, YAHOO began to intercept them before said emails  
19 reached Yahoo's servers or the intended recipient's inboxes. Specifically, beginning on or about  
20 June 7, 2010, YAHOO has intentionally blocked all emails sent by HOLOMAXX to YAHOO  
21 users worldwide, despite the fact that YAHOO users solicited these emails, and HOLOMAXX  
22 sent them in accordance with the provisions of the Can-Spam Act. YAHOO has failed and  
23 refused to deliver email at all from most of HOLOMAXX's IP addresses; the few emails that  
24 YAHOO does accept are purposely routed to user's spam folders, despite the fact that users have  
25 elected to receive these emails, and whether or not the user has marked any other emails from  
26 HOLOMAXX as spam.  
27  
28

1 37. YAHOO has stated that it is treating HOLOMAXX's emails as spam based on potential  
2 issues raised by its automatic "SpamGuard" filter; despite repeated requests from HOLOMAXX,  
3 YAHOO has never identified any actual problem with HOLOMAXX's emails, and has explicitly  
4 refused to provide any specific information about the potential issues, citing the "proprietary  
5 nature" of information relating to SpamGuard. This is in violation of the MAAWG protocols and  
6 evidences a lack of good faith by YAHOO.  
7

8 38. YAHOO has also stated - falsely - that SpamGuard intercepted emails sent by  
9 HOLOMAXX in response to user complaints. As noted by HOLOMAXX in several  
10 communications to YAHOO in about June, 2010, this is impossible, because YAHOO began  
11 intercepting HOLOMAXX's emails immediately after HOLOMAXX began using the IP  
12 Addresses, and were stopped at "SMTP time," *i.e.*, they were refused by YAHOO servers before  
13 any of the Emails had the chance to reach their end users. Tellingly, YAHOO offered the same  
14 excuse when it blocked test emails sent by HOLOMAXX from an IP message that had never been  
15 used before to send email. Furthermore, according to data provided by YAHOO's own feedback  
16 loop, HOLOMAXX's aggregate complaint rate for emails sent to YAHOO is consistently at or  
17 below 0.1%: *i.e.*, HOLOMAXX receives fewer than one complaint per 1,000 emails; this is  
18 generally considered a "clean threshold" (*i.e.*, not a cause for concern). Many of the notices that  
19 contribute to this figure are not indicative of a non-existent email address or unwanted email.  
20 This bounce rate technique is just another way that YAHOO prevents competitive ads from  
21 reaching its email users. YAHOO bounces such emails knowing that most responsible email  
22 marketers will simply remove the bounced email addresses from their lists, and not actually  
23 investigate whether or not the email address is non-existent or email is unwanted. HOLOMAXX  
24 has sent emails to YAHOO users that have been bounced as non-existent email addresses one day  
25 and, then, made another attempt to send to the same email address a few days later and the email  
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1 is accepted. This has happened both when HOLOMAXX has sent from the same IP address and  
2 different IP addresses.

3 39. HOLOMAXX is entitled to send legitimate, permission-based emails to its clientsø  
4 customers *now*. However, despite HOLOMAXXø repeated requests, YAHOO has failed and  
5 refused to resolve the issue, causing HOLOMAXX to lose revenues and damaging  
6 HOLOMAXXø client relationships. Furthermore, YAHOO has informed HOLOMAXX that it  
7 will only *consider* accepting emails from HOLOMAXX after a six-month waiting period, and  
8 only if HOLOMAXX òsignificantly changesö its email policies - despite the fact that  
9 HOLOMAXX is sending legitimate email, and YAHOO has explicitly refused to identify any  
10 actual problem with any emails sent by HOLOMAXX. YAHOO continues to lock  
11 HOLOMAXX out of the market for internet advertising to YAHOO email users.  
12  
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14

15 **C. YAHOO knew that HOLOMAXX contracts with clients to send emails on**  
16 **their behalf, and that its conduct interferes with HOLOMAXX's contractual,**  
17 **economic, and business relationships.**

18 40. YAHOO knows full well that HOLOMAXX sends emails on behalf of commercial clients  
19 because, *inter alia*, HOLOMAXX has referenced its clients in numerous communications with  
20 YAHOO, including the Application. YAHOO also knows that it is interfering with  
21 HOLOMAXXø client relationships; among other things, HOLOMAXX explicitly stated in an  
22 email to YAHOO on June 20, 2010 that its business relies on its ability òto reliably deliver  
23 permission-based email to all of our subscribers.ö YAHOO has a financial interest in blocking  
24 HOLOMAXXø legitimate emails so that it may compete unfairly for internet advertising  
25 revenue. To this end, YAHOO advertises the same products and services advertised by  
26 HOLOMAXX including: online auctions; online dating; business opportunities, employment  
27  
28

1 opportunities; coupons and special offers for consumer products and services; consumer loans;  
2 educational services. Attached hereto as Exhibit "A" and incorporated fully into the First  
3 Amended Complaint is a true and correct copy of examples of YAHOO email advertisements for  
4 the same or similar goods and services as advertised by HOLOMAXX. Attached hereto as  
5 Exhibit "B" and incorporated fully into the First Amended Complaint is a true and correct copy of  
6 examples of HOLOMAXX's email advertisements for the same or similar goods and services as  
7 advertised by YAHOO. YAHOO's actions are anti-competitive, unfair, unlawful and seek to  
8 prevent HOLOMAXX from advertising the same or similar goods and services in the marketplace  
9 to YAHOO's email users.  
10

