

EXHIBIT 5

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 8 EUROPLAY CAPITAL ADVISORS, LLC;
 CLARIA INNOVATIONS, LLC
 9

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

12 IN RE: PERSONAL WEB TECHNOLOGIES,
 13 LLC ET AL., PATENT LITIGATION

14 AMAZON.COM, INC., and AMAZON WEB
 15 SERVICES, INC.,

16 Plaintiffs

17 v.

18 PERSONALWEB TECHNOLOGIES, LLC and
 LEVEL 3 COMMUNICATIONS, LLC,

19 Defendants,

20 PERSONALWEB TECHNOLOGIES, LLC,
 21 and LEVEL 3 COMMUNICATIONS, LLC,

22 Plaintiffs,

23 v.

24 TWITCH INTERACTIVE, INC.,

25 Defendant.
 26
 27
 28

Case No. 5:18-md-02834-BLF

Case No. 5:18-cv-00767-BLF

Case No. 5:18-cv-05619-BLF

**OBJECTIONS OF EUROPLAY CAPITAL
 ADVISORS, LLC TO SUBPOENA TO
 PRODUCE DOCUMENTS ISSUED BY
 AMAZON.COM, INC., AMAZON WEB
 SERVICES, INC., AND TWITCH
 INTERACTIVE, INC.**

1 Third party Europlay Capital Advisors, LLC ("Europlay") objects to the Subpoena to
 2 Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action
 3 ("Subpoena") issued by Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive,
 4 Inc. (collectively, "Amazon") in the above-captioned action (the "Action") as follows:

5 **GENERAL OBJECTIONS**

6 1. On May 10, 2021, the Superior Court of California, County of Los Angeles,
 7 Northwest District (Van Nuys) ("Receivership Court"), in currently pending Case No.
 8 21VECV00575, entitled *Brilliant Digital Entertainment, Inc., etc., et al., v. PersonalWeb*
 9 *Technologies, LLC, etc., et al.* ("Receivership Action") appointed Robb Evans and Associates
 10 LLC ("Receiver") as Receiver over Personal Web Technologies, LLC ("PersonalWeb"), pursuant
 11 to the Receivership Court's Order for Ex Parte Immediate Appointment of Receiver
 12 ("Receivership Order") (copy attached as Exh. 1). The Receivership Court is the first and only
 13 court to date to have taken jurisdiction over the secured creditors of PersonalWeb, PersonalWeb
 14 itself, and all of the assets of PersonalWeb, and the subject of the interrelationships between and
 15 among those parties and those assets.

16 2. On June 1, 2021, the Receivership Court entered its Order for Entry of Preliminary
 17 Injunction in Aid of the Receiver ("Injunction Order") (copy attached as Exh. 2), which confirmed
 18 the Receiver's appointment and enjoined certain actions by PersonalWeb, its creditors, judgment
 19 holders, and others. Amazon has had notice of and received service of the Injunction Order.

20 3. Europlay objects to the Subpoena, and each request contained therein, on the
 21 grounds that its issuance and service violates the Injunction Order, which Order provides, in part:

22 ... IT IS FURTHER ORDERED that except by leave of this Court,
 23 during the pendency of the receivership ordered herein, Defendant
 24 PersonalWeb, and all of its customers, principals, investors,
 25 collectors, stockholders, lessors, other creditors, judgment holders,
 26 and other persons seeking to establish or enforce any claim, debt,
 27 right, lien, or interest against Defendant PersonalWeb, or any of its
 28 subsidiaries or affiliates, and all others acting for or on behalf of
 such persons, attorneys, trustees, agents, sheriffs, constables,
 marshals, and any other officers and their deputies, and their
 respective attorneys, servants, agents, and employees, be and are
 hereby stayed from:

(a) Commencing, prosecuting, continuing, or enforcing

1 any suit, judgment, lien, levy, or proceeding against Defendant
2 PersonalWeb, or any of its subsidiaries or affiliates, except such
3 actions may be filed to toll any applicable statute of limitations;

4

5 (d) Using self-help or executing or issuing, or causing
6 the execution or issuance of any court attachment, subpoena,
7 replevin, execution, levy, writ, or other process for the purpose of
8 impounding or taking possession of or interfering with, or creating
9 or enforcing a lien upon, any property, wheresoever located, owned
10 by, claimed by, or in the possession of Defendant PersonalWeb, or
11 any of its subsidiaries or affiliates, or the Receiver appointed
12 pursuant to this Order or any agent appointed by said Receiver; and

