

Blake D. Miller (4090)
Paxton R. Guymon (8188)
Joel T. Zenger (8926)
MILLER MAGLEBY & GUYMON, P.C.
170 South Main Street, Suite 350
Salt Lake City, Utah 84101
Telephone: (801) 363-5600
Facsimile: (801) 363-5601
Special Assistant Attorneys General

Mark Shurtleff (4666)
Philip C. Pugsley (2661)
UTAH ATTORNEY GENERAL'S OFFICE
160 East 300 South
Suite 500
Post Office Box 140811
Salt Lake City, UT 84114-0811
Telephone: (801) 366-0245
Facsimile: (801) 366-0352

Attorneys for Defendants

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

**WHENU.COM, INC. a Delaware
corporation,**

Plaintiff,

vs.

**THE STATE OF UTAH, a body politic,
OLENE S. WALKER, in her official
capacity as Governor of Utah., and
MARK SHURTLEFF in his official
capacity as Utah Attorney General,**

Defendants.

**MOTION FOR
RECONSIDERATION**

Civil No. 040907578

Honorable Joseph C. Fratto

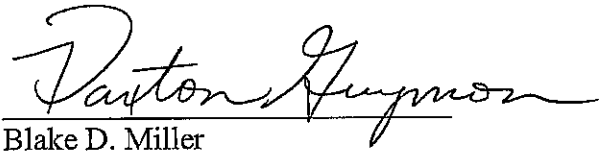
Pursuant to Rule 52(b) and Rule 59(e) of the Utah Rules of Civil Procedure, Defendants State of Utah, Olene S. Walker, and Mark Shurtleff (collectively the "State"), by and through counsel of record, respectfully move this Court to reconsider its June 22, 2004 Ruling and July 8, 2004 Preliminary Injunction.

The State requests that the Court reconsider its entering of a preliminary injunction enjoining the enforcement of the entire Spyware Control Act, which is codified at Utah Code Ann. § 13-39-101, et. seq. (the "Spyware Act" or "Act"). In accordance with controlling Utah case-law, this Court should amend its ruling and enjoin the enforcement of only the pop-up advertisement prohibition set forth in § 13-39-201(1)(c) of the Spyware Act regarding which the Court found that Plaintiff WhenU.com, Inc. ("Plaintiff") demonstrated a substantial likelihood of success rather than enjoining enforcement of the entire Spyware Act. Severing the prohibition against contextually based triggering of pop-up advertisements does not defeat the operation of the remainder of the Spyware Act and the remaining prohibitions of the Act would still fulfill the State's legitimate legislative purposes in passing the Spyware Act by protecting Utah citizens and Utah businesses from the unauthorized and uniformed installation of spyware on their computers.

This motion is supported by a memorandum of points and authorities filed herewith.

Dated this 14th day of July, 2004.

Miller Magleby & Guymon, P.C.

A handwritten signature in cursive script, reading "Paxton R. Guymon". The signature is written in black ink and is positioned above a horizontal line.

Blake D. Miller

Paxton R. Guymon

Joel T. Zenger

Special Assistant Attorneys General

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MILLER MAGLEBY & GUYMON, P.C., 170 South Main Street, Suite 350, Salt Lake City, Utah 84101, and that pursuant to Rule 5(b), Utah Rules of Civil Procedure, a true and correct copy of the foregoing **MOTION FOR RECONSIDERATION** was delivered to the following this 14th day of July, 2004 by:

- Hand Delivery
- Facsimile
- Depositing the same in the U.S. Mail, postage prepaid
- Federal Express
- Certified Mail, Receipt No. _____, return receipt requested

Brent V. Manning
Douglas R. Larson
MANNING CURTIS, BRADSHAW
& BEDNAR, LLC
Third Floor Newhouse Building
10 Exchange Place
Salt Lake City, UT 84111

Alan L. Sullivan
James D. Gardner
SNELL & WILMER
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, UT 84101-1004

Celia Goldwag Barenholz
Michael D. Paley
KRONISH LIEB WEINER & HELLMAN, LLP
1114 Avenue of the Americas
New York, NY 10036

