

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

Google, Inc.	)	
	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
	)	No. 3:14-cv-981-HTW-LRA
	)	
	)	
Jim Hood, Attorney General of the	)	
State of Mississippi, in his official	)	
capacity	)	
	)	
<i>Defendant</i>	)	
	)	

---

**ATTORNEY GENERAL JIM HOOD’S RESPONSE IN OPPOSITION TO MOTION  
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

---

**COMES NOW** Jim Hood, Attorney General for the State of Mississippi in his official capacity (hereafter the “Attorney General” or “General Hood”), and files his response in opposition to Google’s motion for temporary restraining order and preliminary injunction and states:

1. Google asks this Court to enjoin the Attorney General from any further investigation of Google and preemptively bar him from ever instituting civil litigation or criminal charges against by virtue of 47 U.S.C. § 230 of the Communications Decency Act (“CDA”). Supp. Mem. at 2.

2. Google also contends the Attorney General’s Subpoena is preempted by the Copyright Act, 17 U.S.C. §§ 301, 512, and the Food, Drug, and Cosmetics Act (“FDCA”), 21 U.S.C. § 337 and that “[m]any of the Attorney General’s inquiries concern copyright infringement. . . .” *Id.* at p. 3.

3. Google claims the FDCA bars the Attorney General from obtaining documents and information “relating to the importation of prescription drugs.” *Id.* Although Google objects to the investigation arguing it violates the enumerated statutory and constitutional provisions, Google does not challenge the constitutional validity of any state statute through which General Hood is conducting his investigation

4. Google’s declaratory judgment action should be dismissed for lack of subject matter jurisdiction. Google has not stated claims arising under 28 U.S.C. § 1331 but has asserted defenses to anticipated but not filed state law claims. As such, jurisdiction is lacking under Section 1331.

5. Google has failed to establish subject matter jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) as it has failed to state a claim against the Attorney General under 42 U.S.C. § 1983.

6. Alternatively, the case should be dismissed under the *Younger* abstention doctrine, set forth in *Younger v. Harris*, 401 U.S. 37 (1971), and its progeny.

7. Finally, the case should be dismissed because Google’s claims are not ripe for adjudication. *See Reno Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

8. In further support of the response in opposition to the motion for temporary restraining order and preliminary injunction, the Attorney General relies on the following:

- A. Memorandum in Support of Motion to Dismiss Complaint Based on Jurisdiction and Other Grounds, filed separately [**EXHIBIT A**];
- B. Administrative Subpoena and Subpoena Duces Tecum [**EXHIBIT B**];
- C. Google Non-Prosecution Agreement; [**EXHIBIT C**];
- D. February 13, 2013 Letter from Attorneys General of Hawaii, Mississippi, Virginia [**EXHIBIT D**];

- E. Declaration of Bridgette Wiggins [**EXHIBIT E** ];
  - 1. Assurance of Voluntary Compliance dated March 8, 2013 [**Wiggins Decl. EXHIBIT 1**];
  - 2. Assurance of Voluntary Compliance dated Marcy 11, 2013 [**Wiggins Decl. EXHIBIT 2**];
- F. Letter from Attorneys General from Nebraska and Oklahoma dated July 2, 2013 Letter [**EXHIBIT F**];
- G. Letter from Attorneys General from Nebraska, Hawaii, Virginia and General Hood dated October 7, 2013 Letter [**EXHIBIT G**];
- H. Letter from twenty-three (23) Attorneys General, including General Hood, dated December 10, 2013 [**EXHIBIT H**];
- I. Letters from General Hood to Google dated April 1, 2013, May 21, 2013, and June 10, 2013 [**EXHIBIT I**].

**WHEREFORE, PREMISS CONSIDERED**, Jim Hood, Attorney General for the State of Mississippi in his official capacity, requests that the Court deny Google's motion for temporary restraining order and preliminary injunction and requests such other relief as the Court deems proper.

This the 12<sup>th</sup> day of January, 2015.

Respectfully Submitted,

JIM HOOD, ATTORNEY GENERAL FOR THE  
STATE OF MISSISSIPPI, in his official capacity

By: JIM HOOD, ATTORNY GENERAL FOR THE  
STATE OF MISSISSIPPI

By: /s/ Douglas T. Miracle  
DOUGLAS T. MIRACLE, MSB # 9648  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
CIVIL LITIGATION DIVISION  
Post Office Box 220  
Jackson, Mississippi 39205-0220  
Telephone: (601) 359-5654  
Facsimile: (601) 359-2003  
[dmira@ago.state.ms.us](mailto:dmira@ago.state.ms.us)

**CERTIFICATE OF SERVICE**

I, Douglas T. Miracle, Special Assistant Attorney General for the State of Mississippi, do hereby certify that on this date I electronically filed the foregoing document with the Clerk of this Court using the ECF system and sent a true and correct copy to counsel of record:

Daniel J. Mulholland  
FORMAN, PERRY, WATKINS, KRUTZ & TARDY, LLP - Jackson  
P.O. Box 22608  
200 S. Lamar Street, Suite 100 (39201-4099)  
Jackson, MS 39225-2608  
601/960-8600  
Fax: 601/960-8613  
Email: [mulhollanddj@fpwk.com](mailto:mulhollanddj@fpwk.com)

David H. Kramer - PHV  
WILSON, SONSINI, GOODRICH & ROSATI, PC  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
650/493-9300  
Fax: 650/565-5100  
Email: [dkramer@wsgr.com](mailto:dkramer@wsgr.com)

Fred Krutz , III  
FORMAN, PERRY, WATKINS, KRUTZ & TARDY  
P.O. Box 22608  
Jackson, MS 39225-2608  
(601) 960-8600  
Email: [fred@fpwk.com](mailto:fred@fpwk.com)

Blake C. Roberts - PHV  
WILMER, CUTLER, PICKERING, HALE & DORR, LLP - Washington  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006  
Fax: 202/663-6363  
Email: [blake.roberts@wilmerhale.com](mailto:blake.roberts@wilmerhale.com)



Jamie S. Gorelick - PHV  
WILMER, CUTLER, PICKERING, HALE & DORR, LLP - Washington  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006  
202/663-6500  
Fax: 202/663-6363  
Email: [jamie.gorelock@wilmerhale.com](mailto:jamie.gorelock@wilmerhale.com)

Patrick J. Carome - PHV  
WILMER, CUTLER, PICKERING, HALE AND DORR, LLP - Washington  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006  
202/663-6610  
Fax: 202/663-6363  
Email: [patrick.carome@wilmerhale.com](mailto:patrick.carome@wilmerhale.com)

Peter Neiman - PHV  
WILMER, CUTLER, PICKERING, HALE AND DORR, LLP - New York  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
212/295-6487  
Fax: 212/230-8888  
Email: [peter.neiman@wilmerhale.com](mailto:peter.neiman@wilmerhale.com)

Violetta G. Watson - PHV  
WILMER, CUTLER, PICKERING, HALE AND DORR, LLP - New York  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
212/230-8800  
Fax: 212/230-8888  
Email: [violetta.watson@wilmerhale.com](mailto:violetta.watson@wilmerhale.com)

This the 12<sup>th</sup> day of January, 2015.

/s/ Douglas T. Miracle  
DOUGLAS T. MIRACLE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

Google, Inc.	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
	)	No. 3:14-cv-981-HTW-LRA
	)	
	)	
Jim Hood, Attorney General of the	)	
State of Mississippi, in his official	)	
capacity	)	
<i>Defendant</i>	)	
	)	

---

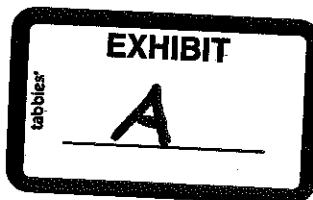
**ATTORNEY GENERAL JIM HOOD’S MEMORANDUM IN SUPPORT OF MOTION  
TO DISMISS COMPLAINT BASED ON JURISDICTION AND OTHER GROUNDS**

---

Jim Hood, Attorney General for the State of Mississippi in his official capacity (hereafter the “Attorney General” or “General Hood”), files this memorandum in support of his motion to dismiss Google, Inc.’s (“Google”) Complaint for Declaratory and Injunctive Relief pursuant to FRCP 12(b)(1) and 12(b)(6).

**I. Introduction**

Google filed suit against the Attorney General seeking declaratory and injunctive relief stemming from General Hood’s investigation of Google under the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.* (“MCPA”), Complaint, Docket No. 1. The Attorney General, as a constitutional state officer, has the duty and authority to enforce the MCPA which authorizes him to investigate and prosecute violations of the consumer protection laws by, among other acts, issuing subpoenas requesting the production of documents. Under the MPCA, the Attorney General performs, *inter alia*, investigative functions and has the weight



of the state's courts behind such subpoenas. Google asks this Court to impermissibly interfere with the Attorney General's investigation including two matters committed to state law and state courts: (1) the legality of a subpoena issued under state law and enforceable only in state courts, and (2) the state's enforcement of state consumer protection laws. Under any circumstances, to permit subjects of state civil and/or criminal investigations to challenge state subpoenas in federal court threatens to do great harm to principles of equity, comity, and federalism and to make federal courts the first stop for parties wishing to challenge state-issued subpoenas. Google's suit is especially improper given that it was instituted before the Attorney General has completed his investigation or filed an actual complaint against Google in state court and before Google sought to quash or narrow the Subpoena in state court.

This lawsuit is nothing more than a brazen strategic maneuver on Google's part to hinder the Attorney General's investigation into its possible violations of Mississippi law. And for this, Google does not enjoy constitutional immunity from compliance with Mississippi's consumer protection laws. In furtherance of this effort, Google seeks a declaration that the Attorney General's on-going state-law investigation: (1) violates 47 U.S.C. § 230 of the Communications Decency Act ("CDA"); (2) violates Google's First and Fourteenth Amendment rights under the United States Constitution and 42 U.S.C. § 1983; (3) violates Google's Fourth and Fourteenth Amendment rights and Section 1983; and (4) is preempted under the Copyright Act, 17 U.S.C. § § 301, 512, and the Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 337 ("FDCA"). Complaint, pp. 28-32.

Google claims this case presents a federal question under Article III and 28 U.S.C. §§ 1331 and 1343(a)(3) and seeks remedies under 28 U.S.C. § 2201 and 2202, and 42 U.S.C. §§ 1983 and 1988. Complaint, ¶ 6. While Google alleges the Attorney General's investigation

violates the enumerated statutory and constitutional provisions, Google does not challenge the constitutional validity of any state statute, either facially or as applied, under which the Attorney General is conducting his investigation.

At present, and because of the on-going investigation, the Attorney General has not instituted criminal prosecution and/or civil litigation against Google. On October 21, 2014, and as part of the investigation, the Attorney General served on Google an Administrative Subpoena and Subpoena Duces Tecum (“Subpoena”), *see* Ex. A, seeking documents and information. Instead of challenging the scope of the Subpoena in state court as it should have done, Google seeks to prematurely litigate its defenses in this Court to possible state-court claims that the Attorney General *may* file at some later date. Obviously the Attorney General cannot yet know the information the Subpoena will elicit. If the Subpoena reveals that Google’s conduct is not immunized under the CDA and violates the MCPA, then the Attorney General could proceed under the MCPA. Thus, among other jurisdictional deficiencies, Google’s challenge to the Subpoena is premature because it requires this Court to assume: (1) what the nature of the potential claims against Google may be and, (2) that the Attorney General would bring an action that runs afoul of federal law. There is no basis for such an assumption.

According to the theory of Google’s lawsuit, any claims the Attorney General could possibly file would *violate* the CDA, the First, Fourth and Fourteenth Amendments or be preempted by the Copyright Act, the FDCA, and 42 U.S.C. § 1983. In making these arguments, Google incorrectly presumes that these claims “arise under” federal law for purposes of conferring federal subject matter jurisdiction. Google’s claims do not arise under federal law but constitute defenses to possible future state law claims. For purposes of the Declaratory Judgment Act (“DJA”), 28 U.S.C. § 2201 and 2202, the assertion of defenses to threatened or

impending state law claims do not confer federal subject matter jurisdiction and thus, subject matter jurisdiction is lacking in this case.

Even more troubling than a declaratory action which is filed in the face of an existing state law claim where the issues are clearly identified in the states court lawsuit, Google's complaint is predicated on its unilateral interpretation of claims the Attorney General might bring as a result of the documents sought in the Subpoena. Not only is this speculative, but the issue of whether Google may have defenses to assert in the event of state-court litigation is not the relevant issue for federal jurisdictional purposes. Instead, the relevant inquiry is whether Google's declaratory claims "arise under" federal law. The answer to that question is no. Likely recognizing its declaratory claims do not arise under federal law under 28 U.S.C. § 1331, Google alternatively alleges that jurisdiction is proper under 28 U.S.C. § 1343(a)(3). Complaint, ¶ 6.

Google fairs no better, jurisdictionally speaking, under Section 1343(a)(3) because the statute does not create a cause of action in and of itself. Courts have referred to Section 1343(a)(3) as the "jurisdictional counterpart to Section 1983 which requires that an official's action deprive the plaintiff of some right, privilege or immunity secured by the Constitution or federal law. The mere assertion of a federal claim is not sufficient to obtain jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3). *Lovern v. Edwards*, 190 F.3d 648 (4th Cir. 1999). Here, Google has not asserted a federal claim, but has raised defenses in anticipation of a state-court litigation. Thus, subject matter jurisdiction is lacking under Section 1343(a)(3).

More troubling is that Google's requested relief would not only impermissibly interfere with the Attorney General's on-going investigation, but would essentially award Google a victory over a hypothetical set of facts before that a case has been fully investigated and filed. Google asks this Court to enjoin the Attorney General from enforcing the outstanding Subpoena

and from instituting criminal prosecution and/or civil litigation against it. *See* Complaint, ¶ 107(c).<sup>1</sup> Such relief would conflict with the strong federal policy against federal-court interference with pending state proceedings recognized by the Supreme Court in *Younger v. Harris*, 401 U.S. 37 (1971). Moreover, Google's requested relief would effectively quash a validly issued Subpoena under state law and one that is enforceable only under state law and where Google never sought relief in a state tribunal.

Google could have and may still challenge the Subpoena in state court and assert the same defenses it has raised in this declaratory action should the Attorney General move to enforce the Subpoena at a later date should an injunction not issue.<sup>2</sup> According to the Fifth Circuit, the relevant question is whether Google will be able to present its constitutional defenses in the state forum, "not whether [Google] will have an opportunity to do so without exposing itself to the negative consequences should it lose." *Empower Texans, Inc v. Texas Ethics Comm'n*, 2014 WL 1666389 at \* 5 (S.D.Tex April 25, 2014) (citing *Tex. Ass'n of Bus. v. Earle*, 388 F.3d 515 (5th Cir. 2004)). The fact that Google would rather challenge the Subpoena in federal, as opposed to state court, is irrelevant from a constitutional and jurisdictional perspective.

Most egregious is the fact that if injunctive relief is granted, it would preemptively bar the Attorney General from enforcing Mississippi's consumer protection statutes against Google before the investigation has been completed. The Fifth Circuit in *Okpalobi v. Foster* held that the exception to suits against state officials in federal court under the *Ex Parte Young* exception

---

<sup>1</sup> Google tries to narrowly define potential claims as all falling under Section 230. *See, e.g.*, Complaint, ¶ 107(c). However, potential claims against Google are much broader than Google describes. *See, e.g.*, Miss. Code Ann. 75-24-5 which prohibits "unfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce."

<sup>2</sup> The Subpoena is not self-executing and if Google does not comply, the Attorney General would have to file an enforcement action in the Chancery Court for the First Judicial District of Hinds County, Mississippi.

is “properly understood to create a *precise exception* to the general bar against suing states in federal fora . . . [and] this exception only applies when the named defendant state officials have some connection with the enforcement of the act and ‘threat and are about to commence proceedings’ *to enforce the unconstitutional act.*” 244 F.3d 405, 416 (5th Cir. 2001) (citing *Young*, 209 U.S. at 155-56) (emphasis supplied). Google does not allege the Attorney General is trying to enforce an unconstitutional act. Instead, Google seeks an incredibly expansive prospective declaration and injunction from this Court prohibiting the Attorney General from carrying out his duties under a valid, and unchallenged, state law.

The Supreme Court when considering the federal-state relationship has held the appropriate inquiry is not whether Google should prevail on its objection to the Subpoena, but whether the State of Mississippi has a substantial, legitimate interest in enforcing its consumer protection laws. *See New Orleans Pub. Servs. Comm’n. v. Council of City of New Orleans*, 491 U.S. 350, 365 (1989) (“NOPSP”). The Supreme Court has said in the strongest terms that “[a]nticipatory judgment by a federal court to frustrate action by a state . . . is even less tolerable to our federalism.” *Public Service Comm’n of Utah v. Wycoff Co.*, 344 U.S. 237, 241 (1952). In pointing to the danger of this type of interference, the Court stated:

Is the declaration contemplated here to be res judicata, so that [the state] cannot hear evidence and decide the matter for itself? If so, the federal court has virtually lifted the case from the State [ ] before it could be heard. If not, the federal judgment serves no useful purpose as a final determination of rights.

*Wycoff*, 344 U.S. at 247. Google asks just that; to remove the Attorney General’s investigation and possible state court litigation, out of the hands of the state before any suit, or challenge to the Subpoena, can be properly adjudicated in state court. Google is not entitled to be preemptively insulated from violations of state law. If at the completion of his investigation the Attorney

General institutes criminal prosecution and/or civil litigation under the MCPA, Google may have its day in state court to raise the defenses it has asserted in this declaratory action.

The significance cannot be overstated that Google does not challenge the authority of the Attorney General to issue the Subpoena in the first instance, nor does Google contest the constitutional validity of the Subpoena, either facially or as applied. Instead, Google challenges the scope of the Subpoena by asserting defenses to state law claims disguised as federal claims. Complaint, ¶ 78 (“Google asked that the Subpoena be withdrawn or at least *limited to activity not immunized by Section 230 of the CDA*.”). Therefore, Google has not alleged claims that arise under federal law for purposes of satisfying subject matter jurisdiction under the DJA, but are matters committed to the jurisdiction of the Hinds County Chancery Court for resolution should the Attorney General move to enforce the Subpoena in that venue as required by state statute.

Accordingly, the Attorney General moves to dismiss the complaint for lack of federal subject matter jurisdiction, or alternatively, that the Court abstain under the *Younger* abstention doctrine. Finally, the case should be dismissed because Google’s claims are not ripe.

## **II. Background**

On October 21, 2014, the Attorney General issued the Subpoena at issue pursuant to Miss. Code Ann. § 75-24-27. *See* Ex. A (Subpoena). Google’s response to the Subpoena was due on November 20, 2014, but by agreement of the parties that deadline was extended to January 5, 2015. Complaint, ¶ 78. Instead of requesting additional time to respond or challenge the Subpoena in state court where it should have, Google filed this suit on December 19, 2014. Google took this action despite the fact that the Attorney General had previously agreed to move Google’s response deadline from November 20, 2014 to January 5, 2015. The current deadline for Google’s response, by agreement, is now March 6, 2015. The Court conducted a hearing on



December 22, 2014 on Google's motion for a temporary restraining order and subsequently entered an Order on Agreed Stay, Briefing Schedule and Preliminary Injunction Hearing Date dated December 23, 2014. Docket No. 25. In accordance with the deadlines established in the Order, the Attorney General moves to dismiss the complaint for the reasons set forth below.

### **III. Standard of Review**

#### **A. 12(b)(1) Standard**

A case is properly dismissed for lack of subject matter jurisdiction under FRCP 12(b)(1) when the court lacks the statutory or constitutional power to adjudicate the case. *Home Builders Ass'n of Miss., Inc. v. Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). The party seeking to invoke jurisdiction of the federal court bears the burden of demonstrating its existence. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). There is a presumption against subject matter jurisdiction that must be rebutted by the party bringing an action to federal court. *Coury v. Prot*, 85 F.3d 244, 248 (5th Cir. 1996). "Conclusory allegations in a complaint . . . do not establish [federal] jurisdiction." *Gaar v. Quirk*, 86 F.3d 451, 453 (5th Cir. 1996). A court may base its disposition of a motion to dismiss for lack of subject matter jurisdiction on the complaint alone, the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *Ynclan v. Department of the Air Force*, 943 F.2d 1388, 1390 (5th Cir. 1991) (citation omitted).

#### **B. 12(b)(6) Standard**

To survive a motion to dismiss, a complaint must allege sufficient factual matter, accepted as true, to state a claim that is plausible on its face. *Hershey v. Energy Transfer Partners, L.P.*, 610 F.3d 239, 245 (5th Cir. 2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009)). Although a court must take the factual allegations in the complaint as

true and construe them in the light most favorable to the plaintiff, this tenet is inapplicable to legal conclusions. *Iqbal*, 556 U.S. at 678. Dismissal is warranted when the complaint on its face shows a bar to relief. *Clark v. Amoco Prod. Co.*, 794 F.2d 967, 970 (5th Cir. 1986). The Court may also consider documents referenced in, and/or attached to, the plaintiff's complaint in ruling on a motion to dismiss. *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011).

#### **IV. Google's Defenses to State Law Claims do not Confer Subject Matter Jurisdiction.**

##### **A. 28 U.S.C. § 1331**

Google alleges this case “arises under the United States Constitution and the laws of the United States, and presents a federal question under Article III of the Constitution, 28 U.S.C. § 1331 and 1343(a)(3). Complaint, ¶ 6. Careful examination demonstrates subject matter jurisdiction is lacking. “[F]ederal courts are courts of limited jurisdiction, having ‘only the authority endowed by the Constitution and that conferred by Congress.’” *Epps v. Bexar-Medina-Atascosa Counties Water Improvement Dist. No. 1*, 665 F.2d 594 (5th Cir. 1982) (citation omitted). In fact, “[i]t is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of America*, 515 U.S. 375, 377 (1994).

Federal question jurisdiction “is not satisfied merely because the dispute is in some way connected with a federal matter.” *Lowe v. Ingalls Shipbuilding, A Div. of Litton Systems, Inc.*, 723 F.2d 1173, 1178 (5th Cir. 1984) (citation and internal quotation marks omitted). Section 1331 requires “that the suit be one ‘arising under’ the Constitution or the laws of the United States, and for this purpose ‘[a] suit arises under the law that *creates* the cause of action. *Id.* at 1178 (emphasis supplied) (citation omitted); *Superior Oil Co. v. Pioneer Corp.*, 706 F.2d 603, 605 (5th Cir. 1983). Google has not alleged claims arising under federal law but instead has

asserted defenses to what it perceives as threatened or impending state law claims that the Attorney General may file in the future. The Supreme Court in *Wycoff Public Serv. Comm'n v. Wycoff* flatly stated that “[f]ederal courts will not seize litigation from state court merely because one, normally a defendant, goes to federal court to begin his federal law defense before the state court begins the case under state law. 344 U.S. at 248 (citation omitted). This is precisely what Google has done by instituting this declaratory action and attempting to prospectively insulate itself from any possible litigation under the MCPA.

**B. The DJA is Procedural and does not Confer Subject Matter Jurisdiction.**

While Google filed suit using the DJA as the procedural vehicle, the DJA does not separately confer federal jurisdiction on federal courts but only authorizes federal courts to provide declaratory relief. *Jolly v. United States of America*, 488 F.2d 35 (5th Cir. 1974) (citing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671-72 (1950)). “The federal [DJA] . . . is procedural only, not substantive, and hence the relevant cause of action must arise under some other federal law . . . to afford jurisdiction of a declaratory judgment suit.” *Lowe*, 723 F.2d at 1179. Justice Frankfurter, writing in *Skelly Oil Co. v. Phillips Petroleum Co.*, said that “‘the operation of the [DJA] is procedural only.’ Congress enlarged the range of remedies available in federal courts but did not extend their jurisdiction. . . . ‘[J]urisdiction’ means the kinds of issues which give right of entrance to federal courts. Jurisdiction in this sense was not altered by the Declaratory Judgment Act.” *Lowe*, 723 F.2d at 1179 (quoting *Skelly Oil*, 339 U.S. at 671) (emphasis supplied). Here, Google has not stated a claim giving it such right of entrance in federal court.

The Fifth Circuit adheres to the principle that a party's interest is an adverse legal interest within the meaning of the DJA when it relates to a “case of actual controversy within [the

court's] jurisdiction.” *Collin Cnty. Texas v. Homeowners Ass’n for Values Essential to Neighborhoods*, 915 F.2d 167, 170-71 (5th Cir. 1990). Accordingly, “[t]his language merely recognizes that the case or controversy requirement of Art[icle] III . . . applies in the declaratory judgment context.” *Id.* (citing *Foster v. Center Tp. of LaPorte County*, 798 F.2d 237, 249 (7th Cir. 1986)). In order to confer subject matter jurisdiction “[a] party's legal interest must relate to an actual ‘claim arising under federal law *that another asserts against him. . .*’” *Id.* (quoting *Lowe*, 723 F.2d 1173, 1179 (5th Cir. 1984) (emphasis supplied). “[T]he mere presence of a federal issue, *specifically the anticipation of a federal defense*, would not permit invocation of federal question jurisdiction.” *Id.* at 1178 (emphasis supplied) (citing *Superior Oil Co. v. Pioneer Corp.*, 706 F.2d 603, 605 (5th Cir. 1983)). A suit “does not involve federal question jurisdiction being predicated under the [DJA] solely upon a federal defense to a cause of action which does not itself arise under federal law.” *Id.* at 1179. In fact, the DJA was declared “constitutional only by interpreting it to confine the declaratory remedy with conventional ‘case or controversy’ limits.” *Wycoff*, 344 U.S. at 239 (citing *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 325, 56 S.Ct. 466, 473, 80 L.Ed. 688 (1935)). Google’s declaratory action fails woefully under this standard.

### C. Google’s Claims do not “Arise Under” Federal Law.

In 1952, the Supreme Court in *Public Serv. Comm’n v. Wycoff*, articulated the principle that “the declaratory judgment procedure will not be used to preempt and prejudice issues that are committed for initial decision to an administrative body or special tribunal any more than it will be used as a substitute for statutory methods of review.” *Wycoff*, 344 U.S. at 246. The Court rejected the federal declaratory plaintiff’s effort to establish a defense against future

litigation it perceived the Utah Public Service Commission might bring against it in state court regarding transportation of goods within the state. *Id.* at 248.

Like Google who requests a declaration that its products and activities could *never* violate the MCPA, the *Wycoff* plaintiff sought similar relief arguing that transportation of goods through Utah constituted interstate commerce and the Public Service Commission of Utah should be *forever* enjoined from interfering with routes authorized by the Interstate Commerce Commission. *Id.* at 239. The Supreme Court rejected this argument stating that “[plaintiff’s] idea seems to be that it can now establish the major premise of an exemption, not as an incident of any present declaration of any specific right or immunity, *but to hold in readiness for use* should the commission at any future time attempt to apply any part of a complicated regulatory statute to it. . . . We think this for several reasons exceeds any permissible discretionary use of the Federal [DJA].” *Wycoff*, 344 U.S. at 245 (emphasis supplied).

This is no different than what Google requests; to have an order from this Court it can forever hold in readiness should the Attorney General ever institute litigation against it in state court against claims that have not yet been ascertained in full. The Supreme Court cautioned that “when the request is not for ultimate determination of rights but for preliminary findings and conclusions intended to fortify the litigant against future regulation, it would be a rare case in which the relief requested should be granted. *Id.* at 245, 246. Furthermore, the Court said, “[w]e may conjecture that [plaintiff] fears some form of administrative or *judicial action* to prohibit its service. . . . *What respondent ask is that it win any such case before it is even commenced.* Even if [plaintiff] is engaged solely in interstate commerce, *we cannot say that there is nothing whatever that the State may require.* *Id.* at 245 (emphasis supplied). The same logic holds true in this case. Google cannot credibly argue that there is nothing the State of Mississippi may

require of it under its consumer protection laws, *i.e.* the same type of blanket exemption sought and rejected in *Wycoff*. Google does not nor could it credibly argue the Attorney General lacks legal authority to enforce the MCPA. Instead, Google argues it should not be subject to regulation by the State under the MCAP. Just as the Court in *Wycoff* rejected such immunity from regulation, the Attorney General submits this Court too should refuse such a request.

*Wycoff* is also poignant in analyzing the complaint because it set out the analytical framework for examining federal jurisdiction in the context of action filed under the DJA.

Respondent here has sought to ward off possible action of the petitioners by seeking a declaratory judgment to the effect that he will have a good defense when and if that cause of action is asserted. ***Where the complaint in an action for declaratory judgment seeks in essence to assert a defense to an impending or threatened state court action, it is the character of the threatened action, and not of the defense, which will determine whether there is federal-question jurisdiction in the District Court.*** If the cause of action, which the declaratory defendant threatens to assert, does not itself involve a claim under federal law, it is doubtful if a federal court may entertain an action for a declaratory judgment establishing a defense to that claim. If the cause of action, which the declaratory defendant threatens to assert, does not itself involve a claim under federal law, it is doubtful if a federal court may entertain an action for a declaratory judgment establishing a defense to that claim. This is dubious even though the declaratory complaint sets forth a claim of federal right, if that right is in reality in the nature of a defense to a threatened cause of action.

*Wycoff*, 344 U.S. at 245, 248-49 (citation omitted) (emphasis supplied). Again, this is precisely what Google seeks here – to ward off possible action by the Attorney General asserting that it will have a good defense to any claims that might be filed. While the *Wycoff* Court used terms such as “dubious” or doubtful,” later cases, including the Fifth Circuit in *Lowe*, quoting approvingly from Wright, Miller & Kane’s commentary on *Wycoff*, and eliminated any question about the effect on jurisdiction where a party asserts a defense to threatened state law claims in a declaratory action:

Despite the [*Wycoff*] Court’s use of such words as ‘doubtful’ and ‘dubious,’ it seems clear that this is the law today, that the narrow view is the correct one, and

that a historical test must be used to measure federal jurisdiction in declaratory actions. Therefore, *if, but for the availability of the declaratory judgment procedure, the federal claim would arise only as a defense to a state created action, jurisdiction is lacking.*

*Lowe*, 723 F.2d at 1180 (quoting Federal Practice and Procedure: Civil 2d § 2767, at 744-45) (italics in original). Moreover, the *Lowe* Court said “[w]hile we are in agreement with these views, what is more important is that the Supreme Court has most recently reaffirmed the conclusion stated by Wright, Miller and Kane, quoting with approval the italicized portion of the language set out above.” *Id.* (citing *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 103 S.Ct. 2841, 2846-2847, 77 L.Ed.2d 420, 431 (1983).

Following *Wycoff*, a number of courts, including the Fifth Circuit in *Gaar v. Quirk*, 86 F.3d 451, 453 (5th Cir. 1996), have applied this jurisdictional principle in the context of declaratory actions. See *E.I. DuPont de Nemours & Co. v. Sawyer*, 517 F.3d 785, 801 (5th Cir. 2008) (citing *Wycoff*) (holding that “[w]here the complaint in an action for declaratory judgment seeks in essence to assert a defense to an impending or threatened state court action, it is the character of the threatened action, and not of the defense, which will determine whether there is federal-question jurisdiction in the District Court.”); *Armstrong v. Kennedy Krieger Inst., Inc.*, 2012 WL 1554643, at \* 5 (D. Md., 2012 (an affirmative defense does not create a substantial federal question); *Pinney v. Nokia, Inc.*, 402 F.3d 430, 448 (4th Cir. 2005) (affirmative defense of preemption cannot serve as a basis for removal under the substantial federal question doctrine); *Shad v. Z-Tel Comm., Inc.*, 2005 WL 83337, at \*4 (N.D. Ill. 2005) (federal jurisdiction cannot be based on a federal defense, including a preemption defense, with the limited exception of the conversion of a state law claim to a federal claim via the complete preemption doctrine).<sup>3</sup>

---

<sup>3</sup> Cf. *Lipscomb v. Columbus Mun. Separate Sch. Dist.*, 269 F.3d 494 (5th Cir. 2001) (explaining the distinction between redress for an existing injury through the Declaratory Judgment Act and the anticipation of a state judicial action) (“Since the state legislative action giving rise to [federal plaintiff’s] claim is the Mississippi



In *Gaar*, the Fifth Circuit held that a “petition for declaratory judgment concerning federal law is not sufficient to create federal jurisdiction; ‘hence the relevant cause of action must arise under some other federal law.’” *Id.* at 453 (citing *Lowe*, 723 F.2d at 1179). In that case, the Court addressed federal declaratory judgment asserting immunity under the federal Longshore and Harbor Workers’ Compensation Act (“LHWA”) against a pending malpractice case in state court. *Id.* Neither party raised a jurisdictional defect, but the Court reviewed its subject matter jurisdiction *sua sponte*. The Court concluded that federal jurisdiction was premised on the LHWA and general maritime law in providing an immunity defense to the state law claim. *Id.* at 454. In finding jurisdiction lacking, the Court stated:

When a declaratory judgment complaint essentially invokes a federal-law defense to a state-based claim, it is the character of the threatened action that determines whether federal courts have jurisdiction. Under this rule, the character of [state plaintiff’s] state court action controls our determination. Because [state plaintiff’s] malpractice complaint is founded solely in state law, the district court was without jurisdiction to entertain [federal plaintiff’s] petition, which is merely a defense to [state plaintiff’s] claim.

*Garr*, 86 F.3d at 451 (citing *Lowe*, 723 F.2d at 1180). Here, Google did the same thing as the *Garr* plaintiff asserting an immunity-based defense under Section 230 of the CDA. Just as the LHWA provided an immunity defense to the state action, and not a claim arising under federal law, so too is Google’s invocation of the CDA’s immunity. If the Attorney General files suit in state court against Google for claims Google contends are covered by Section 230’s immunity, then it can raise its defense at that time. Thus, the existence of Section 230 does not turn this case into one “arising under federal law.”

---

Constitution of 1890, [the] complaint does not anticipate a state judicial action, it seeks redress for an existing harm. *To the point, the threatened action is legislative impairment of contract.* *Id.* at 500 (emphasis supplied).



**D. The Character of the Threatened Action under the MCPA**

Applying *Wycoff* and *Garr* to the complaint, it becomes evident that the nature and character of the threatened action would not arise under federal law. While Google has attempted to unilaterally re-characterize claims which have yet to fully come into existence as being federal in nature, the undeniable fact is that the MCPA provides causes of action which are not prohibited by any law relied on by Google. The only law cited by Google as a basis for federal jurisdiction is Section 230 of the CDA, and preemption under the Copyright Act, and the FDCA. Alternatively, Google alleges the Attorney General's investigation violates the First, Fourth Amendment through the Fourteenth Amendment and also § 1983. Complaint, pp. 28-32. Google's defenses to future claims do not define the jurisdictional inquiry and a number of potential claims exist which, if filed by the Attorney General, would arise not under federal law but under the MCPA. The fact that the Attorney General may bring claims which are connected with federal law does not transform the case into one arising under federal law for purposes of Section 1331. *Lowe*, 723 F.3d at 1178.

**(1) Potential Claims against Google under the MCPA**

Section 230 of the CDA does provides a defense for websites such as Google arising from its passive display as a publisher of content created by third parties. However, this type of passive conduct is not what the Attorney General is investigating via the Subpoena and the conduct at issue may fall within the three (3) exceptions to the CDA.

**(a) Exceptions under the CDA**

First, the CDA provides that “[n]othing in this section shall be construed to limit or expand any law pertaining to intellectual property.” Section 230(e)(2). Numerous courts have interpreted this provision as a carve-out from CDA immunity for both federal and state law

intellectual property claims. *See e.g., Atlantic Recording Corp. v. Project Playlist, Inc.*, 603 F. Supp. 2d 690 (S.D.N.Y. 2009); *Universal Comm. Sys. C. Lycos, Inc.*, 478 F.3d 413, 422-23 (1st Cir. 2007) (“Claims based on intellectual property laws are not subject to Section 230 immunity.”); *Chicago Lawyers’ Comm. For Civil Rights Under Law, Inc. v. Craig’s List, Inc.*, 519 F.3d 666, 670 (7th Cir. 2008) (holding that content providers’ may be liable for contributory infringement if their system is designed to help people steal music or other material in copyright). The Attorney General’s investigation seeks to determine whether Google has misled Mississippi consumers about steps Google takes to protect consumers from infringing and other illegal material in the way it sorts content in its services. This would not be preempted by the CDA.

Second, the CDA does not immunize Google from prosecution for its *own* acts of fraud or misconduct. For example, the Subpoena requests “documents concerning the use of Google Advertising Services to promote or serve ads on websites or in conjunction with videos on YouTube that are or appear to be promoting, facilitating, offering for sale, disseminating, or engaging in dangerous or Illegal Content/Conduct. *See Ex. A, (Doc. Request No. 16)*. This and similar requests in the Subpoena may illicit evidence that Google knowingly allows sites engaged in unlawful activities to use its advertising services, despite Google’s express policies and representations to consumers forbidding such activities. Such evidence could demonstrate Google’s affirmative and fraudulent misrepresentations that would be outside the scope of the CDA. *See CYBERSitter, LLC v. Google, Inc.*, 905 F. Supp. 2d 1080, 1086 (C.D. Cal. 2012) (denying Google’s motion to dismiss on CDA immunity); *Mazur v. ebay, Inc.*, 2008 WL 618988, at \*9 (N.D. Cal. 2008) (“The CDA does not immunize” an interactive computer service provider “for its own fraudulent misconduct.”); *Anthony v. Yahoo! Inc.*, 421 F. Supp.2d 1257, 1263 (N.D.