11 **D. There was actual disruption of HOLOMAXX's contractual, economic, and**  
12 **business relationships with its clients.**

13  
14 41. HOLOMAXX entered into contracts to send emails for its clients including 42 PX  
15 Marketing Services, Wow Offers, LLC, Mediasoft, True.com, and Swipe Auctions: These  
16 contracts generally provided that HOLOMAXX would be paid a fixed fee for each email that  
17 HOLOMAXX sent and was received by an email account holder ; a few contracts specified that  
18 HOLOMAXX will receive a direct share of the profits generated by the email campaign. As a  
19 result of the conduct described herein, HOLOMAXX cannot perform its contracts, and its clients  
20 have not paid HOLOMAXX for the blocked emails that HOLOMAXX attempted to send on their  
21 behalf. In addition, the resulting damage to HOLOMAXX's reputation - both as a legitimate  
22 email sender, and as a business partner that is able to follow through on its contractual  
23 commitments - has caused harm to HOLOMAXX's economic and business relationships.  
24

25  
26 **E. CISCO has intercepted emails sent by HOLOMAXX.**

27 42. Like YAHOO, CISCO has wrongfully intercepted HOLOMAXX's legitimate emails.  
28

1 CISCO used information collected from those emails to evaluate HOLOMAXX's purported  
2 "reputation," and then published those false statements to YAHOO and other internet service  
3 providers through, *inter alia*, its internet SenderBase service. Like YAHOO, CISCO's  
4 SenderBase service is a "black box" - *i.e.*, CISCO does not provide any kind of useful feedback  
5 about how it determines that a particular sender is sending spam, and senders are not able to  
6 challenge its findings.  
7

8  
9 **F. YAHOO obtained information from HOLOMAXX's confidential email**  
10 **communications (and the computers where they were stored), and then used**  
11 **and disclosed this information.**

12 43. HOLOMAXX is informed and believes, and based thereon alleges, that DEFENDANT  
13 both accessed computers on which HOLOMAXX's confidential email communications were  
14 stored, and that DEFENDANT also scanned the contents of those emails and obtained  
15 information therefrom, without the consent of either HOLOMAXX or the intended recipients.  
16 CISCO then used, disclosed, and relied on this information, by developing and publishing  
17 HOLOMAXX's purported "Reputation Score." YAHOO similarly used, disclosed, and relied on  
18 the contents of HOLOMAXX's emails, as well as information provided by CISCO about  
19 HOLOMAXX's purported "reputation," when it elected to treat HOLOMAXX's emails as spam.  
20 HOLOMAXX is informed and believes, and based thereon alleges, that YAHOO also disclosed  
21 the contents of its emails to CISCO, for CISCO's use in connection with its SenderBase service.  
22

23 44. Upon Information and belief, YAHOO intercepts and scans the contents of  
24 HOLOMAXX's emails in the following manner: YAHOO uses Bayesian filtering techniques  
25 which scans the content of HOLOMAXX's email message body and headers for words and  
26 phrases associated with alleged spam messages. YAHOO then provides the incoming and  
27  
28

1 intercepted HOLOMAXX email with a score before the HOLOMAXX email reaches the  
2 YAHOO receiving server. The receiving server, armed with the score procured from the illegal  
3 interception, then decides whether or not to accept the HOLOMAXX email or reject it as spam.

4 45. Upon information and belief, in conjunction with the Bayesian technique, YAHOO  
5 also intercepts HOLOMAXX emails before they reach YAHOO's servers and uses a distributed  
6 catalogue of signatures to detect spam. These signatures are generated as a result of YAHOO user  
7 submissions in the past. The HOLOMAXX emails are intercepted and the contents scanned and  
8 compared to the catalogue of past signatures. This is known as a collaborative filtration system.

9 46. YAHOO did not have authorization from HOLOMAXX to access the contents of  
10 HOLOMAXX's emails in the manner alleged herein, in transit between leaving HOLOMAXX's  
11 server and before reaching MICROSOFT's servers.

12  
13  
14  
15 **G. DEFENDANT acted with malice, oppression, fraud, and reckless indifference,**  
16 **in engaging in the conduct described above.**

17  
18 **1. Yahoo's repeated refusal not merely to send the Email, but also to**  
19 **provide information or means of redress, reflects a larger pattern of**  
20 **abuse.**

21  
22 47. YAHOO's conduct, as described above, was part of a larger pattern of indiscriminately  
23 blocking legitimate emails, engaging in anti-competitive, unlawful and unfair behavior to keep  
24 HOLOMAXX and similar companies out of the marketplace for internet advertising, violating  
25 objective industry standards for handling HOLOMAXX's unblock requests, and illegally  
26 intercepting and scanning the contents of HOLOMAXX's emails. Tellingly, even after  
27 HOLOMAXX had repeatedly responded to YAHOO's requests for information, described its  
28

1 email practices in detail, affirmed that its email is Can-Spam compliant, noted its low complaint  
2 rate based on *YAHOO's own data*, and offered to make any *additional* changes required by  
3 YAHOO above and beyond the legal minimum, YAHOO responded that its determination was  
4 final, and that HOLOMAXX would have to significantly change its practices, in some  
5 unspecified manner - i.e., to guess at what changes might make its email acceptable - and then  
6 wait six months before YAHOO would even consider sending emails from HOLOMAXX to  
7 YAHOO users. This evidences a lack of good faith on the part of YAHOO.

