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11 Attorneys for CoStar Group, Inc. and
CoStar Realty Information, Inc.

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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
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17 In re:
18 LOOPNET, INC.
19 Subpoena Enforcement Matter

MISCELLANEOUS ACTION
Case No. CV 05-80294 - Misc. VRW (JL)

20 COSTAR GROUP, INC., a Delaware corporation
21 and COSTAR REALTY INFORMATION, INC., a
22 Delaware corporation

DECLARATION OF FRANK SIMURO

Date: June 28 2006
Time: 9:30 a.m.
Courtroom: F, 15th Floor

23 vs.

24 LOOPNET, INC., a California corporation
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1 1. My name is Frank Simuro. I am an employee of CoStar Realty Information, Inc., a
2 subsidiary of CoStar Group, Inc. (collectively, "CoStar"). The statements in this Declaration are
3 truthful and are made knowingly and voluntarily.

4 2. I am currently employed by CoStar as Senior Vice President of Information Systems, a
5 position that I have occupied since approximately April 2005. I joined CoStar in December 1999 after
6 serving as Director of Data Warehousing at GRC International, a division of AT&T Corporation. Prior
7 to GRC, I was a technology consultant specializing in operational efficiency and database technologies.
8 I hold a Masters degree in Information Systems from George Washington University and a Bachelor's
9 degree in Computer Science from State University of New York-Geneseo. Through my coursework
10 and work experience, I have gained a strong understanding about product and website design and
11 operations, database technology, and email infrastructure. In particular, I am knowledgeable about how
12 companies, like CoStar, operate large databases that maintain information that can be accessed by
13 customers.

14 3. CoStar is the leading provider of information services to commercial real estate
15 professionals in the United States. Our subscribers include real estate brokers, investors, and financial
16 institutions, among others.

17 4. CoStar offers a host of services to its subscribers, including "CoStar Property
18 Professional, which provides subscribers with a comprehensive inventory of office, industrial, and retail
19 properties throughout the United States. Among other features, the service includes detailed property
20 information, building photographs, sale and lease listings, historical data, maps, and floor plans.

21 5. CoStar COMPS Professional is another service. This service gives subscribers
22 comprehensive information about property comparables and market trends in the U.S. commercial real
23 estate industry.

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1 6. CoStar Tenant is another service provided by CoStar. This service gives users access to
2 profiles of tenants in commercial buildings around the country, including information about lease
3 expirations and occupancy levels.

4 7. Maintaining this high level of information is expensive and logistically complicated.
5 CoStar invests millions of dollars a year to maintain its services and employs a research team of
6 hundreds of research analysts and field researchers. These individuals make millions of phone calls and
7 drive millions of miles each year to acquire, maintain, and revise CoStar's database of over 35 billion
8 square feet of commercial space.

9 8. A central part of CoStar's database is its electronic library of over one million
10 photographs of commercial properties around the United States. These photographs are taken by
11 professional CoStar photographers.

12 9. LoopNet, Inc. ("LoopNet") operates a website at www.loopnet.com (the "LoopNet
13 Site") where individuals can post listings of commercial real estate space for lease and/or for sale and
14 can include within the listings photographs depicting the property that is the subject of the listing. I
15 have reviewed the public portions of the LoopNet site and the statements made by LoopNet on that site.

16 10. Attached hereto as Exhibits 1 through 13 are printouts from the publicly accessible, non-
17 password protected areas of the LoopNet Site describing various features of the LoopNet listings
18 service that can be utilized by Premium Membership users of such listing service. It is my
19 understanding that Premium Members pay a fee for use of the LoopNet website, as opposed to Basic
20 Members who are not required to pay any fees, and that not all of the features available to Premium
21 Members are available to the Basic Members.

22 11. These materials tout the fact that LoopNet provides users not just with a place to post
23 listings and photographs, but with information about people who might be interested in the listings and
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1 photographs. In short, LoopNet markets itself as a service that allows subscribers to create reports and
2 disseminate information using LoopNet's computer servers.

3 12. I have reviewed the descriptions of these features as contained within the attached
4 exhibits. Through use of these features, users of the LoopNet website are definitely reproducing,
5 distributing and displaying the property photographs, potentially including CoStar's copyrighted
6 photographs, posted on the LoopNet website. For example, and without limitation, a property
7 photograph within a listing is (i) reproduced each time the user prints it, incorporates it into an email or
8 report, or saves it to their desktop computer, (ii) distributed each time the listing is emailed by a user,
9 and (iii) displayed each time a user views the listing.

