

**KRAMER DECLARATION EXHIBIT H**

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10 Attorneys for DIGITAL ENVOY, INC.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14 DIGITAL ENVOY, INC.,

Case No. C 04 01497 RS

15 Plaintiff/Counterdefendant,

**DIGITAL ENVOY, INC.'S RULE 26(a)(1)  
DISCLOSURES**

16 v.

17 GOOGLE, INC.,

18 Defendant/Counterclaimant.  
19

20 Plaintiff Digital Envoy, Inc. hereby makes the following disclosures:

- 21 **A. The name and, if known, the address and telephone number of each individual likely**  
22 **to have discoverable information that the disclosing party may use to support its**  
23 **claims or defenses, unless solely for impeachment, identifying the subjects of the**  
24 **information.**

24 **RESPONSE:**

- 25 1. Rob Friedman  
26 Digital Envoy  
c/o Plaintiff's counsel only  
27  
28

1 Mr. Friedman has knowledge of all aspects of the relationship between Digital Envoy and  
2 Google, as well as Digital Envoy's relationship with its other customers, and Digital Envoy's  
3 technology and its business affairs.

4 2. Sanjay Parek  
5 Digital Envoy  
6 c/o Plaintiff's counsel only

7 Mr. Parekh has knowledge of Digital Envoy's technology and its business affairs,  
8 including the relationship with Google and its other customers.

9 3. Steven Schimmel  
10 Google

11 Mr. Schimmel has knowledge of the formation of the contract between Digital Envoy and  
12 Google, and other aspects of Google's business and technology.

13 4. Sukhinder Singh  
14 Google

15 Mr. Singh has knowledge regarding Google's local search program, and other aspects of  
16 Google's business and technology.

17 5. Jeffrey Dean  
18 Google

19 Mr. Dean has knowledge of Google's technology.

20 6. Georges Harik  
21 Google

22 Mr. Harik has knowledge of Google's technology.

23 7. Paul Bucheit  
24 Google

25 Mr. Bucheit has knowledge of Google's technology.

26 8. David Drummond  
27 Google

28 Mr. Drummond has knowledge of the contract between Google and Digital Envoy, and  
other aspects of Google's business and technology.

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9. Salar Kamangar  
Google

Mr. Kamangar has knowledge of the AdWords program and pricing, and other aspects of Google's business and technology.

10. Susan Wojcicki  
Google

Ms. Wojcicki has knowledge of the AdWords program and pricing, the AdSense program and other aspects of Google's business and technology.

11. Joan Braddi  
Google

Ms. Braddi has knowledge of Google's third party search program, and other aspects of Google's business and technology.

12. Tim Armstrong  
Google

Mr. Armstrong has knowledge of Google's advertising program, and other aspects of Google's business and technology.

13. Jonathan Rosenberg  
Google

Mr. Rosenberg has knowledge of the development of Google's programs, and other aspects of Google's business and technology.

14. Cindy McCaffrey  
Google

Ms. McCaffrey has knowledge of Google's corporate communications, and other aspects of Google's business and technology.

15. Omid Kordestani  
Google

Mr. Kordestani has knowledge of the AdSense program, and other aspects of Google's business and technology.

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16. Matt Cutts  
Google

Mr. Cutts has knowledge of Google's corporate communications, geo-location technology, and other aspects of Google's business and technology.

17. Sergey Brin  
Google

Mr. Brin has knowledge of Google's decisions regarding geo-location technology, AdSense, AdWords, and other aspects of Google's business and technology, its corporate communications and business policies and plans.

18. Larry Page  
Google

Mr. Page has knowledge of Google's decisions regarding geo-location technology, AdSense, AdWords, and other aspects of Google's business and technology, its corporate communications and business policies and plans.

19. Eric Schmidt  
Google

Mr. Schmidt has knowledge of Google's decisions regarding geo-location technology, AdSense, AdWords, and other aspects of Google's business and technology, its corporate communications and business policies and plans.