13 (e) Doing any act or thing whatsoever to interfere with
14 the Receiver taking control or possession of, or managing the
15 property subject to this receivership; or in any way to interfere with
16 the Receiver; or to harass or interfere with the duties of the
17 Receiver; or to interfere in any manner with the exclusive
18 jurisdiction of this Court over the property and assets of Defendant
19 PersonalWeb, or its subsidiaries or affiliates. Provided, however,
20 nothing in this paragraph shall prohibit any federal or state law
21 enforcement or regulatory authority from commencing or
22 prosecuting an action against Defendant PersonalWeb, or its
23 subsidiaries or affiliates.

24 4. A court appointing a receiver has exclusive jurisdiction over receivership property.

25 (*O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1062, citing 2 Clark on Receivers (3d
26 ed.1959), § 548(a), p. 889.) Further, "it must be held, in conformity with the general rule of
27 comity established by a long line of authority, that the court which first takes the subject matter of
28 a litigation into its control for the purpose of administering the rights and remedies with relation to
specific property obtains thereby jurisdiction so to do, to the exclusion of the exercise of a like
jurisdiction by other tribunals ..." (*Cutting v. Bryan* (1929) 206 Cal. 254, 257 [state court quiet
title action dismissed where federal receivership action filed first].) This principle applies to both
federal and state courts. (*Princess Lida of Thurn and Taxis v. Thompson* (1939) 305 U.S. 456,
466, 59 S.Ct. 275, 280 ["[T]he principle applicable to both federal and state courts [is] that the
court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the
exclusion of the other ...".])

5. On August 10, 2021, Amazon moved to intervene in the Receivership Action (copy
attached as Exh. 3, without exhibits, except Exh. T, a proposed Complaint in Intervention), and as

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1 set forth in the proposed Complaint in Intervention specifically sought to involve Europlay and the
2 other secured creditors in the Amazon disputes with PersonalWeb. By Minute Order dated
3 November 17, 2021, the Receivership Court denied Amazon's intervention motion (copy attached
4 as Exh. 4) because, in part, Amazon has alternative ways to assert its positions as to PersonalWeb,
5 and the secured creditors, in the Receivership Action. Then, on January 14, 2022, Amazon filed a
6 Petition for Writ of Supersedeas with the California state Second District Court of Appeal
7 ("2DCA"), seeking to stay the Receivership Action pending Amazon's appeal of the intervention
8 denial order (copy of pp. 1-13 attached as Exh. 5). Amazon again lost, the Court of Appeal having
9 denied the writ petition by Order filed February 17, 2022 (copy attached as Exh. 6.) But,
10 Amazon's appeal of the intervention denial order remains pending with the 2DCA. Amazon also
11 has pending in the Receivership Court its motion to stay the action (copy attached as Exh. 7).
12 Amazon has invoked the jurisdiction of both the Receivership Court and the 2DCA with respect to
13 these disputes.

14 6. Europlay further objects to the Subpoena, and each request contained therein, on
15 the grounds that it is improper discovery under the doctrines of federalism and comity to be shown
16 by a federal court to a state court, and under Fed. R. Civ. P. 69(a)(2), which not only is a
17 contemptuous violation of the Injunction Order by Amazon and its legal counsel, but also seeks to
18 circumvent Amazon's two Receivership Action losses regarding its attempt to intervene in the
19 Receivership Action to become an active litigant in the state court at this time ----- because doing
20 so would interfere with the Receivership. The Subpoena is also an improper "end run" to the
21 discovery Amazon wants in the Receivership Action, but to which it is not entitled --- at this time -
22 -- because it is not a party to the Receivership action as a result of the Receivership Court's denial
23 of leave to intervene, and it is premature in the Receivership Action for any such litigation
24 activities, under the rulings of the Receivership Court and the 2DCA.

25 7. Europlay further objects to the Subpoena, and each request contained therein, on
26 the grounds that it further appears to be an attempt by Amazon to disrupt and interfere with the
27 funding of the Receivership by plaintiffs in the Receivership Action, Brilliant Digital
28 Entertainment, Inc., Claria Innovations, LLC, Europlay Capital Advisors, LLC, and Monto

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