10 13. Additionally, as discussed below, it seems that LoopNet definitely has some level of
11 information that identifies individuals who have made these unauthorized reproductions, distributions
12 and displays of CoStar's photographs; (i.e., information that could identify to CoStar the individuals
13 who have reproduced, distributed and/or displayed listings that had infringing copies of CoStar's
14 photographs). Indeed, LoopNet requires users to register (i.e., create a username and password) to use
15 its site. In doing so, LoopNet requires users to provide their real names, e-mail addresses and other
16 information. And LoopNet clearly maintains this information because a subscriber once logged-in can
17 access her registration information through LoopNet's My LoopNet feature. Having had to register to
18 use the site, it seems clear that LoopNet knows either the name or the IP address of the user performing
19 the download.
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23 14. LoopNet's access to this information would be typical of a computer database company,
24 for such companies as a matter of course keep large amounts of information about how their subscribers
25 access information in order to provide customer service, as well as for a variety of administrative and
26 other purposes. An analogous example would be Westlaw, which keeps track of what searches its users
27 employ, and provides users with services like access to prior results.
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1 15. For example, one feature where LoopNet appears to have information identifying those
2 individuals is the “ProspectList Lead Generation” feature. LoopNet’s overview of that feature is
3 attached as Exhibit 3. It says that a LoopNet user can market their listing by (i) matching their listing
4 with the buying and leasing requirements of interested prospects, (ii) accessing a list of matching
5 prospects and their contact information, (iii) sending a customized email of their listing to principals,
6 brokers and others, and (iv) saving a personal email list of prospects for future email sends. The
7 screenshot in Exhibit 3 depicts a thumbnail photograph of each listing and alongside the photograph a
8 boxed-in “PL” with the words “Access Your Prospect List”. From that screenshot alone, it isn’t clear
9 whether the ProspectList is a list of matching prospects and their contact information to whom the email
10 could be sent or whether it is a list of those prospects to whom the user has already emailed the listing.
11 However, that ambiguity seems to be resolved by a page from an FAQ within the “LoopNet Help
12 Center” for the question “How do I access ProspectList”. The page is attached hereto as Exhibit 12,
13 and it says “To review a list of all members to whom you have already sent a **ProspectList** email for
14 this listing, click the **Number of Emails Sent to Date Link**.” This indicates to me that, at least with
15 respect to the ProspectList Lead Generation feature, LoopNet has information identifying users that
16 have emailed particular listings to others, including the identity of the senders and the recipients. As a
17 result, LoopNet should be able to query its ProspectList Lead Generation records for information
18 identifying the sender and recipients of property listings that CoStar has identified to LoopNet as having
19 infringing copies of CoStar photographs.
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23 16. The ProspectList Lead Generation feature is not the only feature through which the
24 LoopNet user can email listings containing infringing copies of CoStar’s photographs. Others include
25 the Custom Marketing Emails feature (Exhibit 9), and the “Saved Property Folder” feature (Exhibit 11).
26 While I have not found marketing on LoopNet’s website indicating one way or the other whether
27 LoopNet has information identifying individuals who have used these features to make unauthorized
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1 reproductions, distributions or displays of listings with CoStar photographs, it is certainly possible that
2 LoopNet possesses that information, as it apparently does with respect to use of the ProspectList Lead
3 Generation feature.

4 17. LoopNet’s promotional materials also state that it maintains information regarding the
5 “exposure” of particular listings, which are keyed to particular photographs. (Exhibit 4). That is,
6 LoopNet keeps track of how often a particular listing and accompanying photograph has been accessed
7 and emailed. I believe that it is highly likely that LoopNet’s ability to keep track of this information
8 means it also has access to information about the identities of the subscribers, either through their
9 username or IP address, who downloaded or emailed CoStar’s photographs.