9 48. Moreover, YAHOO would not provide any information as to how it made this  
10 determination, or how HOLOMAXX could revise its practices to get back into YAHOO's good  
11 graces. Clearly, despite being informed that its conduct was causing damage to HOLOMAXX,  
12 YAHOO never intended to remedy this situation. In the course of an electronic exchange  
13 between HOLOMAXX and YAHOO, beginning with HOLOMAXX's submission of the  
14 Application on about May 27, 2010, and continuing through July 8, 2010:

- 16 a. YAHOO repeatedly stated that emails from the IP Addresses were being blocked due to  
17 user complaints, despite the fact that YAHOO began intercepting HOLOMAXX's emails  
18 immediately after HOLOMAXX started to use the new IP Addresses.
- 19 b. YAHOO informed HOLOMAXX several times that it had taken steps to allow emails  
20 from HOLOMAXX to reach their intended recipients, but these steps had no effect, and  
21 YAHOO then refused to make any changes that *would* be effective.
- 22 c. YAHOO repeatedly directed HOLOMAXX to generic links about "best practices,"  
23 despite detailed descriptions from HOLOMAXX about its practices. For example, in an email  
24 to YAHOO dated June 26, 2010, HOLOMAXX wrote:  
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26  
27  
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1 My company is not new to providing email marketing services - it is a  
2 service we have offered for many years, so we are well aware of the  
3 best practices and do our best to follow them. We require that our  
4 clients provide full opt-in information for each subscriber on their list.  
5 Even with that measure in place, we rely on your feedback loop to  
6 gauge our clients' list integrity. If a particular list is generating too  
7 many complaints we will warn the client and tell them to review their  
8 list. If the complaint rate does not improve we will suspend or cancel  
9 their mailing privileges.  
10

11  
12 The problem is that you are indiscriminately interfering with the  
13 delivery of email, despite there not being any basis for it. Based on  
14 your own feedback loop data our aggregate complaint rate is  
15 consistently at or below 0.1% - and that is generally accepted as a  
16 clean threshold. If we were seeing complaint rates of 1% or more  
17 over an extended period of time then I would not disagree with your  
18 course of action...but in this case I do not see any reason or  
19 justification.  
20  
21

22 d. YAHOO repeatedly suggests that HOLOMAXX have its end users take active steps to  
23 receive emails from HOLOMAXX, including, e.g., creating their own filters - even after  
24 HOLOMAXX has informed YAHOO that (i) these users have already opted into receiving  
25 emails from HOLOMAXX; (ii) this is an unreasonable request to make of individual users;  
26 and (iii) the emails are being stopped at SMTP time, i.e., before the users have a chance to  
27 accept or reject them. This is unfair and evidences a lack of good faith by YAHOO.  
28

1 e. Despite HOLOMAXX's repeated offers to customize its services and respond to any  
2 actual problems, YAHOO repeatedly refuses to provide any specific information that would  
3 allow HOLOMAXX to continue to send email to YAHOO users.

4 f. YAHOO finally informed HOLOMAXX that it will only *consider* accepting emails from  
5 HOLOMAXX after a six-month waiting period, and then only if HOLOMAXX "significantly  
6 changes" its email policies - despite the fact that (a) YAHOO has not identified any actual  
7 problem with HOLOMAXX's email practices, and (b) HOLOMAXX's practices are already  
8 Can-Spam compliant.  
9

10  
11 **C. Damages**

12 49. As a result of the foregoing conduct by DEFENDANT, HOLOMAXX has suffered, and  
13 continues to suffer, direct and consequential damages in an excess of the jurisdictional limit of  
14 this court (including at least \$700,000 in damages since about January, 2010), in an amount to be  
15 proven at trial. In addition, HOLOMAXX has suffered, and continues to suffer, irreparable harm  
16 to its reputation and ongoing business relationships.  
17

18 50. Among other things, HOLOMAXX's contracts generally specify that HOLOMAXX will  
19 be paid a fixed fee for each email sent; a few contracts specify that HOLOMAXX will receive a  
20 direct share of the profits generated by the email campaign. In addition to the loss of profits that  
21 would have accrued from sending each email, HOLOMAXX has also lost business from existing  
22 and prospective clients, based on the injury to its reputation and its inability to send email reliably  
23 on behalf of its clients. HOLOMAXX has lost business from the following clients as a result of  
24 DEFENDANT's actions: 42 PX Marketing Services, Wow Offers, LLC, Mediasoft, True.com,  
25 Swipe Auctions.  
26

27 51. Furthermore, 18 U.S.C. §§ 2510 *et seq.* and 18 U.S.C. §§ 2701 *et seq.* each provide a  
28

1 statutory minimum for civil damages caused by violations thereof.

2 52. Because YAHOO has refused even to consider sending email sent by HOLOMAXX for a  
3 six-month period, HOLOMAXX's damages are likely limited not only to lost profits and lost  
4 clients; in addition, HOLOMAXX risks the threat of business disruptions including employee  
5 layoffs, unpaid bills, poor credit reports, damaged vendor relationships, and (potentially)  
6 bankruptcy.  
7

8 **FIRST CAUSE OF ACTION**

9 **(Violation of 18 U.S.C. §§ 2510 *et seq.* - The Wiretap Act)**

10 **(Against YAHOO)**

11 53. Plaintiff incorporates by reference and re-alleges each and every allegation of the  
12 preceding paragraphs as if set forth herein.