Cal. 2006 (“[The CDA] does not absolve Yahoo! From liability for any [of its own] accompanying misrepresentations.”).

Third, the CDA does not immunize Google from prosecution for its own participation in developing illegal content. Section 230 of the CDA provides immunity to interactive computer services from liability only if the provider is not also an ‘information content provider . . . responsible, in whole or in part, for the creation or development of’ the offending content. Section 230(f)(3). For example, the Ninth Circuit held that a “website helps develop unlawful content, and thus falls within this exception to Section 230, *if it contributes materially to the alleged illegal conduct.*” *Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC.*, 521 F.3d 1157, 1168 (9th Cir. 2008) (emphasis supplied). The Subpoena seeks documents and information related to Google’s Autocomplete function. *See* Ex. A, (Request Nos. 76-79). Such requests could reveal evidence that Google engaged in unfair trade practices by programming Autocomplete to direct users who are searching for lawful content and activities to search instead for sites engaged in unlawful activities. An MCPA claim based on this type of conduct would not be barred by the CDA because Google created, designed, and wholly controls Autocomplete.

At best, the CDA offers Google a potential defense depending on the nature of a claim asserted against it. The CDA does not, however, provide a pathway into federal court. Obviously, factual development is still necessary to determine the applicability of Section 230, which is the reason the Attorney General issued the Subpoena in the first instance. The Attorney General is entitled to know whether Google is, in fact, acting as merely a “publisher” if third-party material (*i.e.* a passive activity under Section 230 of the CDA), or whether it does more than passively publish third-party content. Without the investigation and the pertinent

documents, the Attorney General cannot know that answer to the question. Furthermore, to the extent that claims against Google arise from possible tortious conduct related to actions other than posting third-party content, the CDA does not provide a defense. Section 75-24-25(g) of the MCPA would be applicable to this type of claim because it prohibits the practice of “representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are another.” *Id.*

In summary Google cannot, on the one hand, argue the Attorney General is prohibited, *ab initio*, from conducting an investigation while at the same time unilaterally concluding that no claims could exist against it, except under federal law. This position begs the question: What if documents responsive to the Subpoena do exist and would provide a basis for claims not excluded by the CDA? Without enforcement of the Subpoena, only Google would know the answer to this question. The Subpoena clearly seeks information that may form the basis for claims under the MCPA that are not otherwise precluded by the CDA. As the Court said in *J & W. Seligman v. Spitzer*, 2007 WL 2822208 (S.D.N.Y. 2007) without such subpoenas, the Attorney General “seldom could amass the evidence necessary” to commence fraud actions. 2007 WL 2822208 at \*5.

**E. Exceptions to Rule against Asserting Defenses to Pending or Threatened State Law Claims to Establish Subject Matter Jurisdiction.**

According to *Garr*, there are only two (2) exceptions to the rule concerning defenses asserted state law claims: (1) the artful pleading doctrine (in which the state-court plaintiff’s pleading is designed to conceal the fact that the claim was actually federal in nature; and (2) when federal law completely preempts state law in that area. *Gaar*, 86 F.3d at 454 n.11 (citing *Aaron v. Nat. Union Fire Ins. Co.*, 876 F.2d 1157, 1161 (5th Cir. 1989)). As in *Garr*, neither exception applies to this case.

**(1) The Artful Pleading Doctrine is not Applicable**

The artful pleading doctrine does not apply in this case because there is not a presently-filed state court complaint that would be “designed to conceal the fact that the claim was actually federal in nature.” *Id.* That leaves only complete preemption, which is not present.

**(2) Complete Preemption does not Exist.**

As set forth by the Fifth Circuit in *Garr*, the only other means to federal jurisdiction in the absence of the artful pleading doctrine is complete preemption. *Gaar*, 86 F.3d at 454 n.11. The Supreme Court has held that complete preemption is a basis for the invocation of federal subject matter jurisdiction. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987). Under the complete preemption doctrine, the Court has “concluded that the pre-emptive force of a statute is so ‘extraordinary’ that it ‘converts an ordinary state common law complaint into one stating a federal claim for purposes of the well-plead complaint rule.’” *Id.* (citing *Metropolitan Life Ins. Co., v. Taylor*, 481 U.S. 58, 63, 107 S.Ct. 1542, 1546, 95 L.Ed.2d 55 (1987)). The *Caterpillar* Court held that “[o]nce an area of state law has been completely preempted, any claim purportedly based on that preempted state law is considered, from its inception, a federal claim, and therefore arises under federal law.” *Id.* (citing *Franchise Tax Board of Cal. v. Constr. Labors Vacation Trust for Southern Cal.*, 461 U.S. 1, 24, 103 S.Ct. 2841, 2854, 77 L.Ed.2d 420 (1983)).

The Supreme Court has found only three (3) statutes having the type of preemptive force to support complete preemption for jurisdictional purposes: (1) Section 301 of the Labor-Management Relations Act (LMRA), (2) Section 502 of the Employee Retirement Income Security Act (ERISA), and (3) Sections 85 and 86 of the National Bank Act. *See Cuomo v. Dreamland Amusements, Inc.*, 2008 WL 4369270 at \*3 (S.D.N.Y. September 22, 2008). *Id.*

(citing *Sullivan v American Airlines, Inc.*, 424 F.3d 267, 271 (2nd Cir. 2005)). “These statutes are distinctive because they ‘provide the exclusive cause of action for the claim asserted and also set forth procedures and remedies governing that cause of action.’” *Cantrell v. Briggs & Veselka Co.*, 2014 WL 6900846 at \*2. (S.D. Tex December 5, 2014).

In *Caterpillar*, the Court offered an example, citing *Avco Corp. v. Machinists*, where the Court said complete preemption exists where “[s]tate law does not exist as an independent source of private rights to enforce collective bargaining contracts.” *Caterpillar*, 482 U.S. at 394. However, “[a]side from complete preemption, a defense of preemption does not support removal to federal court ‘even if the defense is anticipated in the plaintiff’s complaint and even if both parties concede that the federal defense is the only question truly at issue.’” *Id.* (emphasis supplied). Here, state law claims may exist independently from the federal law relied by Google. Furthermore, Google does argue the existence complete preemption or that any statute that the Supreme Court has determined completely preempts state law for purposes of subject matter jurisdiction.

Google does allege certain claims may be preempted under the Copyright Act and the FDCA. Again, this requires speculation on Google’s part as no state law causes of action have been filed. Further, neither the Copyrights Act nor the FDCA are complete preemption statutes. Google, of its own accord, recognizes that the Subpoena is not completely preempted. (“The Attorney General’s Inquiry, *in so far as* it pertains to possible copyright infringement or the importation of prescription drugs is preempted by the Copyright Act, including the DMCA, and by the FDCA. *Id.* at ¶ 105 (emphasis supplied). At best, what Google has articulated is a preemption defense but not complete preemption.

**(a) Neither the Copyright Act nor the FDCA Preempt the Subpoena.**

In looking a preemption under the Copyright Act, the Fifth Circuit applies the “extra element” test and where a right under state law is not “equivalent” to any of the rights in the scope of federal copyright law, there is no preemption if “one or more qualitatively different elements are required to constitute the state-created cause of action. *Computer Mgmt. Asst. Co. v. Robert F. DeCastro, Inc.*, 220 F.3d 396, 404 (5th Cir. 2000). As previously set forth, the elements of the Attorney General’s potential state law causes of action do not overlap with federal copyright law. The Attorney General’s investigation seeks evidence to determine whether Google has misled consumers about the steps it takes to protect consumers from infringing and other illegal material in the way it sorts content in its services. Proving unfair or deceptive trade practices based on this theory would not involve the same elements as a copyright infringement claim.<sup>4</sup>

Depending on what the evidence shows, the Attorney General could pursue a number of claims based on misrepresentation, none of which would be preempted by the Copyright Act, including: (1) misrepresentations about the quality of search results; (2) misrepresentations; about Google’s advertising services with partner websites; (3) misrepresentations to advertisers on YouTube or on websites that partner with Google; (4) deceptive trade practices by directing consumers to dangerous or illegal conduct through Autocomplete; and (5) Unfair and deceptive

---

<sup>4</sup> To establish copyright infringement, only two elements must be proven: (1) ownership of a valid copyright, and (2) copying of the work or otherwise invading one of the exclusive rights of copyright holders (publicly performing, displaying, etc.). *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 341, 361 (1991); *Lakedreams v. Taylor*, 932 F.2d 1103, 1107 (5th Cir. 1991). In contrast, a deceptive trade practices claim would require proof of misrepresentation, thus satisfying the “extra element” test. In *Computer Mgmt. Asst. Co.*, the Fifth Circuit held that Louisiana’s unfair trade practices claims were not preempted by the Copyright Act because they required proof of the “extra element” of fraud or misrepresentation. *Id.*



practices by using user information to direct users to websites containing illegal or dangerous conduct.

**V. Google failed to State a Justiciable Claim under the First and Fourteenth Amendment and Section 1983.**

Whether analyzed in terms of subject matter jurisdiction or under Article III's justiciability doctrine, Google failed to state a justiciable First and Fourteenth Amendment claim based "chilling" or "retaliation." Google claims the Attorney General's investigation "chill[s] the operation of Google's search engine, Autocomplete feature, YouTube video-sharing site and advertising thereby threatening to silence vast amounts of protected speech" in violation of the First Amendment. Complaint, ¶ 97. Notably absent from this contention is any specific instance in which constitutionally protected speech has actually been silenced or that Google has been forced to take any steps to remove otherwise protected speech as a result of the Attorney General's investigation. Google further claims that "[t]he Attorney General's Inquiry against Google constitutes the exercise of prosecutorial and/or civil regulatory authority under color of state law." *Id.* at ¶ 98. Google also alleges "[t]he Attorney General's Inquiry has violated, is violating, and any further steps . . . would further violate the rights of Google under the First and Fourteenth Amendments. *Id.* at ¶ 100. Notably absent is a constitutional challenge, either facial or as applied, to any state statute. Google does not allege that the Attorney General is trying to enforce an unconstitutional statute against it, either facially or as applied but confines its complaint to what it terms the "Attorney General's Inquiry." Complaint ¶¶ 94-100.

In *Laird v. Tatum*, 404 U.S. 1, 11 (1972) the Supreme Court said "constitutional violations may arise from the deterrent, or 'chilling,' effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights. *Id.* at 11. (citing *Baird v. State Bar of Ariz.*, 401 U.S. 1 (1971); *Keyishian v. Board of Regents*, 385 U.S. 589



(1967); *Lamont v. Postmaster General*, 381 U.S. 301 (1965); and *Baggett v. Bullitt*, 377 U.S. 360 (1964)). However, the Court said that “[i]n none of these cases, . . . did the chilling effect arise merely from the individual’s knowledge that a governmental agency was engaged in certain activities or from the individual’s concomitant fear that, armed with the fruits of those activities, the agency might in the future take some other and additional action detrimental to that individual.” *Laird*, 408 U.S. at 11.

In reversing the lower court, the *Laird* Court held that federal court jurisdiction cannot be invoked by a party who alleges his First Amendment right is being “chilled by the mere existence without more, of a governmental investigative and data gathering activity that is alleged to be broader in scope than is reasonably necessary for the accomplishment of a valid governmental purpose.” *Laird*, 408 U.S. at 11. This is precisely what Google has alleged. See Complaint, ¶ 99 (“The Attorney General’s Inquiry is not the least restrictive means of accomplishing any compelling governmental purpose and is not narrowly tailored to accomplish any compelling purpose.”). Clearly because there is no existing lawsuit against it, Google fears litigation that may result in the future. Such “subjective chilling” of speech does not confer federal jurisdiction.

[t]hat the alleged ‘chilling’ effect may perhaps be seen as arising from [plaintiff’s] perception of the system as inappropriate to the [defendant’s] role under our form of government, . . . or as arising from [plaintiff’s] *less generalized yet speculative apprehensiveness that the [defendant] may at some future date misuse the information in some way that would cause direct harm to [plaintiff]*. Allegations of subjective ‘chill’ are not an adequate substitute for a claim of specific present objective harm or a threat of a specific future harm; ‘the federal courts establishment pursuant to Article III of the Constitution do not render advisory opinions.

*Id.* (emphasis supplied).<sup>5</sup> Because Google has not challenged the Attorney General’s enforcement of an allegedly unconstitutional statute, a generalized claim about the alleged chilling effect of the Attorney General’s investigation is insufficient to establish federal jurisdiction under *Laird*. The infirmity of Google’s First Amendment claim is further highlighted by the Sixth Circuit’s holding in *National Rifle Ass’n of America v. Magaw*, 132 F.3d 272, 279 (6th Cir. 1997). There, the Court said “[d]eclaratory judgments are typically sought before a completed ‘injury-in-fact’ has occurred, . . . but must be limited to the resolution of an ‘actual controversy.’” *Magaw*, 132 F.3d at 279 (citing *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239-40, 57 S.Ct. 461, 463-64, 81 L.Ed. 617 (1937)). Furthermore, “pre-enforcement review is usually granted under the [DJA] when a *statute* ‘imposes costly, self-executing compliance burdens or if it *chills protected First Amendment activity*.” *Id.* at 279 (citations omitted). *See also Steffel v. Thompson*, 415 U.S. 452, 459, 94 S.Ct. 1209, 1216, 39 L.Ed.2d 505 (1974) (petitioner’s challenge is to those *specific provisions of state law* which have provided the basis for threats of criminal prosecution against him. Google does not allege that a state statutory scheme imposes costly, self-executing compliance burdens or chills protected First Amendment activity. The Subpoena at issue is not self-executing and would require the Attorney General to file an enforcement action in state court in the event of non-compliance by Google. In the event of non-compliance, Google will have the opportunity to litigate its defenses to the Subpoena in a state forum.

---

<sup>5</sup> *Cf. Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298-99 (1979) (“When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, *but proscribed by statute* and there exists a credible threat of prosecution, he ‘should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.’”) (citing *Doe v. Bolton*, 410 U.S. 179, 188 (1973)); *See also Steffel v. Thompson*, 415 U.S. 452, 459, 94 S.Ct. 1209, 1216, 39 L.Ed.2d 505 (1974) (“When fear of criminal prosecution under *an allegedly unconstitutional statute* is not imaginary or wholly speculative a plaintiff need not ‘first expose himself to actual arrest or prosecution to be entitled to challenge *the statute*.’”).

The second exception to the “chilling effect” has traditionally been called “overbreadth.” This exception has been consistently applied only to claims that a statute, though constitutional in its present application, tends to “chill” the constitutional free speech rights of others in different contexts. In *Wallace v. Brewer*, 315 F. Supp. 431, 455 (D.C. Ala. 1970), the Court stated:

After *Dombrowski* [*v. Pfister*, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22], it is clear that state criminal prosecution can be enjoined under 42 U.S.C. § 1983 **where a challenged statute** which infringes upon first amendment rights **is unconstitutional on its face or where the statute is applied for purposes of discouraging protected activities.** (citation). It is also clear that *Dombrowski* relief is not limited to state criminal prosecutions, but also is applicable to state civil actions. In *Machesky v. Bizzell*, 414 F.2d 283 (5th Cir. 1969), the Fifth Circuit found *Dombrowski* applicable to plaintiffs' challenge of a state court injunction which enjoined their picketing activities. The *Dombrowski* relief, however, was premised on the *vagueness* and *overbreadth* of the state court injunction which infringed upon plaintiffs' first amendment rights.

[T]he *Dombrowski* elements must be present: *a statute, or as in Machesky an injunction, challenged on its face as an unconstitutional abridgement of first amendment rights.* In this case these elements are not present; only the action itself is challenged as infringing upon plaintiffs' first amendment rights. Plaintiffs' defenses to the action, constitutional or otherwise, must be raised in the state courts with right to appeal through the state courts and to the United States Supreme Court.

*Wallace*, 315 F. Supp. at 455 (emphasis supplied).<sup>6</sup> Google does not challenge any state statute as being unconstitutional, either facially or as applied, nor has it challenged any statutory scheme on grounds of “vagueness” or “overbreadth.”

---

<sup>6</sup> In *Virginia v. Hicks*, 539 U.S. 113 (2003), the Supreme Court again addressed the “overbreadth” doctrine. *Id.* Where the defendant convicted under state law for trespass did not challenge the validity of the statute itself, but claimed the policy was “over-broad under the First Amendment and [could not] be applied to him – or anyone else.” *Hicks*, 539 U.S. at 118. The Court stated that the “First Amendment doctrine of overbreadth is an exception to our normal rule regarding standards for facial challenges.” *Id.* (citation omitted).

The showing that a law punishes a ‘substantial’ amount of protected free speech, ‘judged in relation to the statute’s plainly legitimate sweep,’ (citation) suffices to invalidate *all* enforcement of the law, ‘until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression (citations).

Even if Google could make out a *prima facie* case of First Amendment retaliation – which it cannot – Google showed in its brief why that claim has no likelihood of success on the merits. Specifically, as Google acknowledges, the Attorney General can defeat a retaliation claim by showing that the “[s]tate prosecution [or action] was undertaken with no hope of a valid conviction [or success].” Supp. Mem. at 25 (quoting *Wilson v. Thompson*, 593 F.2d 1375 (5<sup>th</sup> Cir. 1979)). In this regard, the Fifth Circuit has adopted the “bad faith” standard applicable in Younger abstention cases to evaluate retaliation claims. See *Thompson*, 593 F.2d at 1387, n.22.

The Fifth Circuit actually clarified the standard there explaining that the Attorney General’s burden is to show [ ] by a preponderance of the evidence that it would have reached the same decision to prosecute even had the impermissible purpose not been considered.” *Id.* As discussed, the Attorney General has demonstrated, as a matter of law, that the Subpoena was likely to produce information directly relevant to whether Google is in violation of the MCPA, leaving no doubt that the Attorney General would have issued the Subpoena under any circumstances to ensure that Google is not injuring the citizens of Mississippi. See *Smith v. Hightower*, 693 F.2d 359, 369 (5th Cir. 1982) (“[t]he strength and seriousness of the charges remains relevant in determining if the prosecution would have been brought anyway under the third prong of *Thompson*.”).

---

*Id.* at 118-19. Similarly the Supreme Court in *U.S. v. Lemons*, 697 F.2d 832 (8th Cir. 1983), stated that “[w]e limit our inquiry to the constitutionality of the statute as applied in this case pursuant to the prudential rule of self-restraint established by the Supreme Court. . . .” *Id.* at 834. In describing the chilling effect exception to the overbreadth doctrine, Court found that it has been applied “only to claims that a statute, though constitutional in its present application, tends to ‘chill’ the constitutional free speech rights of others in different contexts, in violation of the first amendment.” *Id.* at 835. (citations omitted). In *Forsyth Cnty. Ga. v. Nationalists Movement*, 505 U.S. 123, 129 (1992), the Court held that the “exception to the general standing rules is based on the appreciation that the very existence of some broadly written laws has the potential to chill the expressive activity of others not before the court.” *Id.*

**B. Jurisdiction does not exist under 28 U.S.C. § 1443(a)(3).**

Alternatively, Google asserts jurisdiction is proper under 28 U.S.C. § 1343(a)(3). This argument fairs no better than did Section 1331. In *Smith v. West Indian Company Limited* the Court noted that “pursuant to 28 U.S.C. § 1343(a)(3), federal courts have jurisdiction over civil rights claims; however, the statute does not “create a cause of action in and of itself.” 2014 WL 65366 (D.V.I. January 7, 2014) (citing *Eddy v. V.I. Water & Power Auth.*, 961 F. Supp. 113, 115 (D.V.I. 1997). “Instead, “section 1343(a)(3) ‘is the jurisdictional counterpart’ of the substantive law contained in section 1983.” *Id.* (quoting *Chapman v. Hous. Welfare Rights Org.*, 441 U.S. 600, 613 (1979)).

For a Section 1983 action, a plaintiff must demonstrate that an official (1) acted under color of law, and (2) the official’s actions deprived the plaintiff of some right, privilege or immunity secured by the Constitution or federal law. *James v. Texas Collin County*, 535 F.3d 365, 373 (5th Cir. 2008). Thus, the Court will only have jurisdiction under § 1343(a)(3) if plaintiff’s complaint states a valid § 1983 claim. *Id.* (citation omitted). The Supreme Court has held that a plaintiff can only sue under § 1983 for violations of federal rights, including federal laws, not just mere violation of federal statute. *Maine v. Thiboutot*, 448 U.S. 1, 4, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980); *Blessing v. Freestone*, 520 U.S. 329, 340, 117 S.Ct. 1353, 137 L.Ed.2d 569 (1997).

The mere assertion of a federal claim is not sufficient to obtain jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3). *Lovern v. Edwards*, 190 F.3d 648 (4th Cir. 1999) (citing *Davis v. Pak*, 856 F.2d 648, 650 (4th Cir. 1988) (dismissing § 1983 claims for lack of subject matter jurisdiction because the federal claims were insubstantial and were pre-textual state claims).

Google has not alleged the violation of any federal law or federal right that would state a claim under Section 1983. This is due to the fact that Google has only alleged defenses to potential state law claims and not constitutional violations.

Analysis of Google's First and Fourth Amendment and thus § 1983 claims yield the same result. In *Anne Arundel Cnty. Maryland v. West Street, Inc.*, 1991 WL 263559 (D.M.D December 3, 1991) the Court found that subject matter jurisdiction was lacking under Section 1343(a)(3) where a party sought to use the First Amendment as a defense to the enforcement of the county ordinance. The Court held that the defendant in a state law case cannot transform the case into a federal question and thereby remove the case to federal court asserting a defense based on federal constitutional grounds. *Id* at \*1 (citing *Korb v. Raytheon Co.*, 707 F. Supp. 63, 66 n.1 (D. Mass. 1989)). Likewise, Google fails to state a Fourth Amendment claim under § 1983. *See Tapia v. City of Albuquerque*, 10 F. Supp.3d 1207, 1317 (D.N.M. 2014) (plaintiff cited no authority for the proposition that when a government attorney issues a defective subpoena, the state-action doctrine and the Fourth Amendment elevate the subpoena's defects from a discovery dispute to a problem of constitutional dimension).

Google does not allege the Attorney General has no authority to issue the Subpoena, or that the statute under which he issued the Subpoena is constitutionally defective. Instead, Google objects to the content and scope of the Subpoena which is not a constitutional violation for purposes of *Younger*. *Tapia*, 10 F. Supp. 3d at 1317 ("If the opposing party objects to a subpoena's breadth or to the manner in which it issued, there is an easy solution: ask the tribunal – which after all, formally issued the subpoena – to narrow the subpoena's reach or to correct the defect."). *Id*. Thus, Section 1343(a)(3) does not confer subject matter jurisdiction on Google's claims.

## VI. *Younger* Abstention Warrants Dismissal.

While the Court should dismiss the case for lack of subject matter jurisdiction, alternatively, the case should be dismissed under the *Younger* abstention doctrine. Under the rule set out in *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), federal courts must refrain from considering requests for injunctive relief based upon constitutional challenges to state criminal proceedings pending at the time the federal action is instituted.

While there is no currently filed lawsuit pending in state court, the Fifth Circuit has recognized that “*Younger*’s applicability has been expanded to include certain kinds of civil and even administrative proceedings that are ‘judicial’ in nature.” *Texas Assoc. of Business v. Earle*, 388 F.3d 515, 520 (5th Cir. 2004); *see also Ohio Civil Rights Comm’n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986) (applying *Younger* to matter before a state agency).

*Younger*’s three-prong test is well-established: (1) the dispute should involve ‘ongoing state judicial proceedings (2) the state must have an important interest in regulating the subject matter of the claim; and (3) there should be an ‘adequate opportunity in the state proceedings to raise constitutional challenges. *Wighman v. Tex. Supreme Court*, 84 F.3d 188, 189 (5th Cir. 1996) (quoting *Middlesex*, 457 U.S. at 432. Here, Google seeks an injunction against the Attorney General, a state constitutional officer, from acting on two matters that are expressly committed to state officials, state law, and state courts: (1) the legality of subpoena issued under state law and enforceable only in state courts and (2) the enforcement of Mississippi’s consumer protection laws.

Based on *Younger* and its progeny, all three prongs are satisfied and abstention is warranted. First enjoining and quashing the Attorney General’s state-law subpoena will interfere with the on-going state consumer protection investigatory proceedings. *See* Ex. A (Subpoena).



Second, the ongoing proceedings involve multiple important state interests, namely the enforcement of state subpoenas issued under state statutory authority and the enforcement of state consumer protection laws. Third, state law and the pending state consumer protection investigatory proceeding through the issuance the Subpoena, provides Google with the opportunity to raise its constitutional arguments in state court, if necessary.<sup>7</sup> A refusal to abstain will create substantial federal-state friction over the enforceability of state issued subpoenas and frustrate the state's ability to enforce its consumer protection laws. By contrast, Google cannot demonstrate irreparable harm in the face of abstention. It will be able to raise its defenses before a state court eliminating federal intervention and avoiding duplicative litigation.

**A. The Subpoena Constitutes an “On-Going” State Proceeding.**

*Younger*'s first prong is met when the state action, whether civil or administrative, is “judicial in nature.” *Texas Ass’n of Bus. v. Earl*, 388 F.3d 515, 520 (5th Cir. 2004); *Ohio Civil Rights Comm’n*, 477 U.S. 619 (1986). In the context of *Younger*, the Supreme Court has explained that “judicial in nature” means a state process that “investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed to already exist.” *NOPSI*, 491 U.S. at 371. The Subpoena issued by the Attorney General as part of an ongoing state law investigation into whether Google's activities violate the MCPA is “judicial in nature.”

Google may contend that *Younger* is to be applied only to judicial proceedings (*i.e.*, filed cases) and does not apply to subpoenas issued by a state officer prior to the filing of a civil case or prior to a criminal indictment. However, it has repeatedly been held that a subpoena issued by an attorney general “commences an adversary process during which the person served with the subpoena may challenge it in court before complying with its demands. As judicial process is afforded before any intrusion occurs, the proposed intrusion is regulated by, and its

---

<sup>7</sup> The Subpoena must be enforced in Chancery Court. Miss. Code Ann. § 75-24-17.



justification derives from, that process.” *In re: Subpoena Duces Tecum*, 228 F.3d 341, 348 (4th Cir. 2000) (internal citations omitted).

A number of courts confirm that investigatory proceedings occurring pre-indictment are an integral part of a state criminal prosecution and constitute ‘ongoing state proceedings’ for *Younger* purposes. See *Empower Texans, Inc. v. Texas Ethics Comm’n*, 2014 WL 1666389 (W.D. Tex. 2014); *Geir v. Miss. Ethics Comm’n*, 715 F.3d 674 (8th Cir. 2013) (federal court, *sua sponte*, abstained under *Younger*); *Mir v. Shah*, 2012 WL 6097770 (S.D.N.Y. 2012); *Cuomo v. Dreamland Amusements*, 2008 WL 4369270 (S.D. N.Y. 2008); *J & W. Seligman v. Spitzer*, 2007 WL 2822208 (S.D.N.Y. 2007); *Mirka United, Inc., v. Cuomo*, 2007 WL 4225487 (S.D.N.Y. November 27, 2007); *Kaylor v. Fields*, 661 F.2d 12177, 1182 (8th Cir. 1981) (“The issuance [by the Arkansas Attorney General] of the subpoenas . . . is part of a state proceeding in which the plaintiffs have an opportunity to present their claims” and therefore requires *Younger* abstention.).

Although the contested subpoenas are not part of a criminal proceeding, they were issued by the Attorney General pursuant to an investigation of Plaintiffs’ allegedly illegal activities, and the information sought may be used to initiate civil or criminal proceedings against Plaintiffs. Moreover, the contested subpoenas serve a similar purpose to subpoenas in criminal matters. They are an “integral part” of a potential proceeding against Plaintiffs, and without such subpoenas, the Attorney General “seldom could amass the evidence necessary” to commence fraud actions.

*In J & W Seligman & Co*, 2007 WL 2822208 at \*5. The *Seligman* decision was buttressed by an earlier decision in *Hip-Hop Summit Action Newwork v. New York Temp. State Comm’n on Lobbying*, 2003 WL 22832569 at \* 3 (S.D.N.Y. Nov. 25, 2003) (“[T]he Attorney General is a state official charged with investigating illegal activities, who issued the contested subpoenas pursuant to that power. The issuance of subpoenas by a state official under these circumstances

constitutes and on-going proceeding for purposes of *Younger*.”). *Younger*’s first requirement is met.

**B. The Subpoena Implicates Multiple Compelling State Interests.**

The second *Younger* prong is met because the Attorney General’s investigation and the Subpoena in furtherance of that investigation, involve compelling state interests. Moreover, the enforcement of a state subpoena enforceable only in state court is an important state interest to the judicial branch of government. *See Judice v. Vail*, 430 U.S. 327, 335-36 (1977). The Attorney General maintains a strong interest in maintaining the effectiveness of the consumer protection subpoenas as a prosecutorial tool. *See J & W Seligman & Co.*, 2007 WL 2822208, at \* 6 (“The Attorney General’s investigation also involves an ‘important state interest:’ *investigating and preventing fraudulent conduct and enforcing subpoenas issue pursuant to that law.*”). If a party, when served with a subpoena can proceed directly to federal court and eliminate the state from which it was issued, the interests of federalism and comity are severely damaged.

As the Court in *J & W Seligman* said, these subpoenas are an “‘integral part’ of a potential proceeding against Plaintiffs, and without such subpoenas, the Attorney General ‘seldom could amass the evidence necessary’ to commence fraud actions.” 2007 WL 2822208 at \*5. State courts similarly have a strong interest in supervising the issuance of subpoenas issued under state law, in reviewing their legality, and enforcing their terms consistent with law. Federal intervention to vet the appropriateness of a state subpoena would interfere with these important state interests. Thus, prong two of *Younger* is met.

**C. Google has an Opportunity to Challenge the Subpoena in State Court.**

The third *Younger* prong looks to whether the party has an adequate opportunity for judicial review in state court. This aspect of *Younger* is “fueled by the notion that courts of equity should not intervene where a party has an adequate remedy at law. *Cescos Int’l, Inc. v. Jortling*, 895 F.2d 66, 70 (2nd Cir. 1990). Where a compelling or “vital” state interest is involved, “a federal court should abstain unless state law clearly bars the interposition of the constitutional claims.” *Middlesex County Ethics Comm’n v. Garden State bar Ass’n*, 457 U.S. 423, 431 (1982); *NOPSI*, 491 U.S. at 365. However, even without the heightened burden, Google has the burden of proving, at a minimum, that the state procedure for appeal does not afford it an opportunity to present constitutional challenges and have those challenges addressed. *Penzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1978). Google cannot satisfy its burden here for two (2) reasons. First, after the Attorney General issued the Subpoena, Google could have brought a state court action to quash the subpoenas in state circuit court. The ability to a party to raise in Mississippi state courts a Fourth Amendment challenge to state subpoenas has been recognized for nearly one hundred years. See *Knox v. L.N. Dantzler Lumber Co.*, 114 So. 873, 878 (Miss. 1927).

Second, even if Google failed to comply with the Subpoena, the Attorney General still must file an enforcement action in state court under Section 75-24-17 of the Mississippi Code. If the Attorney General did not move to enforce the Subpoena, Google would suffer no adverse consequences from its failure to comply. If on the other hand, the Attorney General files an enforcement action Google would be afforded the full opportunity to present its defenses, constitutional and otherwise, before that state court tribunal. In *Empower Texans, Inc. v. Texas*

*Ethics Commission*, the Court was unpersuaded by the plaintiff's concern regarding non-compliance with a subpoena issued by the Attorney General:

Plaintiffs seem particularly disturbed by the thought they might face legal consequences for failing to comply with a subpoena. Setting aside the fact that Plaintiffs could have moved to quash the subpoena rather than file a federal lawsuit, Plaintiff's argument is irrelevant. Nothing in *Younger* and its progeny requires Plaintiffs to be immunized from the consequences of their actions while pursuing their legal arguments.

2014 WL 1666389 at \*4. For purposes of *Younger*, it is not relevant that the state court action to enforce the Subpoena is filed after a party has filed in federal court. *See Attorney General Abramms*, 761 F. Supp. at 241-42. In *Middlesex*, the Court addressed the importance underlying the policy of allowing state tribunals to act:

*Younger v. Harris*, [ ] and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances. The policies underlying *Younger* abstention have been frequently reiterated by this Court. The notion of "comity" includes "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Minimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights.*

*Middlesex*, 457 U.S. at 430 (emphasis supplied). With the available state court action in the event an enforcement action is filed, *Younger* "precludes any presumption that the state courts will not safeguard federal constitutional rights." *Id.* When it is abundantly clear that the party has an opportunity to present their federal issues in the state proceeding, no more is required to invoke *Younger* abstention. *Judidice*, 430 U.S. at 337. More importantly, under *Younger*, any uncertainties as to the scope of state proceedings or the availability of state remedies are generally resolved in favor of abstention." *Spargo v. New York State Com'n on Judicial Conduct*, 351 F.3d 65, 78 (2nd Cir. 2003). Thus, the third *Younger* prong is satisfied.

**D. Google's Fourth Amendment Claim does not Defeat *Younger* Abstention.**

Rather than move in state court to quash the subpoena, Google asks the Court to enjoin the Attorney General's investigation (thereby quashing the Subpoena) because it claims the subpoena's breadth violates Fourth Amendment standards. Complaint, ¶ 102-103. This argument rests on the proposition that the Fourth Amendment prohibits the issuance of a subpoena that may capture protected speech and that the subpoena "demands information about lawful conduct that is immunized from state regulation under federal statutory and constitutional law, including Section 230 of the CDA, the First and Fourteenth Amendments, the Copyright Act, including the DMCA, and the FDCA. Complaint, ¶ 103.

First, Google does not allege that the Attorney General is without legal authority to issuance the Subpoena in the first instance. In fact, the Attorney General issued the Subpoena pursuant to Miss. Code Ann. § 75-24-27. Instead, Google attacks the breadth of the Subpoena and that it may implicate protected speech under the First Amendment. Furthermore, while the Fourth Amendment's prohibition against unreasonable searches applies to administrative subpoenas, the Supreme Court has held that such subpoenas are, at best, "constructive searches." *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 202-08, 66 S.Ct. 494, 502-05, 90 L.Ed. 614 (1946). "An administrative subpoena is not self-executing and is therefore technically not a 'search.' It is at most a constructive search, amounting to no more than a simple direction to produce documents, subject to judicial review and enforcement. Thus, unlike the subject of an actual search, the subject of an administrative subpoena has an opportunity to challenge the subpoena before yielding the information. In the course of that resistance, the Fourth Amendment is available to the challenger as a defense against enforcement of the subpoena. *United States v. Sturm, Ruger & Co.*, 84 F.3d 1, 3 (1st Cir. 1996).

As described by the Supreme Court in *Walling*, the Subpoena issued by the Attorney General is not self-executing. If Google does not comply with the Subpoena, the Attorney General must apply to the Chancery Court of Hinds County, Mississippi, First Judicial District, for an order compelling compliance in accordance with Miss. Code Ann. § 75-24-17. As such, administrative subpoenas do not require full probable cause for enforcement. *United States v. Morton Salt Co.*, 338 U.S. 632, 70 S.Ct. 357, 94L.Ed. 401 (1950). The *Morton Salt* Court held that as long as subpoenaed information was “reasonably relevant to the agency investigation,” “not too indefinite” and “within the authority of the agency,” the Fourth Amendment was not offended. *Id.* at 652, 70 S.Ct. at 368-69. In rejecting a Fourth Amendment claim regarding administrative subpoenas, the Court in *Tapia v. City of Albuquerque*, 10 F. Supp.3d 1207, 1317 (D.N.M. 2014), stated that:

[p]laintiffs cited no authority for the proposition that when a government attorney issues a defective subpoena, the state-action doctrine and the Fourth Amendment elevate the subpoena's defects from a discovery dispute *to a problem of constitutional dimension*. If the opposing party objects to a subpoena's breadth or to the manner in which it issued, there is an easy solution: ask the tribunal – which after all, formally issued the subpoena – to narrow the subpoena's reach or to correct the defect.”

*Id.* After the Attorney General issued the Subpoena, Google could have moved to quash the subpoenas in state circuit court. The ability to a party to raise in Mississippi state courts a Fourth Amendment challenge to state subpoenas has been recognized for nearly one hundred years. *See Knox v. L.N. Dantzler Lumber Co.*, 114 So. 873, 878 (Miss. 1927). While Google has tried to link its Fourth Amendment assertion to the First Amendment, courts have made clear that the potential for a subpoena or search warrant to capture material protected by the First Amendment adds no new element to the traditional Fourth Amendment inquiry. *United States v. Mayer*, 490 F.3d 1129 (9th Cir. 2007).

**E. Google's Preemption Claim does not Defeat *Younger*.**

Google raised preemption under both the Copyright Act and the FDCA arguing hypothetical claims the Attorney General may file in the future would be preempted. Complaint, ¶¶ 104-105. Presumably this preemption claim is an attempt to avoid *Younger* but the argument fails for two (2) reasons: (1) Google is incorrect that federal law preempts the Subpoena and (2) the Supreme Court has confirmed that a federal court must abstain under *Younger* even when the plaintiff raises a “substantial claim” of preemption. See *New Orleans Pub. Serv. Comm'n. (NOPSI) v. Council of City of New Orleans*, 491 U.S. 350 (1989).