10 18. Another feature where LoopNet appears to have information identifying individuals who
11 have made unauthorized reproductions, distributions and/or displays of CoStar’s photographs is the
12 “Saved Property Folder”. See Exhibit 11. In LoopNet’s marketing for this feature, underneath a
13 heading entitled “Save Properties To Custom Folders,” it says “select the properties you want to save
14 and add them to an online folder.” The concept is to enable the user to “access, review, update and
15 organize properties” in one place, from which they can also be used to create custom property reports
16 and personalized emails for clients. While I do not have any firsthand experience utilizing the LoopNet
17 “Saved Property Folder” feature directly, in my experience the fact that the user is able to save the
18 properties to these online folders for later retrieval and use indicates that a copy of the property
19 information and photograph and/or pointer to the property information and photograph must be created
20 and tied to the user. Indeed, the LoopNet User Guide indicates that “[t]o view a listing in a folder, click
21 the folder name and then click the property name **or thumbnail photo** for that listing.” See Exhibit 13
22 (emphasis added). That thumbnail photo is a duplicate copy of the photo that the user stored in the
23 online folder and/or a display of the original copy that acts as a pointer to the full listing. Of course, as
24 shown in more detail in the marketing for this feature in Exhibits 11 and 13, the user already displayed
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1 the property photograph on their computer as part of the process of viewing the property listing and
2 then saving it into the folder. Thus, LoopNet appears to have information that at a minimum would
3 reveal the identities of individuals that have made unauthorized displays (and possibly reproductions) of
4 CoStar photographs through use of the Saved Property Folder feature. And LoopNet should be able to
5 query for that information based on properties or property listings that CoStar has previously identified
6 to LoopNet as containing infringing copies of CoStar photographs.
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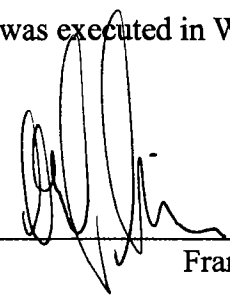
8 19. Indeed, even if LoopNet did not have directly identifying information (such as names
9 and phone numbers) for the individuals who use its services to download CoStar's copyrighted
10 materials, CoStar could still track down the individuals by reference to their IP address, date and time.
11 If LoopNet provided this information about infringers to CoStar, CoStar could determine which ISP
12 provider was providing Internet access to the infringer, and in turn which individual account was used
13 to access LoopNet's site.
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Washington, D.C. on May 10, 2006.



Frank Simuro

EXHIBIT 1

EXHIBIT 2



Need a 1031 Exchange Property?

PREMIUM MEMBERSHIP : Unlimited Searching Access

Premium Membership gives you immediate access to ALL LoopNet listings, allows you to view the newest listings first, and enables you to produce professional-quality property search reports from your findings.

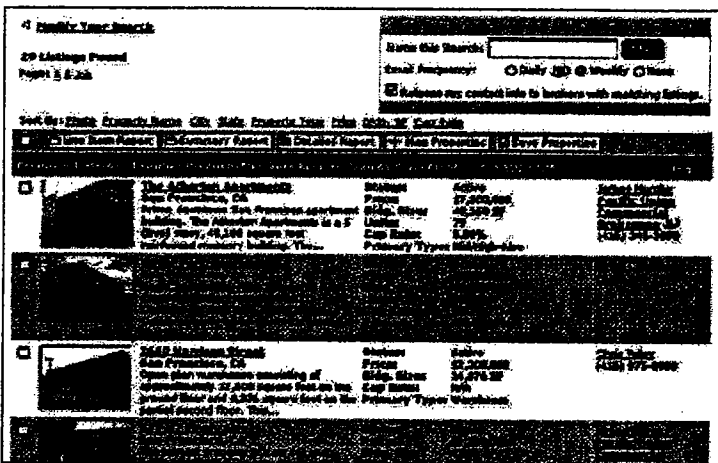
Searching Benefits include:

- **Access to ALL listings**
Access the newest listings on the site.
- **Reporting Tools**
Create professional-looking property reports generated from your property searches.
- **Property Mapping**
Plot multiple properties on a personalized map that can be printed or emailed for clients.

Become a Premium Member
as low as
\$39⁹⁵ per month

Premium Membership Features Include:

- ▶ Maximum Listing Exposure
- ▶ Unlimited Searching Access
- ▶ ProspectList Lead Generation
- ▶ Listing Exposure Reports
- ▶ Controlled Access Marketing
- ▶ Professional-Quality Reports
- ▶ Property Mapping
- ▶ Daily Email Alerts
- ▶ Custom Marketing Emails
- ▶ Personalized ListingsLink
- ▶ Saved Property Folders



View Next Feature

For more information, contact information@loopnet.com or call (888) 567-7442.

EXHIBIT 3