13  
14 54. DEFENDANT have intentionally intercepted electronic communications sent by  
15 HOLOMAXX, in violation of 18 U.S.C. §§ 2510 *et seq.* As described fully above, YAHOO has  
16 blocked all emails sent by HOLOMAXX to YAHOO users, and both DEFENDANT have  
17 intercepted emails to evaluate their purported spam-like characteristics.

18 55. DEFENDANT intentionally used and disclosed the contents of such electronic  
19 communications sent by HOLOMAXX, while knowing or having reason to know that the  
20 information was obtained through the interception of those communications in violation of 18  
21 U.S.C. § 2511. As described fully above, both DEFENDANT have intercepted emails sent by  
22 HOLOMAXX in order to evaluate their purported spam-like characteristics; and furthermore,  
23 HOLOMAXX is informed and believes, and based thereon alleges, that both DEFENDANT  
24 disclosed the contents of such emails to each other and to third parties for a similar purpose.  
25

26 56. DEFENDANT's conduct, as described herein, was performed with malice, oppression,  
27 fraud, and reckless indifference. As described fully above, DEFENDANT's conduct was part of a  
28

1 larger pattern or practice, tending to increase their own profits without regard for legitimate email  
2 senders.

3 57. As a result of DEFENDANT's conduct, as described herein, HOLOMAXX has suffered,  
4 and continues to suffer, damages in an amount to be proven at trial, including without limitation  
5 past and future lost profits, and injury to reputation, as well as other consequential damages, in  
6 excess of the jurisdictional limit of this court.  
7

8 58. DEFENDANT are continuing to engage in the unlawful actions alleged herein, and unless  
9 restrained and *enjoined* will continue to do so, causing irreparable harm to HOLOMAXX. It is  
10 difficult to ascertain the amount of compensation that could afford HOLOMAXX adequate relief  
11 for DEFENDANT's continuing unlawful acts. HOLOMAXX's remedy at law is, therefore,  
12 inadequate to compensate for the injuries threatened.  
13

14 59. HOLOMAXX is therefore entitled to:

15 a. A declaration that:

- 16 i. HOLOMAXX's current email practices, as set forth herein, are in accord  
17 with the Can-Spam Act;
- 18 ii. Emails sent by HOLOMAXX in accord with such practices are not spam;
- 19 iii. HOLOMAXX has the right to send such legitimate, non-spam emails  
20 directly to the intended recipient's primary inbox, without interception,  
21 deprioritization, blocking, delay, or other interference; and  
22
- 23 iv. DEFENDANT are prohibited from intercepting, deprioritizing, blocking,  
24 delaying, or interfering with any emails sent by HOLOMAXX in  
25 accordance with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701  
26 et seq.), including rerouting such emails away from the primary inbox of  
27 the intended recipient.  
28



1 61. By engaging in the wrongful conduct described herein, DEFENDANT have intentionally  
2 exceeded their authorization to access facilities through which electronic communication services  
3 are provided, and have thereby obtained and prevented authorized access to wire or electronic  
4 communications sent by HOLOMAXX while they are in electronic storage in such system, in  
5 violation of 18 U.S.C. §§ 2701 *et seq.*

6  
7 62. DEFENDANT's conduct, as described herein, was performed with malice, oppression,  
8 fraud, and reckless indifference. As described fully above, DEFENDANT's conduct was part of a  
9 larger pattern or practice, tending to increase their own profits without regard for legitimate email  
10 senders.

11 63. As a result of DEFENDANT's conduct, as described herein, HOLOMAXX has suffered,  
12 and continues to suffer, damages in an amount to be proven at trial, including without limitation  
13 past and future lost profits, and injury to reputation, as well as other consequential damages, in  
14 excess of the jurisdictional limit of this court.

15  
16 64. DEFENDANT are continuing to engage in the unlawful actions alleged herein, and unless  
17 restrained and *enjoined* will continue to do so, causing irreparable harm to HOLOMAXX. It is  
18 difficult to ascertain the amount of compensation that could afford HOLOMAXX adequate relief  
19 for DEFENDANT's continuing unlawful acts. HOLOMAXX's remedy at law is, therefore,  
20 inadequate to compensate for the injuries threatened.

21  
22 65. HOLOMAXX is therefore entitled to:

23 a. A declaration that:

24 i. HOLOMAXX's current email practices, as set forth herein, are in accord  
25 with the Can-Spam Act;

26 ii. Emails sent by HOLOMAXX in accord with such practices are not spam;

27 iii. HOLOMAXX has the right to send such legitimate, non-spam emails  
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- directly to the intended recipient's primary inbox, without interception, deprioritization, blocking, delay, or other interference; and
- iv. DEFENDANT are prohibited from intercepting, deprioritizing, blocking, delaying, or interfering with any emails sent by HOLOMAXX in accordance with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 et seq.), including rerouting such emails away from the primary inbox of the intended recipient.
- b. A preliminary and permanent injunction:
- i. prohibiting DEFENDANT from intercepting, deprioritizing, blocking, delaying, or interfering with any emails sent by HOLOMAXX in accordance with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 et seq.), including rerouting such emails away from the primary inbox of the intended recipient;
- ii. requiring YAHOO to forward such emails directly and immediately to the primary inbox of the intended recipient;
- iii. requiring YAHOO *to provide information to HOLOMAXX* about the grounds for blocking HOLOMAXX's emails;
- iv. requiring CISCO *to provide information to HOLOMAXX* about the grounds for any information provided to YAHOO and other third parties about HOLOMAXX; and
- v. requiring DEFENDANT to reconfigure any automated technology to comply with the terms of the Court's order.
- c. Compensatory damages, in an amount to be proven at trial, but in no event less than the statutory minimum provided for damages at 18 U.S.C. §§ 2701 *et seq.*

- 1 d. Reasonable attorneys' fees and costs of litigation.
- 2 e. Punitive damages.