In that case, a public utility argued “*Younger* does not require abstention in the face of a *substantial claim* that the challenged state action is completely preempted by federal law.” 491 U.S. at 364. The Court summarized the utility’s argument as “call[ing] into question the prerequisite of *Younger* abstention that the State have a legitimate, substantial interest in its pending proceeding.” *Id.* The utility also argued “a district court presented with a pre-emption based request for equitable relief should take a *quick look* at the merits; and if upon that look the claim appears to be substantial, the court should endeavor to resolve it.” *Id.* (emphasis supplied). The Court rejected this argument holding “it is clear that the mere assertion of a substantial constitutional challenge to state action will not alone compel the exercise of federal jurisdiction.” *Id.* at 365.<sup>8</sup>

The utility also argued abstention was improper under *Younger* because the “federal plaintiff will ‘suffer irreparable injury’ absent equitable relief.” *NOPSI*, 491 U.S. at 365. According to the utility, “[i]rreparable injury may possibly be established, *Younger* suggested, by a showing that a *challenged state statute* is ‘flagrantly and patently violative of express

---

<sup>8</sup> The Court further clarified that when it conducts “inquiries into the substantiality of the State’s interest in its proceedings we do not look narrowly to its interest in the outcome of the particular case. *NOPSI*, 491 U.S. at 365.



constitutional prohibitions. . . .” *Id.* at 366 (emphasis supplied). The utility further claimed “*Younger*’s posited exception for state statutes ‘flagrantly and patently violative of express constitutional prohibitions’ ought to apply equally to state proceedings and orders that are flagrantly and patently violative of federal preemption (which is unlawful only because it violates the express constitutional proscription of the Supremacy Clause).” *Id.*

Lastly, the utility argued that “even if a *substantial claim* of federal preemption is not sufficient to render abstention inappropriate, at least a *facially conclusive* claim is.” *Id.* at 367. The Supreme Court did not have to reach this question because it could not “conclusively say it [the Council] [was] wrong without further factual inquiry – and what requires further factual inquiry can hardly be deemed ‘flagrantly’ unlawful for purposes of a threshold abstention determination.” *Id.* See also *Attorney General Spitzer*, 2007 WL 282208, at \*4 (applying *NOPSI*, and abstaining from considering preemption of state attorney general issued subpoenas. In *Cuomo*, the Second Circuit, in applying *NOPSI* and not abstaining based on pre-emption, summarized as follows:

The Supreme Court noted that such an exception would be illogical, because the federal interest in enforcing constitutional guarantees is just as strong as the federal interest in enforcing federal statutes that may preempt state laws, and ‘the mere assertion of a substantial constitutional challenge to a state action will not alone compel the exercise of federal jurisdiction.

*Cuomo*, 2008 WL 4369270 at \*11. Here, Google has not alleged, much less demonstrated the existence of a facially conclusive constitutional infirmity of any state statute or regulation or proceeding.

## **VII. Google’s Claims are Not Ripe.**

Finally as this case is still in the investigatory stages, it is not ripe for adjudication. Google asks this Court to speculate about claims the Attorney General may bring in the future as

a result of his on-going investigation and based on its unilateral interpretation of the documents sought in the Subpoena. The Attorney General, not Google, is best positioned and statutorily authorized, to determine what claims may be brought against Google under the MCPA. The doctrine of ripeness, as a doctrine of justiciability “drawn from both Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 57 n.18 (1993).

In particular, “[a] Court should refrain from enjoining an administrative action, such as an investigation, where the issue sought to be reviewed is not ‘ripe’ for review.” *Cuomo v. Dreamland Amusements, Inc.*, 2008 WL 4369270 at \*7 (S.D.N.Y. September 22, 2008) (citation omitted). Because Google has not even responded to the Subpoena and the Attorney General has not made a final determination regarding Google’s violations of the MCPA, this case is not ripe. Federal Courts must be alert to avoid imposition upon their jurisdiction through obtaining futile or premature interventions, especially in the field of public law.” *Wycoff*, 344 U.S. at 243. “A maximum of caution is necessary in the type of litigation that we have here, where a ruling is sought that would reach far beyond the particular case.” *Id.* Finally, factual development of the case still remains with respect to claims against Google under the MCPA and Google’s claims are not ripe.

### **VIII. Conclusion**

For the reasons set forth, Jim Hood, Attorney General for the State of Mississippi, in his official capacity, requests that the Court grant the motion and dismiss the case with prejudice.

This the 12<sup>th</sup> day of January, 2015.

Respectfully Submitted,

JIM HOOD, ATTORNEY GENERAL FOR THE  
STATE OF MISSISSIPPI, in his official capacity

By: JIM HOOD, ATTORNEY GENERAL FOR THE  
STATE OF MISSISSIPPI

By: /s/ Douglas T. Miracle  
DOUGLAS T. MIRACLE, MSB # 9648  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
CIVIL LITIGATION DIVISION  
Post Office Box 220  
Jackson, Mississippi 39205-0220  
Telephone: (601) 359-5654  
Facsimile: (601) 359-2003  
[dmira@ago.state.ms.us](mailto:dmira@ago.state.ms.us)

**CERTIFICATE OF SERVICE**

I, Douglas T. Miracle, Special Assistant Attorney General for the State of Mississippi, do hereby certify that on this date I electronically filed the foregoing document with the Clerk of this Court using the ECF system and sent a true and correct copy of the forgoing to counsel of record:

Daniel J. Mulholland  
FORMAN, PERRY, WATKINS, KRUTZ & TARDY, LLP - Jackson  
P.O. Box 22608  
200 S. Lamar Street, Suite 100 (39201-4099)  
Jackson, MS 39225-2608  
601/960-8600  
Fax: 601/960-8613  
Email: [mulhollanddj@fpwk.com](mailto:mulhollanddj@fpwk.com)

David H. Kramer - PHV  
WILSON, SONSINI, GOODRICH & ROSATI, PC  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
650/493-9300  
Fax: 650/565-5100  
Email: [dkramer@wsgr.com](mailto:dkramer@wsgr.com)

Fred Krutz , III  
FORMAN, PERRY, WATKINS, KRUTZ & TARDY  
P.O. Box 22608  
Jackson, MS 39225-2608  
(601) 960-8600  
Email: [fred@fpwk.com](mailto:fred@fpwk.com)

Blake C. Roberts - PHV  
WILMER, CUTLER, PICKERING, HALE & DORR, LLP - Washington  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006  
Fax: 202/663-6363  
Email: [blake.roberts@wilmerhale.com](mailto:blake.roberts@wilmerhale.com)

Jamie S. Gorelick - PHV  
WILMER, CUTLER, PICKERING, HALE & DORR, LLP - Washington  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006  
202/663-6500  
Fax: 202/663-6363  
Email: [jamie.gorelock@wilmerhale.com](mailto:jamie.gorelock@wilmerhale.com)

Patrick J. Carome - PHV  
WILMER, CUTLER, PICKERING, HALE AND DORR, LLP - Washington  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006  
202/663-6610  
Fax: 202/663-6363  
Email: [patrick.carome@wilmerhale.com](mailto:patrick.carome@wilmerhale.com)

Peter Neiman - PHV  
WILMER, CUTLER, PICKERING, HALE AND DORR, LLP - New York  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
212/295-6487  
Fax: 212/230-8888  
Email: [peter.neiman@wilmerhale.com](mailto:peter.neiman@wilmerhale.com)

Violetta G. Watson - PHV  
WILMER, CUTLER, PICKERING, HALE AND DORR, LLP - New York  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
212/230-8800

Fax: 212/230-8888

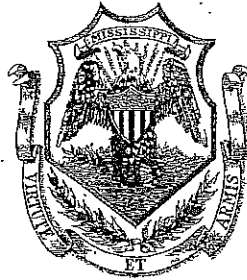
Email: [violetta.watson@wilmerhale.com](mailto:violetta.watson@wilmerhale.com)

This the 12<sup>th</sup> day of January, 2015.

*/s/ Douglas T. Miracle*

DOUGLAS T. MIRACLE

# STATE OF MISSISSIPPI



## ADMINISTRATIVE SUBPOENA and SUBPOENA DUCES TECUM

STATE OF MISSISSIPPI  
OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF:  
GOOGLE INC.

To: Google Inc.

By Service Upon: The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, Delaware 19801

The Attorney General of the State of Mississippi has information providing reasonable grounds to believe that Google Inc. may have violated one or more of the provisions of Section 75-24-1, *et seq.*, Mississippi Code of 1972, as amended, commonly referred to as the Mississippi Consumer Protection Act, as follows: Miss. Code Ann. §§ 75-24-5(1). Specifically, the



Attorney General has reasonable grounds to believe that Google Inc. has used trade practices that are unfair, deceptive, and misleading.

Pursuant to Miss. Code Ann. § 75-24-27 and by the authority vested in the Attorney General, you are hereby required to answer in writing the Interrogatories set forth below and to deliver copies of the documents specified in the Demand for Production of Documents. The Interrogatory answers must be sworn upon oath and returned by mail to the undersigned at P. O. Box 22947, Jackson, MS 39225-2947, within thirty (30) days of service of this subpoena. The specified documents must be returned by mail to the above address within thirty (30) days of service of this subpoena.

If you do not comply with this subpoena, the Attorney General may apply to the Chancery Court of Hinds County Mississippi, First Judicial District, for an order compelling compliance in accordance with Miss. Code Ann. § 75-24-17.

All documents and information produced in response to this subpoena shall be governed by the provisions of the Miss. Code Ann. § 75-24-27.



## TABLE OF CONTENTS

<u>TABLE OF CONTENTS</u> .....	3
<u>DEFINITIONS</u> .....	4
<u>INSTRUCTIONS</u> .....	10
<u>INTERROGATORIES AND DEMANDS FOR PRODUCTION OF DOCUMENTS</u> .....	12
<u>GENERAL</u> .....	12
<u>NPA-RELATED</u> .....	12
<u>ADVERTISING</u> .....	16
<u>KNOWLEDGE</u> .....	26
<u>ACTIONS TAKEN CONCERNING DANGEROUS OR ILLEGAL CONTENT/CONDUCT</u> .....	32
<u>COMPLAINTS</u> .....	35
<u>SEARCH</u> .....	36
<u>“WHISTLEBLOWERS” AND GOV’T INVESTIGATIONS</u> .....	41
<u>QUANTIFYING DANGEROUS AND ILLEGAL CONTENT</u> .....	43
<u>PROMISES AND ASSURANCES</u> .....	45
<u>WILMER HALE LETTER</u> .....	48
<u>“LOCALLY UNLAWFUL” CONTENT IN GENERAL</u> .....	50
<u>SPECIFIC EXAMPLES OF LOCALLY UNLAWFUL CONTENT</u> .....	51
<u>A. PRESCRIPTION DRUG SALES</u> .....	51
<u>B. STEROIDS</u> .....	54
<u>C. BATH SALTS</u> .....	57
<u>E. DRUG ABUSE</u> .....	58
<u>F. CREDIT CARDS</u> .....	61
<u>G. FRAUDULENT DOCUMENTS</u> .....	66
<u>H. HUMAN TRAFFICKING</u> .....	69
<u>I. STOLEN INTELLECTUAL PROPERTY</u> .....	71
<u>AUTO COMPLETE</u> .....	76

## DEFINITIONS

Unless otherwise defined in this subpoena, the following terms shall have these meanings:

1. “AID”, “ABET”, “ASSIST”, “FACILITATE,” “ENCOURAGE” or “PROMOTE” mean the doing of any act, including the act of hosting or displaying search results, content or advertisements, that could possibly directly, indirectly or tangentially further or advance a course of action by any actor or actors, regardless of whether or not the act or acts would be protected or immunized under the Communications Decency Act, 47 United States Code (“U.S.C.”), § 230. These terms should be construed broadly, in the disjunctive and with their plain meanings, and not the legal definitions that may be conveyed by these terms. For example, and by no means an exclusive list, hosting content that depicts the sale of stolen credit card data shall be interpreted as possibly “aiding, abetting, assisting, facilitating, encouraging or promoting” such sales.

2. “COMMUNICATION DECENCY ACT” and “CDA” refer to 47 United States Code (“U.S.C.”), § 230.

3. “DANGEROUS CONTENT or CONDUCT” means content, conduct or information that in itself is dangerous or has indicia that it could, in any way, either directly, indirectly or tangentially, aid, abet, assist, facilitate, encourage or promote activity that could lead to physical harm or injury and takes into account all facts and circumstances, including the age of the intended audience. For example, and by no means as an exclusive list, a “how to” video depicting children making a homemade bomb from household products would qualify as dangerous content or conduct.

4. DANGEROUS OR ILLEGAL CONTENT/CONDUCT means any content or conduct that is either DANGEROUS CONTENT OR CONDUCT or ILLEGAL OR UNLAWFUL CONTENT OR CONDUCT (or both).

5. "DOCUMENT," "DOCUMENTS," "RECORD," or "RECORDS" means the original and copies, identical or non-identical, of any handwritten, typewritten, printed, recorded or graphic matter of any kind, in the possession and/or control of you or your officers, agents, employees, or known to you to exist, however produced or reproduced, including specifically, but not exclusively, letters or other correspondence, telegraphs, telexes, memoranda, reports, summaries, handwritten notes, corporate resolutions, minutes of meetings, transcriptions of conversations, meetings or conferences or the like, tabulations, work papers, cost sheets, promissory notes, financial statements, sales records, contracts, agreements, orders, calendars, diaries, telephone call slips, or other telephone records, photographs, diagrams, schematic drawings, prints, slides, movies or any other pictorial representations, tape recordings, databases, computer inputs or outputs, e-mail messages, text messages, instant messaging, computer memory, computer disks, laser disks, CD-ROM disks, microfiche, microfilm, magnetic tapes, video tapes, recordings, motion pictures and photographs. When any database or other information on computer is requested, you should produce also any documents needed to test, analyze and operate the system. DOCUMENTS shall also mean all copies or drafts of documents by whatever means made, including specifically, but not exclusively, those copies or drafts bearing commentary or notations not appearing on the original or final version.

6. "EMPLOYEE" means any current or former employee of Google, Inc., whether full or less than full-time, regardless of compensation.

7. "GOOGLE ADVERTISING SERVICES" refers to any service owned, controlled, or operated by Google that is involved in the sale of advertisements, whether the advertisements are hosted on servers owned, controlled or operated by Google, are provided or served to Google services or websites by third parties, or are hosted, provided, or served on third-party websites who partner with Google through various services. GOOGLE ADVERTISING SERVICES includes, but is not limited to, AdWords, AdWords Express, AdSense, DoubleClick, the Google Display Network, and advertising served or hosted in conjunction with YouTube videos.

8. "IDENTIFY" or "IDENTITY" means the following:

a. When used in reference to a *natural person* means to state (1) the person's full name and title; (2) the person's present or last known address; and (3) the person's present last known telephone number;

b. When used in reference to an *artificial person* or entity such as a corporation or partnership means to state (1) the organization's full name and trade name, if any; (2) the address and telephone number of its principal place of business; and (3) the names and titles of those officers, directors, managing agents or employees who have knowledge of and under Miss. R. Civ. P. 30(b)(6) and would be designated to testify with respect to the matters involved in the Interrogatory;

c. When used in reference to a *document* means to (1) state the type of document (e.g., letter, memorandum, print-out, report, newspaper, etc.); (2) state the title and date, if any, of the document; (3) state the author's name and address; (4) state the addressee's name and address; (5) provide a brief description of its contents; (6) indicate the present location of the document; and (7) provide the name and address of the person or persons having custody over the

document. If any such document was, but is no longer, in your possession, custody or subject to your control, state what disposition was made of it. In all cases where you are requested to identify particular documents, in lieu of such identification you may supply a fully legible copy of the document in question. This permission, however, shall in no way prejudice the State's right to require production and allow inspection of all records in your possession;

d. With respect to *oral communications* means to set forth the following information: (1) the substance of the communication; (2) the date and time of the communication; (3) the place of origin of the communication; and if different, as in the case of telephone communications, the place at which the communication was received; (4) identification of each originator and recipient of the communication; and (5) identification of all persons present at the place of origin, and if different, the place of receipt of the communication at the time the communication took place; and

e. When used in reference to a *factual situation* or *allegation* means to state with particularity and specificity all facts known which bear upon or are related to the matter which is the subject of the inquiry, using the simplest and most factual statements of which you are capable.

9. "ILLEGAL CONTENT or CONDUCT"/"UNLAWFUL CONTENT or CONTENT," used interchangeably, means content, conduct, materials or any information that is itself in violation of any criminal or civil law of the United States or that of any state or territory or has indicia that it could, either directly, indirectly or tangentially, promote, facilitate, encourage, aid, or abet activity that could be in violation of any criminal or civil law of the United States or that of any state or territory. For example, such content or conduct includes

content or conduct that violates state or federal law related to the sale of controlled substances or illegal pharmaceuticals (including, but not limited to, prescription drugs, street drugs, steroids, and bath salts), state or federal law prohibiting human trafficking, state or federal law governing sale of tobacco, alcohol or other products to minors, state or federal laws governing intellectual property, state or federal law governing the sale, use or dissemination of fraudulent documents, credit cards, and identity theft, and/or state or federal law governing the sale or dissemination of counterfeit goods.

10. "ILLEGAL/ILLICIT DRUGS," "PHARMACEUTICALS" or "SUBSTANCES" means drugs, pharmaceuticals or any substance, the possession, use distribution or importation of which is unlawful under any state or federal law, including the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., and the Federal Controlled Substances Act, 21 U.S.C. § 801 et seq. For example, and by no means as an exclusive list, many types of "bath salts" would be considered an illicit drug, pharmaceutical or substance since some bath salts are controlled by state statute.

11. "MANAGEMENT TEAM" means the Executive Officers and Senior Leadership personnel identified on the following webpage, as well as any other individuals who hold or have held the same or similar positions at Google and/or YouTube.

<http://www.google.com/about/company/facts/management/>.

12. "MISSISSIPPI CONSUMER" means a natural person who resides in or has an address in the State of Mississippi. If an Interrogatory or Document Request seeks information relating to Mississippi consumers and Google Inc. only has responsive information for all

consumers without regard to location, then "Mississippi consumer" shall mean consumer without regard to state of residence for that Interrogatory or Request for Document Production, and Google Inc. shall designate so in its answer.

13. "MONETIZED" or "MONETIZATION" refers to deriving revenue, consideration of any type or other benefit from any content, advertisement or other information appearing on Google's websites, including YouTube, or third party sites, including, but not limited to, revenue or consideration derived through Google Advertising Services, to include, but not limited to, Google DoubleClick Ad Exchange, Google Display Network, partner videos, streaming ads, InVideo ads, AdSense ads, AdWords, preferential ad or product placement, masthead ads, banner ads, etc.

14. "NON-PROSECUTION AGREEMENT," "NPA" or "AGREEMENT" means the agreement entered into to resolve the Google online pharmaceuticals investigation, memorialized in a document signed on August 19, 2011 by the United States Attorney for the District of Rhode Island, Peter Neronha, and August 17, 2011 by Google Senior V.P. and General Counsel Kent Walker.

15. "PERSON" means any natural person, any corporation, partnership, or association of persons.

16. "TARGET DATA BREACH" refers to the breach of credit and debit card information of tens of millions of Target customers in late 2013 as referenced in [http://www.nytimes.com/2014/01/11/business/target-breach-affected-70-million-customers.html?\\_r=0](http://www.nytimes.com/2014/01/11/business/target-breach-affected-70-million-customers.html?_r=0).



17. “United States Department of Justice” or “USDOJ” includes all agencies of USDOJ and the United States Attorney’s Offices in each of the states and territories as well as all investigative arms of USDOJ (i.e., the Federal Bureau of Investigation, U.S. Postal Service, etc.) or other branch of the federal government.

18. “YOU” or, “YOUR”, and “Google” means Google Inc., YouTube and any of Google or YouTube’s employees and any merged or acquired predecessors, successors, divisions, parents, subsidiaries, affiliates, and any other organization in which you have a management or controlling interest.

### **INSTRUCTIONS**

1. The Interrogatories and Document Requests should always be interpreted to be inclusive rather than exclusive, including interpreting the following as appropriate: the singular form of a word as plural, and vice versa; “and” to include “or”, and vice versa; the past tense to include the present tense, and vice versa.

2. Copies of documents requested may be submitted in lieu of originals, provided that all originals are preserved until written notice from this Office of the completion of this investigation.

3. In responding to this subpoena, preface each answer or document by the Interrogatory or Document Request to which it is addressed. If you are unable to answer an Interrogatory fully, submit as much information as is available, explain why your answer is incomplete, and state the source or sources from which a complete answer may be obtained. If

an accurate answer cannot be obtained, from books and records, your best estimate, so identified, should be submitted indicating the source of the estimate.

4. If you object to any information demanded in whole or in part on the basis of any claimed privilege or protection, identify the privilege or protection you claim, as well as each statement or communication for which you claim the privilege or protection, and provide the following information:

- a. Date of the communication;
- b. The author and all addressees and recipients of the communication;
- c. The names of all persons present during the communication or to whom the communication was made available;
- d. The subject matter of the communication;
- e. The location of any documents concerning the communication; and
- f. The factual basis on which you claim privilege or protection.

5. Whenever this subpoena seeks information on Mississippi consumers or activities and you do not possess and produce such information, you should produce the information requested for all consumers or all your activities without regard to geographic limitation.

6. These Document Requests impose a continuing duty to produce promptly any responsive information or item that is not objected to, which comes into your knowledge, possession, custody or control after your initial production of responses to the requests.

7. Do not destroy any documents relating to any of these interrogatories or requests for production.

8. Documents produced shall be provided in an electronic and searchable format.

**INTERROGATORIES AND DEMANDS FOR PRODUCTION OF DOCUMENTS**

**GENERAL**

**INTERROGATORY NO. 1**

Identify each person who assisted in answering these Interrogatories and Document Requests.

**INTERROGATORY NO. 2**

Identify all abbreviations and codes used in documents produced in response to any Document Request.

**NPA-RELATED**

**INTERROGATORY NO. 3**

Identify all employees who were disciplined or terminated from employment for conduct relating, in any way, to online pharmaceutical advertisements and sales that gave rise to the NPA, either before or after the Agreement was entered into by you. For each, describe the employee's name, title, job description, social security number, location of employment, date of discipline or termination and the reasons given for the discipline or termination.

**INTERROGATORY NO. 4**

Identify all employees who testified before the grand jury or were interviewed by USDOJ personnel or any other investigative arm of the United States government about the online pharmacy conduct giving rise to the NPA.

**INTERROGATORY NO. 5**

Identify the total number of online pharmacies to which you sold advertisements prior to entering into the NPA. Identify the total number of online pharmacies that were the subject of the NPA. If you do not have this information, explain why not and include any statements or estimates from USDOJ, or any other federal agency, that estimates this number. Where possible, identify sales made by the pharmacies addressed by the NPA by state.

**INTERROGATORY NO. 6**

Describe any performance metrics, standards and expenditures required by USDOJ under the NPA and describe any changes to your advertising practices, compensation structure, training or any other practice or procedure that was or is being made as a direct, indirect or tangential result of the NPA.

**DOCUMENT REQUEST NO. 1**

Provide all records from you to USDOJ, or from USDOJ to you, that reference or relate to your compliance under the terms of the NPA.

**DOCUMENT REQUEST NO. 2**

Provide all documents that relate to your acceptance of responsibility in NPA ¶3, including all documents showing that Google (1) “was on notice that most Canadian online pharmacy advertisers, advertising through the Company’s AdWords program, geo-targeted their advertisements to consumers in the United States and imported into the United States both controlled prescription drugs, in violation of Title 21, United States Code, Section 331(a) and (d),” and (2) improperly assisted Canadian online pharmacy advertisers to run these advertisements that geo-targeted the United States through AdWords.”

**DOCUMENT REQUEST NO. 3**

Provide all documents related to any review, report, analysis or discussion of the revenue, consideration or other benefits received by Google from facilitating, providing assistance or customer support to, or otherwise aiding Canadian online pharmacies, including but not limited to the revenue derived from the activities discussed in the NPA.

**DOCUMENT REQUEST NO. 4**

Provide all documents concerning any breach by you of the NPA alleged by the USDOJ, including, but not limited to, the NPA ¶¶ 12, 13, 14 and 15.

**DOCUMENT REQUEST NO. 5**

Identify your employees who provided “customer support to some of these Canadian online pharmacy advertisers to assist them in placing and optimizing their AdWords advertisements and in improving the effectiveness of their websites,” as described in NPA ¶ 2(k).

**DOCUMENT REQUEST NO. 6**

Provide all documents related to any investigation, analysis, report, review, or other discussion concerning provision of assistance, customer support, or collaboration by Google or its employees to any individual, company, entity, or website that is, has or has been suspected of promoting, offering for sale, facilitating, or engaging in Dangerous or Illegal Content/Conduct, including but not limited to activities such as providing customer support or geotargeting assistance to such individual, company, entity or website.

**DOCUMENT REQUEST NO. 7**

Provide all records that address any of your business practices, procedures or policies that were amended, deleted, changed or added as a result of the NPA, directly, indirectly or tangentially. For each, identify to whom the records and other materials were addressed and all records that address or discuss the reasons or need for the revisions to practices, procedures or policies.

**DOCUMENT REQUEST NO. 8**

Provide all records that identify or address online pharmacy sales, addressed in the NPA, to persons located in Mississippi and other states, broken down by state.

**DOCUMENT REQUEST NO. 9**

Provide all records, including pleadings, that relate to injuries or claims of injury sustained by persons located in Mississippi, and all other states, as a result of the online pharmacy sales addressed in the NPA.

**ADVERTISING**

**INTERROGATORY NO. 7**

Describe if, and if so, how, advertisers are apprised of the placement of their advertisements in relation to search queries and search results.

**INTERROGATORY NO. 8**

Describe the role and use of behaviorally targeted advertising in Google Advertising Services and how it works.



**INTERROGATORY NO. 9**

Provide the name, title, job description and work location of the persons who are most knowledgeable about Google Advertising Services and implementation of these practices and policies from January 1, 2003 up to the present.

**INTERROGATORY NO. 10**

Describe actions you have taken or considered taking to prevent Google Advertising Services from being used to serve ads on websites, alongside search results, or in connection with YouTube videos, that promote, facilitate, disseminate, offer for sale or engage in Dangerous or Illegal Content/Conduct. For actions you considered taking but decided not to take, describe the reasons for your decision. Describe any policies concerning the use of Google Advertising Services in connection with websites or videos that promote, facilitate, disseminate, offer for sale, or engage in Dangerous or Illegal Content/Conduct.

**INTERROGATORY NO. 11**

Provide a list of all employees working on Google Advertising Services who have been terminated for reasons related to your advertising policies or practices and identify each by name, title, date of termination, reason for termination, last work location, social security number and date of birth.

**INTERROGATORY NO. 12**

Identify all employees, or other personnel, who serve as advertising “account representatives,” or an equivalent position for any Google Advertising Services, and have offered personal assistance to your advertisers. For each, provide their title, describe how they are compensated and identify the advertiser.

**INTERROGATORY NO. 13**

Describe how Google reviews and determines whether content on YouTube or on websites is dangerous, offensive, illegal, in violation of Google’s policies, or otherwise inappropriate for hosting on YouTube and/or participating in Google Advertising Services, including both human and automated review processes.

**INTERROGATORY NO. 14**

Identify all state and federal laws Google references when it evaluates videos on YouTube or website for dangerous, offensive, illegal or otherwise inappropriate conduct or for violation of any Google policy related to Google Advertising Services.

**DOCUMENT REQUEST NO. 10**

For the time period of January 1, 2012, through the current date, provide a searchable database of YouTube “partner” videos, by title or other description, that have been accepted for monetization.

**DOCUMENT REQUEST NO. 11**

For the time period of January 1, 2012, through the current date, provide a searchable database of prospective YouTube “partner” videos, by title or description, that have been rejected for monetization *before* being hosted. For this same time period, provide a searchable database of YouTube “partner” videos, by title or other description, that have been rejected for monetization *after* they have been hosted.

**DOCUMENT REQUEST NO. 12**

For the time period of January 1, 2010, to the current date, provide organizational charts (“org charts”) for each service, product or feature offered as part of Google Advertising Services.

**DOCUMENT REQUEST NO. 13**

Identify the ten (10) largest Google business advertisers for each Google Advertising Service, including advertising on YouTube, by revenue received by you from them. For each such business, list the amount of revenue or other consideration received by you from each in descending order, from most to least, and provide all documents relating to your advertising agreements with these businesses.

**DOCUMENT REQUEST NO. 14**

Identify the ten (10) largest government institution advertisers for each Google Advertising Service, including advertising on YouTube, by revenue received by you from them. For each such government institution, list the amount of revenue or other consideration received by you from each in descending order, from most to least, and provide all documents relating to your advertising agreements with these businesses.

**DOCUMENT REQUEST NO. 15**

Identify the ten (10) largest charitable organization advertisers for each Google Advertising Service, including advertising on YouTube, by revenue received by you from them. For each such charitable organization, list the amount of revenue or other consideration received by you from each in descending order, from most to least, and provide all documents relating to your advertising agreements with these charitable organizations.

**DOCUMENT REQUEST NO. 16**

Provide all documents concerning the use of Google Advertising Services to promote or serve ads on websites or in conjunction with videos on YouTube that are or appear to be promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 17**

Provide all documents relating to contracts or agreements to provide Google Advertising Services to websites or posters of videos on YouTube that are or appear to be promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 18**

Provide all documents concerning any customer support, including geotargeting assistance, that Google has provided to websites or posters of videos on YouTube that are or appear to be promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 19**

Provide all documents about or reflecting statements or representations by Google about the review it conducts of websites or YouTube videos before allowing Google Advertising Services to serve ads on those websites or in connection with those videos.

**DOCUMENT REQUEST NO. 20**

Provide all documents about any review conducted by Google of websites or of YouTube videos before allowing Google Advertising Services to serve ads on those websites or in connection with those videos.

**DOCUMENT REQUEST NO. 21**

Provide all documents regarding actions considered or taken when Google learns that a website using Google Advertising Services or a video posted on YouTube is or appears to be promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 22**

Provide all documents regarding actions considered or taken by Google to prevent the use of Advertising Services by websites or videos posted on YouTube that are or appear to be promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 23**

Provide documents reflecting all communications between Google and websites or posters of videos on YouTube that are or appear to be promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous or Illegal Content/Conduct, including communications with reference to Google Advertising Services.

**DOCUMENT REQUEST NO. 24**

Provide all documents concerning websites or videos posted to YouTube that have been rejected for receipt of advertising for Google Advertising Services, as

well as documents concerning websites or videos posted to YouTube that were considered for rejection, but permitted to receive advertising.

**DOCUMENT REQUEST NO. 25**

Provide all communications from Google seeking information from websites or posters of YouTube videos that sought to be part of Google Advertising Services about whether the content on the websites or YouTube videos was lawful or unlawful.

**DOCUMENT REQUEST NO. 26**

Provide all documents reflecting Google's review of or knowledge that advertisements placed by Google Advertising Services appear next to videos that violate YouTube's Community Guidelines, appear on websites that violate Google's policies with respect to advertising or appear in conjunction with videos or on websites that are or appear to be promoting, facilitating, disseminating, offering for sale or engaging in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 27**

Provide all documents related to complaints or reports made to Google about offensive, objectionable, dangerous or unlawful content on YouTube, including but not limited to complaints made by advertisers and reports by any internal, user or third-party "flagging" process implemented by Google.

**DOCUMENT REQUEST NO. 28**

Provide all documents sent or received by one or more members of Google's Management Team concerning the use of Google services, including but not limited to Google Advertising Services, Google Search, and YouTube, to promote, offer for sale, disseminate, facilitate, or otherwise engage in Dangerous or Unlawful Content/Conduct.

**DOCUMENT REQUEST NO. 29**

Provide all documents relating to Google's policies for sites on which AdSense advertisements are served, including "Content Policies: Prohibited Content," and Google's enforcement of those policies. (See Content Policies: Prohibited Content)

**DOCUMENT REQUEST NO. 30**

Provide documents sufficient to demonstrate in detail how complaints or concerns about Dangerous or Unlawful Content/Conduct on YouTube or on third-party websites using Google Advertising Services may be reported, and the procedures for responding to those complaints.



**DOCUMENT REQUEST NO. 31**

Provide all communications with advertisers regarding the types of websites or YouTube videos, in connection with which their ads will, are likely to, or may appear.

**DOCUMENT REQUEST NO. 32**

Provide all communications with advertisers regarding Google's review of websites or YouTube videos in connection with which ads may appear, including the possible removal or termination of any such websites or videos.

**DOCUMENT REQUEST NO. 33**

Provide all communications with advertisers regarding the content of sites or YouTube videos in connection with which ads actually appear, including complaints that advertisements were placed on sites or in connection with YouTube videos that violate Google's policies or that otherwise are or appear to be promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 34**

Provide all documents concerning training provided to all persons involved in any way in the review of videos on YouTube or on websites on how to identify videos or websites that are promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous or Illegal Content/Conduct, are inappropriate for hosting

on YouTube, are in violation of Google's policies concerning advertising, and/or are ineligible for participation in Google Advertising Services.

**DOCUMENT REQUEST NO. 35**

Provide all documents concerning advertisements placed by Google's advertising services on websites, alongside search results, or in connection with YouTube videos that violate Google's policies or that otherwise are or appear to be promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 36**

Provide all documents relating to any actions considered, taken, or not taken in response to complaints from advertisers regarding the content of websites, search results, or YouTube videos in connection with which advertisements appear.

**KNOWLEDGE**

**INTERROGATORY NO. 15**

Describe your Management Team members' knowledge about the hosting, display (through search results or otherwise), monetization, promotion and/or relationship with Google through Google Advertising Services of Dangerous or Unlawful Content/Conduct, including, but not limited to, online pharmaceutical sales, before and since you signed the NPA.

**INTERROGATORY NO. 16**

Describe your Management Team members' knowledge about violations, or suspected violations, by websites or content providers, such as posters of YouTube videos, of the policies contained in YouTube's "Community Standards, YouTube's Terms of Service, Google's Platform Programs Policy, AdSense Content Policies: Prohibited Content, or any other policy that relates to, directly or indirectly, the promotion, facilitation, offer for sale, dissemination of, or engagement in Dangerous or Illegal Content/Conduct in connection with Google's service, including, but not limited to Google Search, Google Advertising Services, and YouTube.

**INTERROGATORY NO. 17**

Describe what the "User Safety Initiative," referenced in the matter of *In re Google Inc. Shareholder Derivative Litigation*, United States District Court, Northern District of California, Oakland Division, Master File CV-11-04248-PJH and Case No. CV-13-02038-PJH, does that goes beyond or that is different from the obligations agreed to by you in the NPA. Describe why the User Safety Initiative is limited to only addressing online pharmacy and drug-related matters.

**INTERROGATORY NO. 18**

Describe why one focus of the settlement document in *In re Google Inc. Shareholder Derivative Litigation*, United States District Court, Northern District of California, Oakland Division, Master File CV-11-04248-PJH and Case No. CV-13-02038-PJH addresses "Criminal Activity Reporting" and is designed to obligate you to review all matters where a Google employee is

convicted of a felony. Describe if the employment of felons has been a concern in the context of online pharmacy sales and other matters.

**INTERROGATORY NO. 19**

Describe why one focus of the settlement document in *In re Google Inc. Shareholder Derivative Litigation*, United States District Court, Northern District of California, Oakland Division, Master File CV-11-04248-PJH and Case No. CV-13-02038-PJH addresses “corporate governance reforms (that are) designed to enhance the Google Board of Directors’ monitoring of and response to legal compliance issues and shareholder concerns relating to online pharmacies who potentially poses a threat to users of Google’s services.” Describe why these proposed corporate governance reforms, or similar reforms, were not undertaken immediately after agreeing to the obligations in the NPA.

**DOCUMENT REQUEST NO. 37**

Provide all board meeting minutes, notes or other communications that address or discuss, either directly, indirectly or tangentially, the promotion, facilitation, offer for sale, dissemination of, and/or engagement in Dangerous or Illegal Content/Conduct in connection with any of Google’s services, including but not limited to Google Search, Google Advertising Services, and YouTube.

**DOCUMENT REQUEST NO. 38**

Provide all communications by current and former Google Management Team members discussing, either directly, indirectly or tangentially, the hosting, display (through search

results or otherwise), monetization, promotion of, or engagement in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 39**

Provide all communications from, to or including former Management Team Member Sheryl Sandberg that address, either directly, indirectly or tangentially, the hosting, monetization, display (in search results or otherwise), dissemination of or engagement in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 40**

Provide all records that relate to your decisions about how to comply with state civil and criminal laws. Include records that relate to complying with state civil and criminal laws when there are differences in those laws between states.

**DOCUMENT REQUEST NO. 41**

Provide all communications sent or received by one or more members of Google's Management Team concerning the use of Google services, including but not limited to Google Search, Google Advertising Services, and YouTube, to promote, offer for sale, or facilitate the sale of illicit drugs and pharmaceuticals.

