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November 20, 2018

The Honorable Richard G. Andrews
United States District Court
for the District of Delaware
844 North King Street
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: *Acceleration Bay LLC v. Electronic Arts Inc.*
C.A. No. 16-454 (RGA)

Dear Judge Andrews:

We write on behalf of Defendant Electronic Arts Inc. ("EA") regarding Plaintiff's request for a continuance of the December 19 summary judgment hearing. Although the parties agree that the *EA* trial now scheduled for March 4, 2019 should be postponed until after the *Activision* trial, they disagree about whether the summary judgment hearing should proceed. Acceleration seeks a continuance because of uncertainty concerning the admissibility of its damages theory in the *Activision* case (C.A. No. 16-453). But whatever uncertainty exists is exclusively Acceleration's fault, and not a reason to continue the *EA* hearing.

EA's non-infringement arguments are case dispositive. EA is not a direct infringer of the system claims (D.I. 426 at 17–20; D.I. 476 at 7–9)—a point all but resolved in EA's favor by the *Activision* summary judgment decision (C.A. No. 16-453, D.I. 578 at 9–20). The remaining claims are method claims, which are not infringed as a matter of law because Acceleration accuses a step performed by EA servers that are located exclusively outside the United States. D.I. 426 at 20–21; D.I. 476 at 9–10. The accused networks are also not m-regular and incomplete. D.I. 426 at 11–16; D.I. 476 at 1–5. These three issues are dispositive of all claims in the case, are not subject to factual dispute, and do not depend on further developments about damages in the *Activision* case.

The damages issues that have been briefed are also still ripe for adjudication. Despite the rulings in the *Activision* case, Acceleration has not withdrawn or moved to supplement its sole damages report. The *Uniloc* jury verdict that forms the sole basis of Acceleration's lone damages report is equally inadmissible in all three cases because, as the Court found "[j]ury-determined damages are not evidence of arm's-length negotiations between parties, and will not help the trier of fact determine a royalty." C.A. No. 16-453, D.I. 578 at 27. Nevertheless, Acceleration

has stated that it is maintaining the *Uniloc* theory but claims it intends to supplement at some point in the future depending on what happens in the *Activision* case. That future intent is not before the Court. What is before the Court is the *Uniloc* theory, which has been rejected by the Court in the *Activision* case, and should be rejected by the Court in this case. In any event, the fact that the Court may exclude Dr. Meyer's reliance on the *Uniloc* verdict in the *EA* case is no reason to delay the summary judgment hearing, especially when Acceleration is still attempting to maintain the *Uniloc* theory.

If Acceleration ever wants to seek permission to supplement its damages theories, it should promptly withdraw its existing theory and agree to supplement in the manner and schedule for the *Activision* case. That way, the Court may consider any supplemental damages issues all at the same time. On the other hand, if Acceleration wants to rely on its existing damages theory, it should live with the consequences of its decision and the Court's ruling. But it should not be allowed to present more serial damages theories.

In any event, regardless of the damages issues, there is no reason to delay the December 19 hearing on liability issues, which EA believes are dispositive of the entire case.

Respectfully,

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)

JBB/bac

cc: Clerk of Court (via hand delivery)
All Counsel of Record (via electronic mail)