3 **THIRD CAUSE OF ACTION**

4 **(Violation of 18 U.S.C. §§ 1030 *et seq.* - Computer Fraud)**

5 **(Against YAHOO)**

6  
7 66. Plaintiff incorporates by reference and re-alleges each and every allegation of the  
8 preceding paragraphs as if set forth herein.

9 67. DEFENDANT have interfered with emails sent by HOLOMAXX, including emails sent  
10 to interstate and foreign recipients. As described fully above, YAHOO has blocked all emails  
11 sent by HOLOMAXX to YAHOO users, and both DEFENDANT have intercepted emails, and  
12 scanned their contents, to evaluate their purported spam-like characteristics.

13  
14 68. By engaging in the wrongful conduct described herein, DEFENDANT intentionally  
15 exceeded their authorization to access computers used for interstate and foreign communications  
16 and commerce, and obtained information from such computers, in violation of 18 U.S.C. §§ 1030  
17 *et seq.*

18 69. DEFENDANT's conduct, as described herein, was performed with malice, oppression,  
19 fraud, and reckless indifference. As described fully above, DEFENDANT's conduct was part of a  
20 larger pattern or practice, tending to increase their own profits without regard for legitimate email  
21 senders.

22  
23 70. As a result of DEFENDANT's conduct, as described herein, HOLOMAXX has suffered,  
24 and continues to suffer, damages in an amount to be proven at trial, including without limitation  
25 past and future lost profits, and injury to reputation, as well as other consequential damages.

26 71. DEFENDANT are continuing to engage in the unlawful actions alleged herein, and unless  
27 restrained and *enjoined* will continue to do so, causing irreparable harm to HOLOMAXX. It is  
28

1 difficult to ascertain the amount of compensation that could afford HOLOMAXX adequate relief  
2 for DEFENDANT's continuing unlawful acts. HOLOMAXX's remedy at law is, therefore,  
3 inadequate to compensate for the injuries threatened.

4 72. HOLOMAXX is therefore entitled to:

5 a. A preliminary and permanent injunction:

- 6
- 7 i. prohibiting DEFENDANT from intercepting, deprioritizing, blocking,  
8 delaying, or interfering with any emails sent by HOLOMAXX in  
9 accordance with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701  
10 et seq.), including rerouting such emails away from the primary inbox of  
11 the intended recipient;
- 12 ii. requiring YAHOO to forward such emails directly and immediately to the  
13 primary inbox of the intended recipient;
- 14 iii. requiring YAHOO *to provide information to HOLOMAXX* about the  
15 grounds for blocking HOLOMAXX's emails;
- 16 iv. requiring CISCO *to provide information to HOLOMAXX* about the grounds  
17 for any information provided to YAHOO and other third parties about  
18 HOLOMAXX; and
- 19 v. requiring DEFENDANT to reconfigure any automated technology to  
20 comply with the terms of the Court's order.

21  
22  
23 b. Compensatory damages, in an amount to be proven at trial.

24 **FOURTH CAUSE OF ACTION**

25 **(Intentional Interference with Contract)**

26 **(Against YAHOO)**

27 73. Plaintiff incorporates by reference and re-alleges each and every allegation of the  
28

1 preceding paragraphs as if set forth herein.

2 74. As described fully above, HOLOMAXX has entered into contracts with commercial  
3 clients, pursuant to which (among other things) HOLOMAXX sends marketing emails on its  
4 clients' behalf.

5 75. As described fully above, YAHOO knew of such contractual relationships.

6 76. As described fully above, YAHOO engaged in intentional acts to disrupt HOLOMAXX's  
7 contracts with its clients by, *inter alia*, intercepting and blocking all of HOLOMAXX's legitimate  
8 emails to its clients' customers.

9 77. As described fully above, there was actual disruption of the contracts between  
10 HOLOMAXX and its clients. Among other things, HOLOMAXX was unable to perform its  
11 contracts, and its clients did not pay HOLOMAXX for the blocked emails that HOLOMAXX  
12 attempted to send on their behalf. In addition, the resulting damage to HOLOMAXX's reputation  
13 - both as a legitimate email sender, and as a business partner that is able to follow through on its  
14 contractual commitments - has caused harm to HOLOMAXX's economic and business  
15 relationships.

16 78. YAHOO's conduct, as described herein, was performed with malice, oppression, fraud,  
17 and reckless indifference. As described fully above, DEFENDANT's conduct was part of a larger  
18 pattern or practice, tending to increase their own profits without regard for legitimate email  
19 senders.