**DOCUMENT REQUEST NO. 42**

Provide all documents that relate to an investigation, or a request for an investigation, by any of your shareholders or your Board of Directors or

Management Team members that directly, indirectly or tangentially address the hosting, display, monetization, promotion of, dissemination of, offer for sale of, or engagement in Dangerous or Illegal Content/Conduct in connection with any Google service, including, but not limited to, Google Search, Google Advertising Services, and YouTube. Your response should include, but not be limited to, all documents that relate to this request, the formation of a Special Committee, and all correspondence and findings of the Special Committee, that is referenced in that matter of *In re Google Inc. Shareholder Derivative Litigation*, United State District Court, Northern District of California, Oakland Division, Master File CV-11-04248-PJH and Case No. CV-13-02038-PJH.

**DOCUMENT REQUEST NO. 43**

Provide all documents that relate to the formation, purpose and allocation of resources of the User Safety Initiative that is referenced in that matter of *In re Google Inc. Shareholder Derivative Litigation*, United State District Court, Northern District of California, Oakland Division, Master File CV-11-04248-PJH and Case No. CV-13-02038-PJH.

**DOCUMENT REQUEST NO. 44**

Provide all records that relate to the employment of felons in connection with online pharmacy and drug matters, as referenced in *In re Google Inc. Shareholder Derivative Litigation*, United States District Court, Northern District of

California, Oakland Division, Master File CV-11-04248-PJH and Case No. CV-13-02038-PJH.

**DOCUMENT REQUEST NO. 45**

Provide all documents reflecting or relating to Google's knowledge or awareness that YouTube videos promote, disseminate, offer for sale, engage in or facilitate Dangerous or Illegal Content/Conduct, including, but not limited to, the sale of illicit drugs and pharmaceuticals.

**DOCUMENT REQUEST NO. 46**

Provide all communications with users who post, have posted, or attempted to post videos on YouTube that promote, disseminate, offer for sale, engage in or facilitate Dangerous or Unlawful Content/Conduct, including but not limited to, the sale of illicit drugs and pharmaceuticals.

**DOCUMENT REQUEST NO. 47**

Provide all documents reflecting or relating to Google's knowledge or awareness of websites that use Google Advertising Services and that are or appear to be promoting, disseminating, offering for sale, engaging in or facilitating Dangerous or Illegal Content/Conduct, including, but not limited to, the sale of illicit drugs and pharmaceuticals.

**DOCUMENT REQUEST NO. 48**

Provide all communications with individuals, companies or other entities that operate or control websites using Google Advertising Services and that are or appear to be promoting, disseminating, offering for sale, engaging in or facilitating Dangerous or Unlawful Content/Conduct, including but not limited to, the sale of illicit drugs and pharmaceuticals.

**DOCUMENT REQUEST NO. 49**

Provide documents sufficient to demonstrate in detail the automated or manual content screening procedures used to prevent violations of Google's YouTube Community Guidelines, Terms of Use, and similar content policies, as well as any procedures used to review YouTube videos for eligibility to be monetized.

**ACTIONS TAKEN CONCERNING DANGEROUS OR ILLEGAL  
CONTENT/CONDUCT**

**INTERROGATORY NO. 20**

Describe how you review and deem content to be sufficiently dangerous, offensive, illegal or unlawful, such that it is deemed inappropriate for hosting on YouTube. Describe the role of both human and automated review processes in your answer.



**INTERROGATORY NO. 21**

Describe if you maintain a list of current state and federal civil and criminal laws and do anything to ensure that content appearing on your websites, or third party websites using Google Advertising Services do not aid, abet, assist, facilitate, encourage or promote the violation of state civil and criminal laws. If this is not done, explain why. If it is done, identify the state and federal civil and criminal laws that Google reviews.

**INTERROGATORY NO. 22**

Describe the training about complying with state civil and criminal laws given to your employees who serve in any type of content or advertising “reviewer” capacity. If there is no such training, explain why.

**DOCUMENT REQUEST NO. 50**

Identify the total number of employees who are employed in positions assigned to review content (including YouTube videos and websites) and advertisements for Dangerous or Illegal Content/Conduct, or that violate your policies. Using an organizational chart, identify these employees.

**DOCUMENT REQUEST NO. 51**

Provide all records relating to the staffing needs required in positions relating to content and advertising review.

**DOCUMENT REQUEST NO. 52**

Provide all records that relate to or address your interpretation, analysis or application of state consumer protection laws as they relate to content or other information appearing on your websites, or on third party websites that use Google Advertising Services.

**DOCUMENT REQUEST NO. 53**

Provide all records that relate to or address your interpretation, analysis or application of state criminal laws as they relate to content or other information appearing on your websites, or on third party websites that use Google Advertising Services.

**DOCUMENT REQUEST NO. 54**

Provide all documents reflecting the removal of videos from YouTube that are or appear to promote, offer for sale, disseminate, engage in or facilitate Dangerous or Illegal Content/Conduct, including but not limited to, the sale of illicit drugs and pharmaceuticals.

**DOCUMENT REQUEST NO. 55**

Provide all documents concerning any actions considered, taken, or not taken to remove videos from YouTube that are or appear to be promoting, offering for sale, disseminating, engaging in or facilitating Dangerous or Illegal Content/Conduct, including but not limited to, the sale of illicit drugs and pharmaceuticals.

## **COMPLAINTS**

### **INTERROGATORY NO. 23**

Describe how complaints or concerns about offensive, dangerous, illegal or unlawful content that you host or display may be reported. Quantify, in general terms, the number of such complaints received by you between January 1, 2012 and the present date.

### **DOCUMENT REQUEST NO. 56**

Provide all records relating to complaints by your advertisers, in any form, about the placement of their advertisements in relation to content appearing on your websites or content appearing on third party webpages where you serve ads.

### **DOCUMENT REQUEST NO. 57**

Provide a searchable database of those instances where offensive, objectionable, dangerous or unlawful content has been identified by you or by users, through a user-generated "flagging" process or any other system or manner since January 1, 2012, where a decision was made not to remove the content. For each, provide a copy of the user, or "flagged," complaint and indicate if the content was monetized in any way.

**DOCUMENT REQUEST NO. 58**

Provide documents sufficient to demonstrate in detail how complaints or concerns about videos that is or appears to be promoting, offering for sale, engaging in, disseminating or facilitating Dangerous or Illegal Content/Conduct, including but not limited to, the sale of illicit drugs and pharmaceuticals, on YouTube may be reported, and the procedures for responding to those complaints.

**DOCUMENT REQUEST NO. 59**

Provide all documents reflecting reports or complaints to Google about any entity that is or appears to be promoting, offering for sale, engaging in, disseminating or facilitating Dangerous or Illegal Content/Conduct, including, but not limited to, documents created by Google employees about the use of Google services by any entity that is or appears to be promoting, offering for sale, engaging in, disseminating or facilitating Dangerous or Illegal Content/Conduct.

**SEARCH**

**INTERROGATORY NO. 24**

Describe how search results, including search result rankings, relate to or are affected by any advertisements you serve on third party webpages, including those webpages that appear in search results. Include all information about how monetized content versus non-monetized content is treated in relation to search queries. For example, please describe whether YouTube

partner content receives preferential treatment or “greater relevance” in comparison to non-monetized, non-partner content in YouTube searches.

**INTERROGATORY NO. 25**

Describe how your search services use a user’s web history or use of Google services to generate and tailor search results for that particular user. Describe how your search algorithms use information about a particular user to provide personalized or tailored search results, including by promoting some websites in search results over other websites.

**DOCUMENT REQUEST NO. 60**

Provide documents sufficient to demonstrate in detail Google’s definition, determination, and use of “quality” in Search, including search algorithms. This request includes documents demonstrating all factors that positively or negatively impact the “quality” of a website and factors that Google considered and rejected as having an impact on “quality.”

**DOCUMENT REQUEST NO. 61**

Provide all versions of Google’s Search Quality Rating Guidelines, including all guidelines concerning flags that raters can assign to webpages.

**DOCUMENT REQUEST NO. 62**

Provide all documents concerning all instances in which websites are flagged by reviewers or others for potentially Dangerous or Unlawful Content/Conduct.

**DOCUMENT REQUEST NO. 63**

Provide technical and other documents sufficient to show how Google Search uses personal information about a user, including a user's web history or use of Google services, to generate and tailor search results for a particular user.

**DOCUMENT REQUEST NO. 64**

Provide all records relating to differences in how monetized and non-monetized content are placed or "linked" or associated with search queries on your websites.

**DOCUMENT REQUEST NO. 65**

Provide all documents relating to complaints or communications regarding the inclusion of websites are or appear to be promoting, facilitating, disseminating, offering for sale, and/or engaging in Dangerous or Illegal Content/Conduct in Google's search results.

This request includes any responses from Google and any actions considered or taken in response.

**DOCUMENT REQUEST NO. 66**

Provide all documents relating to changes to Google's search algorithms considered, taken, or not taken to limit the appearance of, delist or demote the rankings of websites are or appear to be promoting, facilitating, disseminating, offering for sale, and/or engaging in Dangerous or Illegal Content/Conduct in Google search results.

**DOCUMENT REQUEST NO. 67**

Provide all documents regarding competitive, business, or other advantages to Google from tailoring search results to specific users.

**DOCUMENT REQUEST NO. 68**

Provide all documents reflecting how search activities by users affect Google's revenues, profits or ability to monetize other activities.

**DOCUMENT REQUEST NO. 69**

Provide all documents reflecting how tailored search results affect Google's revenues, profits or ability to monetize other activities.

**INTERROGATORY NO. 26**

Describe how the introduction and implementation of AdWords Enhanced Campaigns has impacted advertisers' cost-per-click ("CPC") for search advertising purchased on smartphones, tablets, and desktops.

**DOCUMENT REQUEST NO. 70**

Provide all documents that address, discuss or relate to this Interrogatory.

**INTERROGATORY NO. 27**

Describe how the introduction and implementation of AdWords Enhanced Campaigns has impacted advertisers' choice for search advertising purchased on smartphones, tablets, and desktops.

**DOCUMENT REQUEST NO. 71**

Provide all documents that address, discuss or relate to this Interrogatory.

**INTERROGATORY NO. 28**

Describe how Google anticipates the introduction and implementation of AdWords close variant matching [in late September 2014] will impact [and/or has impacted] advertisers' cost-per-click ("CPC") for AdWords search advertising.

**DOCUMENT REQUEST NO. 72**

Provide all documents that address, discuss or relate to this Interrogatory.

**INTERROGATORY NO. 29**

Describe how the introduction and implementation of AdWords's close variant matching has impacted advertiser choice in bids for AdWords search advertising keyword auctions.

**DOCUMENT REQUEST NO. 73**

Provide all documents that address, discuss or relate to this Interrogatory.



**DOCUMENT REQUEST NO. 74**

Provide a summary of how “key words” are marketed and sold to advertisers and quantify the revenue earned from these sales between January 1, 2012 and December 31, 2013.

**“WHISTLEBLOWERS” and GOV’T INVESTIGATIONS**

**INTERROGATORY NO. 30**

Describe any “whistleblower” complaints, or similar complaints, by any of your employees that relate to Dangerous or Illegal Content/Conduct appearing on, promoted or facilitated by your websites.

**INTERROGATORY NO. 31**

Identify all investigations of you and your employees by any local, state, federal or foreign government agency initiated since January 1, 2012, that directly, indirectly or tangentially address content hosted on your websites.

**DOCUMENT REQUEST NO. 75**

Provide all records of any “whistleblower” complaints, made by any employee, that relate to Dangerous or Illegal Content/Conduct appearing on, promoted or facilitated by your websites.

**DOCUMENT REQUEST NO. 76**

Provide all pleadings, records and communications of investigations of you or any employee by any local, state, federal or foreign government agency initiated since January 1, 2012, that directly, indirectly or tangentially relate to content appearing on, promoted or facilitated by your websites.

**INTERROGATORY NO. 32**

In a letter dated February 21, 2014, Google's Kent Walker replied to several questions posed by Attorneys General Hood (MS), Bruning (NE), Louie (HI), McDaniel (AR) and Reyes (UT). The following Interrogatories relate to this letter:

***a. Page 2: Policy enforcement teams and personnel.***

1. Describe how these teams perform their essential job functions.
2. Provide job descriptions, training materials, compensation structure, all policies and procedures and other records that relate to how these individuals and teams are to perform their jobs. Provide an organizational chart that includes all personnel on these teams. Provide any data, studies or reports that address the past, present and future staffing needs for these teams.

***b. Page 3: Removal of 359 million ads from AdWords.***

1. Describe the criteria and process for removing ads that were Google-generated and not "flagged" or otherwise identified by a third party.
2. Describe how these ads were identified and processed for removal.

***c. Page 3: First Amendment concerns.***

1. Describe and provide Google's policies and procedures related to protecting speech under the First Amendment in Google search terms when that search term is designed to identify websites promoting, facilitating, disseminating, offering for sale, and/or engaging in Dangerous or Illegal Content/Conduct.

**QUANTIFYING DANGEROUS AND ILLEGAL CONTENT**

**INTERROGATORY NO. 33**

Describe if there are any estimates made by you, USDOJ or any other federal agency that relate to the volume of suspected or known Dangerous or Illegal Content/Conduct appearing on or promoted or facilitated by Google services.

**INTERROGATORY NO. 34**

Describe how you estimate the search advertising revenue you earn from suspected or known Dangerous or Illegal Content/Conduct that is suspected of being hosted on your websites and/or on websites that use Google Advertising Services.

**INTERROGATORY NO. 35**

Describe how you estimate any type of advertising revenue other than search advertising revenue you earn from suspected or known dangerous, illegal or unlawful content that is suspected of being hosted on your websites and/or on websites that use Google Advertising Services.

**INTERROGATORY NO. 36**

Describe how you estimate any type of revenue other advertising revenue you earn from suspected or known dangerous, illegal or unlawful content that is suspected of being hosted on your websites and/or on websites that use Google Advertising Services.

**DOCUMENT REQUEST NO. 77**

Provide all records relating to any estimates made by you, USDOJ or any other federal agency of the volume of Dangerous or Illegal Content/Conduct appearing on or promoted or facilitated by Google services.

**DOCUMENT REQUEST NO. 78**

Summarize any estimates of revenue or other consideration derived, directly, indirectly or tangentially, by you from monetized Dangerous or Illegal Content/Conduct appearing on or promoted or facilitated by Google services.

**DOCUMENT REQUEST NO. 79**

Provide all records that relate to the amount of revenue, consideration or benefit of any kind received by you from content or advertising that is related to content that is or appears to be promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 80**

Provide documents reflecting the revenues received through advertisements placed on websites or in connection with YouTube videos that were later determined to violate Google's policies, such as YouTube Community Guidelines.

**DOCUMENT REQUEST NO. 81**

Provide all records relating to any estimates made by you about the costs, including lost opportunity costs, impact on revenues and impact on growth rates, by more aggressively removing content or rejecting participation in Google Advertising Services for content that is or appears to be promoting, facilitating, disseminating, offering for sale, and/or engaging in Dangerous or Illegal Content/Conduct.

**PROMISES AND ASSURANCES**

**INTERROGATORY NO. 37**

You make the following assurances to users of your websites:

- (a) YouTube "...draw[s] the line at content that's intended to incite violence or encourage dangerous, *illegal activities* that have an inherent risk of serious physical harm or death . . . ."
- (b) YouTube "is a *safe and reliable home for your brand*... For an extra level of safety and quality, *ads run only on approved YouTube partner videos*."

Describe how you implement these assurances and protect users and advertisers in a manner that is consistent with these assurances.

**DOCUMENT REQUEST NO. 82**

Provide all records relating to advertiser complaints or concerns about their brands.

**DOCUMENT REQUEST NO. 83**

Provide all documents concerning YouTube's Terms of Service and Community Guidelines, including how those Terms of Service and Community Guidelines are enforced.

**DOCUMENT REQUEST NO. 84**

Provide all representations and statements by Google regarding the extent to which the content on YouTube complies with and enforces YouTube's Community Guidelines.

**DOCUMENT REQUEST NO. 85**

Provide all records that relate to your ability and limits on your ability to detect and to remove YouTube "content that's intended to incite violence or *encourage dangerous, illegal activities* that have an inherent risk of serious physical harm or death . . . ."

**DOCUMENT REQUEST NO. 86**

Provide all current, prior and draft versions of YouTube's Community Guidelines page. In addition, provide all current, prior and draft versions of any statement made by you on your websites that directly, indirectly or tangentially addresses expectations, assurances, guarantees or promises made by you about the use of your websites and about preventing Dangerous and or Illegal Content/Conduct from appearing on your websites.

**DOCUMENT REQUEST NO. 87**

Provide all current, prior and draft versions of any statements made by you on your websites to advertisers about keeping their brands safe or any other statement that directly, indirectly or tangentially addresses an advertiser's expectations, assurances, guarantees or promises made by you about the placement of their advertisements on your website.

**INTERROGATORY NO. 38**

Describe your procedure for determining that a YouTube video will be "age-restricted" as described in the YouTube Community Guidelines.

**WILMER HALE LETTER**

**INTERROGATORY NO. 39**

In your June 26, 2013, letter from Wilmer Hale, addressed to Mississippi Attorney General Jim Hood, the following appears at p. 2: "...Google *locally removes content* that violates local censorship rules, such as Nazi-related content from its German service (google.de), allegedly defamatory content from its United Kingdom service (google.co.uk), or insults to religion in its India service (google.co.in). Google does remove child pornography, which is illegal virtually everywhere in the world." Describe why you do not remove all content that would be "locally unlawful" in Mississippi (e.g., violates Mississippi civil or criminal laws). Describe all reasons for a distinction between these foreign countries, where locally unlawful content is removed if required by that country's laws, and the United States, where it may not be removed. In your answer, include all reasons for such a distinction, to include differences in prioritization, staffing levels, the role of criminal or civil enforcement actions and lack thereof, the role of the CDA, financial or business reasons, or any other reason for a distinction.

**INTERROGATORY NO. 40**

Describe your total budget allocation and staffing for removing locally unlawful content in the four examples cited in the June 26, 2013, Wilmer Hale letter.

**INTERROGATORY NO. 41**

Describe your total budget allocation and staffing for removing locally unlawful content in the United States.



**INTERROGATORY NO. 42**

Describe your total budget allocation and staffing for removing locally unlawful content in Mississippi.

**DOCUMENT REQUEST NO. 88**

Provide copies of all practices, procedures or policies that explain how you are able to remove locally unlawful content in the four examples referenced in the June 26, 2013, Wilmer Hale letter.

**DOCUMENT REQUEST NO. 89**

Provide any communication with the governments, or any government agency, in the four examples referenced in the June 26, 2013, Wilmer Hale letter, that addresses content removal and compliance with the relevant laws of these four countries.

**DOCUMENT REQUEST NO. 90**

Provide documents that relate to the role of automated content “filtering” in monitoring content and removing it in the four examples referenced in the June 26, 2013, Wilmer Hale letter. Provide documents that relate to these same filtering systems, or the rigor in applying these systems, to remove content that is locally unlawful in Mississippi.

**DOCUMENT REQUEST NO. 91**

Provide any records that relate to purging your websites of “child pornography, which is illegal virtually everywhere in the world” but not the online sale of controlled substances, false identification or stolen credit card data which is illegal in all states.

**“LOCALLY UNLAWFUL” CONTENT IN GENERAL**

**INTERROGATORY NO. 43**

Describe if you have a “zero tolerance” policy for content that is locally unlawful or illegal under Mississippi law. If you do not, describe why.

**DOCUMENT REQUEST NO. 92**

Provide all documents that address, discuss or relate to the issues that are the subject of this Interrogatory.

**INTERROGATORY NO. 44**

Describe if you have a “zero tolerance” policy for content that is dangerous and carries with it a substantial risk of harm? If not, describe why not.

**DOCUMENT REQUEST NO. 93**

Provide all documents that address, discuss or relate to the issues that are the subject of this Interrogatory.

**INTERROGATORY NO. 45**

Describe what standards you apply to determine how much and what kinds of Dangerous or Illegal Content/Conduct you will allow on your websites or on the websites of partners through Google Advertising Services.

**DOCUMENT REQUEST NO. 94**

Provide all documents that address, discuss or relate to the issues that are the subject of this Interrogatory.

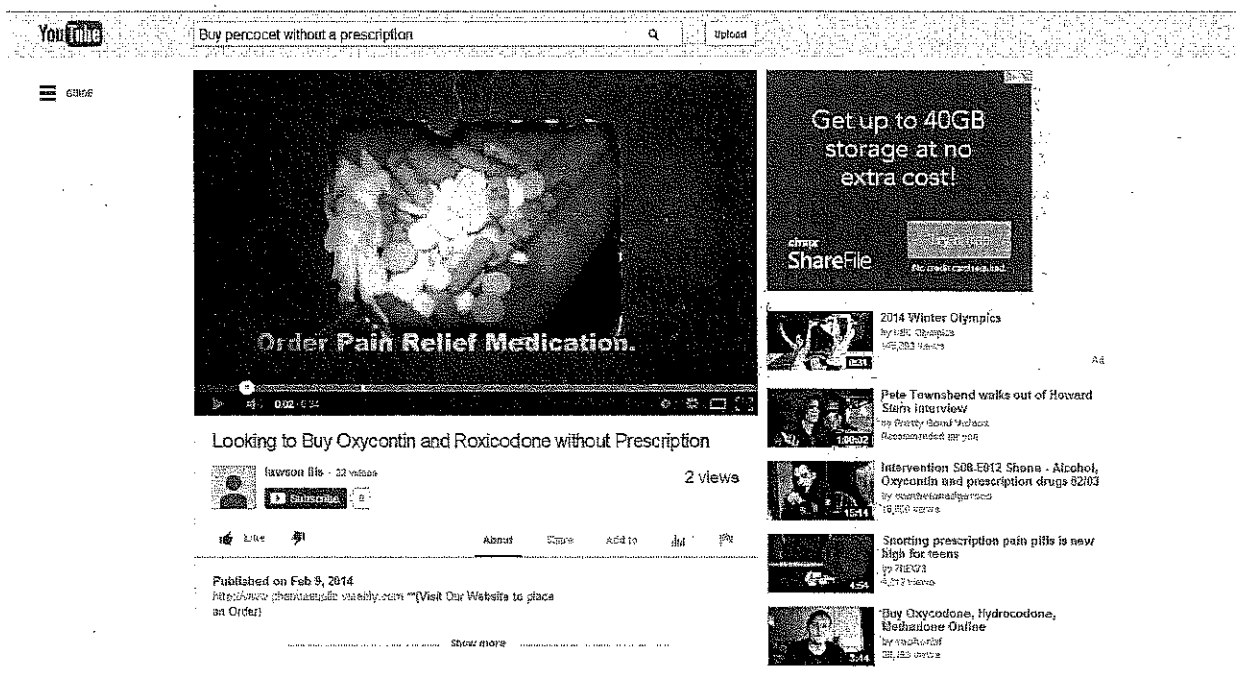
**SPECIFIC EXAMPLES OF LOCALLY UNLAWFUL CONTENT**

**A. PRESCRIPTION DRUG SALES**

**INTERROGATORY NO. 46**

In addition to your obligations under the NPA, you have stated to the Attorneys General that you have done an improved job of taking down content related to the sale of online prescription drugs. Recently, the following monetized YouTube video, and numerous others like it, were readily located. Describe how, under the NPA and your assurances to the state Attorneys General you do a better job of locating and removing such videos, if a monetized video of the type depicted below could still appear on YouTube using the search query "Buy percocet without

a prescription.” Describe the standards that Google and YouTube apply for determining the types and amounts of dangerous or illegal content that may appear on your websites or on the websites that partner with Google Advertising Services.



**DOCUMENT REQUEST NO. 95**

Provide all documents related to the migration of illegal drug sales from Google to YouTube following the NPA.

**DOCUMENT REQUEST NO. 96**

Provide all documents related to varying levels of tolerance of Dangerous or Illegal Content/Conduct between Google's other services and YouTube.

**INTERROGATORY NO. 47**

Describe all steps taken by you to detect and prevent the use of your services to promote, facilitate or accomplish the unlawful sale of controlled substances and pharmaceuticals.

**DOCUMENT REQUEST NO. 97**

Provide all documents concerning Google's indexing, de-indexing or ranking in search results websites or webpages that promote the sale of, offer for sale, disseminate, or facilitate the sale or dissemination of controlled substances and pharmaceuticals.

**DOCUMENT REQUEST NO. 98**

Provide all documents concerning Google's display of advertisements in connection with YouTube videos that promote, facilitate the distribution of, or offer for sale controlled substances and pharmaceuticals.

**DOCUMENT REQUEST NO. 99**

Provide all documents concerning the use of Google services, including, but not limited to, Google Advertising Services, Google search, and YouTube, by any entity that is or appears to be promoting, offering for sale, or facilitating the distribution of controlled substances and pharmaceuticals, including all communications between Google and any entity that is or appears to be promoting, offering for sale, or facilitating the distribution of controlled substances and pharmaceuticals.

**DOCUMENT REQUEST NO. 100**

Provide all documents reflecting the monies earned by Google from advertisements that Google serves in connection with third party websites or videos on YouTube promoting, offering for sale, or facilitating the distribution of controlled substances in violation of any state or federal law.

**B. STEROIDS**

**INTERROGATORY NO. 48**

On October 3, 2013, ABC News reported on the sale of illegal steroids using the YouTube website. *See: The Lure of Speed and Strength: Illegal Steroids Available Overseas* (Oct. 03, 2013). *See also:*

http://abcnews.go.com/WNT/video/lure-speed-strength-illegal-steroids-overseas-20465512.

Following this report, you reported that you had removed numerous videos related to the illegal sale of steroids. Describe whether you were unaware of the objectionable videos before the airing of the above report, and if so, why you were not aware of and had failed to detect them. Describe the heightened steps you took to identify and remove these videos after the story aired. Describe any policy, personnel, technology or other steps you took as a result of the above news report to identify and remove such videos. For all such steps, describe if they have been utilized to identify and remove other Dangerous or Illegal Content/Conduct in addition to steroids. If not, explain why.

**INTERROGATORY NO. 49**

Describe how videos, like the following that was located using the search query “buy steroids online without prescription,” are still available after you became aware of the ABC report.



**DOCUMENT REQUEST NO. 101**

Provide all communications involving a Management Team member that discuss or address, directly, indirectly or tangentially, the October 3, 2103, ABC News report *The Lure of Speed and Strength: Illegal Steroids Available Overseas*, (Oct. 03, 2013, aired).

**DOCUMENT REQUEST NO. 102**

Provide a searchable database of all videos removed after the October 3, 2013 ABC News report *The Lure of Speed and Strength: Illegal Steroids Available Overseas*, (Oct. 03, 2013, aired). Describe for each the nature of the video, the title, how it was detected or located for removal, the process for deciding to remove it and how long they had been hosted on YouTube prior to removal.

**DOCUMENT REQUEST NO. 103**

For videos removed after the October 3, 2013, ABC News report on steroids aired, describe for each if it was monetized, and if so, how. Quantify the amount of revenue generated from each video and the total amount or revenue lost from all removed videos.



### C. BATH SALTS

#### INTERROGATORY NO. 50

Describe if you are aware that synthetic or cathinone-based “bath salts” are controlled substances in a number of states and may pose a serious risk of harm or even death. *See generally:*

[http://www.drugabuse.gov/sites/default/files/drugfacts\\_bath\\_salts\\_final\\_0\\_1.pdf](http://www.drugabuse.gov/sites/default/files/drugfacts_bath_salts_final_0_1.pdf)

#### INTERROGATORY NO. 51

The following recently appeared on your website:

The screenshot shows a Google search interface. The search bar contains the text "buy bath salts online usa". Below the search bar are navigation tabs for "Web", "Images", "Videos", "News", "Shopping", "Maps", and "Books". The search results are displayed in two columns. The left column shows search filters (Any time, Past hour, Past 24 hours, Past week, Past month, Past year, All results, Verbatim) and a list of search results. The right column shows "Ads" with several advertisements for bath salts.

Google buy bath salts online usa

Web Images Videos News Shopping Maps Books

About 174,000 results

Any time  
Past hour  
Past 24 hours  
Past week  
Past month  
Past year  
All results  
Verbatim

**buy bath salts & research chemicals online: BUY LEGAL BATH ...**  
[newenergybathsalts.info/](http://newenergybathsalts.info/) ▾  
BUY LEGAL BATH SALTS & RESEARCH CHEMICALS ONLINE IN USA ... New Energy Bath Salts Online Shop | BATH SALTS | RESEARCH CHEMICALS | 50 ...

**buy bath salts online securely in US-Concentrated legal bath salts**  
[www.megabathsalts.com/](http://www.megabathsalts.com/) ▾  
buy bath salts online securely in USA Canada & Australia with discrete packaging and overnight shipment at low rates. Concentrated legal bath salts, purchase ...

**BATH SALTS IN USA**  
[bath-salts-direct.com/](http://bath-salts-direct.com/) ▾  
Come pay a visit to our online head shop and find the legal high that is perfect for you. We guarantee that you will be more than satisfied with your purchase and ...  
Stimulating Bath Salts Powder ... - Search - Check Law - Wholesale

**Buy Bath Salts - What to Consider When Ordering Bath Salts Online**  
[v2shoponline.com/](http://v2shoponline.com/) ▾  
Order now on phone buy bath salts online, bath salts for sale, legal bath salts, ... bath salts for sale online in usa online shops for bath salts retails online buy ...

**Buy Bath Salts Online- Discrete shipping world wide**  
[www.bathsaltsforsale.com/](http://www.bathsaltsforsale.com/) ▾  
Buy bath salts online and get 24 hours discrete delivery securely in USA Canada & Australia with discrete packaging and overnight shipment at low rates.get ...

Ads

**Ivory Wave Bath Salts**  
[www.legitbathsaltsonline.com/](http://www.legitbathsaltsonline.com/) ▾  
Buy Ivory Wave Bath Salts Online. Guaranteed Low Prices. Order Now!

**Get Bath Salts Online**  
[www.bundesbathsalts.com/](http://www.bundesbathsalts.com/) ▾  
Quality bath salts online & best Free shipping For Bulk orders

**Bulk Bath Salt at Amazon**  
[www.amazon.com/beauty](http://www.amazon.com/beauty) ▾  
Find Thousands of Beauty Products Discover Amazon's Beauty Store

**How to get bath salts**  
[www.inhalant.org/](http://www.inhalant.org/) ▾  
Sniffing Common Household Products What are the Dangers for your Kids?

**Blue Ridge Naturally**  
[www.blueridgenaturally.org/](http://www.blueridgenaturally.org/) ▾  
Western North Carolina's official seal for local, natural products

Google's Privacy and Terms state, under the "Google Safety Center" section, that "Keeping the web safe for everyone is a shared responsibility." Describe how Google discharges its portion of this "shared responsibility" by continuing to display in search results or otherwise and monetize such content.

**DOCUMENT REQUEST NO. 104**

Provide all records of use of Google Advertising Services relating to the sale of bath salts that are controlled substances in some states. Provide all records relating to your compliance with these states' laws.

**DOCUMENT REQUEST NO. 105**

Provide all records related to how you track state laws which prohibit the sale of some synthetic or cathinone-based "bath salts" so that you are not facilitating the sale of "locally unlawful" conduct in those states.

**E. DRUG ABUSE**

**INTERROGATORY NO. 52**

Describe how the following content, and content like it, complies with YouTube's "Community Standards."

The screenshot shows a YouTube search results page for the query "How to inject drugs". The search bar at the top contains the text "How to inject drugs" and a magnifying glass icon. To the right of the search bar is an "Upload" button and a "Sign in" button. Below the search bar, the text "Filters" and "About 14,700 results" is visible. On the left side, there is a vertical navigation menu with icons and labels for "Popular on YouTube", "Music", "Sports", "Gaming", "Education", "Movies", "TV Shows", "News", "Live", and "Spotlight". The main content area displays two video results. The first result is titled "Safer heroin injecting" by Jon Derricott, posted 5 months ago with 18,256 views. The description states: "This film is designed to help people to identify ways to reduce potential harms resulting from injecting. The film is aimed at people...". The video thumbnail shows a close-up of a hand holding a syringe. The second result is titled "HOW TO: inject drugs safely...informational/health" by BeautifulHysteria, posted 3 years ago with 68,451 views. The description states: "I DO NOT CONDONE DRUGS TO ANYONE! this is a health informational video I made for people that are starting out and need...". The video thumbnail shows a person wearing sunglasses. To the right of the video results, there is a large advertisement for "MOUNTAIN HARD WEAR" featuring a person climbing a rock and the text "perform at your best" and "Ultimate apparel and gear". At the bottom of the ad, it says "SHOP MEN".

Filters About 160,600 results

- Popular on YouTube
- Music
- Sports
- Gaming
- Education
- Movies
- TV Shows
- News
- Live
- Spotlight

CHANNELS FOR YOU

- Machinima
- danisnotonfire
- CBS News
- MUSIC
- Nerdist

Browse channels

Sign in now to see your channels and recommendations!



**@586\_Marrmar THE NEIGHBORHOOD DRUG DEALER TEACH YOU HOW TO COOK CRACK**

by [MHDJFL](#) • 2 years ago • 160,600 views  
FOLLOW ME ON TWITTER @DJFL608 AND FACEBOOK Follow @586\_marrmar LOG ON TO <http://thefamousworld.com/> ...



**How to cook Crack Cocaine**

by [fredecoy](#) • 7 months ago • 117,887 views



**Gang Tapes Crack Cooking**

by [גלגלית](#) • 2 years ago • 42,607 views  
A great scene from the movie Gang Tapes : Scene : Cooking Crack Music : Artist : Gig Hutch Song : Gangsta Shit.



**How to Cook Crack**

by [Patrick Delisser](#) • 2 years ago • 140,216 views  
The 7 minute THUG workout Vol 1: The Cook Up A couple Atlanta Goons teach us How to Cookin dis Crack can make for a good ...



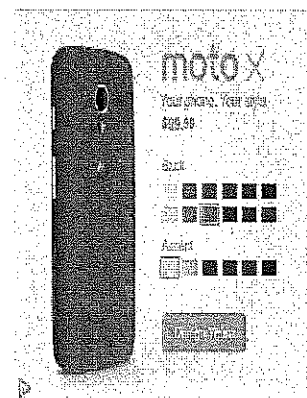
**cooking crack 101**

by [kocaj17](#) • 5 years ago • 384,913 views  
the brooklyn way making it easy to roll to up ya hustle.



**How To Cook CRACK!**

by [ColdAziceTV](#) • 1 year ago • 166,607 views  
Kp is out of product for the streets and calls for a big boy!  
[www.coldazice.tv](http://www.coldazice.tv) @coldaziceTV Twitter: Cold az iceTV or coldaziceTV ...



Advertisement

## **F. CREDIT CARDS**

### **INTERROGATORY NO. 53**

Since the Target Data Breach, there has been heightened public attention paid to the problems created by breaches of this type and magnitude. Describe your efforts to stem the sale of stolen credit card data on your websites once the Target Data Breach became known to you.

### **INTERROGATORY NO. 54**

Describe how the following hosted and monetized content was available on your website after the Target Data Breach. Describe the steps you took to remove the following videos, and others like them, after the Target Data Breach became known by you. Describe whether Target would be aware that their brand was associated with stolen credit card data. If so, describe how Target would be aware. For example, describe if you provide reports on ad placements to advertisers.

YouTube CC with CVV and SSN



**subscription**  
save with delivery of your essentials, right on schedule.

**CC Database...**  
by [channel] 1,234 views

**Fresh Credit Cards, 100% working, 500 CC, CVV**  
by [channel] 1,234 views

**Sell CVV Goods - Bumpo - Bank Login - Acc PayPal - Western Union ...**  
by [channel] 1,234 views

**Sell CVV, Drivers Track 1&2, Paypal, Transfer Western Union, Money Gram, In other bank 500 each**  
by [channel] 1,234 views

**Sell cvv USA, CA, GERMANY, UK, GREECE, UK**  
by [channel] 1,234 views

**Sell CVV : usa uk ca aus inter + pass vby +dob+ssn=fullz**  
139 views

Published on Jan 17, 2014  
Selling good and fresh cvv full track 1 and 2 bank login bank transfer  
wiring check  
Selling good and fresh cvv full track 1 and 2 bank login bank transfer wiring checks transfer to US...

YouTube Fresh dumps



**Get up to 40GB storage at no extra cost!**  
ShareFile

**SELL CVV BANK LOGINS ACC PAYPAL TRANSFER AND ...**  
by [channel] 1,234 views

**KAPLAN + DENIS DAVID + PSN ...**  
by [channel] 1,234 views

**SELL CVV DUMPS TRACK 1,2, FULLY ...**  
by [channel] 1,234 views

**Entrepreneur - Ask Steve Meyers Relationship ...**  
by [channel] 1,234 views

**Selling CVV Video Banking CC ...**  
by [channel] 1,234 views

**Sell cvv good, dumps, tracks, transfer ...**  
by [channel] 1,234 views

**Sell cvv, dumps with pin, dumps bank ...**  
by [channel] 1,234 views

**CVV DUMPS WITH PIN, TRACK 1 & 2 ...**  
by [channel] 1,234 views

**Fresh dumps, dumps + pin, Fullz, WU transfers, Bank transfers, ...**  
488 views

Published on Oct 10, 2013  
GoodDumps.com: We sell fresh dumps, sell cvv, dumps + pin, Fullz, our dump, 100 transfers, Bank transfers, CVV www.gooddumps.com

**ALL COMMENTS (13)**



YouTube

fresh dumps

What to Watch

BEST OF YOUTUBE

Popular on YouTube

- Music
- Sports
- Gaming
- Education
- Movies
- TV Shows
- News
- Spotlight

CHANNELS FOR YOU

- NBA
- Team Coco
- Pop Kely
- Animation Domination
- KrewellaLiveEVO
- CartistTF Channel

Show channels

Sign in now to see your channels and recommendations!