20 79. As described fully above, HOLOMAXX is informed and believes, and based thereon  
21 alleges, that CISCO was aware that YAHOO planned to engage in the conduct described herein,  
22 and intended that YAHOO engage in such conduct.

23 80. As a result of DEFENDANT's conduct, as described herein, HOLOMAXX has suffered,  
24 and continues to suffer, damages in an amount to be proven at trial, including without limitation  
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1 past and future lost profits, and injury to reputation, as well as other consequential damages, in  
2 excess of the jurisdictional limit of this court.

3 81. YAHOO is continuing to engage in the unlawful actions alleged herein, and unless  
4 restrained and *enjoined* will continue to do so, causing irreparable harm to HOLOMAXX. It is  
5 difficult to ascertain the amount of compensation that could afford HOLOMAXX adequate relief  
6 for YAHOO's continuing unlawful acts. HOLOMAXX's remedy at law is, therefore, inadequate  
7 to compensate for the injuries threatened.

8 82. HOLOMAXX is therefore entitled to:

9 a. A preliminary and permanent injunction:

- 10 i. prohibiting DEFENDANT from intercepting, deprioritizing, blocking,  
11 delaying, or interfering with emails sent by HOLOMAXX in accordance  
12 with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 et seq.),  
13 including rerouting such emails away from the primary inbox of the  
14 intended recipient.
- 15 ii. requiring YAHOO to forward such emails directly and immediately to the  
16 primary inbox of the intended recipient;
- 17 iii. requiring YAHOO *to provide information to HOLOMAXX* about the  
18 grounds for blocking HOLOMAXX's emails;
- 19 iv. requiring CISCO *to provide information to HOLOMAXX* about the grounds  
20 for any information provided to YAHOO and other third parties about  
21 HOLOMAXX; and
- 22 v. requiring DEFENDANT to reconfigure any automated technology to  
23 comply with the terms of the Court's order.

24 b. Compensatory damages, in an amount to be proven at trial.

1 c. Punitive damages.

2 **FIFTH CAUSE OF ACTION**

3 **(Intentional Interference with Prospective Business Advantage)**

4 **(Against YAHOO)**

5  
6 83. Plaintiff incorporates by reference and re-alleges each and every allegation of the  
7 preceding paragraphs as if set forth herein.

8 84. As described fully above, HOLOMAXX maintains economic and business relationships  
9 with third parties, pursuant to which (among other things) HOLOMAXX sends marketing emails  
10 on their behalf.

11 85. As described fully above, such economic and business relationships contain a probable  
12 future economic benefit or advantage to HOLOMAXX.

13 86. As described fully above, YAHOO knew of the existence of such economic and business  
14 relationships.

15 87. As described fully above, YAHOO engaged in intentional, wrongful acts to disrupt such  
16 economic and business relationships, by, *inter alia*, blocking emails sent by HOLOMAXX to  
17 YAHOO users on behalf of HOLOMAXX's commercial clients.

18 88. As described fully above, there was actual disruption of such economic and business  
19 relationships, in that HOLOMAXX was unable to perform its contracts, and its clients did not  
20 paid HOLOMAXX for the blocked emails that HOLOMAXX attempted to send on their behalf.  
21 In addition, the resulting damage to HOLOMAXX's reputation - both as a legitimate email  
22 sender, and as a business partner that is able to follow through on its contractual commitments -  
23 has caused harm to HOLOMAXX's economic and business relationships.

24 89. YAHOO's conduct, as described herein, was performed with malice, oppression, fraud,  
25 and reckless indifference. As described fully above, DEFENDANT's conduct was part of a larger  
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1 pattern or practice, tending to increase their own profits without regard for legitimate email  
2 senders.

3 90. As described fully above, HOLOMAXX is informed and believes, and based thereon  
4 alleges, that CISCO was aware that YAHOO planned to engage in the conduct described herein,  
5 and intended that YAHOO engage in such conduct.

6  
7 91. As a result of YAHOO's conduct, as described herein, HOLOMAXX has suffered, and  
8 continues to suffer, damages in an amount to be proven at trial, including without limitation past  
9 and future lost profits, injury to reputation, and injury to reputation, as, as well as other  
10 consequential damages.

11 92. YAHOO is continuing to engage in the unlawful actions alleged herein, and unless  
12 restrained and *enjoined* will continue to do so, causing irreparable harm to HOLOMAXX. It is  
13 difficult to ascertain the amount of compensation that could afford HOLOMAXX adequate relief  
14 for YAHOO's continuing unlawful acts. HOLOMAXX's remedy at law is, therefore, inadequate  
15 to compensate for the injuries threatened.

16  
17 93. HOLOMAXX is therefore entitled to:

- 18 a. A preliminary and permanent injunction:
- 19 i. prohibiting DEFENDANT from intercepting, deprioritizing, blocking,  
20 delaying, or interfering with emails sent by HOLOMAXX in accordance  
21 with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 et seq.),  
22 including rerouting such emails away from the primary inbox of the  
23 intended recipient.;
  - 24 ii. requiring YAHOO to forward such emails directly and immediately to the  
25 primary inbox of the intended recipient;
  - 26 iii. requiring YAHOO *to provide information to HOLOMAXX* about the  
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1 grounds for blocking HOLOMAXX's emails;

2 iii. requiring CISCO to provide information to HOLOMAXX about the grounds  
3 for any information provided to YAHOO and other third parties about  
4 HOLOMAXX; and

5  
6 iv. requiring DEFENDANT to reconfigure any automated technology to  
7 comply with the terms of the Court's order.