Sign in

http://www.youtube.com

Filter

About 14,199 results



**Cards dumps (101,201), track 102, valid fresh and good working**  
 by **Sekey Dudge** • 7 months ago • 358 views  
 Here all Superimposed cvv, Bank Login, Acc papers, Transfer Wu High Balance Good last days Good Sign For Business



**SELL DUMPS WITH PIN, DUMPS+PIN, TRACKS WITH PIN BUY FRESH OR BNOP NEW DUMPS FOR BU**  
 by **Henry Chen** • 10 months ago • 428 views  
 WU.com to mail by email. Up [www.10000.com](http://www.10000.com), yahoo ID: [Up\\_www@10000.com](mailto:Up_www@10000.com), In sell cvv, DUMP+PIN, TRACK 102, ...



**The Fresh Kids Story: From World's Largest Garbage Dump to a World-Class Park**  
 by **Andy Gross** • 3:07:35 • 26,545 views  
 For many years, all of New York City's garbage was brought to Fresh Kids. At over 2250 acres, it grew to become the world's



**Sell cvv, fresh dumps, buy dumps, sell dumps, cvv, full, WU transfers**  
 by **Sekey Dudge** • 5 months ago • 175 views  
 New sell CVV, fresh dumps, full, Bank, cvv WU transfers.



**Sell cvv all type, Dumps Track 1\_3 fresh and private | Transfer WU**  
 • Paypal • 5018 views  
 by **Sekey Dudge** • 11 months ago • 549 views  
 I'm seller from WU/TAU and report items to sell something about CVV • TRACK 102 (10102) • only sell for personal user...



**CVV+DOB, Fresh dumps, dumps + pin, WU transfers, Bank transfers**  
 (NO)SDCVV'S C204 YouTube  
 by **Thomas Riley** • 4 months ago • 12 views



**Fresh dumps, dumps + pin, full, WU transfers, Bank transfers, CVV**  
 by **GoodDumpsDotCom** • 5 months ago • 405 views  
 GoodDumps.com WA sell fresh dumps, pdf cvv, dumps + pin, full, cvv, WU transfers, Bank transfers, CVV...

Find a special offer on the Volkswagen Passat

320,995 down / 42,000 per week  
 2.9% rate

DOCUMENT REQUEST NO. 106

Provide all documents relating to your advertising arrangements with Target.

The screenshot shows a YouTube video player with the search term "Buy Stolen cc numbers" in the top search bar. The video being played is an advertisement for "all-access" credit cards, featuring a MasterCard Debit card with the number 5189 1899 9999. The ad text says "See what we're doing to help protect them." Below the video player, the video title is "buy / sell credit card number cw2, dump track1&2 verified seller" by "Boss Seller" (7 videos, 1,244 views). The video was published on Oct 8, 2013, and the description includes contact information and details about the "DUMP SHOP" service. To the right of the video player is a list of related videos, including "Search Engine Hacking: Finding Credit Cards, Social Security Numbers, and...", "Woman Mauled by Orca!", "Credit card number and cw2", "Credit Card Skimmers More Advanced, Harder to Detect", "How To Hack a website using Manual sql injection [ Step by Step tutorial ]", "BUY CW2, Buy Cvx, Buy TRACK2, buy DUMPS, Buy track1", "The Deepweb | Exploring The Black Market Reloaded. | Just an Overview.", and "Knife Review : Iain Sinclair 'CardSharp 2' [Credit Card Size Folding Knife]".



**INTERROGATORY NO. 55**

YouTube has assured its advertisers that the YouTube platform will garner the “Perfect Audience, Picked By [Them]” and that “YouTube is a *safe and reliable home* for your brand... For an extra level of safety and quality, ads run only *on approved YouTube partner videos.*” *YouTube Community Guidelines*. Describe how, in the example above, the Honda brand has been provided a “safe and reliable” home by running its advertisement against the search term “buy stolen cc numbers.”

**INTERROGATORY NO. 56**

Describe any technical, or other capabilities, you have to ensure that advertisers’ advertisements do not “run” in tandem with content these advertisers might deem to be harmful or inappropriate and/or that are or appear to be promoting, facilitating, offering for sale, disseminating, or engaging in Dangerous Or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 107**

Provide a searchable database, by title or other description, of all videos that contained credit or debit card information that were removed from YouTube after you became aware of the Target Data Breach. In addition, provide all videos that contained credit or debit card information that were reviewed by you after you became aware of the Target Data Breach but not removed. Describe for both categories if they were monetized or non-monetized. For monetized and removed

videos, provide the amount of revenue generated from each and the total amount or revenue derived from all monetized and removed videos.

**DOCUMENT REQUEST NO. 108**

Provide your policies and procedures designed to prevent the use of your services to sell or promote or facilitate the sale of stolen credit or debit card data.

**G. FRAUDULENT DOCUMENTS**

**INTERROGATORY NO. 57**

Describe your efforts to prevent your services from being used to sell or to promote or facilitate the sale of false and fraudulent identification documents, as illustrated in the examples below.

Describe why these efforts have failed to prevent these videos from appearing on YouTube and being monetized by you. Describe your level of awareness of the potential dangers of facilitating the sale of false and fraudulent identification documents.

Buy Fake birth certificate

BUY ORIGINAL, DRIVING LICENSE, PASSPORT, ID CARD,...

143 views

Published on Jan 11, 2014

BUY ORIGINAL, DRIVING LICENSE, PASSPORT, ID CARD AND OTHER DOCUMENTS AND MANY OTHER DOCUMENTS

We are original cheap license, passport and id card birth certificate and many other documents within a short period of time check our website for more... Original Passport Real California Passport State License (driver) National Identity Card Class 1-10 (UK) Driving License Police Game theory Database Police Full name Identity European New Identity South America Africa

Original e-mail: [info@keymanprinting.com](mailto:info@keymanprinting.com) Skype: [skype.com](https://www.skype.com) WhatsApp: [whatsapp.com](https://www.whatsapp.com) Website: [www.keymanprinting.com](http://www.keymanprinting.com)

We are the best, fastest, reliable and the real selling solution for alternative identification documents. We can provide original documents that are hard to obtain. Please let us know!

- Buy fake ID UK online
- Buy PASSPORT USA
- STAFF EMPLOYEE of visa oilpassport by business
- How to detect a False Canadian Passport
- How to get a 2nd Social Security number and start over legally
- US Visa and Have Economic 2nd Passport Program
- Buying a electronic passport from the Big Island of the social insurance city
- National ID Card Ladder is manufacturing

Fake passport for sale

MagnetStreet  
Leader in Trend, Forward Designs & Personalized Services. Shop Now!

fake passports, ID cards, DL fake money and other documents f...

macstve brenda 1 video 57 views

Published on Feb 4, 2014

http://bit.ly/passports-40-40-40-366...

Hello, Getting a fake and real passport, ID or driving license or any other document is simple I can make you both real and fake documents

However, the real documents are more expensive than the fake because it takes time, skill and contacts to get it done. Note that, the fake is going to be in 100% unique and very good quality. The difference is based on the registration of the numbers. The real document will be

show more

ALL COMMENTS (2)

- Pats Townsend walks out of Howard Stern interview
- Nigerian Man Caught With Fake Passport Documents At Uk Airport
- NGH: How Long Does it Take To Start Working?
- How to detect a False Canadian Passport
- Fake Britain on ID fraud 1 of 3
- SOMALIA BIOMETRIC ID CARDS
- How to Get Away with Stealing

**DOCUMENT REQUEST NO. 109**

Provide all documents concerning any actions considered or taken by Google to prevent Google services from being used to locate, promote, offer for sale, or obtain false and fraudulent identification documents.

**DOCUMENT REQUEST NO. 110**

Provide all documents concerning Google's indexing, de-indexing, or ranking in search results sites that offer for sale or that inform users how to obtain or create false and fraudulent identification documents.

**DOCUMENT REQUEST NO. 111**

Provide all documents concerning the use of Google services, including, but not limited to, Google Advertising Services, Google search, and YouTube, by any entity that is or appears to be offering for sale false and fraudulent identification documents.

**DOCUMENT REQUEST NO. 112**

Provide all communications between Google and any entity that is or appears to be offering for sale false and fraudulent identification documents.

**DOCUMENT REQUEST NO. 113**

Provide all documents reflecting the monies earned by Google from advertisements that Google serves on third party websites or in connection with videos on YouTube that promote, offer for sale, or facilitate the sale of false and fraudulent identification documents.

**DOCUMENT REQUEST NO. 114**

Provide all documents reflecting the monies earned by Google from advertisements that Google serves on third party websites or in connection with videos on YouTube that promote, offer for sale, or facilitate the sale of false and fraudulent identification documents.

**DOCUMENT REQUEST NO. 115**

Provide all communications between Google and any entity that is or appears to be offering for sale false and fraudulent identification documents.

**H. HUMAN TRAFFICKING**

**INTERROGATORY NO. 58**

Describe how the marketing of sexual acts with underage children abroad, as the below content appears to facilitate, if viewed in those states where such acts are unlawful, does not violate state laws. Describe your level of awareness of the amount of similar content that remains on your websites and why these types of videos continue to appear and be monetized by you.

fucking saigon schoolgirls

About 2,746,676 results (0.34 seconds)

**Fucking Vietnamese School Girls in Saigon** info: [www.911.com](http://www.911.com) ...  
 Date: 07/2011 - Website: <http://www.911.com> Copyright: +643289537894. Sex  
 tour in Vietnam, sex hotel, sex holiday, erotic nus, Saigon Tour Guide. ...

**Saigon Vietnamese school girl fucking in the school toilet** ...  
 Date: 08/2011 - Home Secret Service Website: <http://www.home-secret-service.com>  
 We offer a wide range of services and pleasure - from Casino Models to ...

**Most Sexy Vietnamese School Girls being fucked by man in home** ...  
 Date: 08/2011 - HOTTEST & SEXIEST ASIAN GIRLS by [www.911.com](http://www.911.com)  
 Saigon Vietnamese school girl fucking in the school toilet home ...

**Fuck Saigon Pornstars Everyday in home** ...  
 Date: 07/2011 - Fuck Saigon Pornstars Everyday in home ...  
 sex holidays, Vietnamese prostitution, Vietnamese school girls fucking. ...

**Fucking 2 Vietnamese girls in Saigon, ho chi minh city Vietnam** ...  
 Date: 07/2011 - Fucking Vietnamese School Girls in Saigon  
 Fucking Vietnamese school girls in Saigon ...

**Paragon, Fantasy, Honest & Diorama Service in Saigon Hotel** ...  
 Date: 10/2011 - Vietnamese supermodel pornstar and saigon hotel  
 FUCKING IN THE SCHOOL ... Saigon Vietnamese school girl fucking in the school ...

**Sexy Vietnamese School Girls - YouTube** ...  
 Date: 08/2011 - Home Secret Service Website: <http://www.home-secret-service.com>  
 Beautiful in Saigon Vietnam, Vietnam hot sex tourism fucking fuck ...

**Adult Locations in saigon and erotic destinations in Vietnam** ...  
 Date: 07/2011 - Watch Later Erotic Destination supermodel ...  
 Fucking Vietnamese School Girls in Saigon ...

**Ho chi minh city sex tour** ...  
 Date: 08/2011 - Links to Ho Chi Minh sex services and nightlife ...

These search results linked to monetized YouTube videos like this:

**DOCUMENT REQUEST NO. 116**

Provide all documents concerning any actions considered or taken by Google to prevent Google Services from being used to engage in, facilitate, or promote human trafficking.

**DOCUMENT REQUEST NO. 117**

Provide all documents concerning Google's indexing, de-indexing, or ranking in search results sites that engage in, facilitate, or promote human trafficking.

**DOCUMENT REQUEST NO. 118**

Provide all documents concerning the use of Google services, including, but not limited to, Google Advertising Services, Google search, and YouTube, by any entity that is or appears to be engaging in, facilitating, or promoting human trafficking.

**I. STOLEN INTELLECTUAL PROPERTY**

**INTERROGATORY NO. 59**

You claim that your search engine provides "high-quality" search results and that you seek to ensure that the top search results are the most relevant and trusted and legitimate sites. Please describe whether and how you take copyright infringement, or potential copyright infringement, into account in determining the "quality" websites and their ranking in search results.

**INTERROGATORY NO. 60**

You claim that you made changes to your search algorithm to demote websites for which you have received a large number of copyright notices. Describe the changes you made to your algorithm and how those changes have affected actual search results. Describe why infringing sites identified in Google's Transparency Report, including "Specified Domains" that have received hundreds of thousands or millions of takedown notices, still regularly appear on the top of search results.

**DOCUMENT REQUEST NO. 119**

Provide all documents, including communications, concerning the use of Google Services to locate, obtain, or view material that infringes copyright, or to commit, promote, or facilitate copyright infringement.

**DOCUMENT REQUEST NO. 120**

Provide all documents concerning how Google Search, including search algorithms, rank, weigh, promote, demote, or delist sites that offer infringing or allegedly infringing content, including but not limited to any evaluations of websites by reviewers.

**DOCUMENT REQUEST NO. 121**

Provide all documents concerning communications with owners or operators of websites using the "Specified domains" identified in the Google Transparency Report that have received copyright removal requests for more than 5,000 URLs,



as identified at

<http://www.google.com/transparencyreport/removals/copyright/domains/?r=all-time>.

**DOCUMENT REQUEST NO. 122**

Provide all documents reflecting the quality rankings assigned to the “Specified Domains” identified in the Google Transparency Report that have received copyright removal requests for more than 5,000 URLs, as identified at <http://www.google.com/transparencyreport/removals/copyright/domains/?r=all-time>.

**DOCUMENT REQUEST NO. 123**

Provide all documents relating to the frequency with which the Specified Domains or other pirate websites appear on the first page of search results, including, but not limited to, any analysis, report, review or discussion of the placement in search results of pirate websites that are or appear to be distributing copyrighted material without authorization and/or legitimate websites distributing copyrighted material lawfully.

**DOCUMENT REQUEST NO. 124**

Provide all documents, including any review, analysis, report, or discussion, concerning consumers’ perception of the websites presented at the top of Google search results, including but not limited to their perception of the legitimacy,

quality and/or lawfulness of the content on or available from or conduct depicted on such websites.

**DOCUMENT REQUEST NO. 125**

Provide all documents reflecting analyses or evaluations of how users interact with Google search results pages, including, but not limited to, how the ranking of sites affects which search results are visited by users and the frequency with which users view and access search results beyond the first page and/or first position.

**DOCUMENT REQUEST NO. 126**

Provide all documents concerning determinations or evaluations of the “quality” of the Specified Domains.

**DOCUMENT REQUEST NO. 127**

Provide all documents, including communications, concerning the existence of spyware, malware, viruses, or other malicious code on piracy sites including the Specified Domains.

**DOCUMENT REQUEST NO. 128**

Provide all documents concerning any actions considered, taken, or not taken, to promote, demote, or remove from search results webpages engaged in piracy of copyrighted materials.

**DOCUMENT REQUEST NO. 129**

Provide all documents concerning Google's change to its search algorithms to take into account the number of valid copyright removal notices Google receives for any given site, as described in <http://insidesearch.blogspot.com/2012/08/an-update-to-our-search-algorithms.html>.

**DOCUMENT REQUEST NO. 130**

Provide documents sufficient to explain, qualitatively and quantitatively, how Google's search algorithm demotes webpages in response to the number of valid copyright removal notices Google receives for a given site, including, but not limited to information showing the degree (e.g., how far down the search results a website will be demoted) that a website is affected.

**DOCUMENT REQUEST NO. 131**

Provide all documents concerning any analyses of the Google search rankings of piracy sites, including the Specified Domains. This request includes all documents concerning the effectiveness of Google's change to its search algorithms to take into account the number of valid copyright removal notices

Google receives for any given site, as described in

<http://insidesearch.blogspot.com/2012/08/an-update-to-our-search-algorithms.html>.

## **AUTO COMPLETE**

### **INTERROGATORY NO. 61**

Describe the creation and operation of the “auto complete” function, including specifically, the manner in which phrases are generated.

### **INTERROGATORY NO. 62**

Describe each and every circumstances in which your auto complete feature has been altered to reduce or eliminate search terms that are potentially shocking or offensive or that if used could return in search results websites that are or appear to be promoting, offering for sale, disseminating, engaging in, or facilitating Dangerous or Illegal Content/Conduct.

### **DOCUMENT REQUEST NO. 132**

Provide documents sufficient to identify each term that has been removed or excluded from Autocomplete because it violates Google’s “Autocomplete policies,” as referenced in <https://support.google.com/websearch/answer/106230?hl=en>, and the date each term was added as a violation of Google’s Autocomplete policies.

**DOCUMENT REQUEST NO. 133**

Provide all documents concerning Google's Autocomplete policies for the removal or exclusion of "things like pornography, violence, hate speech, and terms that are frequently used to find content that violates copyrights," as referenced in <https://support.google.com/websearch/answer/106230?hl=en>. This request includes all documents concerning Google's enforcement of these policies, as well as actions considered, take, or not taken to remove or exclude words or phrases.

**DOCUMENT REQUEST NO. 134**

Provide all documents relating to Google's procedures and processes for identifying and removing search terms from Autocomplete.

**DOCUMENT REQUEST NO. 135**

Provide all documents concerning representations made by Google regarding its efforts to exclude or remove "search terms for things like pornography, hate speech, illegal and dangerous things, and terms that are frequently used to find content that violates copyrights," including but not limited to Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 136**

Provide all documents concerning actions taken or considered by Google to prevent Autocomplete from predicting or presenting search terms related to Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 137**

Provide technical and other documents sufficient to show in detail how Autocomplete uses a person's web history or interaction with any Google services in generating predicted searches for that person.

**DOCUMENT REQUEST NO. 138**

Provide all documents relating to how search behavior is affected by Autocomplete suggestions, including whether suggested queries are more likely to be searched than queries not suggested by Autocomplete.

**DOCUMENT REQUEST NO. 139**

Provide all documents relating to how Autocomplete affects the tendency of users to use search queries associated with Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 140**

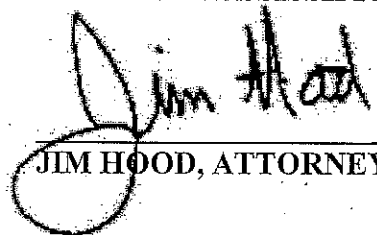
Provide all documents relating to how Autocomplete affects the websites users ultimately visit from search results, and the tendency of users to visit websites that are or appear to be promoting, facilitating, disseminating, offering for sale or engaging in Dangerous or Illegal Content/Conduct.

**DOCUMENT REQUEST NO. 141**

All communications sent to or received by one or more members of Google's Management Team concerning Autocomplete's prediction and presentation to users of search terms related to Dangerous or Illegal Content/Conduct.

ISSUED THIS 21st DAY OF OCTOBER, 2014.

STATE OF MISSISSIPPI

A handwritten signature in black ink that reads "Jim Hood". The signature is written in a cursive style with a large loop at the beginning of the word "Jim".

JIM HOOD, ATTORNEY GENERAL, MSB No. 8637

**NON-PROSECUTION AGREEMENT**

The United States Attorney's Office for the District of Rhode Island, United States Department of Justice (the "Government"), and Google Inc. ("Google" or the "Company"), a California-based corporation with its principal place of business located in Mountain View, California, hereby agree as follows:

**The Investigation**

1. The Government has conducted an investigation into the Company's acceptance of advertisements placed by online pharmacy advertisers that did not comply with United States law regarding the importation and dispensation of prescription drugs.

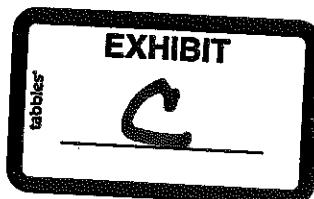
**Statement of Relevant Facts**

2. The Government and the Company agree that the following statements are true and accurate:

(a) Except under very limited circumstances, not relevant here, it is unlawful for pharmacies outside the United States to ship prescription drugs to customers in the United States. Such conduct violates the Federal Food, Drug, and Cosmetic Act, Title 21, United States Code, Section 331(a) and (d) (Introduction into Interstate Commerce of Misbranded or Unapproved Drugs). Where these prescription drugs are controlled substances, such conduct also violates the Controlled Substances Act, Title 21, United States Code, Section 952 (Importation of Controlled Substances).

(b) The Company is a publicly-traded Internet search and technology corporation.

(c) The Company offers various advertising services that permit advertisers to have their advertising message, and a hyperlink to their website, appear above and next to search



AR B



results in response to search queries relevant to the advertiser, and on various websites that contract with the Company.

(d) The Company's largest advertising program, AdWords, displays sponsored advertisements in response to queries by the Company's search engine users. Advertisers pay fees to the Company for each ad. Advertisers are able to geo-target their advertising campaigns, selecting the countries where the advertisements will display.

(e) Online pharmacies advertise through AdWords and other Company advertising platforms. The Company adopted initial policies regarding advertising by online pharmacies, and these policies evolved over time as the Company grew.

(f) As early as 2003, the Company was aware that in most circumstances it was illegal for pharmacies to ship controlled and non-controlled prescription drugs into the United States from Canada. For example, in March 2003 and again in December 2008, the National Association of Boards of Pharmacy advised the Company that the importation of prescription drugs from foreign countries is illegal.

(g) The Company was aware that importation of prescription drugs to consumers in the United States is almost always unlawful because the United States Food and Drug Administration ("FDA") cannot ensure the safety and effectiveness of foreign prescription drugs that are not FDA-approved and because the drugs may not meet FDA's labeling requirements, may not have been manufactured, stored, and distributed under proper conditions, and may not have been dispensed pursuant to a valid prescription. While Canada has its own regulatory regime for prescription drugs, Canadian pharmacies that ship prescription drugs to U.S. residents are not subject to Canadian regulatory authority, and many sell drugs obtained from countries other than Canada, which lack adequate pharmacy regulations.

(h) As early as 2003, the Company was on notice that online Canadian pharmacies were advertising prescription drugs to the Company's users in the United States through the Company's AdWords advertising program. Although the Company took steps to block pharmacies in countries other than Canada from advertising in the United States through AdWords, the Company continued to allow Canadian pharmacy advertisers to geo-target the United States in their AdWords advertising campaigns. The Company knew that U.S. consumers were making online purchases of prescription drugs from these Canadian online pharmacies. For example, in a November 18, 2003 email, a Company employee discussed the advertising budgets of several Canadian online pharmacy advertisers and noted that "[a]ll ship from Canada into the US via Express Mail." In an August 23, 2005 email, an employee in the Company's policy group stated, "the majority of Canadian Pharmacies are in business to drive pharmacy traffic from the United States to Canada" and "target the US in their geo-targeting."

(i) The Company also knew that many of these Canadian online pharmacy advertisers distributed prescription drugs, including controlled prescription drugs, based on an online consultation, rather than a valid prescription from a treating medical practitioner. The Company was also on notice that many pharmacies accepting an online consultation rather than a prescription charged a premium for doing so, because individuals seeking to obtain prescription drugs without a valid prescription were willing to pay higher prices for the drugs.

(j) From 2004 to 2006, the Company retained a third-party verification service, Square Trade, Inc. ("Square Trade"), to verify whether online pharmacies seeking to advertise through AdWords were licensed in at least one state in the United States or in Canada. Square Trade required pharmacies seeking to advertise through AdWords to self-certify that they would act in accordance with applicable U.S. laws and regulations. During the period that Square

AR B

Trade was providing services to the Company, the Company knowingly permitted Canadian online pharmacies that were certified by Square Trade to advertise the sale of prescription drugs through AdWords to U.S. consumers.

(k) From 2003 through 2009, the Company provided customer support to some of these Canadian online pharmacy advertisers to assist them in placing and optimizing their AdWords advertisements and in improving the effectiveness of their websites. For example, on or about April 23, 2004, a Google employee based in Canada reported in an email concerning the advertisements of a large Canadian pharmacy advertiser that “the Google team is proactively adjusting creative and optimizing with Square Trade policy in mind.” On or about June 4, 2004, the same employee emailed a member of the Company’s policy group and stated, “The Max team and [customer support] are sort of furiously working on creative to appease our new policy before approvals gets to them and disapproves.”


(l) In 2006, the Company’s relationship with Square Trade ended, and the Company began using the certification program of a second verification company, PharmacyChecker.com LLC (“PharmacyChecker”). While PharmacyChecker did not certify online pharmacies that shipped controlled prescription drugs, Canadian or otherwise, PharmacyChecker did certify advertisers of non-controlled prescription drugs, including distributors of non-controlled prescription drugs located in Canada. As a result, the Company knowingly permitted Canadian online pharmacies, certified by PharmacyChecker, to advertise the sale of non-controlled prescription drugs through AdWords to U.S. consumers.

(m) Some pharmacy advertisers did not qualify for certification by either Square Trade or, later, PharmacyChecker, but nonetheless advertised through the Company’s AdWords program. The Company was on notice that certain online pharmacy advertisers set up their

AR B

advertising programs so that their AdWords advertisements would not run in the United States. Thus, those advertisements could begin to run without the advertiser being required to obtain a Square Trade or PharmacyChecker certification. Once the advertisements began to run on the Company's search engine, however, some pharmacies changed the geo-targeting of the advertisements so as to cause the advertisements to appear in the United States in response to queries by U.S. users of the Company's search engine. Although the Company was on notice that some online pharmacies changed their geo-targeting in this manner, the Company did not prevent these changes in geo-targeting until after it became aware of the Government's investigation.

(n) In addition, as early as July 2004, the Company was on notice that online pharmacies were circumventing the Square Trade and PharmacyChecker certification process by intentionally avoiding the use of certain pharmaceutical terms in the text of their AdWords advertisements, while using these same terms as advertising "keyword" terms. A keyword is a specific word or phrase selected by the advertiser that the Company uses to trigger the display of advertisements in response to a user's query. Advertisers bid, in an auction-like format, on keywords in order to have their advertisements appear when the user enters the selected keywords into the Company's search engine. Once the Company began using Square Trade, and continuing throughout the period during which the Company used PharmacyChecker, the Company conducted manual review of non-certified online pharmacy advertisements only if a pharmaceutical term appeared in the text of the advertisement. The Company was on notice, however, that some online pharmacy advertisers, including some from Canada, avoided this review by using the prescription drug terms as keywords only and not in advertising text. For example, in a February 13, 2008 email, a member of the Company's policy group stated, "[t]he

AR 

only ads that are getting blocked are those with explicit pharma terms in the ad texts; the shady, fraudulent advertisers know not to do this.” After it became aware of the Government’s investigation, the Company made changes to its systems in order to flag for review all ads that had prescription drug terms as keywords.

(o) The Government and the Company estimate that the total proceeds to the Company and Canadian online pharmacy advertisers generated from the advertising and sale of controlled prescription drugs by Canadian online pharmacies that advertised through the Company’s AdWords program was approximately \$500 million.

(p) The Government’s investigation did not relate to the award or performance of any government contract or subcontract.

(q) In 2009, after the Company became aware of the Government’s investigation of its advertising practices in the online pharmacy area, and as a result of that investigation, the Company took a number of significant steps to prevent the unlawful sale of prescription drugs by online pharmacies to U.S. consumers. Among other things, the Company became the first search engine to require online pharmacy advertisers to be certified by the National Association of Boards of Pharmacy’s rigorous Verified Internet Pharmacy Practices Sites (“VIPPS”) program, which conducts site visits, has a stringent standard against the issuance of prescriptions based on online consultations, and does not certify Canadian online pharmacies. In addition, the Company retained an independent company to enhance its back-end sweeps, which were designed to detect pharmacy advertisers exploiting flaws in the Company’s screening systems. The Company has also sued pharmacy advertisers who violated the Company’s terms of use, and has reported suspected illegal pharmacies to the FDA.

ak 6

### Acceptance of Responsibility

3. The Company was on notice that most Canadian online pharmacy advertisers, advertising through the Company's AdWords program, geo-targeted their advertisements to consumers in the United States and imported into the United States both controlled prescription drugs, in violation of Title 21, United States Code, Section 952, and misbranded and unapproved prescription drugs, in violation of Title 21, United States Code, Section 331(a) and (d). The Company acknowledges that it improperly assisted Canadian online pharmacy advertisers to run these advertisements that geo-targeted the United States through AdWords, and the Company accepts responsibility for the Company's conduct as set forth above in paragraph 2, "Statement of Relevant Facts."

### Forfeiture

4. As a result of the conduct described in paragraph 2 above, the Company agrees to forfeit \$500,000,000 (five hundred million) to the United States as a substitute res for the proceeds of controlled prescription drug sales by Canadian online pharmacies that advertised through the Company's AdWords program. Payment shall be wire-transferred to the Seized Assets Deposit Account of the United States Marshals Service within three days of the execution of this Agreement.

5. The Government contends, and the Company agrees not to contest, that the facts contained in this Agreement are sufficient to establish that the \$500,000,000 (five hundred million) being paid by the Company to the Government is subject to civil forfeiture to the Government and that this agreement, in lieu of a separate affidavit, may be attached to and incorporated into the Civil Forfeiture Complaint to be filed against said amount. By this agreement, the Company specifically waives service of said Civil Forfeiture Complaint and

agrees that a Final Forfeiture Order may enter against the \$500,000,000 (five hundred million) paid.

6. Upon payment of said funds as described in paragraph 4 above, the Company shall release any and all claims it may have to such funds and execute such documents as are necessary to accomplish the same, including the release of its claim to said funds in a civil forfeiture proceeding brought against said funds.

#### **Remediation**

7. The Company represents that it has a comprehensive compliance and ethics program, and policies, procedures and technological tools designed to detect and prevent violations of these laws and to ensure compliance with internal Company policies and procedures.

8. The Company has enhanced its pre-existing compliance program and has undertaken reforms and remedial actions in response to the conduct that has been the subject of the Government's investigation.

(a) The Company in March 2010 began requiring VIPPS certification for pharmacy advertisers using AdWords in order to exclude pharmacy advertisers that import or dispense prescription drugs in violation of United States law.

(b) Because most advertisements the Company accepts are placed electronically and without human interaction, the Company uses electronic screening systems to identify pharmacy ads for which VIPPS approval of the advertiser is required. The Company has continued to improve its electronic systems designed to block ads that violate its policies. To supplement its electronic screening systems, the Company has retained an independent company to enhance its back-end sweeps, that is, searches of advertisements running through AdWords, in order to

Handwritten signature or initials in the bottom right corner of the page.

identify and allow the Company to block pharmacy advertisers that are not VIPPS-approved and that evaded the Company's electronic screening mechanisms.

(c) Company policy now forbids accepting advertisements from pharmacies located in Canada, or elsewhere outside the United States, to run in the United States on AdWords.

(d) The Company shall maintain, and update as necessary, all compliance programs and policies referenced in paragraphs (a), (b) and (c) above.

(e) The Company has cooperated with the FDA, Office of Criminal Investigations, by making referrals where the Company determines that criminal investigation of a pharmacy advertiser is warranted, and the Company will continue to make such referrals.

(f) Every three months, beginning three months following the execution of this Agreement, and continuing for two years following the execution of this Agreement, the Company shall furnish a report to the FDA detailing the efforts it has taken to comply with paragraphs (d) and (e) above.

#### **Government's Agreements**

9. In consideration of the Company's entering into this Agreement and its commitments to: (a) accept corporate responsibility for the conduct described in paragraph 2; (b) forfeit \$500,000,000 to the United States; (c) enforce its ethics and compliance programs relating to the advertisement and sale of prescription drugs; and (d) otherwise comply with the terms of this Agreement, the Government agrees not to prosecute the Company for any crimes relating to (i) the conduct described in paragraph 2 or (ii) any other conduct relating to the advertisement or sale of prescription drugs known to the Government or that was the subject matter of the investigation by the Government that led to this Agreement as of the date this Agreement is executed, including but not limited to any alleged violation of Title 21, United States Code.





Section 331(a) and (d) (Introduction into Interstate Commerce of Misbranded or Unapproved Drugs), and Title 21, United States Code, Section 952 (Importation of Controlled Substances).

10. The Government further agrees to release the Company and its successors and assigns (the "Related Parties") from any civil, administrative or equitable claims the Government has or may have against the Company or the Related Parties of which the Government is currently aware that relate to (i) the conduct described in paragraph 2 or (ii) any other conduct relating to the advertisement or sale of prescription drugs known to the Government or that was the subject matter of the investigation by the Government that led to this Agreement as of the date this Agreement is executed. The Company expressly understands that the protections provided under this Agreement shall not apply to any acquirer or successor entities unless and until such acquirer or successor formally adopts and executes this Agreement.

11. It is understood that this Agreement is binding on the United States Attorney's Office for the District of Rhode Island, the United States Attorneys' Offices for each of the other ninety-three judicial districts of the United States and the United States Department of Justice, but that this Agreement does not bind any other federal agencies, or any state or local authorities. Any reference in this Agreement to an obligation of the "Government" shall be binding on all of the government entities described in this paragraph.

#### **Additional Obligations**

12. It is understood that if, in the two years following execution of this Agreement, the Government determines, in its sole discretion, that the Company: (a) has deliberately given false, incomplete, or misleading testimony or information in the investigation that led to this Agreement; (b) has committed any criminal conduct relating to the advertisement or sale of prescription drugs through AdWords and constituting a felony under United States law after the



date of this Agreement; or (c) has otherwise deliberately violated any provision of this Agreement, the Company shall, in the sole discretion of the Government, be subject to prosecution for any Federal criminal violation of which the Government has knowledge, including a prosecution based upon the conduct specified in paragraph 2 herein. Any such prosecutions that are not time-barred by the applicable statute of limitations on the date of the execution of this Agreement may be commenced against the Company. In addition, the Company agrees to toll, and to exclude from any calculation of time, the running of the criminal statute of limitations for any criminal conduct relating to the advertisement or sale of prescription drugs through AdWords and constituting a felony under United States law for two years from the date of execution of this Agreement. By this Agreement, the Company expressly intends to and hereby does waive its rights to make a claim premised upon the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay. Such waivers are knowing, voluntary, and in express reliance upon the advice of the Company's counsel. It is further understood that if, within two years following execution of this Agreement, the Government determines, in its sole discretion, that the Company: (i) has deliberately given false, incomplete, or misleading testimony or information in the investigation that led to this Agreement; (ii) has committed any criminal conduct relating to the advertisement or sale of prescription drugs through AdWords and constituting a felony under United States law after the date of this Agreement; or (iii) has otherwise deliberately violated any provision of this Agreement, then: (a) any statements made or testimony given by any then current officer, agent or employee of the Company before a grand jury or other tribunal, whether prior or subsequent to the signing of this Agreement, and any leads from such statements or testimony, shall be admissible in evidence in any criminal proceeding hereinafter brought against the Company; (b)

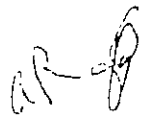


the facts set forth in the Statement of Relevant Facts section of this Agreement shall be admissible in evidence in any federal criminal proceeding hereinafter brought against the Company; and (c) the Company shall assert no claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that such statements or any leads therefrom should be suppressed or otherwise excluded from evidence. It is the intent of this Agreement to waive all rights in the foregoing respects.

13. It is understood that for a period of two years following the execution of this Agreement, the Company shall fully cooperate with the Government and any federal law enforcement agency designated by the Government and provide the Government, upon request and appropriate legal process if otherwise required by law, all non-privileged information, documents, records, or other tangible evidence about which the Government or any designated federal law enforcement agency inquires in connection with the Company's conduct relating to the advertisement and sale of prescription drugs through AdWords. Nothing in this Agreement shall be construed as a waiver by the Company of any protections of the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or protection with respect to any information, documents or records requested by the Government.

#### **Public Statements**

14. The Company, through its attorneys, agents, officers, directors or employees who have authority to speak, and are speaking on behalf of the Company, shall not make any public statement contradicting any part of paragraph 2. If the Government notifies the Company that it has preliminarily determined, in its sole discretion, that the Company has made any such contradictory statement, the Company may avoid a finding of breach of this Agreement by



repudiating such statement, in a manner satisfactory to the Government, both to the recipients of such statement and to the Government within 48 hours after receipt of notice from the Government. The Company consents to the public release by the Government of any such repudiation. Consistent with the above, the Company may avail itself of any legal or factual arguments available to it in defending any litigation brought, or in any investigation or proceeding, by the Company or any party other than the Government, as long as doing so does not otherwise violate any term of this Agreement. This paragraph is not intended to apply to any statement made by any individual in the course of any actual or contemplated criminal, regulatory or administrative proceeding or civil case initiated by any governmental or private party against such individual.

#### **The Government's Discretion**

15. The Company agrees that it is within the sole discretion of the Government to determine whether there has been a deliberate violation of this Agreement. The Company understands and agrees that the exercise of discretion by the Government under this Agreement is not reviewable by any court. In the event that the Government preliminarily determines that the Company has deliberately violated this Agreement, the Government shall provide written notice to the Company of that preliminary determination and shall provide the Company with thirty calendar days from the date of that written notice in which to make a presentation to the Government to demonstrate that no deliberate breach has occurred, or to the extent applicable, that the breach has been cured. The Government shall thereafter provide written notice to the Company of its final determination regarding whether a deliberate breach has occurred and has not been cured.

#### **Limits of the Agreement**

16. It is understood that this Agreement does not bind any prosecuting authority other than



the Government. However, if requested by the Company or its attorneys, the Government will bring to the attention of any other prosecuting authorities the existence of this Agreement and the status of the Company's compliance with its obligations under this Agreement.


17. If requested by the Company or its attorneys, the Government agrees to bring to the attention of governmental contracting authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of the Company's cooperation and remediation. By agreeing to provide this information to governmental contracting authorities, the Government is not agreeing to advocate on the Company's behalf, but rather to provide facts to be evaluated independently by the government contracting authorities.

#### **Public Filing**

18. The Company and the Government agree that this Agreement will be disclosed to the public.

#### **Integration Clause**

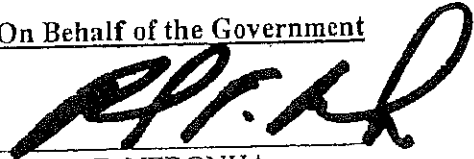
19. This Agreement sets forth all the terms of the agreement between the Company and the Government. This Agreement supersedes all prior, if any, understandings, promises and/or conditions between the Company and the Government. No modifications or additions to this Agreement shall be valid unless they are in writing and signed by all of the parties.

AR 

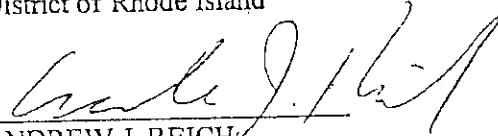
20. The undersigned represents and warrants to the Government that he/she has the authority to enter into this Agreement on behalf of the Company.

On Behalf of the Government

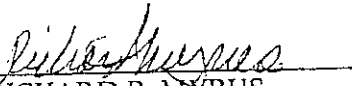
8/19/11  
DATE

  
PETER F. NERONHA  
United States Attorney  
District of Rhode Island

8-19-11  
DATE


By:   
ANDREW J. REICH  
Senior Litigation Counsel

8/19/11  
DATE


By:   
RICHARD B. MYRUS  
Assistant United States Attorney

On Behalf of Google Inc.

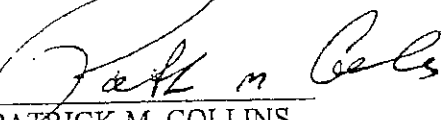
8/17/11  
DATE

By:   
KENT WALKER  
Senior Vice President & General Counsel  
Google Inc.

8/19/11  
DATE

By:   
KAREN F. GREEN  
Wilmer Cutler Pickering Hale and Dorr LLP  
Counsel to Google Inc.

8/18/11  
DATE

By:   
PATRICK M. COLLINS  
Perkins Coie LLP  
Counsel to Google Inc.

AR



# OFFICES OF THE UNITED STATES ATTORNEYS

SEARCH THE SITE

- ABOUT
- EOUSA
- PRIORITY AREAS
- RESOURCES
- TRAINING
- CAREER CENTER

Home » Priority Areas » Cybercrime » Major Achievements in the Courtroom: United States v. Google

## United States v. Google

by Peter F. Neronha  
U.S. Attorney for the District of Rhode Island

On August 19, 2011, Google Inc. entered into a non-prosecution agreement (NPA) with the United States Attorney's Office for the District of Rhode Island. This agreement resolved the government's long-running investigation into Google's advertising practices concerning online pharmacies. Under the terms of the NPA, Google agreed to forfeit \$500 million to the United States for allowing Canadian online pharmacies to target U.S. consumers with prescription drug advertisements. The Google NPA is significant not only because of the amount of the financial forfeiture by Google and the extensive remedial steps that the NPA obligates Google to take; it also highlights the threat that imported, unregulated prescription drugs pose to U.S. consumers. In addition, the Google NPA marks the first time that a search engine has acknowledged responsibility for facilitating the improper conduct of its advertisers.



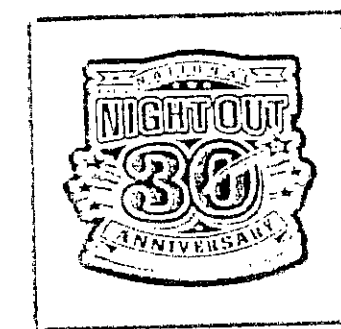
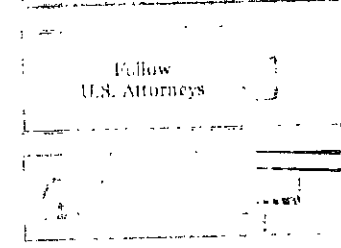
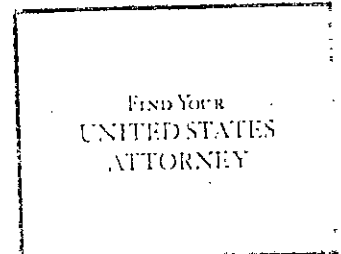
Peter F. Neronha, U.S. Attorney for the District of Rhode Island

The Google NPA was the culmination of a multi-year investigation by the Rhode Island Task Force of the Food and Drug Administration's (FDA) Office of Criminal Investigations. The investigation had its origins in a separate, multimillion dollar financial fraud prosecution unrelated to Google in which the main target fled to Mexico. While a fugitive, the target began to advertise the unlawful sale of drugs through Google's AdWords program. After the United States Secret Service apprehended the target in Mexico and returned him to the United States, he cooperated with law enforcement and provided information about his use of the Ad Words program. During the ensuing investigation of Google, the government created a number of undercover websites that advertised the unlawful sale of controlled and non-controlled substances through AdWords.

The subsequent investigation established, and Google acknowledged in the non-prosecution agreement, that beginning in 2003 Google was aware that in almost all instances it was illegal for pharmacies to ship controlled and non-controlled prescription drugs into the United States from Canada. Google further acknowledged that it was aware that importation of prescription drugs to consumers in the United States is unlawful, because these drugs are not FDA-approved and therefore may not meet the FDA's labeling requirements; may not have been manufactured, stored, and distributed under proper conditions; and may not have been dispensed pursuant to a valid prescription. In the NPA, Google also conceded that Canadian pharmacies that ship prescription drugs to U.S. residents are not subject to Canadian regulatory authority, and many sell drugs obtained from countries other than Canada, which lack adequate pharmacy regulations.

In addition to admitting that it was aware of the illegality of importing prescription drugs, Google conceded in the NPA that it was on notice that online Canadian pharmacies were in fact advertising prescription drugs to Google users in the United States through Google's AdWords "geo-targeting" feature. Finally, Google acknowledged that it provided customer support to some of these Canadian online pharmacy advertisers to assist them in placing and optimizing the AdWords advertisements that targeted U.S. consumers.

Prosecuting an internet search engine for aiding and abetting the illegal conduct of its users poses a substantial challenge. Generally speaking, the government must establish that the search engine possessed the requisite combination of knowledge and intent regarding the underlying criminal endeavor and did not act merely as an unwitting, neutral conduit for the principal defendant's illegal activities. The Google NPA signals that, where evidence can be developed that a search engine knowingly and actively assisted advertisers to promote improper conduct, the search engine can be held accountable as an accomplice.



### DEPARTMENT OF JUSTICE ACTION CENTER

- Report a Crime
- Job Opportunities
- Report Waste, Fraud, Abuse or Misconduct to the Inspector General
- Crime Victims' Rights Ombudsman
- Request Records Through FOIA
- Identify Our Most Wanted Fugitives
- Report and Identify Missing Persons
- Contact Us

UNITED STATES ATTORNEYS

JUSTICE.GOV/USAO

ATTACHMENT B



AFFIDAVIT OF LUKE SAMPLE

I, Luke Sample, being duly sworn, attest as follows:

1. I am a resident of Cape Girardeau, Missouri and above the age of 18. I am a defendant in a lawsuit, filed by a number of motion picture studios and pending in federal court in New York, asserting claims for copyright infringement and unfair competition. I have personal knowledge of the facts set forth in this affidavit.

2. Around June 2003, my business partner Brandon Drury and I began operating a website business that offered customers assistance in locating and downloading films, television shows, music, and software off of the Internet. We operated this business until 2005, when we shut it down after we were named as defendants in the lawsuit mentioned above. We operated this business through websites located at the following URLs: <www.thedownloadplace.com>, <www.easydownloadcenter.com>, <www.directdownloader.com>, and <www.themp3place.com>. We nominally operated these businesses through two companies Drury and I owned, Internet Billers LLC and LSDB Enterprises.

3. We operated all of these websites according to the same basic model. The business was one where, for a fee, we would provide customers with one of the popular file-sharing programs through which they could download copies of films, music, software, and photos from the Internet.

4. We designed our websites and described our services in a way that we believed potential customers would find appealing. For example, we added

cover art from motion pictures and “drop down” menus listing films. We also offered step-by-step instructions on how to use the software, which we called “Download Manager,” and how to “burn” onto blank DVDs copies of the films, television shows, and other files these customers had downloaded. The description of our business that appears in the lawsuit is accurate, and the pages from our websites that are attached to the lawsuit are accurate copies of what the websites looked like at that time.

5. Customers who signed up for the download service we offered had to pay a “membership” fee. They could pay either \$29.95 for a one-year membership or \$39.95 for a “lifetime” membership. We estimate that we signed up more than 30,000 customers during the period we operated this business.

6. In addition to offering a “help” page, we also offered our customers on-line support, that is, they would send us email requests for assistance. Either Brandon, myself, or one of our employees would respond. We received requests for assistance in helping our customers find, download, play, or burn copies of films or television programs they had located on the Internet.

7. Also, for an additional \$14.95, our customers could purchase another software package called “Pro Movie Pack.” Films or television shows that are widely available over the Internet typically are pirated copies that others have “uploaded” after copying them off of DVDs. Such unauthorized copies quite often are made in different file formats. The purpose of this extra software package we sold was to allow our customers who were looking to download such pirated copies

to view these copies regardless of the file format used by the person who created and uploaded the copy.

8. The design of our websites was basically intended to capture two types of customers. First, we wanted to give our site the “look and feel” of a website that was an authorized source of film, television, music, and software downloads. Presumably there are Internet users out there who are not aware, for example, that films that are still playing in movie theaters are not typically available for download from the Internet. The statements on our website to the effect that the service we were offering was legal were intended to reassure such customers. Second, for those other Internet users who are aware that downloading these files is not legal, we wanted to offer (for a fee) a simpler way to find and download those files, along with our assistance if they needed it. The type of file-sharing software that we were supplying was available for free elsewhere, but we believed that we provided additional value that would induce these Internet users to subscribe to our service.

9. During the time we were operating this business, there were many, many other websites offering the identical service. In order to be successful, we needed to find ways to get customers to visit our websites and, hopefully, purchase memberships. In the terminology used by Internet businesses, we needed to find a way to “drive traffic” to our downloading websites.

10. A common method for getting traffic to your website—perhaps the most common method for this type of Internet business—is to advertise on the

Google search engine using the Google "AdWords" program. With this service, a business owner can have "sponsored link" advertisements for its website appear on the right side of the Google search engine page, in response to particular search terms a Google user might enter. Specifically, from the perspective of an Internet business owner, the AdWords program works this way. You go to the Google website and set up an AdWords account. To do this you must supply certain identifying information, and you also must provide a credit card number. You supply text for the advertisement along with the URL (or website address) that you want to appear on the advertisement, so that if and when the advertisement is "clicked," the Google user is taken to your website. To get the sponsored link to appear, you provide Google with a list of search terms or "keywords" that, when entered by a Google user, will prompt your advertisement to appear. Since you are competing with other Internet businesses for placement of your advertisement, you need to make a bid on how much you are willing to pay Google each time a Google user who searches a particular term clicks on your sponsored link. In effect, Google auctions off search terms or keywords to the highest bidder among Internet businesses who want their "sponsored links" to appear in front of Google users who enter those keywords into the Google search engine.

11. We started using the Google AdWords program for our downloading business in the summer of 2003. For example, we created a sponsored link advertisement for the <thedownloadplace.com> that read: "Freaky Friday - free. Join now, movies still in theaters, dvd movies, new releases, adult." We then

entered a series keywords that we wanted to bid on, which when typed into Google would prompt our advertisement to appear, including “Freaky Friday free movie,” and “Freaky Friday free movie download.” As these keywords make clear, we were looking to capture two types of Google users: those who were looking for a legal, authorized source of film downloads, and those who were looking for a good way to find pirated copies of films and television shows

12. At least initially, all of our dealings with Google regarding our AdWords advertising were through automated software Google uses. Among other things, the Google software suggested keywords for us to use. Beginning in April 2004, however, we began communicating with and receiving assistance from individual Google employees on how to structure our AdWords advertising. I contacted Google at that time to complain that while we were paying Google large amounts for sponsored links—more than \$150,000—we were unhappy with the “conversion rate.” That is, we were paying Google each time a Google user clicked on one of our sponsored links, but the frequency with which those users purchased a “membership” at one of our websites was low. At that time we communicated with a Google employee named Katie. She suggested that we use more targeted keywords than we had been using. For example, she suggested combining “free music” and “listen” into “listen to free music.”

13. We acted on Google’s suggestions and revamped our AdWords advertising in the spring of 2004. To implement Katie’s suggestion about targeted keywords, we created a single new campaign to use for all of our sponsored links

geared toward specific movies. Specifically, in this campaign, we created sponsored links referencing the following films: Anchorman, Bourne Supremacy, Catwoman, Fahrenheit 911, Hellboy, I Robot, Kill Bill, Shrek II, and Spiderman 2. The ad text for these links told potential customers that they could get access to "movies still in theaters," "new releases," and "DVD." The keywords associated with these advertisements combined the title of the film with "download" (e.g. "spiderman 2 download"). Later that year, we created another AdWords campaign targeted at television programs and referencing Friends and The Simpsons.

14. In the summer of that year, our monthly spending for Google advertising was in excess of \$20,000. In the fall, apparently due to the amount we were spending, Google assigned employees to be our personal account representatives.

15. Julio Herrera was the first Google representative assigned to our account. In the fall of 2004, I had email communications with him, and also several telephone conversations with him. He expressed familiarity with our business and the content of our websites, as well as the advertisements and keywords we had been bidding on, including advertisements and keywords utilizing the names of specific films. Herrera's assistance to us included monitoring our credit card limits; in fact, we supplied him with account information for other credit cards, so that, when one card "maxed out," he could replace it with another so that our AdWords programs could continue.



**A Communication from the Chief Legal Officers of the Following States:**

**Hawaii \* Mississippi \* Virginia**

**February 13, 2013**

Dear Search Engines,

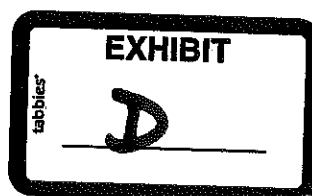
Thank you for your attendance at the National Association of Attorneys General's Intellectual Property Committee Stakeholder Discussion on November 28 in Ft. Lauderdale. We believe the meeting was a critical first step in addressing intellectual property crimes in the global online marketplace.

As we discussed, attorneys general are indeed concerned about the infringing activities. In addition to the economic impact, the sale of counterfeit products clearly places the consumers' health and safety at risk. Immigration and Custom Enforcement Director John Morton's comments provided chilling examples of the harm that can be inflicted by such products.

We are therefore interested in achieving a consensus on voluntary action that members of the e-commerce community can take to eliminate or significantly reduce infringing activities, with the caveat that to the extent possible, the voluntary action should not be overly burdensome, either technically or financially. To that end, we are intending to have a conference call with each sector to obtain feedback from the November meeting, as well as discuss the voluntary action and the next steps.

As a prelude to the conference call, we are interested in receiving your written comments on the following:

- Specific details of how the takedown process works.
- A detailed explanation of the use of DMCA notices or other factors to alter search results, including statistics demonstrating how rankings have been altered as a result of removal notices.
- How auto complete features can be altered to reduce or eliminate directing consumers to counterfeit product sites, as well as illegal and harmful sites, such as the search "buy oxycodone online without a prescription" mentioned at the meeting.
- How licensing services have helped or can help reduce infringing activities.
- Whether "whole site" removal can be used in cases of repeat offenders.
- Legal issues posed by altering or eliminating direct access by consumers to counterfeit product sites and illegal and harmful sites, as well as "whole site" removal.
- What role search engines have played in curbing the sale of counterfeit pharmaceuticals, medical devices, and other products posing significant consumer health and safety threats.



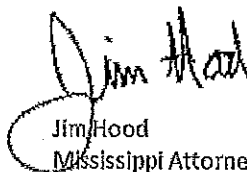
One of our staff members will be following up on this letter to obtain your comments on the items listed above.

Thank you in advance for your cooperation and assistance.

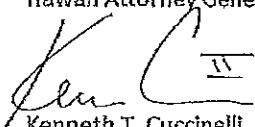
Sincerely,



David M. Louie  
Hawaii Attorney General



Jim Hood  
Mississippi Attorney General



Kenneth T. Cuccinelli  
Virginia Attorney General



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

Google, Inc.

*Plaintiff*

v.

Jim Hood, Attorney General of the  
State of Mississippi, in his official  
capacity

*Defendant*

No. 3:14-cv-981-HTW-LRA

---

**DECLARATION OF BRIDGETTE WIGGINS**

---

I, Bridgette Wiggins, hereby declare as follows:

1. I am a Special Assistant Attorney General with the Mississippi Attorney General's Office, Consumer Protection Division. I submit this Declaration in support of Attorney General Jim Hood's opposition to Plaintiff Google, Inc.'s Motion for Temporary Restraining Order and Preliminary Injunction.

2. In 2013, the Mississippi Attorney General's Office, Consumer Protection Division, entered into two (2) separate agreements with Google whereby Google agreed not to engage in certain conduct. These two (2) agreements are attached to this Declaration.

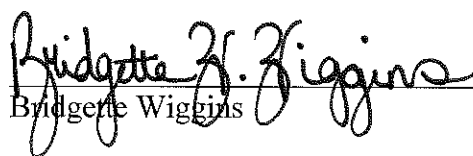
3. Attached hereto as Exhibit 1 is a true and correct copy of the Assurance of Voluntary Agreement dated March 8, 2013 entered into between Google and thirty-seven (37) states, including the State of Mississippi.



4. Attached hereto as Exhibit 2 is a true and correct copy of the Assurance of Voluntary Agreement dated November 8, 2013 entered into between Google and thirty-seven (37) states and the District of Columbia, including the State of Mississippi.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Executed on January 12<sup>th</sup> 2015, Jackson, Mississippi.

  
Bridgette Wiggins

CS-13-01033

## ASSURANCE OF VOLUNTARY COMPLIANCE

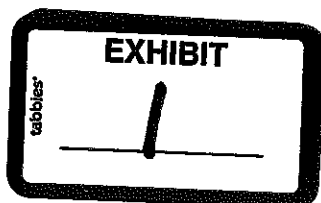
This Assurance of Voluntary Compliance ("Assurance") is entered into by the Attorneys General of the States of Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Washington (hereinafter "the Attorneys General")<sup>1</sup> and Google Inc. ("Google" or the "Company").

### I. REPRESENTATIONS BY GOOGLE

1. Google outfitted its Street View cars with commercially available antennae and freely available, open-source software called Kismet, between 2008 and May 2010, to drive down public streets and collect WiFi network identification information for use in offering "location aware" or geolocation services.
2. In addition to the network identification information, Google also collected and stored Data Frames which were sent over unencrypted WiFi networks if the network was broadcasting as the Street View car drove by.
3. By cycling through WiFi channels five times per second, the software limited any single data-acquisition event to two-tenths of one second. The low bit rate for transmission of such Data Frames, as well as the variable speed and direction of the vehicles, further resulted in limited, episodic collection of Data Frames.
4. Data Frames collected under the 802.11 standard consist of (1) a header, containing network identifying information (such as a MAC Address or SSID) and (2) a

---

<sup>1</sup> For ease of reference purposes, this entire group will be referred to collectively herein as the "Attorneys General" or individually as "Attorney General." Such designations, however, as they pertain to: Connecticut, shall refer to the Commissioner of Consumer Protection; and Hawaii, shall refer to the Executive Director of the State of Hawaii's Office of Consumer Protection.



body that may contain the content of communications being transmitted over the network (such content referred to as the "Payload Data").

5. The Payload Data may include URLs of requested Web pages, partial or complete email communications, or any other information, including any confidential or private information being transmitted to or from the network user.

6. Notwithstanding the variables affecting the collection of Data Frames, Google understands from investigations conducted by foreign regulators that in some cases, a full email, complete email address, URLs, or other private information was collected.

7. The Payload Data collected was stored in binary, machine-readable form, and remained unparsed by Google.

8. Google stored the Payload Data on hard drives in vehicles and its servers until May 2010, and thereafter Google undertook efforts to segregate and secure such Payload Data for safekeeping.

9. The Payload Data was not and will not be used in any product or service, nor has the Payload Data collected in the United States been disclosed to any third party.

10. The Payload Data collection occurred without the knowledge of Google executives.

11. Upon discovery of the Payload Data collection, Google:

- a. terminated the collection of the Payload Data;
- b. segregated the Payload Data from Google File Servers to preservation disks;
- c. undertook efforts to secure the Payload Data; and
- d. disabled the equipment and software on the Street View vehicle that was used for collection of Payload Data and WiFi Network Information.

12. Google retained an independent expert to confirm: 1) what data was collected and in what manner; 2) that the Payload Data had been segregated and secured; and 3) that the equipment and software on the Street View vehicles used to collect the Payload Data and WiFi Network Information had been removed or deleted.

13. Google continued and updated training of its employees regarding Google's privacy principles and Code of Conduct.

14. Google enhanced the core training for engineers with a particular focus on privacy and security of data, including a security awareness program.

15. Google provided an expert report to the Executive Committee of the Multistate Working Group (the "MSEC") and otherwise responded to the Attorneys General inquiries.

16. Google is implementing a privacy program (the "Privacy Program") that includes or will include within six months from the Effective Date of this Assurance unless a different timeframe is specifically noted herein:

- a. the delivery of this Assurance to the Company's executive management within 30 days of the Effective Date of this Assurance;
- b. the delivery of this Assurance to employees having supervisory responsibilities for implementation of the Privacy Program within 30 days of the Effective Date of this Assurance;
- c. the delivery of this Assurance to the Company's product counsel and attorneys whose responsibilities include providing advice in regard to the privacy of consumer information within 30 days of the Effective Date of this Assurance;
- d. the designation of an employee or employees to coordinate and be responsible for the Privacy Program;
- e. regular employee training that is designed to:

- (1) inform new employees about the importance of user privacy and their role in helping maintain it;
  - (2) offer further privacy education to Google employees with responsibilities materially relating to the privacy or confidentiality of user data;
  - (3) make privacy certification programs available to key employees, such as the Certified Information Privacy Professional Certification ("CIPP") or similar certifications demonstrating mastery of a widely recognized body of privacy knowledge; and
  - (4) provide in-house counsel privacy awareness refresher training for counsel advising product teams.
- f. holding an annual "Privacy Week" event, which will be promoted across Google offices and which will include various presentations by internal and external subject matter experts of varied backgrounds relating to privacy and information risk management;
  - g. the provision of periodic updates, posted using applicable internal communications channels, by individuals responsible for the operation of the Privacy Program, describing key material developments in user privacy, including, for example, descriptions of key technical, legal, or policy developments relating to user privacy;
  - h. taking reasonable steps designed to select and retain third-party service providers that are capable of appropriately protecting the privacy of Google users' personal information;
  - i. regular assessments of the effectiveness of the Privacy Program's controls and the consideration of updates to such controls based on those assessments; and

- j. the development and maintenance of policies and procedures for responding to identified events involving the unauthorized collection, use or disclosure of user data.

## II. PROHIBITIVE AND AFFIRMATIVE CONDUCT

Google and its successors and assigns:

1. Shall not collect and store for use in any product or service Payload Data via Street View vehicles, except with notice and consent.
2. Shall, for a period of ten years from the Effective Date of this Assurance, maintain the Privacy Program described in Paragraph 16 of Section I above.
3. Shall provide the Attorneys General a copy of the initial and biennial public assessments and reports ("Assessments") conducted pursuant to Part IV of the Consent Decree with the Federal Trade Commission (Docket No. C-4336) (the "Buzz Consent Decree"), without regard to further amendments, and provided thereunder to the Federal Trade Commission.
4. Shall delete or destroy, as soon as practicable and not inconsistent with any current, pending or future litigation holds, preservation orders, preservation letters, or preservation requests of any kind, all Payload Data it collected in the United States of which Google has possession or control (such deletion or destruction is referred to hereinafter as the "Payload Data Deletion"). The Payload Data Deletion shall not occur while any preservation order, preservation letter, or preservation request of any kind is pending, or a preservation obligation otherwise exists or is pending. The Payload Data Deletion shall constitute either or both electronic deletion or physical destruction and be sufficient to ensure that the Payload Data are rendered reasonably unrecoverable and unreadable. Within five (5) days after such Payload Data Deletion, Google shall provide the Attorneys General with a certification that the Payload Data Deletion is complete.
5. Shall design and implement, after consultation with the MSEC, a Public Service Campaign (the "PSC") reasonably designed to educate consumers about steps they

can take to better secure their personal information while using wireless networks. The PSC will begin no later than four (4) months after the Effective Date of this Assurance and at a minimum will include the following components:

- Develop and promote a video on YouTube that explains how users can encrypt their wireless networks (the "how-to video"). This how-to-video shall remain on YouTube for at least two years from the date the PSC begins and at a minimum should demonstrate the configuration of wireless security modes: WEP (Wired Encryption Protocol), WPA-Personal (Wireless Protected Access), WPA2-Personal (Wireless Protected Access supporting AES), and WPA-Enterprise & WPA2-Enterprise (Wireless Protected Access supporting AES using RADIUS server authentication).
- Write a blog post for the Google Public Policy Blog explaining the value of encrypting a wireless network, directing users to links to how-to videos on YouTube. This blog post shall remain on the Google Public Policy blog for at least two years from the date the blog post is first published.
- Run at least one half-page educational newspaper ad in a newspaper of national circulation and at least one half-page educational ad in the newspaper with the greatest circulation rate in each State.
- Incorporate a discussion on WiFi security in an educational pamphlet about online safety and privacy. This pamphlet shall be made available to the public for at least two years from the date of its first dissemination or publication.
- Run daily online ads promoting the how-to video for at least two years from the date the campaign begins.

### **III. PAYMENT TO THE STATES**

Google shall pay \$7,000,000.00 (Seven Million Dollars) to be divided and paid by Google directly to each of the Attorneys General in an amount to be designated by and



in the sole discretion of the MSEC. Each of the Attorneys General agrees that the MSEC has the authority to designate such amount to be paid by Google to each Attorney General and to provide Google with instructions for the payments to be distributed under this paragraph. Payment shall be made no later than thirty (30) days after the Effective Date and receipt of payment instructions by Google from the MSEC except, where state law requires judicial or other approval of the Assurance, payment shall be made no later than thirty (30) days after notice from an Attorney General that such final approval for the Assurance has been secured.

Said payment shall be used by the Attorneys General for such purposes that may include, but are not limited to civil penalties, attorneys' fees and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection law enforcement fund, including future consumer protection or privacy enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of each Attorney General.

#### IV. RELEASE

By execution of this Assurance, and following a full and complete payment to an Attorney General, that Attorney General, on behalf of his or her State, releases and forever discharges Google and its affiliates, and their respective directors, officers, employees, agents, representatives, successors, predecessors, and assigns ("Released Parties"), from the following: all civil claims, causes of action, damages, restitution, fines, costs, and penalties that the Attorney General could have asserted against the Released Parties under the consumer protection statutes listed on Attachment A based on Google's collection of Payload Data through use of its Street View vehicles prior to the date of this Assurance, whether known or unknown, foreseen or unforeseen, as described in more detail in Section I of this Assurance (collectively, the "Released Claims").

Released Claims do not include claims for violation of this Assurance or claims pursuant to any other statute or regulation (including, without limitation, antitrust laws, environmental laws, tax laws, credit repair/service organization laws, buying club laws, and criminal statutes and codes), nor do they include actions or proceedings brought pursuant to State consumer protection laws or statutes alleging violations that are not addressed by the terms of this Assurance.

#### V. NO ADMISSIONS

This Assurance is for settlement purposes only, and to the fullest extent permitted by law neither the fact of, nor any provision contained in, this Assurance nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Released Parties or admission by any Released Parties of the validity or lack thereof of any claim, allegation, or defense asserted in any other action.

#### VI. GENERAL PROVISIONS

1. Any failure of any State to exercise any right under this Assurance shall not constitute a waiver of any rights hereunder of that State or any other State.
2. Counsel for Google, by and on behalf of Google, and the undersigned representatives of each of the Attorneys General, by and on behalf of each Attorney General, hereby represent that each is authorized to enter into and execute this Assurance.
3. Google is and has been represented by legal counsel and has been advised by its legal counsel of the meaning and effect of this Assurance.
4. Nothing in this Assurance shall be construed as relieving Google of its obligations to comply with all state and federal laws, regulations, and rules, or as

granting permission to engage in any acts or practices prohibited by such law, regulation, or rule.

5. The Attorneys General have relied on all of the representations and warranties set forth in this Assurance and if any representation is proved false or misleading in any material respect, the Attorneys General have the right to seek any relief or remedy afforded by law or equity in their respective states.

6. The Attorneys General have not approved any of Google's business practices, past, current or future, and nothing contained herein shall be interpreted to mean otherwise.

7. This Assurance may be enforced only by the parties hereto. Nothing in this Assurance shall provide any rights or permit any person or entity not a party hereto, including any state or attorney general not a party hereto, to enforce any provision of this Assurance. No person or entity not a signatory hereto is a third party beneficiary of this Assurance. Nothing in this Assurance shall be construed to affect, limit, alter or assist any private right of action that a consumer may hold against Google.

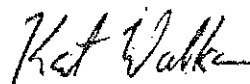
8. This Assurance may be executed in counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts may be delivered by facsimile or electronic transmission or a copy thereof with the intent that it or they shall constitute an original counterpart hereof.

9. The Attorney General of Connecticut, which for purposes of this paragraph shall mean both Commissioner of Consumer Protection and the Connecticut Attorney General, on behalf of the MSEC and the Attorneys General, is the designated representative to receive any report, notice or consultation required under paragraphs 3, 4 and 5 of Section II of this Assurance. Google agrees that the Attorney General of Connecticut is authorized to share any materials received from Google with the Attorneys General.

10. This Assurance shall become effective when all Attorneys General have delivered a counterpart signature page to Google (the "Effective Date").

WHEREFORE, the following signatures are affixed hereto:

GOOGLE INC.



---

KENT WALKER  
Senior Vice President & General Counsel  
Google Inc.

Date: 3/8/13

JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI

BY: Meredith M. Aldridge

MEREDITH M. ALDRIDGE

BRIDGETTE W. WIGGINS

SPECIAL ASSISTANT ATTORNEYS GENERAL

Office of the Attorney General

Post Office Box 220

Jackson, Mississippi 39205

Telephone No. (601) 359-3680

**ATTACHMENT A**

<b>State</b>	<b>Consumer Protection Statute</b>
Alaska	Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Stat. §§ 45.50.471 to 45.50.561
Arizona	Arizona Consumer Fraud Act, Ariz. Rev. Stat. Ann. §§ 44-1521, <i>et seq.</i>
Arkansas	Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101, <i>et seq.</i>
California	Cal. Bus & Prof. Code §§17200, <i>et seq.</i>
Colorado	Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101, <i>et seq.</i>
Connecticut	Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a, <i>et seq.</i>
Delaware	Delaware Consumer Fraud Act, Del. Code Ann. tit. 6, §§ 2511 to 2527
D.C.	District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901, <i>et seq.</i> (2001)
Florida	Florida Deceptive and Unfair Trade Practices Act, Part II, Chapter 501, Fla. Stat. Ann §§ 501.201 <i>et seq.</i>
Hawaii	Haw. Rev. Stat. §§ 480-1, <i>et seq.</i> ; Hawaii Unfair and Deceptive Trade Practices Act, Haw. Rev. Stat. §§ 481A-1, <i>et seq.</i>
Illinois	Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1, <i>et seq.</i>
Iowa	Iowa Consumer Fraud Act, Iowa Code § 714.16
Kansas	Kan. Stat. Ann. §§ 50-623, <i>et seq.</i>
Kentucky	Kentucky Consumer Protection Act, Ken. Rev. Stat. Ann § 367.170
Louisiana	Louisiana Unfair Trade Practices and Consumer Protection Act, La. Rev. Stat. Ann. §§ 51:1401, <i>et seq.</i>
Maine	The Maine Unfair Trade Practices Act, Me. Rev. Stat. Ann. tit. 5, § 207

State	Consumer Protection Statute
Maryland	Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 through 13-501 (2005 Repl. Vol. and 2011 Supp.)
Massachusetts	Mass. Gen. Law ch. 93A
Michigan	Michigan Consumer Protection Act, Mich. Comp. Laws §§ 445.901, <i>et seq.</i>
Mississippi	Miss. Code Ann §§ 75-24-1, <i>et seq.</i>
Missouri	Mo. Rev. Stat. § 407.020
Montana	Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code Ann. §§ 30-14-101, <i>et seq.</i>
Nebraska	Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, <i>et seq.</i> and Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§ 87-301, <i>et seq.</i>
Nevada	Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598.0903, <i>et seq.</i>
New Jersey	New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, <i>et seq.</i>
New Mexico	New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57-12-1, <i>et seq.</i>
New York	N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law §§ 349 and 350
North Carolina	North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, <i>et seq.</i>
North Dakota	Unlawful Sales or Advertising Practices, N.D. Cent. Code §§ 51-15-01, <i>et seq.</i>
Ohio	Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §§ 1345.01, <i>et seq.</i>
Oklahoma	Oklahoma Consumer Protection Act, Ok. Stat. tit. 15, §§ 751, <i>et seq.</i> (2011)
Oregon	Oregon Unlawful Trade Practices Act, Or. Rev. Stat. §§ 646.605, <i>et seq.</i>
Rhode Island	Deceptive Trade Practices Act, R.I. Gen. Laws Ann. §§ 6-

State	Consumer Protection Statute
	13.1-1, <i>et seq.</i>
South Carolina	South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, <i>et seq.</i>
Tennessee	Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, <i>et seq.</i>
Texas	Texas Deceptive Trade Practices--Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41, <i>et seq.</i>
Vermont	Vermont Consumer Protection Act, Vt. Stat. Ann. tit. 9, §§ 2451, <i>et seq.</i>
Virginia	Virginia Consumer Protection Act, Va. Code Ann. §§ 59.1-196, <i>et seq.</i>
Washington	Washington Consumer Protection Act, Wash. Rev. Code Ann. §§ 19.86, <i>et seq.</i>



**GOOGLE STREET VIEW SIGN-ON**

The State of Mississippi agrees to participate in the proposed Assurance of Voluntary Compliance resolving the Google Street View multistate investigation and agrees to the monetary distribution proposed by the Executive Committee on January 11, 2013.

Meredith Aldridge  
Signature

Special Assistant Attorney General  
Position

2/20/2013  
Date

**Settlement Process Contact Information:**

Contact Person: Meredith Aldridge

Contact Phone Number: 601.359.4204

Contact Email Address: maldr@ago.state.ms.us

Alternate contact person, phone number and email address if contact is unavailable:

Bridgette Wiggins, 601.359.4279, bwill@ago.state.ms.us

**Payment Information**

Name of account to make check payable to, or complete wiring information and instructions:

Attorney General Contingent Fund

Complete mailing address for Federal Express, including name of person to address package to:

Walter Sillers Building, Suite 1200, 550 High Street, Jackson, MS 39201

**IN THE MATTER OF**

\*

**GOOGLE INC.**

\*

\*

\*

\*

**ASSURANCE OF VOLUNTARY COMPLIANCE**

This Assurance of Voluntary Compliance (“Assurance”)<sup>1</sup> is entered into by the Attorneys General of the States of Alabama, Arizona, Arkansas, California, Connecticut<sup>2</sup>, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin, as well as the District of Columbia and Google Inc. (hereinafter “Google”), without trial or adjudication on any issue of fact or law, and without admission of any wrongdoing or violation of law.

**I. DEFINITIONS**

For the purposes of this Assurance, the following definitions shall apply:

1. “Any” shall be construed as synonymous with “every” and “all” and shall be all-inclusive.
2. “Browser” shall mean a standalone desktop or mobile software application that allows users to enter URLs and navigate to and display web pages.
3. “Cookie” shall mean a string of characters sent in the HTTP Set-Cookie Header by a website or service intended to be sent back by the Browser to the website or service in the Cookie Header.
4. “Covered Conduct” shall mean:
  - a. Google’s posting of information regarding Apple Inc.’s Safari Browser, stating that “Safari is set by default to block all third-party cookies. If you have not changed those settings, this option effectively accomplishes the same thing as setting the opt-out cookie,” or any similar statement to that effect; and

<sup>1</sup> This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

<sup>2</sup> For ease of reference purposes, this entire group will be referred to collectively herein as the “Attorneys General” or individually as “Attorney General.” Such designations, however, as they pertain to Connecticut, shall refer to the Commissioner of Consumer Protection.