8 b. Compensatory damages, in an amount to be proven at trial.

9 c. Punitive damages.

10 **SIXTH CAUSE OF ACTION**

11 **(Violation of California Penal Code §§ 630 et seq. - Wiretapping/Eavesdropping)**

12 **(Against YAHOO)**

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14 94. Plaintiff incorporates by reference and re-alleges each and every allegation of the  
15 preceding paragraphs as if set forth herein.

16 95. As described fully above, HOLOMAXX is informed and believes, and based thereon  
17 alleges, that DEFENDANT intentionally scanned and recorded the contents of confidential emails  
18 sent by HOLOMAXX, and attempted to learn the contents of such emails while they were in  
19 transit, without the consent of HOLOMAXX or the intended recipients.

20 96. DEFENDANT's conduct, as described herein, was performed with malice, oppression,  
21 fraud, and reckless indifference. As described fully above, DEFENDANT's conduct was part of a  
22 larger pattern or practice, tending to increase their own profits without regard for legitimate email  
23 senders.

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25 97. As a result of DEFENDANT's conduct, as described herein, HOLOMAXX has suffered,  
26 and continues to suffer, damages in an amount to be proven at trial, including without limitation  
27 past and future lost profits, and injury to reputation, as well as other consequential damages, in  
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1 excess of the jurisdictional limit of this court.

2 98. DEFENDANT are continuing to engage in the unlawful actions alleged herein, and unless  
3 restrained and *enjoined* will continue to do so, causing irreparable harm to HOLOMAXX. It is  
4 difficult to ascertain the amount of compensation that could afford HOLOMAXX adequate relief  
5 for DEFENDANT's continuing unlawful acts. HOLOMAXX's remedy at law is, therefore,  
6 inadequate to compensate for the injuries threatened.  
7

8 99. HOLOMAXX is therefore entitled to:

- 9 a. A preliminary and permanent injunction prohibiting DEFENDANT from  
10 intercepting any emails sent by HOLOMAXX in accordance with the provisions of  
11 the Can-Spam Act (103 U.S.C. §§ 7701 et seq.), and/or scanning or recording the  
12 contents of such emails.  
13  
14 b. Compensatory damages, in an amount to be proven at trial, and in no event less  
15 than the greater of the following: (i) Five thousand dollars; or (ii) Three times the  
16 amount of actual damages sustained by HOLOMAXX.

17 **SEVENTH CAUSE OF ACTION**

18 **(Violation of California Business & Professions Code §§ 17200 et seq.)**

19 **(Against YAHOO)**

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21 100. Plaintiff incorporates by reference and re-alleges each and every allegation of the  
22 preceding paragraphs as if set forth herein.

23 101. By engaging in the conduct described herein, DEFENDANT have engaged in unlawful,  
24 unfair, or fraudulent business acts or practices in violation of California Business & Professions  
25 Code §§ 17200 et seq.

26 102. DEFENDANT's conduct, as described herein, was performed with malice, oppression,  
27 fraud, and reckless indifference. As described fully above, DEFENDANT's conduct was part of a  
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1 larger pattern or practice, tending to increase their own profits without regard for legitimate email  
2 senders.

3 103. As a result of DEFENDANT's conduct, as described herein, HOLOMAXX has suffered,  
4 and continues to suffer, damages in an amount to be proven at trial, including without limitation  
5 past and future lost profits, and injury to reputation, as well as other consequential damages, in  
6 excess of the jurisdictional limit of this court.  
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8 104. HOLOMAXX is therefore entitled to:

9 a. A declaration that:

- 10 i. HOLOMAXX's current email practices, as set forth herein, are in accord  
11 with the Can-Spam Act;  
12 ii. Emails sent by HOLOMAXX in accord with such practices are not spam;  
13 and  
14 iii. HOLOMAXX has the right to send such legitimate, non-spam emails  
15 directly to the intended recipient's primary inbox, without interception,  
16 deprioritization, blocking, delay, or other interference.  
17

18 b. A preliminary and permanent injunction:

- 19 i. prohibiting DEFENDANT from intercepting, deprioritizing, blocking,  
20 delaying, or interfering with emails sent by HOLOMAXX in accordance  
21 with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 et seq.),  
22 including rerouting such emails away from the primary inbox of the  
23 intended recipient;  
24 ii. requiring YAHOO to forward such emails directly and immediately to the  
25 primary inbox of the intended recipient;  
26 iii. prohibiting DEFENDANT from scanning or recording the contents of such  
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emails;

- iv. prohibiting DEFENDANT from publishing false reports about HOLOMAXX, or about emails sent by HOLOMAXX; and
  - v. requiring DEFENDANT to reconfigure any automated technology to comply with the terms of the Court's order.
- c. Restitution of any profits resulting to DEFENDANT from the conduct alleged herein, in an amount to be proven at trial.
  - d. Reasonable attorney's fees and costs of litigation.