- b. Google's placement of Cookies on Safari Browsers from June 1, 2011 through February 15, 2012.
5. "Effective Date" shall mean the date when Google has received counterpart signature pages from each of the Attorneys General.
6. "Google" shall mean Google Inc., a Delaware corporation with its principal office or place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.
7. "State" or "States" shall mean the States entering into this Assurance, either in the singular or collectively. The "Executive Committee of the Multistate" or "MSEC" shall refer to a committee of states that was led by Maryland and was also comprised of Connecticut, Florida, Illinois, Ohio, New Jersey, New York, Texas, Vermont and Washington.

## **II. APPLICATION**

8. The provisions of this Assurance shall apply to Google and its successors, assignees, merged or acquired entities, parent or controlling entities, and subsidiaries in which Google has a majority ownership interest.
9. The provisions of this Assurance shall apply to Google in connection with offering and/or providing any products and/or services to the States' consumers.

## **III. REQUIREMENTS**

10. Google shall not employ HTTP Form POST functionality that uses javascript to submit a form without affirmative user action for the purpose of overriding a Browser's Cookie-blocking settings so that it may place an HTTP Cookie on such Browser, without that user's prior consent. Nothing herein shall prevent Google from taking any of the foregoing actions for the purpose of detecting, preventing or otherwise addressing fraud, security or technical issues, or protecting against harm to the rights, property or safety of Google, its users or the public as required or permitted by law. As used herein, "technical issues" shall be defined as matters necessarily incident to the rendition of services requested by a user or to the protection of the rights or property of the provider of that service.

If an Attorney General determines that Google has not complied with the terms of this provision, and if, at the Attorney General's sole discretion, it determines that the failure to comply does not present an immediate threat to the health or safety of the citizens of the Attorney General's State, the Attorney General shall not bring any action to enforce this provision without first providing Google with fourteen (14) days' written notice in accordance with Paragraph 20 that identifies with particularity the conduct that is alleged to violate this Assurance.

11. Google shall neither misrepresent a material fact, nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, regarding how consumers can use Google's Ads Settings tool or any other Google product, service or tool to directly manage how Google serves advertisements to their Browsers.

If an Attorney General determines that Google has not complied with the terms of this provision, and if, at the Attorney General's sole discretion, it determines that the failure to comply does not present an immediate threat to the health or safety of the citizens of the Attorney General's State, the Attorney General shall not bring any action to enforce this provision without first providing Google with fourteen (14) days' written notice in accordance with Paragraph 20 that identifies with particularity the conduct that is alleged to violate this Assurance.

Nothing herein shall operate to restrict an Attorney General's ability to enforce its own laws regarding misrepresentation or deceptive trade practices.

12. Google shall, for a period of no less than five (5) years from the Effective Date, provide a separate stand-alone page or pages on the Google.com domain designed to give information to users about Cookies (the "Cookie Page"). The Cookie Page shall be posted no later than ninety (90) days from the Effective Date and its contents shall include, and be designed to inform an ordinary consumer about:
  - i. what Cookies are;
  - ii. the general purposes for which Google may use Cookies; and
  - iii. how users can manage Cookies.

Google shall maintain a hyperlink to the Cookie Page on the web page that Google uses to set forth its privacy policy. The hyperlink shall be entitled "Cookies," "What You Need To Know About Cookies," or some similar title that contains the word "Cookies," and be designed to inform consumers that the Cookie Page will provide them with the information about Cookies specified in this paragraph. The hyperlink to the Cookie Page shall also be contained on other pages within Google's Help Center that Google identifies as reasonably related. The hyperlink required under this paragraph shall be of a type, size, and location, and contrast highly with the background on which it appears, so that it will be sufficiently noticeable for an ordinary consumer.

13. Google shall maintain systems configured to instruct Safari brand web Browsers to expire any Cookie placed from the doubleclick.net domain by Google through February 15, 2012 if those systems encounter such a Cookie, with the exception of the DoubleClick opt-out Cookie. Such systems shall remain in place until February 15, 2014, at which time all Cookies placed from the doubleclick.net domain by Google on Safari brand web Browsers through February 15, 2012 should have expired by design.

**IV. PAYMENT TO THE STATES**

14. Google shall pay Seventeen Million Dollars (\$17,000,000.00) to be divided and paid by Google directly to each of the Attorneys General in an amount to be designated by and in the sole discretion of the MSEC. Each of the Attorneys General agrees that the MSEC has the authority to designate such amount to be paid by Google to each Attorney General and to provide Google with instructions for the payments to be distributed under this paragraph. Payment shall be made no later than thirty (30) days after the Effective Date and receipt of payment instructions by Google from the MSEC, except where state law requires judicial or other approval of the Assurance, in which case payment shall be made no later than thirty (30) days after notice from an Attorney General that such final approval for the Assurance has been secured.

Said payment shall be used by the Attorneys General for such purposes that may include, but are not limited to civil penalties, attorneys' fees, and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection law enforcement fund, including future consumer protection or privacy enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorneys General.

**V. RELEASE**

15. A. By execution of this Assurance, the Attorneys General, on behalf of their respective States, release and forever discharge Google and its affiliates, and their respective directors, officers, employees, agents, representatives, successors, predecessors, and assigns ("Released Parties"), from the following: all civil claims, causes of action, damages, restitution, fines, costs, and penalties that the States could have asserted against the Released Parties under each State's consumer protection statute or applicable computer abuse statute set forth in Appendix A resulting from the Covered Conduct up to and including the Effective Date, whether known or unknown, foreseen or unforeseen (collectively, the "Released Claims"). Nothing contained in this paragraph shall be construed to limit the ability of an Attorney General to enforce the obligations of this Assurance.

B. Released Claims do not include any claims based on: (i) any civil or administrative liability that any person and/or entity, including Released Parties, has or may have to any of the States not expressly covered by the release in Paragraph 15.A. above, including, but not limited to any and all claims of State or federal antitrust violations; (ii) any liability under the States' above-cited law(s) which any person and/or entity, including Released Parties, has or may have to any individual consumers; or (iii) any criminal liability that any person and/or entity, including Released Parties, has or may have to the States.

**VI. GENERAL PROVISIONS**

16. This Assurance is for settlement purposes only, and to the fullest extent permitted by law neither the fact of, nor any provision contained in, this Assurance, nor any action taken hereunder, shall constitute or be construed as any admission of the validity of any claim or any fact alleged in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Released Parties or admission by any Released Parties of the validity or lack thereof of any claim, allegation, or defense asserted in any other action. Google denies any and all liability for the Covered Conduct.
17. This Assurance represents the full and complete terms of the settlement entered by the Parties hereto.
18. All Parties participated in the drafting of this Assurance.
19. This Assurance may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.
20. All Notices under this Assurance shall be provided to the following addresses via Electronic and Overnight Mail:

For the Attorneys General:

See Appendix B.

For Google:

Kent Walker  
Senior Vice President & General Counsel  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
kentwalker@google.com

and

Michael Rubin  
Wilson Sonsini Goodrich & Rosati  
One Market Street, Suite 3400  
San Francisco, CA 94105  
mrubin@wsgr.com.

21. Nothing in this Assurance shall be construed as relieving Google of the obligation to comply with all state and federal laws, regulations or rules applicable to it, nor shall any

of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

22. The Parties understand and agree that this Assurance shall not be construed as an approval of or sanction by the Attorneys General of Google's business practices, nor shall Google represent otherwise. The Parties further understand and agree that any failure by the Attorneys General to take any action in response to any information submitted pursuant to the Assurance shall not be construed as an approval, or sanction, of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.
23. This Assurance may be enforced only by the parties hereto. Nothing in this Assurance shall provide any rights or permit any person or entity not a party hereto, including any state or attorney general not a party hereto, to enforce any provision of this Assurance. No person or entity not a signatory hereto is a third party beneficiary of this Assurance. Nothing in this Assurance shall be construed to affect, limit, alter or assist any private right of action that a consumer may hold against Google.
24. Time shall be of the essence with respect to each provision of this Assurance, including, but not limited to, those that require action to be taken by Google within a stated period or upon a specific date.
25. Google shall not participate, directly or indirectly, in any activity, or form a separate entity or corporation, for the purpose of engaging in acts or practices in whole or in part in the States which are prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance.

STATE OF MISSISSIPPI

JIM HOOD  
Attorney General

By:  \_\_\_\_\_  
CRYSTAL M. UTLEY  
SPECIAL ASSISTANT ATTORNEY GENERAL

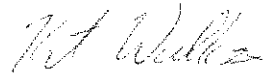
Date: 11/8/13

*State of Mississippi*

Crystal Utley, MSBN 102132  
Consumer Protection Division  
Office of the Attorney General  
Post Office Box 22947  
Jackson, Mississippi 39225  
Telephone: 601-359-4213  
Fax: 601-359-4231  
Email: [cutle@ago.state.ms.us](mailto:cutle@ago.state.ms.us)



GOOGLE INC.



---

KENT WALKER  
Senior Vice President & General Counsel  
Google Inc.

Date: 11/11/13

**APPENDIX A**

<b>State</b>	<b>Consumer Protection Statute/Computer Abuse Statute</b>
Alabama	Alabama Deceptive Trade Practices Act, Ala. Code §§ 8-19-1 through 8-19-15
Arizona	Arizona Consumer Fraud Act, Ariz. Rev. Stat. Ann. §§ 44-1521, <i>et seq.</i> ; Ariz. Rev. Stat. Ann. § 13-2316(A)(6) and (D); Ariz. Rev. Stat. Ann. §§ 44-7301, <i>et seq.</i>
Arkansas	Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101 through 115; Arkansas Computer-Related Crimes Act, Ark. Code Ann. § 5-41-106; Consumer Protection Against Computer Spyware Act, Ark. Code Ann. §§ 4-111-101 through 105
California	Cal. Bus. & Prof. Code §§ 17200, <i>et seq.</i> ; Cal. Bus. & Prof. Code §§ 17500; Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code § 502
Connecticut	Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a, <i>et seq.</i> ; Conn. Gen. Stat. § 53-453
D.C.	District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901, <i>et seq.</i> (2001)
Florida	Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Fla. Stat., §§ 501.201, <i>et seq.</i> ; Florida Computer Crimes Act, Fla. Stat., § 815.06(4)
Illinois	Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 <i>et seq.</i> ; Computer Tampering, 720 Ill. Comp. Stat. 5/17-51
Indiana	Indiana Deceptive Consumer Sales Act, Ind. Code Ann. §§ 24-5-0.5-1 to 24-5-0.5-12; Ind. Code Ann. §§ 24-4.8-1-1, <i>et seq.</i>
Iowa	Iowa Consumer Fraud Act, Iowa Code § 714.16; Iowa Code § 716.6B
Kansas	Kansas Consumer Protection Act, Kan. Stat. Ann. §§ 50-623, <i>et seq.</i>
Kentucky	Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, <i>et seq.</i>

State	Consumer Protection Statute/Computer Abuse Statute
Maine	The Maine Unfair Trade Practices Act, Me. Rev. Stat. Ann. tit. 5, §§ 205-A, <i>et seq.</i> and Maine Deceptive Trade Practices Act, Me. Rev. Stat. Ann. Tit. 10, §§ 1211, <i>et seq.</i> ; Notice of Risk to Personal Data Act, Me. Rev. Stat. Ann. tit. 10, §§ 1347-A, 1349
Maryland	Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 through 13-501 (2005 Repl. Vol. and 2011 Supp.)
Massachusetts	Mass. Gen. Law ch. 93A
Michigan	Michigan Consumer Protection Act, Mich. Comp. Laws §§ 445.901, <i>et seq.</i>
Minnesota	Minnesota Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43 to 325D.48; Minnesota False Statement in Advertising Act, Minn. Stat. § 325F.67; and Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68 to 325F.69, and 325F.70
Mississippi	Miss. Code Ann. §§ 75-24-1, <i>et seq.</i>
Nebraska	Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, <i>et seq.</i> and Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§ 87-301, <i>et seq.</i>
Nevada	Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598.0903, <i>et seq.</i> ; Nev. Rev. Stat. §§ 205.473-.513; Nev. Rev. Stat. §§ 603.010-090
New Jersey	New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, <i>et seq.</i> ; Act Concerning Civil Liability for Computer-Related Offenses, N.J. Rev. Stat. §§ 2A:38A-1, <i>et seq.</i>
New Mexico	New Mexico Unfair Practices Act, N.M.S.A. §§ 57-12-1 to 26
New York	N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law §§ 349 and 350
North Carolina	North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, <i>et seq.</i> N.C. Gen. Stat. §§ 1-539.2A, 14-458

State	Consumer Protection Statute/Computer Abuse Statute
North Dakota	Unlawful Sales or Advertising Practices, N.D. Cent. Code §§ 51-15-01, <i>et seq.</i> ; N.D. Cent. Code § 12.1-06.1-08(3)
Ohio	Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §§ 1345.01, <i>et seq.</i>
Oklahoma	Oklahoma Consumer Protection Act, 15 Supp.2012 §§ 751, <i>et seq.</i> (2012); Oklahoma Computer Crimes Act, 21 O.S.2011 §§ 1951, <i>et seq.</i>
Oregon	Oregon Unlawful Trade Practices Act, Or. Rev. Stat. §§ 646.605, <i>et seq.</i>
Pennsylvania	Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. §§ 201-1, <i>et seq.</i> ; Consumer Protection Against Computer Spyware Act, 73 Pa. Stat. Ann. §§ 2330.1, <i>et seq.</i>
Rhode Island	Deceptive Trade Practices Act, R.I. Gen. Laws §§ 6-13.1-1, <i>et seq.</i> ; R.I. Gen. Laws §§ 11-52-6 and 11-52.2-6
South Carolina	South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, <i>et seq.</i> ; South Carolina Computer Crime Act, S.C. Code Ann. §§ 16-16-10, <i>et seq.</i>
South Dakota	South Dakota Deceptive Trade Practices and Consumer Protection, S.D. Codified Laws §§ 37-24-1 through 37-24-48
Tennessee	Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, <i>et seq.</i> ; Tennessee Personal and Commercial Computer Act of 2003, Tenn. Code Ann. §§ 39-14-601, <i>et seq.</i>
Texas	Texas Deceptive Trade Practices--Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41, <i>et seq.</i> ; Consumer Protection Against Computer Spyware Act, Tex. Bus. & Com. Code §§ 324.001, <i>et seq.</i>
Vermont	Vermont Consumer Protection Act, Vt. Stat. Ann. tit. 9, §§ 2451, <i>et seq.</i> ; Vermont Act Relating to Computer Crime, Vt. Stat. Ann. tit. 13, § 4106
Virginia	Virginia Consumer Protection Act, Va. Code Ann. §§ 59.1-196, <i>et seq.</i> ; Virginia Computer Crimes Act, Va. Code Ann. § 18.2-152.12

State	Consumer Protection Statute/Computer Abuse Statute
Washington	Washington Consumer Protection Act, Wash. Rev. Code Ann. §§ 19.86.010, <i>et seq.</i> ; Wash. Rev. Code Ann. §§ 19.270.010, <i>et seq.</i>
Wisconsin	Wis. Stat. §§ 100.18, 100.26(4) and 100.263; Wis. Stat. § 943.70(5)

**APPENDIX B**

<b>State</b>	<b>Attorney General Contact</b>
Alabama	<p>Noel S. Barnes Consumer Protection Chief <a href="mailto:nbarnes@ago.state.al.us">nbarnes@ago.state.al.us</a></p> <p>Kyle Beckman Assistant Attorney General <a href="mailto:kbeckman@ago.state.al.us">kbeckman@ago.state.al.us</a></p> <p>Office of the Alabama Attorney General Consumer Protection Section 501 Washington Avenue Montgomery, AL 36130</p>
Arizona	<p>Taren M. Ellis Langford Unit Chief Counsel, Consumer Litigation Unit <a href="mailto:Taren.Langford@azag.gov">Taren.Langford@azag.gov</a></p> <p>Office of the Arizona Attorney General 400 W. Congress, Suite S-315 Tucson, AZ 85701</p>
Arkansas	<p>Peggy Johnson Assistant Attorney General <a href="mailto:peggy.johnson@arkansasag.gov">peggy.johnson@arkansasag.gov</a></p> <p>Sarah Tacker Senior Assistant Attorney General <a href="mailto:Sarah.tacker@arkasas.gov">Sarah.tacker@arkasas.gov</a></p> <p>Consumer Protection Division Arkansas Attorney General's Office 323 Center Street Suite 500 Little Rock AR 72201</p>
California	<p>Adam Miller, CIPP/US Supervising Deputy Attorney General Privacy Enforcement and Protection Unit Office of the California Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102 <a href="mailto:Adam.Miller@doj.ca.gov">Adam.Miller@doj.ca.gov</a></p>

State	Attorney General Contact
Connecticut	Matthew F. Fitzsimmons Chair, Privacy Task Force Assistant Attorney General Office of the Attorney General 110 Sherman Street Hartford CT 06105 <a href="mailto:Matthew.Fitzsimmons@ct.gov">Matthew.Fitzsimmons@ct.gov</a>
D.C.	Bennett C. Rushkoff Chief, Public Advocacy Section <a href="mailto:bennett.rushkoff@dc.gov">bennett.rushkoff@dc.gov</a>  Grant G. Moy, Jr. Assistant Attorney General <a href="mailto:grant.moy@dc.gov">grant.moy@dc.gov</a>  Office of the Attorney General for the District of Columbia 441 4th Street, NW, Suite 600S Washington, DC 20001
Florida	Patrice Malloy Sr. Assistant Attorney General Office of the Attorney General 110 Southeast 6th Street Ft. Lauderdale, FL 33301 <a href="mailto:patrice.malloy@myfloridalegal.com">patrice.malloy@myfloridalegal.com</a>
Illinois	Matthew W. Van Hise Assistant Attorney General Consumer Fraud Bureau Illinois Attorney General's Office 500 South Second Street Springfield, IL. 62706 <a href="mailto:mvanhise@atg.state.il.us">mvanhise@atg.state.il.us</a>
Indiana	Lyman "Chuck" Taylor, III Section Chief, Consumer Mediation & Identity Theft Office of the Indiana Attorney General 302 W. Washington, IGCS-5th Floor Indianapolis, IN 46204 <a href="mailto:Ltaylor@atg.in.gov">Ltaylor@atg.in.gov</a>

State	Attorney General Contact
Iowa	<p>Nathan Blake  Assistant Attorney General  <a href="mailto:nathan.blake@iowa.gov">nathan.blake@iowa.gov</a>  Office of the Iowa Attorney General  1305 E. Walnut St.  Des Moines, IA 50319</p>
Kansas	<p>James Welch  Deputy Chief  Consumer Protection &amp; Anti Trust Division  <a href="mailto:James.Welch@ksag.org">James.Welch@ksag.org</a></p> <p>Jackie Williams  Assistant Attorney General  <a href="mailto:Jackie.Williams@ksag.org">Jackie.Williams@ksag.org</a></p> <p>Consumer Protection &amp; Anti Trust Division  Kansas Attorney General's Office  120 SW 10<sup>th</sup> Avenue  Topeka, KS 66612-1597</p>
Kentucky	<p>Todd E. Leatherman  Executive Director, Office of Consumer Protection  <a href="mailto:todd.leatherman@ag.ky.gov">todd.leatherman@ag.ky.gov</a></p> <p>Kevin R. Winstead  Assistant Attorney General  <a href="mailto:kevin.winstead@ag.ky.gov">kevin.winstead@ag.ky.gov</a></p> <p>Office of the Attorney General  Office of Consumer Protection  1024 Capital Center Dr., #200  Frankfort, KY, 40601</p>
Maine	<p>Linda Conti  Chief, Consumer Protection Division  Maine Office of the Attorney General  6 State House Station  Augusta, ME 04333  <a href="mailto:Linda.Conti@main.gov">Linda.Conti@main.gov</a></p>



State	Attorney General Contact
Maryland	<p>Philip D. Ziperman, Deputy Chief, Consumer Protection Division <a href="mailto:pziperman@oag.state.md.us">pziperman@oag.state.md.us</a></p> <p>Steven M. Ruckman, Director, Privacy Unit <a href="mailto:sruckman@oag.state.md.us">sruckman@oag.state.md.us</a></p> <p>Office of the Maryland Attorney General Consumer Protection Division 200 St. Paul Place Baltimore, MD 21202</p>
Massachusetts	<p>Sara Cable Assistant Attorney General <a href="mailto:sara.cable@state.ma.us">sara.cable@state.ma.us</a></p> <p>Consumer Protection Division Public Protection &amp; Advocacy Bureau Office of the Massachusetts Attorney General One Ashburton Place Boston, MA 02108</p>
Michigan	<p>Nate Knapper Assistant Attorney General Consumer Protection Division <a href="mailto:KnapperN1@michigan.gov">KnapperN1@michigan.gov</a></p> <p>Michigan Department of Attorney General Consumer Protection Division 1<sup>st</sup> Floor Williams Bldg. 525 W. Ottawa St. Lansing, MI 48933</p>
Minnesota	<p>David Cullen Assistant Attorney General Minnesota Attorney General's Office 445 Minnesota Street, Suite 1200 St. Paul, MN 55101-2130 <a href="mailto:david.cullen@ag.state.mn.us">david.cullen@ag.state.mn.us</a></p>

State	Attorney General Contact
Mississippi	<p>Bridgette W. Wiggins  Special Assistant Attorney General  Mississippi Attorney General's Office  Consumer Protection Division  Post Office Box 22947  Jackson, MS 39225  <a href="mailto:bwill@ago.state.ms.us">bwill@ago.state.ms.us</a></p> <p>Crystal Utley Secoy  Special Assistant Attorney General  Consumer Protection Division  Mississippi Attorney General's Office  Post Office Box 22947  Jackson, Mississippi 39225  <a href="mailto:cutle@ago.state.ms.us">cutle@ago.state.ms.us</a></p>
Nebraska	<p>Abigail M. Stempson  Chief, Consumer Protection Division  Assistant Attorney General  <a href="mailto:abigail.stempson@nebraska.gov">abigail.stempson@nebraska.gov</a></p> <p>Greg Walklin  Assistant Attorney General  <a href="mailto:greg.walklin@nebraska.gov">greg.walklin@nebraska.gov</a></p> <p>Office of the Nebraska Attorney General  2115 State Capitol  Lincoln, NE 68509</p>
Nevada	<p>Lucas J. Tucker  Senior Deputy Attorney General  Office of the Attorney General  Bureau of Consumer Protection  10791 W. Twain Ave., Suite 100  Las Vegas, Nevada 89135  <a href="mailto:LTucker@ag.nv.gov">LTucker@ag.nv.gov</a></p>
New Jersey	<p>Jah-Juin Ho, Deputy Attorney General  New Jersey Office of the Attorney General  Division of Law  124 Halsey Street, 5th Fl  Newark, New Jersey 07101  <a href="mailto:jah-juin.ho@dol.lps.state.nj.us">jah-juin.ho@dol.lps.state.nj.us</a></p>

State	Attorney General Contact
New Mexico	Lawrence Otero Assistant Attorney General Office of the Attorney General Consumer Protection Division 408 Galisteo Street Santa Fe, NM 87501 <a href="mailto:lotero@nmag.gov">lotero@nmag.gov</a>
New York	Clark P. Russell, Esq. Assistant Attorney General Internet Bureau New York State Office of the Attorney General 120 Broadway, 3rd Floor New York, N.Y. 10271 <a href="mailto:clark.russell@ag.ny.gov">clark.russell@ag.ny.gov</a>
North Carolina	Kim D'Arruda Assistant Attorney General NC Department of Justice, Attorney General's Office Consumer Protection Division 114 West Edenton Street Raleigh NC, 27603 <a href="mailto:kdarruda@ncdoj.gov">kdarruda@ncdoj.gov</a>
North Dakota	Parrell D. Grossman, Director Consumer Protection and Antitrust Division Office of Attorney General of North Dakota Gateway Professional Center 1050 E. Interstate Ave., Suite 200 Bismarck, ND 58503-5574 <a href="mailto:pgrossman@nd.gov">pgrossman@nd.gov</a>
Ohio	Melissa S. Szozda Assistant Attorney General <a href="mailto:melissa.szozda@ohioattorneygeneral.gov">melissa.szozda@ohioattorneygeneral.gov</a>  Michael S. Ziegler Assistant Attorney General <a href="mailto:michael.ziegler@ohioattorneygeneral.gov">michael.ziegler@ohioattorneygeneral.gov</a>  Office of the Ohio Attorney General Consumer Protection Section 30 East Broad Street, 14th Floor Columbus, Ohio 43215

State	Attorney General Contact
Oklahoma	<p>Julie Bays Chief, Public Protection Unit <a href="mailto:Julie.Bays@oag.ok.gov">Julie.Bays@oag.ok.gov</a></p> <p>Rachel Irwin Assistant Attorney General <a href="mailto:Rachel.Irwin@oag.ok.gov">Rachel.Irwin@oag.ok.gov</a></p> <p>Public Protection Unit Office of the Oklahoma Attorney General 313 N.E. 21st Street Oklahoma City, OK 73105</p>
Oregon	<p>Eva H. Novick Assistant Attorney General Oregon Department of Justice Consumer Protection/Financial Fraud Section 1515 SW 5th Ave., Suite 410 Portland, OR 97201 <a href="mailto:eva.h.novick@doj.state.or.us">eva.h.novick@doj.state.or.us</a></p>
Pennsylvania	<p>John M. Abel Senior Deputy Attorney General Pennsylvania Office of Attorney General Bureau of Consumer Protection 15th Floor, Strawberry Square Harrisburg, PA 17120 <a href="mailto:jabel@attorneygeneral.gov">jabel@attorneygeneral.gov</a></p>
Rhode Island	<p>Edmund F. Murray, Jr. Special Assistant Attorney General <a href="mailto:emurray@riag.ri.gov">emurray@riag.ri.gov</a></p> <p>Rhode Island Department of Attorney General 150 South main Street Providence, RI 02903</p>
South Carolina	<p>Mary Frances Jowers Assistant Attorney general Office of the Attorney General State of South Carolina Civil Division, Consumer Protection &amp; Antitrust Section 1000 Assembly Street Columbia, South Carolina <a href="mailto:MFJowers@scag.gov">MFJowers@scag.gov</a></p>

State	Attorney General Contact
South Dakota	<p>Bethanna Feist Chief, Consumer Protection Division <a href="mailto:Bethanna.Feist@state.sd.us">Bethanna.Feist@state.sd.us</a></p> <p>Jody Swanson Director, Consumer Protection Division <a href="mailto:Jody.Swanson@state.sd.us">Jody.Swanson@state.sd.us</a></p> <p>South Dakota Attorney General's Office 1302 E. Hwy 14, Suite 1 Pierre, SD 57501</p>
Tennessee	<p>Jeff Hill Senior Counsel Office of the Attorney General State of Tennessee Consumer Advocate &amp; Protection Division P.O. Box 20207 Nashville, TN 37202-0207 <a href="mailto:Jeff.Hill@ag.tn.gov">Jeff.Hill@ag.tn.gov</a></p>
Texas	<p>Paul Singer Assistant Attorney General <a href="mailto:paul.singer@texasattorneygeneral.gov">paul.singer@texasattorneygeneral.gov</a></p> <p>Esther Chavez Deputy Chief, Multi-State and Complex Litigation <a href="mailto:Esther.chavez@texasattorneygeneral.gov">Esther.chavez@texasattorneygeneral.gov</a></p> <p>Office of the Texas Attorney General Consumer Protection Division PO Box 12548 Austin, Texas 78711</p>

State	Attorney General Contact
Vermont	<p>Wendy Morgan Chief, Public Protection Division <a href="mailto:WMorgan@atg.state.vt.us">WMorgan@atg.state.vt.us</a></p> <p>Ryan G. Kriger Assistant Attorney General <a href="mailto:ryan.kriger@atg.state.vt.us">ryan.kriger@atg.state.vt.us</a></p> <p>Vermont Office of the Attorney General Public Protection Division 109 State Street Montpelier, VT 05609-1001</p>
Virginia	<p>Rich Schweiker Senior Assistant Attorney General <a href="mailto:rschweiker@oag.state.va.us">rschweiker@oag.state.va.us</a></p> <p>Gene Fishel Senior Assistant Attorney General <a href="mailto:sfishel@oag.state.va.us">sfishel@oag.state.va.us</a></p> <p>Virginia Attorney General's Office 900 East Main Street Richmond, VA 23219</p>
Washington	<p>Paula Selis Assistant Attorney General Office of the Washington State Attorney General 800 Fifth Ave., Suite 2000 Seattle, Washington 98104 <a href="mailto:paulas@atg.wa.gov">paulas@atg.wa.gov</a></p> <p>Margaret Farmer Paralegal Office of the Washington State Attorney General 800 Fifth Ave., Suite 2000 Seattle, Washington 98104 <a href="mailto:margaretf@atg.wa.gov">margaretf@atg.wa.gov</a></p>

State	Attorney General Contact
Wisconsin	John S. Greene Assistant Attorney General Unit Director, Consumer Protection & Antitrust Wisconsin Department of Justice 17 W. Main Street Post Office Box 7857 Madison, Wisconsin 53707-7857 <a href="mailto:greenejs@doj.state.wi.us">greenejs@doj.state.wi.us</a>

7



July 2, 2013

Kent Walker  
Senior Vice President and General Counsel  
Google, Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

Dear Mr. Walker,

We are writing in regard to an alarming trend involving videos appearing on Google's video subsidiary, YouTube. During a panel at the June 2013 meeting of the National Association of Attorneys General entitled "Intellectual Property Crimes Online: Dangerous Access to Prescription Drugs and Pirated Content", we learned of Google's business practice of "monetizing" certain videos. As we understand the process, video producers are asked prior to posting whether they will allow YouTube to host advertising with the video and, for those who consent, the advertising revenue is shared between the producer and Google. While this practice itself is not troubling, we were disappointed to learn that many such monetized videos posted to YouTube depict or even promote dangerous or illegal activities. Specific examples were provided to the panel, including the following:

- Videos produced by foreign "pharmacies" that promote the sale of prescription drugs such as oxycontin, percocet and others without a prescription. When the user clicks on the video, advertisements for "MacKeeper" appear both in the sidebar and embedded within the video. It is our understanding that Google and the video poster share in the profits from this advertising revenue.
- Videos providing how-to guides for creating forged driver licenses and passports that include sidebar advertisements for immigration lawyers. It is our understanding that Google and the video poster share in the profits from this advertising revenue.
- Videos promoting the sale of counterfeit merchandise that include sidebar advertisements for weight loss strategies. It is our understanding that Google and the video poster share in the profits from this advertising revenue.





Mr. Walker  
Page Two  
July 2, 2013

As state Attorneys General, we are committed to ensuring the safety of our citizens. In light of this, we and many of our colleagues were deeply concerned to learn of Google's financial partnership with the posters of these videos. Not only are the activities depicted or promoted in the above-described videos illegal in and of themselves, but in the case of document forgery, the how-to guide could be instrumental in the commission of other crimes ranging from under-age drinking to acts of terrorism. We understand that YouTube is an open platform and that not all content can or should be policed. Nevertheless, the fact that Google actively seeks to profit from the posting of these types of videos on YouTube -- a website known to be particularly popular among children and teens -- is very troubling.

In addressing this issue, we cannot ignore the related issues brought to Google's attention recently by our colleagues in other states. As you will recall, several Attorneys General have expressed great concern regarding the prominent appearance of websites advertising counterfeit and pirated merchandise and illegal prescription drugs in results generated by Google's search engine. In April of this year, Google responded to these concerns by touting its efforts to address these issues. Specifically, with regard to the advertising of counterfeit goods, Google wrote that it has "dedicated considerable human and engineering resources across the company to develop and implement measures to root out counterfeit [sic] from our ad networks." Similarly, Google emphasized its commitment "to stopping the problems of online pharmacy advertising at the source...[and providing] criminal referrals to law enforcement in the US regarding rogue pharmacies that have attempted to abuse our systems." That commitment is not consistent with Google receiving advertising revenue from content that promotes illegal conduct.

We are in receipt of your letter dated June 26, 2013 which contained copies of information Google provided to Attorneys General Hood, Cuccinelli and Louie. The information provided in your correspondence fails to adequately address our concerns. We would like more information regarding the extent of Google's monetization of YouTube videos. Accordingly, we ask that you respond to the attached requests for information within 30 days of receiving this letter. The information you provide in response to these requests will help guide our future inquiry into this topic. It is our sincere hope to work collaboratively with you to find an agreeable solution to the concerns set forth in this letter. Nevertheless, we feel that you should know at the outset that we take these issues very seriously and are prepared to take appropriate action to safeguard our citizens.

Sincerely,

  
Jon Bruning  
Nebraska Attorney General

  
Scott Pruitt  
Oklahoma Attorney General

Mr. Walker  
Page Three  
July 3, 2013

Requests for Information

- 1) Please provide the number of videos that were removed between January 2011 and the end of June 2013 for violating YouTube policies that prohibit the posting of illegal and objectionable content.
- 2) Of the number of videos provided in response to Request #1, please provide (a) the number that had been monetized by Google, as that term is used in this letter, prior to their removal, and (b) the total revenue derived by Google from the advertising associated with those videos.
- 3) Please explain what measures, if any, Google has taken to (a) avoid hosting paid advertising on videos containing illegal or objectionable content, (b) remove paid advertising from videos containing illegal or objectionable content once such videos are discovered.
- 4) Based on search results, it appears that an inordinately large number of videos containing potentially objectionable content were removed in the week following a June 7, 2013 article in the USA Today detailed these issues. Please describe any and all measures used to remove these videos and explain why the videos were removed.



October 7, 2013

David C. Drummond  
Senior Vice President, Corporate Development  
and Chief Legal Officer  
Google, Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

Dear Mr. Drummond,

As you are no doubt aware, several state Attorneys General have expressed concerns regarding your company's monetization of dangerous and illegal content, particularly on Google's video subsidiary, YouTube. While YouTube is an enormously useful and productive video sharing system, its capacity to be a means of distributing illegal and possibly dangerous content is significant. The dissemination of such content is troubling in itself. It is compounded by the revelation that, in some instances, Google has partnered with the posters of such harmful content and received revenue from resulting content-specific advertising.

Additionally, several of us have expressed our concern regarding the prevalence of content on Google's platforms which constitute intellectual property violations and ease which with such content is shared and trafficked over Google's systems. Other concerns include the promotion of illegal and prescription-free drugs through Google and the facilitation of payments to and by purveyors of all of the aforementioned content through Google's payment services.

It is our obligation as state Attorneys General to address the wide dissemination and monetization of dangerous and illegal content, particularly when it represents a clear threat to the safety and health of our citizens.

Toward that end, we believe that a meeting is appropriate this fall. We hope to work with Google to determine the particulars of the meeting's agenda, including what preliminary information should be exchanged in advance.



Mr. Drummond  
Page 2  
October 7, 2013

We sincerely hope to work constructively with Google to address the concerns already expressed. We expect this meeting will be a valuable step toward that goal. We appreciate your immediate attention to this matter and look forward to your reply.

Sincerely,



Jon Bruning  
*Attorney General of Nebraska*



Jim Hood  
*Attorney General of Mississippi*



David Louie  
*Attorney General of Hawaii*



Ken Cuccinelli  
*Attorney General of Virginia*

December 10, 2013

Mr. Kent Walker  
General Counsel  
Google, Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

Dear Mr. Walker,

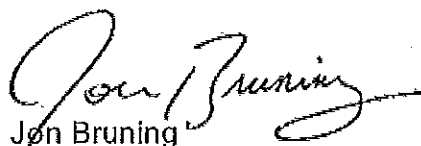
During the past year, a growing number of state Attorneys General have expressed concerns regarding troubling and harmful problems posed by several of Google's products. These issues include: (1) Google's monetization of dangerous and illegal content; (2) the prevalence of content constituting intellectual property violations and ease with which such content is shared and trafficked over Google's systems; (3) the promotion of illegal and prescription-free drugs; and (4) the facilitation of payments to and by purveyors of all of the aforementioned content through Google's payment services.

We feel strongly that Google should not permit its useful and productive systems to be tarnished by abuse and the presence of content which represents a clear threat to public health and safety. As state Attorneys General, it is our obligation to address such issues, collectively if necessary.

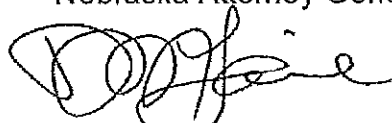
Though Google has taken some steps to mitigate the above-listed concerns, much more must be done. We propose meeting on January 14, 21, or 29, 2014, in Denver, Colorado. In order to facilitate travel, we would ask that you respond by December 17, 2013 as to which date works best.

We sincerely hope to work constructively with Google to address the concerns already expressed. We expect this meeting will be a valuable step toward that goal. We appreciate your immediate attention to this matter and look forward to your reply.