**PRAYER**

**WHEREFORE**, Plaintiff HOLOMAXX respectfully requests that the Court enter judgment against YAHOO, and provide Plaintiff HOLOMAXX the following relief:

**ON THE FIRST CAUSE OF ACTION**

**(Violation of 18 U.S.C. §§ 2510 *et seq.* - The Wiretap Act)**

**(Against YAHOO)**

- 1. A declaration that:
  - a. HOLOMAXX's current email practices, as set forth herein, are in accord with the Can-Spam Act;
  - b. Emails sent by HOLOMAXX in accord with such practices are not spam;
  - c. HOLOMAXX has the right to send such legitimate, non-spam emails directly to the intended recipient's primary inbox, without interception, deprioritization, blocking, delay, or other interference; and
  - d. DEFENDANT are prohibited from intercepting, deprioritizing, blocking, delaying, or interfering with emails sent by HOLOMAXX in accordance with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 *et seq.*), including rerouting such

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emails away from the primary inbox of the intended recipient.

2. A preliminary and permanent injunction:
  - a. prohibiting DEFENDANT from intercepting, deprioritizing, blocking, delaying, or interfering with emails sent by HOLOMAXX in accordance with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 et seq.), including rerouting such emails away from the primary inbox of the intended recipient.
  - b. requiring YAHOO to forward such emails directly and immediately to the primary inbox of the intended recipient;
  - c. requiring YAHOO *to provide information to HOLOMAXX* about the grounds for blocking HOLOMAXX's emails; and
  - d. requiring DEFENDANT to reconfigure any automated technology to comply with the terms of the Court's order.
3. Compensatory damages, in an amount to be proven at trial, but in no event less than the statutory minimum provided for damages at 18 U.S.C. §§ 2510 *et seq.*
4. Reasonable attorney's fees and costs of litigation.
5. Punitive damages.

**ON THE SECOND CAUSE OF ACTION**

**(Violation of 18 U.S.C. §§ 2701 *et seq.* - The Stored Communications Act)**

**(Against YAHOO)**

1. A declaration that:
  - a. HOLOMAXX's current email practices, as set forth herein, are in accord with the Can-Spam Act;
  - b. Emails sent by HOLOMAXX in accord with such practices are not spam;
  - c. HOLOMAXX has the right to send such legitimate, non-spam emails directly to

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the intended recipient's primary inbox, without interception, deprioritization, blocking, delay, or other interference; and

d. DEFENDANT are prohibited from intercepting, deprioritizing, blocking, delaying, or interfering with emails sent by HOLOMAXX in accordance with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 et seq.), including rerouting such emails away from the primary inbox of the intended recipient.

2. A preliminary and permanent injunction:

- a. prohibiting DEFENDANT from intercepting, deprioritizing, blocking, delaying, or interfering with emails sent by HOLOMAXX in accordance with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 et seq.), including rerouting such emails away from the primary inbox of the intended recipient;
- b. requiring YAHOO to forward such emails directly and immediately to the primary inbox of the intended recipient;
- c. requiring YAHOO to provide information to HOLOMAXX about the grounds for blocking HOLOMAXX's emails; and
- d. requiring DEFENDANT to reconfigure any automated technology to comply with the terms of the Court's order.

3. Compensatory damages, in an amount to be proven at trial, but in no event less than the statutory minimum provided for damages at 18 U.S.C. §§ 2510 et seq.

4. Reasonable attorneys' fees and costs of litigation.

5. Punitive damages.

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**ON THE THIRD CAUSE OF ACTION**

**(Violation of 18 U.S.C. §§ 1030 *et seq.* - Computer Fraud)**

**(Against YAHOO)**

1. A preliminary and permanent injunction:
  - a. prohibiting DEFENDANT from intercepting, deprioritizing, blocking, delaying, or interfering with emails sent by HOLOMAXX in accordance with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 *et seq.*), including rerouting such emails away from the primary inbox of the intended recipient;
  - b. requiring YAHOO to forward such emails directly and immediately to the primary inbox of the intended recipient;
  - c. requiring YAHOO *to provide information to HOLOMAXX* about the grounds for blocking HOLOMAXX's emails; and
  - d. requiring DEFENDANT to reconfigure any automated technology to comply with the terms of the Court's order.
2. Compensatory damages, in an amount to be proven at trial.

**ON THE FOURTH CAUSE OF ACTION**

**(Intentional Interference with Contract)**

**(Against YAHOO)**

1. A preliminary and permanent injunction:
  - a. prohibiting DEFENDANT from intercepting, deprioritizing, blocking, delaying, or interfering with emails sent by HOLOMAXX in accordance with the provisions of the Can-Spam Act (103 U.S.C. §§ 7701 *et seq.*), including rerouting such emails away from the primary inbox of the intended recipient;
  - b. requiring YAHOO to forward such emails directly and immediately to the primary





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- b. requiring YAHOO to forward such emails directly and immediately to the primary inbox of the intended recipient;
- c. prohibiting DEFENDANT from scanning or recording the contents of such emails;
- d. prohibiting DEFENDANT from publishing false reports about HOLOMAXX, or about emails sent by HOLOMAXX; and
- e. requiring DEFENDANT to reconfigure any automated technology to comply with the terms of the Court's order.

- 3. Restitution of any profits resulting to DEFENDANT from the conduct alleged herein, in an amount to be proven at trial.
- 4. Reasonable attorneys' fees and costs of litigation

**ON ALL CAUSES OF ACTION**

- 1. Such other relief as the court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff HOLOMAXX demands trial by jury in this action of all issues so triable.

DATED: April 7, 2011

ERIK S. SYVERSON, ATTORNEY AT LAW

By: /s/ Erik Syverson  
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