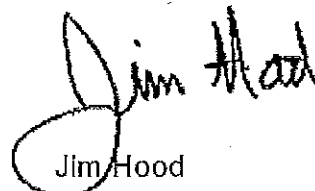
Sincerely,



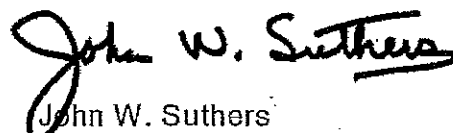
Jon Bruning  
Nebraska Attorney General



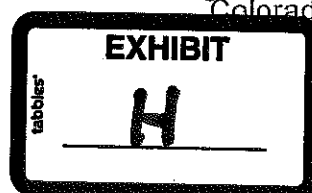
David Louie  
Hawaii Attorney General

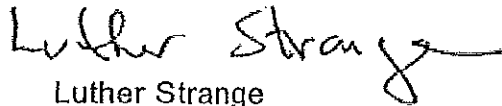


Jim Hood  
Mississippi Attorney General




John W. Suthers  
Colorado Attorney General





Luther Strange  
Alabama Attorney General



Michael Geraghty  
Alaska Attorney General




Dustin McDaniel  
Arkansas Attorney General



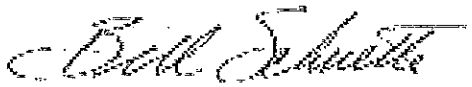
Samuel S. Olens  
Georgia Attorney General



James D. "Buddy" Caldwell  
Louisiana Attorney General



Janet Mills  
Maine Attorney General



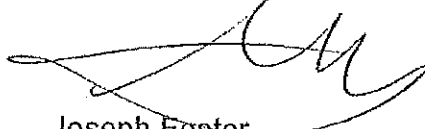
Bill Schuette  
Michigan Attorney General



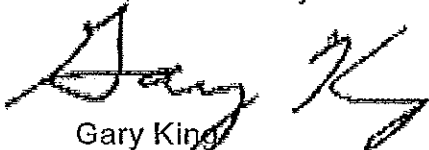
Tim Fox  
Montana Attorney General



Catherine Cortez Masto  
Nevada Attorney General



Joseph Foster  
New Hampshire Attorney General



Gary King  
New Mexico Attorney General



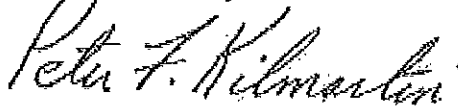
Wayne Stenehjem  
North Dakota Attorney General



Mike DeWine  
Ohio Attorney General



Ellen F. Rosenblum  
Oregon Attorney General



Peter Kilmer  
Rhode Island Attorney General



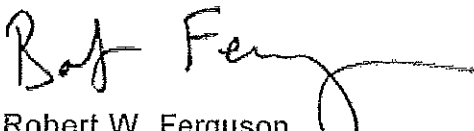
Robert E. Cooper, Jr.  
Tennessee Attorney General



William H. Sorrell  
Vermont Attorney General



Kenneth T. Cuccinelli, II  
Virginia Attorney General



Robert W. Ferguson  
Washington Attorney General



Luis Sánchez Betances  
Puerto Rico Attorney General

STATE OF MISSISSIPPI



**JIM HOOD**  
ATTORNEY GENERAL

April 1, 2013

Kent Walker  
Senior Vice President and General Counsel  
Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

Dear Mr. Walker:

On November 28, 2012, I convened a stakeholders meeting in Fort Lauderdale, Florida for the National Association of Attorneys General Intellectual Property Committee. This meeting highlighted that many of the concerns I have brought to your attention in the past have not been addressed and continue to threaten the lives and livelihoods of millions of American families and companies. These concerns, which a growing number of attorneys general share, range from a failure to stop illegal sites from selling stolen intellectual property to the prevalence of illegal drugs and other products and services that are promoted and even sold through Google platforms.

As you heard during the meeting, attorneys general are concerned about problems with Google's search algorithm, which often leads to sites known to sell counterfeit goods being at the top of the search results. Moreover, attorneys general are concerned about the fact that some of the sites selling counterfeit goods are advertising with Google, which places Google on notice and in the position of being an accessory before the fact to the sale of counterfeit items.

Our concerns were reinforced by the Immigration and Customs Enforcement Director John Morton, who described chilling examples of the harm to our citizens that can be inflicted by counterfeit products for sale on the Internet. No sector or company should suffer or profit from this illegal and harmful commerce.

As you know, these concerns are not new. Despite multiple requests for information from your company, or from its consultants and advocates, no substantive response has been forthcoming. I and others are increasingly troubled by your company's

WALTER SILLERS BUILDING  
TELEPHONE



JEFFERSON, MISSISSIPPI 39205-0220  
(601) 359-3441



deliberately evasive responses and unwillingness to make meaningful reforms. These failures, set forth below, show a lack of commitment to making the Internet a safe place for families and commerce. For example:

**Promotion of Counterfeit and Illegal Drugs** - It has been a year and a half since Google entered into a Non Prosecution Agreement with the Department of Justice and the state of Rhode Island for its role in facilitating the sale of illegal off shore pharmaceuticals, yet Google platforms continue to promote and profit from these dangerous and illegal activities. Most disturbingly, children are still able to purchase drugs without a prescription through Google.

**No Improvement on Sites Providing Counterfeit Goods and Pirated Content**- During the November meeting referenced above, your colleague, Katie Oyama, claimed that Google has made extensive progress in lowering the rankings of sites that received significant numbers of DMCA notices through a change in Google's algorithm last August. There is no evidence, however, that this is in fact happening. Indeed, during the IP committee meeting in November, an attorney general went online and found that sites peddling counterfeit and pirated goods are still appearing at the top of search results. Moreover, as you are no doubt aware, the RIAA has released a comprehensive report showing that no significant change to search results have occurred over the last six months.

In fact, many of the sites that appear prominently in your own Transparency Report continue to appear at the top of Google search results. These are sites for which you have received hundreds of thousands of DMCA notices. Additionally, Google's autocomplete tool continues to facilitate searches for illegal content on rogue websites such as pharmaceuticals, movies, recordings, and other products.

Google's lack of meaningful action is unacceptable. At the meeting in Florida, Ms. Oyama suggested these infringing sites are not as bad as they appear on the surface and offer legal as well as illegal content. She claimed that regulating search was "complicated."

Attorneys general view this differently. The law is crystal clear that certain drugs cannot and should not be sold online without a valid prescription. There is also nothing complicated about Pirate Bay, a site that has been adjudicated in a court. There is nothing complicated about following your own terms of service or eliminating autocomplete terms such as "buy oxycodone online without a prescription."

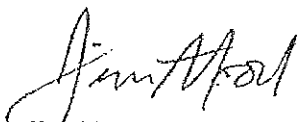
In February, the co-chairs of the committee sent letters to the search engine community. We look forward to your responses to those questions, which our office has tried to obtain as recently as this week. In addition, I would like to meet with you



in April to discuss the greater problem and what Google is committed to doing about it. Your colleagues who have attended previous meetings have not been eager to help. I would like to give you the chance to address the problem.

We are interested in achieving a consensus on voluntary action that members of the search and ecommerce community can take to eliminate or significantly reduce infringing activities. However, if voluntary actions will not suffice, we will take legal action to change behavior to protect consumers and the integrity of economic commerce on the Internet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jim Hood". The signature is fluid and cursive, with the first name "Jim" being more prominent than the last name "Hood".

Jim Hood  
Attorney General

CC: Susan Molinari

STATE OF MISSISSIPPI



**JIM HOOD**  
ATTORNEY GENERAL

May 21, 2013

Mr. Larry Page  
Chief Executive Officer  
Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

Re: Invitation to Meet with Attorneys General

Dear Mr. Page:

I am in receipt of Google's April 19, 2013, letter regarding the questions asked by Attorneys General Ken Cuccinelli, David Louie and me, co-chairs of the Intellectual Property Theft Committee of the National Association of Attorneys General. Google's responses to our questions are insufficient and inadequate. I invite you and your general counsel to personally attend a meeting of the National Association of Attorneys General on June 18, 2013, at 1:30 pm at the Westin Copley Place, Boston, Massachusetts to answer these questions and any questions the attorneys general may pose.

Google has had ample opportunity to answer questions regarding its refusal to assist attorneys general in our efforts to curtail intellectual property theft online and the online sale of prescription and counterfeit drugs without a prescription. Google sent some employees who were evasive and attempted to give overly technical answers to simple questions to a meeting of the Intellectual Property Theft Committee (IP committee) last November. On February 13, 2013, the co-chairs of the IP committee sent a letter to Google. When there was no response, I sent another letter on April 1, 2013, to Kent Walker, General Counsel for Google, asking additional questions. In order to avoid more of the apparent obfuscation by Google, you need to be at the meeting to understand the gravity of these issues. I hope the problems you have had with your voice are better. We will understand if you attend and allow your general counsel to answer most of the questions.

The following points are examples of inadequacies in Google's reply, but by no means do they represent an exhaustive list. Please be prepared to at least address these points at the meeting.

**Content Removal** - Google claims to only remove content from its search results in a narrow set of circumstances. The phrase "narrow set of circumstances" seems misleading. Google's own policies on child exploitation state, "we block search results that lead to child pornography. This is a legal requirement and the right thing to do." However, Google also removes other types of content. For instance, Google removes content from its German portal that glorifies the Nazi party on google.de or insults religion on google.co.in in India. Why will Google not remove websites or de-index known websites that purport to sell prescription drugs without a prescription or provide pirated content? Content removal can be done, but it appears Google is unwilling to remove content related to the purchase of prescription drugs without a prescription or the downloading of pirated movies and songs.

**Auto Complete** - Google claims in its April 19th letter that "the predictions that appear in auto complete are an algorithmic reflection of query terms that are popular with our users and on the internet. Google does not manually select these terms or determine what queries are considered related to each other." This statement is misleading. For example, a user cannot type in "free child" and receive an auto complete of the words "porn" or "pornography." Google blocks an auto complete of the phrase "free child porn." However, the phrase "buy oxycodone online" is auto completed with the words "no prescription cod." Google states in its April 19th letter that removing generic terms such as "prescription" or "online" is vastly overbroad. The issue is not about these words as stand-alone search terms, but phrases that facilitate known illegal behavior. For example, if you type in "buy oxycod," the auto complete will provide "buy oxycodone online no prescription cod" as one of the choices. Another example is typing in "watch movies free so" and auto complete supplies "watch movies free solar." Solarmovie is a known rogue website. The suggested search term by Google, "solar," results in extensive sites containing infringing content on the first page of results. Can Google not remove phrases from auto complete such as "buy oxycodone online no prescription cod" or "watch movies free solar" without removing stand-alone terms?


**Digital Millennium Copyright Act Notices** - Google has repeatedly stated that "sites with high numbers of removal notices may appear lower in our results." However, websites that continue to appear very prominently in Google search results are the same websites highly listed on Google's Transparency Report. For example, single searches for a popular new DVD released film results in the website torrentz.eu on the first hit of the search. Torrentz.eu has received over 2,103,239 URL removal requests according to Google's Transparency Report.

**Role of search engines in curbing sale of counterfeit pharmaceuticals** - Google does not mention the role of "search" at all in response to this question implying that search is not an issue of concern despite what is mentioned above. Moreover, Google does not mention its platform YouTube and the role of search and advertising on YouTube in promoting illegal activities. For example, users can search for and view videos purporting to sell prescription drugs without a prescription and other illegal activities all while viewing paid advertisements. What steps is Google taking to address advertising in conjunction with illicit videos on YouTube?

By blocking results for search terms like child porn, it is obvious that the technology exists for Google to block other terms that direct consumers to dangerous and illicit websites. I understand that Google takes the position that the auto complete suggestions are based upon the number of times users type in these terms. However, when this position is viewed from the perspective of attorneys general, who are duty-bound to enforce their consumer protection laws and other civil and criminal statutes, Google is aiding and abetting by allowing its autocomplete feature to lead and even encourage its users to illegal activity. This is of grave concern to the chief law enforcement officers of this nation.

If you have questions about the format of the meeting, please contact Special Assistant Attorney General Blake Bee in my office at (601) 359-3680. At the conclusion of the June 18 meeting, if Google does not provide adequate answers or unresponsive answers, I will call on all of my fellow attorneys general to issue civil investigative demands to Google to produce documents and answer questions about Google's dangerous conduct. I certainly hope this is not necessary. I hope you will attend the meeting and advise us that the above mentioned activity has ceased and announce a 24-hour link through which attorneys general's de-indexing requests are granted or addressed within hours.

Sincerely yours,

  
Jim Hood

Cc: Kent Walker

STATE OF MISSISSIPPI



**JIM HOOD**  
ATTORNEY GENERAL

June 10, 2013

Jamie S. Gorelick  
WilmerHale  
1875 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
[jamie.gorelick@wilmerhale.com](mailto:jamie.gorelick@wilmerhale.com)

Re: Google Litigation Hold Notice  
Preservation of Relevant Information: Paper Documents and Electronically  
Stored Information

Dear Ms. Gorelick:

The State of Mississippi (the "State") is investigating and evaluating Google's conduct related to its search algorithm, auto-complete feature, advertising policies, and any other related functions. The purpose of this investigation is to determine whether there exist any violations of Mississippi law. One of the many potential outcomes of the ongoing investigation could be civil or criminal litigation arising under state law.

As you are aware, parties have a duty to preserve potentially relevant information that may be used as evidence in pending or reasonably foreseeable litigation. Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a "litigation hold" to ensure the preservation of relevant documents. It is crucial that Google, its employees, and agents ("Google") take affirmative steps to preserve both paper documents and electronically stored information that are relevant to this investigation and that are in Google's possession, custody or control.

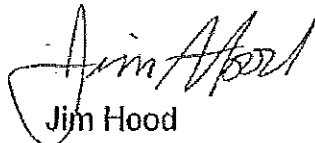
Accordingly, the State formally requests that Google take all appropriate steps necessary to preserve all potentially relevant information pertaining to the State's investigation during the time period covering August 17, 2011 through today and going forward. Google should not discard documents or electronically stored information that is relevant, nor delete, overwrite, alter, or destroy such materials.

"Potentially relevant information" may include YouTube videos related to illicit activity, such as illegal drug infomercials and forged identification documents. It has come to our attention that Google may be removing such videos, documents, and/or other related materials from its platforms, and may be altering its auto-complete feature to eliminate phrases connected to these illicit activities. We request that Google comply with its legal responsibility to retain all relevant evidence related to any such removed content.

In order to comply with this litigation hold request, we ask you to take affirmative steps to prevent intentional or inadvertent destruction of all relevant evidence. To determine what materials may be relevant, Google should refer to the following correspondence: 1) letter from Attorneys General Louie, Cuccinelli, and Hood dated February 13, 2013; 2) letter from Attorney General Hood dated April 1, 2013; and 3) letter from Attorney General Hood dated May 21, 2013.

Thank you for your attention to this matter, and please feel free to contact me should you have any questions related to this litigation hold request.

Sincerely yours,



Jim Hood  
Attorney General

cc: Mr. Kent Walker



STATE OF MISSISSIPPI



**JIM HOOD**  
ATTORNEY GENERAL

November 27, 2013

Mr. Kent Walker  
Senior Vice President and General Counsel  
Google Inc.

Via E-mail: [kwalker@google.com](mailto:kwalker@google.com)  
[jamie.gorelick@wilmerhale.com](mailto:jamie.gorelick@wilmerhale.com)

Dear Mr. Walker:

Pursuant to our telephone conversation on Wednesday, November 20, 2013, I am sending you this letter, which I previously sent you in draft form on November 18, 2013. This letter also responds to the June 26, 2013 letter sent by Ms. Jamie Gorelick of the law firm WilmerHale on behalf of Google ("Google's Letter"). I respectfully request that you answer it in writing before our December 2, 2013, National Association of Attorneys General meeting.

Based on our lengthy discussion, it is my understanding that you will neither come nor send someone with any authority to meet with some of the concerned Attorneys General during our meeting in New Orleans next week to address any of the problems that we have raised with Google. If I am wrong in my assessment of our conversation, please advise me in writing. I will advise my colleagues at the meeting next week of our conversation and I do not want to mischaracterize it.

It is evident from Google's Letter, and my discussion with you, that although Google claims to be interested in cooperating with state Attorneys General, it is unwilling to take basic actions to make the Internet safe from unlawful and predatory conduct, and it has refused to modify its own behavior that facilitates and profits from unlawful conduct.

In my ten years as Attorney General, I have dealt with a lot of large corporate wrongdoers. I must say that yours is the first I have encountered to have no corporate conscience for the safety of its customers, the viability of its fellow

corporations or the negative economic impact on the nation which has allowed your company to flourish.

## I. Overview

As you are aware, overwhelming evidence shows that Google facilitates and profits from numerous illegal online activities ranging from piracy to illegal drug sales and human trafficking. Yet Google has repeatedly refused to take reasonable but important steps that would reduce the ability of criminals to profit from their crimes. Google's inaction is not merely a failure to do the right thing. Rather, it raises serious questions as to whether Google is engaged in unlawful conduct itself.

Nowhere was this made more apparent than in Google's own admissions to the United States Department of Justice when it was compelled to forfeit \$500 million in profits due to its facilitation of the sale of unlawful drugs. By its own admission, Google was aware of and actively aided and abetted the unlawful sales of pharmaceuticals through its search engine and its advertising service. Notwithstanding Google's claims that it merely provides a passive or neutral conduit for the speech of others, or the legal doctrines discussed in Google's Letter, Google nonetheless was liable for its own conduct, its own knowledge, and its own refusal to act in the face of indisputably unlawful activity.

There is every reason to believe further investigation will reveal that Google's illegal conduct reaches far beyond the illegal pharmaceutical sales that it has already admitted to facilitating. Publicly available information, described in greater detail below, already illustrates that Google profits from a host of other types of criminal conduct as well. This includes but is not limited to, further illegal pharmaceutical sales, counterfeiting, copyright infringement, and sex trafficking.

To combat these facts, Google takes two contradictory positions. Google touts its technology, especially in search – its ability to take information (including personal information about its users that raise privacy concerns not discussed in detail here) and use that information to provide “better” search results customized for individual users. With that technology and the army of Google employees who program and operate it, Google can respond to customers' needs. It also can, as Google's letter explains, take actions – when Google wants – against unlawful or offensive conduct by, among other things, deleting search results, removing advertising, and changing its Autocomplete feature.

Google would have us believe that it is a passive search engine incapable of combating the unlawful conduct it facilitates. That is the core of both the legal and the factual argument in Google's Letter. Google's admissions, however, to



the United States in its \$500 million forfeiture, the admissions in its letter, and Google's own public proclamations belie such claims. Google can and does take action against unlawful or offensive conduct – when Google determines it is in its business interests to do so. Google has chosen not to cease facilitating unlawful conduct when doing so would decrease its profits.

Moreover, Google appears to gather the information it receives from separate Google products and services for purposes of enhancing its other products and services and more effectively marketing to consumers across all Google platforms. Google should apply that same philosophy to implement policies across all platforms to reduce unlawful content. For example, if Google has knowledge that a site is problematic from a Google AdSense perspective and takes action based on that, Google should share that knowledge and take the same type of action with respect to other Google products and services that may be used by or in connection with that site.

As is described in greater detail below, Google can take action and does, when it so chooses. But with respect to a host of types of unlawful conduct of concern to state Attorneys General, Google simply refuses, relying on its own claimed (and false) passivity, or the First Amendment, or the technical challenges that it concedes it has overcome.

To maintain its status as a legitimate business and avoid further liability, Google must finally take the actions it can to cease promoting and profiting from unlawful conduct. And it must be called to account, after a full investigation and fair hearing, for actions that are its and its alone.

## **II. Google Facilitates And Profits From Unlawful Activities.**

Google does not seriously dispute that rampant unlawful conduct is assisted and made easier by Google's search results and other conduct. Moreover, state Attorneys General, pharmaceutical companies, motion picture studios, and others have all notified Google of specific websites engaged in obviously unlawful conduct. In general, Google takes little or no action to curb the unlawful conduct, ostensibly based on the arguments made in its letter

### **A. Search**

Google is unquestionably the dominant search engine on the Internet. Those who engage in unlawful activity rely heavily on Google, with Google search results being a primary, if not the primary, way that they obtain traffic to their websites. If a website selling or providing unlawful products ceased to appear at the top of Google's search results, chosen by Google's algorithm and its

employees, it would dramatically reduce the ability of that website to violate the law and harm consumers.

There is no serious dispute that Google has the capability to take such actions. As is detailed in Google's Letter, Google removes content from its search results in a variety of circumstances: Nazi-related content is removed from search results in Germany; allegedly defamatory content is removed in the United Kingdom; insults to religion are removed in India. Google removes child pornography from its search results. It also blocks sites with spam and malware that can be damaging to users. Letter at 2. It takes these actions without waiting for a court order or court adjudication that particular content is unlawful. This is the right thing to do. Google's successes in screening child pornography, malware, and illegal content in foreign countries demonstrate that it can curb unlawful conduct, when it so desires.

Yet while Google is willing to tailor its search results to comply with the law in foreign countries, it has been unwilling to delist and demote sites that violate a variety of domestic laws. In the United States, websites with illegal content not only appear in Google's search results, but are regularly among the top-listed search results. For example, despite the publicity surrounding Google's facilitation of illegal and counterfeit pharmaceutical sales, when a user searches for "buy oxycodone," the top search result on Google is a site titled "Order Oxycodone Online No Prescription."<sup>1</sup> Google's search results also facilitate piracy, forgery of identification documents, sales of counterfeit goods, cigarette sales to minors, and human trafficking.

This is both troubling and inexcusable. In light of Google's successes in screening other types of criminal content, Google cannot claim that it lacks the ability to respond to requests for assistance in fighting crime.<sup>2</sup> Given the obviously unlawful activities on many of these sites, once Google is notified that a site is engaged in unlawful conduct by a state Attorney General, federal law enforcement or the owner of intellectual or other property, it cannot credibly claim that it lacks knowledge. Instead, it has decided to pick and choose what unlawful conduct to combat – based on its own profit motive.

Such an approach must change. One would expect that Google would be eager to act as a responsible corporate citizen and to cooperate with law enforcement to ensure that its search results do not facilitate criminal conduct. Google's

---

<sup>1</sup> The search for "buy oxycodone" was conducted on August 29, 2013.

<sup>2</sup> This is not about the free flow of expression protected by the First Amendment or about the challenge of previewing the trillions of web pages in the world. Those are strawpersons set up by Google's Letter. Rather, this is about what Google knows, what it does, and what it refuses to do (even though Google concedes that it can).

Letter claims that its "commitment to a safer internet is manifest." Letter at 3. But this claim rings hollow in light of Google's inaction toward the proliferation of illegal content in its search results. It appears that Google has made a calculated business decision that it will be most profitable to continue to promote websites with unlawful content and to profit from the advertising that accompanies those searches.

Google should take the following actions to deal with rogue sites and discontinue the promotion of unlawful content:

- **Further promote authorized sites.** Google should take into account information from authoritative sources on which sites have been authorized to provide content, and promote those sites in rankings for searches for that content.
- **Provide an icon or other indication with search results to authorized sites.** Google should show an icon or other visible mark next to search results that are to known authorized sites for searches for content available on those authorized sites.
- **De-index rogue sites.** Google should not index sites that are "rogue sites," that is, sites substantially dedicated to intellectual property infringement. Google should de-index a site that is established to be a rogue site by referrals from trusted rights holders, or by third party services that provide meaningful criteria for assessing the level of IP infringement on websites.
- **Proactively refuse to index repeat infringements of content on a site.** Google should revise its policies on indexing new pages on a site to content for which Google has received multiple notices of infringement on that site.
- **Further deprioritize rogue sites.** Google should make more changes to its algorithm to push rogue sites dramatically lower in the results and to ensure that new infringing sites do not take their place.
- **Provide a "red light" or educational warning about rogue sites.** Google should warn users before it permits them to link from Google to rogue sites.

## B. Autocomplete

Google's Autocomplete function, which offers real-time search term suggestions to users, only exacerbates the problems created in Google search by steering users to search for websites that engage in and promote illegal activities.

Although Google's Letter claims that Autocomplete is "analogous to automatic spell checkers" used in email programs, Letter at 3, this misrepresents the

feature. Spell checking corrects *objective* errors that the user may have made when typing. In contrast, Autocomplete affirmatively suggests search terms to users. In essence, Autocomplete directs users to use specific terms. Autocomplete is utterly and completely in Google's control.

Google trumpets Autocomplete as a way to make searching faster, but Autocomplete also makes it far easier for users to search for and find websites that facilitate illegal activity. As recently as a few months ago, Autocomplete suggested searches for sites selling prescription drugs without prescriptions.<sup>3</sup> Autocomplete takes this process much further, suggesting searches like "buy stolen credit card numbers," "how to make a fake id," and "buy bath salts drug."<sup>4</sup> Autocomplete provides a road map for users to find illegal content online.

Google attempts to escape responsibility for its Autocomplete suggestions by representing, "Autocomplete entries simply reflect what an algorithm predicts is the likely search query . . . ." Letter at 12. Google ignores that it, not a third-party, authors the algorithm producing these suggestions. Although Autocomplete may draw from the massive data Google gathers through users' search queries, none of the suggestions are produced by anything but Google's algorithm. No entity other than Google could be the creator or the speaker of this content.

Once again, it is clear that Google can control Autocomplete to combat unlawful activity but, in most circumstances, chooses not to. Today, Google actively polices Autocomplete's output and regularly censors that output to avoid, for example, suggestions that would lead to vulgar and obscene websites. It will refuse to suggest key terms associated with child pornography. All of this is commendable. Parents should not have to worry that their children will stumble upon inappropriate content based on suggestions offered Google. Google's active tailoring of its Autocomplete suggestions only proves that Google, not a third party, creates and controls that content and thus promotes the searches and websites that engage in unlawful conduct.

### C. YouTube

YouTube's role in unlawful conduct is well-established. For example, a 2013 report by the Digital Citizens Alliance detailed how YouTube has become the

---

<sup>3</sup> Press Release, Attorney General Asks Colleagues to Issue Subpoenas in Google Investigation (June 18, 2013), [http://agjimhood.com/index.php/press/releases/attorney\\_general\\_asks\\_colleagues\\_to\\_issue\\_subpoenas\\_in\\_google\\_investigation](http://agjimhood.com/index.php/press/releases/attorney_general_asks_colleagues_to_issue_subpoenas_in_google_investigation).

<sup>4</sup> These searches were conducted on August 29, 2013.

how-to site for criminal behavior.<sup>5</sup> Videos uploaded to YouTube serve as commercials for businesses peddling prescription drugs from rogue pharmacies, forged identification documents, and counterfeit goods, as well as instructional videos for finding prostitutes, pirated copyrighted material, and illegal drugs.<sup>6</sup>

YouTube is not a mere platform for these videos. Many of these videos are monetized to allow Google and the producer of the content to profit from the videos. When a user uploads a video to YouTube, he or she has the option to check a box to "monetize my video," and to select the advertising formats that can accompany the video.<sup>7</sup> When a YouTube video is monetized, advertisements accompany the video. Google and the video's producer share the revenues from these advertisements. When videos with illegal content are monetized, Google not only profits directly from that illegality; it allows the criminals themselves to profit.

This financial partnership between Google and those who post criminal content is deeply troubling. It is also entirely avoidable. Google claims to conduct a "standard review process" before videos on YouTube are allowed to be accompanied by advertisements.<sup>8</sup> Such a review process certainly provides the opportunity to screen for videos that promote criminal activities. Nevertheless, these videos proliferate. What purpose does this screening process serve, if it fails to ensure that the monetized content complies with the law and YouTube's terms of service?

Google also has the ability to find these illegal videos. Google's Letter asserts that YouTube has "created and implemented automated solutions to attempt to both remove spam videos placed by potential rogue pharmacies and to disable ads from running against videos containing metadata suggesting they might contain objectionable pharma-related content." Letter at 5. The letter also candidly admits that after Google "learned" from news reports that videos promoting rogue pharmacies and counterfeit drugs were rampant on YouTube, it "immediately removed" thousands of videos that it found to be in violation of its guidelines. *Id.* This only demonstrates that Google can quickly and effectively remove videos promoting criminal activities when it chooses to do so. There is no reason why Google cannot take similar steps to address the proliferation of other criminal content on YouTube. Google should ensure that YouTube doesn't become the go-to source for download links to popular, copyrighted content. To

---

<sup>5</sup> See Digital Citizens Alliance, *Google & YouTube and Evil Doers: Too Close for Comfort* (June 2013), <http://www.digitalcitizensalliance.org/cac/alliance/getobject.aspx?file=YouTube>.

<sup>6</sup> See *id.*

<sup>7</sup> [https://support.google.com/youtube/answer/94522?hl=en&ref\\_topic=1322133](https://support.google.com/youtube/answer/94522?hl=en&ref_topic=1322133).

<sup>8</sup> *Id.*



that end, it should remove such content from the videos and/or de-prioritize videos that contain links to known rogue sites for copyrighted content.

#### **D. Advertising**

Through its AdWords program, Google provides advertising and allows business – including illegitimate businesses – to promote their products and gain an advantage over other (legitimate) competitors. Even Google concedes that its legal obligations regarding the content of advertisements are heightened because they are entering into a business relationship, in many cases, with an obviously unlawful website. See Letter at 3.

As in each of the other areas discussed above, Google concedes that it can take action to cease advertising on behalf of unlawful websites. Google's Letter detailed various actions Google has taken to limit rogue pharmacies from advertising through its AdWords program. It is notable, however, that Google has only taken these steps under the compulsion of a Non-Prosecution Agreement with the Department of Justice.<sup>9</sup>

With respect to a host of other types of unlawful sites, including counterfeit goods, piracy, and illegal drug sites, Google continues to do nothing. Just as the owner of a billboard would not post an advertisement informing passersby of where to buy stolen cars, Google's AdWords program should never offer advertisements for criminal enterprises. Google must stop providing criminals with the means to target their customers and victims.

### **III. Google Cannot Escape Liability For Its Facilitation of Unlawful Activity.**

The legal arguments of Google's Letter fail for the same basic reason that Google's factual arguments are unpersuasive – Google is not a mere passive company that just happens upon unlawful conduct, and it is not being investigated or pursued for the conduct of others. It is Google's own conduct that renders it liable, and it is Google's conduct which must change.

Firstly, Google's Letter argues that Google can never be liable for its support of unlawful enterprises. It claims that it could not be convicted of aiding and abetting a crime, no matter how blatant the criminal enterprise of its business partners may be. This is simply wrong. Google's conduct has greatly exceed that of a legitimate business "provid[ing] lawful services . . . even when it is foreseeable that some small portion of users may abuse those services to

---

<sup>9</sup> See Non-Prosecution Agreement between Google, Inc. and the U.S. Attorney's Office for the District of Rhode Island (Aug. 2011), <http://www.justice.gov/usao/ri/news/2011/august2011/Google%20Agreement.pdf>.

promote illegal ventures." Letter at 9. It is not merely "foreseeable" that some of Google's advertising and YouTube partners are promoting illegal activities. To the contrary, the illegal ventures that Google facilitates are open and transparent with their conduct.

Even the case law cited by Google proves why Google's actions go beyond those of a legitimate business engaging in arms-length transactions. In *Direct Sales Co. v. United States*, 319 U.S. 703 (1943), the Supreme Court made clear that the type of transaction matters a great deal when determining whether a business can be liable for the criminal activities of its customer. The Court explained that some articles of commerce "from their very nature[] . . . giv[e] the seller notice the buyer will use them unlawfully." *Id.* at 710. Such is the case here. When YouTube agrees to monetize a video entitled "Fake Passport USA step by step,"<sup>10</sup> YouTube is clearly on notice of the illegal content of the video. YouTube's knowledge of this illegality, combined with its decision to monetize the video and share profits with its producer, proves its intent to "further, promote and cooperate" in the illegal conduct. See *id.* at 711. Similarly, when Google promotes, through its search results, websites obviously selling unlawful drugs or streaming pirated videos, Google cannot escape liability. Once Google is aware of that conduct, or, in some cases, enters in a contractual relationship to promote the illegal content of the poster or advertiser, it assists criminal actors in advertising their criminal services.

We recognize that the question of Google's knowledge is key. Google's own admissions in the \$500 million forfeiture demonstrate that Google was well aware it was promoting unlawful conduct, took no action to stop it and, indeed, took steps to affirmatively assist the unlawful conduct – all the while earning a healthy profit. This conduct – classic aiding-and-abetting – is, we believe, likely to be replicated with respect to other forms of illegal conduct like human trafficking and product piracy. These are areas of great concern to state Attorneys General and not only relate to violations of law but also to public health and safety.

Secondly, Google asserts that it effectively has blanket immunity under Section 230 of the Communications Decency Act of 1996, 47 U.S.C. § 230(c), (e). Again, however, Google overstates the protections the CDA provides.

It is undoubtedly true that courts have interpreted Section 230 to protect service providers, including Google. See, e.g., *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997). Computer service providers like Google are protected from certain forms of liability where they publish information provided by another information content provider, see *id.*; 47 U.S.C. § 230(c)(1). The courts have

---

<sup>10</sup> This was one of the monetized videos specifically discussed in the Digital Citizens Alliance report. See Digital Citizens Alliance, *supra* at 9-10.

also been clear that this immunity is not unlimited. The CDA "was not meant to create a lawless no-man's-land on the Internet." *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1164 (9th Cir. 2008) (en banc). The CDA does not shield Google from its conduct.

Section 230(c) of the CDA provides no immunity to an Internet service provider like Google when it, rather than a third party, is the "information content provider." See *id.* at 1162; *FTC v. Accusearch Inc.*, 570 F.3d 1187, 1197-1200 (10th Cir. 2009). That is, if the service provider is "responsible, in whole or in part, for the creation or development of" the offending content, 47 U.S.C. § 230(f)(3), its actions fall outside the protection of Section 230. As a result, courts have held that a service provider is not immune from suit where the provider *itself* creates or helps to develop, rather than merely publishes, the unlawful content. See, e.g., *Roommates.com*, 521 F.3d at 1168-69; *Accusearch*, 570 F.3d at 1198-99; *Anthony v. Yahoo! Inc.*, 421 F. Supp. 2d 1257, 1262-63 (N.D. Cal. 2006). Where a search engine is "much more than a passive transmitter of information provided by others," and instead "becomes the developer, at least in part, of that information," Section 230 offers no protection. *Roommates.com*, 531 F.3d at 1166.

For this reason, the CDA provides Google no immunity for its wrongdoing.<sup>11</sup> Google is not a mere publisher of third-party content when it suggests search terms through Autocomplete. Google authors the algorithm that generates the suggestions, and Google alters those suggestions based on the identity of the user and to ensure that the user is not directed to offensive content. Thus, Google is the developer of the content generated by Autocomplete. When Autocomplete steers users towards illegal content and websites, Google is responsible and outside Section 230's protections. See *Roommates.com*, 521 F.3d at 1167.

Similarly, where Google's AdWords program assists criminals in optimizing their advertising campaigns, as Google conceded it did for illegal pharmacies in the NPA, it is an information content provider excluded from the protections of the CDA. Such advertising campaigns are not solely attributable to a third party because Google has itself created or developed, "in whole or in part," 47 U.S.C. § 230(f)(3), the unlawful advertising campaign.

---

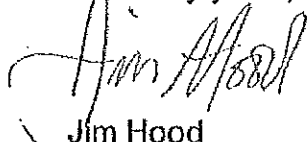
<sup>11</sup> The CDA also offers no immunity for Google's violations of federal criminal law, see 47 U.S.C. § 230(e)(1). It therefore cannot shield Google from liability for its facilitation of forgery of identification, counterfeiting, illegal drug sales, piracy, human trafficking, and other federal crimes.



Moreover, Google enjoys no protection under the CDA where it itself engages in conduct that is unlawful – regardless of who is the “publisher” of content. On YouTube, Google enters into contracts with the producers of YouTube videos to monetize illegal content and *fund* criminal activity. Google becomes a business partner, sharing advertising profits with criminals. Such aiding and abetting of criminal activity falls outside the immunities of Section 230 of the CDA. Courts have been quite clear that the CDA offers no protection to service providers that have themselves engaged in unlawful practices. *See, e.g., Anthony*, 421 F. Supp. 2d at 1263 (The CDA “does not absolve Yahoo! from liability for any accompanying misrepresentations” Yahoo! itself made); *Mazur v. eBay, Inc.*, 2008 U.S. Dist. LEXIS 16561, at \*28 (N.D. Cal. Mar. 4, 2008) (“The CDA does not immunize eBay for its own fraudulent misconduct.”); *800-JR Cigar, Inc. v. Goto.com, Inc.*, 437 F. Supp. 2d 273, 295 (D.N.J. 2006) (holding that the CDA cannot “shield entities from claims of fraud and abuse arising from their own pay-for-priority advertising business, rather than from the actions of third parties”).

At its core, Google's arguments under Section 230(c) are that it bears no responsibility for any criminal activity occurring on any of Google's various platforms – regardless of the role Google has taken in creating, developing, encouraging, and profiting from that conduct. This is not about holding Google liable for merely being a conduit for the speech and actions of others. It is about holding Google to account for its own knowledge and actions – its facilitation of and profit from unlawful conduct, its own choices and actions in building its search and other algorithms, its promotion of particular unlawful websites through the Autocomplete feature that it created and wholly controls, and its business partnership with the producers of YouTube videos engaged in unlawful conduct. No entity – not even Google – is above the law.

Sincerely yours,



Jim Hood  
Attorney General

cc: Jamie Gorelick  
The Honorable Jon Bruning  
The Honorable David Louie  
The Honorable Eric Holder