20. Jeffery Donovan  
Google

Mr. Donovan has knowledge of Google's corporate development and information pertaining to use of Digital Envoy's technology.

21. Leslie Yeh  
Google

Ms. Yeh has knowledge of Google's use of Digital Envoy's technology.

22. Zhe (additional portioin of name unknown)  
Google

1 She has knowledge of Google's use of Digital Envoy's technology.

2 23. Sridhar Ramasamy  
3 Google

4 Mr. Ramasamy has knowledge of Google's use of Digital Envoy's technology.

5 24. Jeremy Chau  
6 Google

7 Mr. Chau has knowledge of Google's use of Digital Envoy's technology.

8 25. Amit Patel  
9 Google

10 Mr. Patel has knowledge of Google's use of Digital Envoy's technology.

11 26. Dan Egnor  
12 Google

13 Mr. Egnor has knowledge of Google's use of Digital Envoy's technology.

14 27. Scott Benson  
15 Google

16 Mr. Benson has knowledge of Google's use of Digital Envoy's technology.

17 28. Steve Berkowitz  
18 Ask Jeeves

19 Mr. Berkowitz has knowledge of Google's business relationship with Ask Jeeves.

20 29. Jim Lanzone  
21 Ask Jeeves

22 Mr. Lanzone has knowledge of Google's business relationship with Ask Jeeves.

23 30. Persons identified in documents produced or in depositions

24 Pursuant to Fed.R.Civ.P. 26(e)(1), Digital Envoy notifies Google that it will supplement  
25 this disclosure as appropriate, but specifically notes that such supplementation is only required  
26 where the person "has not otherwise been made known to the other parties during the discovery  
27 process or in writing." Digital Envoy has made a good faith effort to identify all of the persons  
28 with discoverable information in support of Digital Envoy's claims. Digital Envoy anticipates that

1 additional persons have discoverable information in support of Digital Envoy's claims and that  
2 some of them will be disclosed in documents produced or at depositions in this case. Digital  
3 Envoy will follow the guidance of Rule 26(e)(1) when determining whether further  
4 supplementation is necessary.  
5

6 **B. A copy of, or a description by category and location of, all documents, data**  
7 **compilations, and tangible things that are in the possession, custody or control of the**  
8 **party and that the disclosing party may use to support its claims or defenses, unless**  
9 **solely for impeachment.**

9 **RESPONSE:**

- 10 1. The Agreement, as defined in the Complaint, with amendments.
- 11 2. Documents reflecting communications between the parties leading up to execution  
12 of the Agreement.
- 13 3. Other agreements between the parties, including communications pertaining  
14 thereto.
- 15 4. Documents reflecting communications between the parties regarding performance  
16 under the Agreement.
- 17 5. Documents reflecting performance under the Agreement.
- 18 6. Collected information on Google's business activities from public sources.
- 19 7. Digital Envoy web site information.
- 20 8. Google web site information.
- 21 9. Documents reflecting Digital Envoy's licensing of third parties for targeted  
22 advertising on their content web sites.
- 23 10. Documents reflecting Digital Envoy's licensing of advertising networks for  
24 targeted advertising on a partial revenue share basis.

25 All categories of documents in Digital Envoy's possession, custody or control are located  
26 either at Digital Envoy's office in Norcross, Georgia or at Digital Envoy's counsel's office in  
27 Atlanta, Georgia.  
28

1 **C. A compilation of any category of damages claimed by the disclosing party, making**  
2 **available for inspection and copying as under Rule 34 the documents or other**  
3 **evidentiary material, not privileged or protected from disclosure, on which such**  
4 **computation is based, including materials bearing on the nature and extent of injuries**  
5 **suffered.**

6 **RESPONSE:**

7 **1. Actual damages — recoverable under Counts I, II and IV.**

8 Google's wrongful actions have caused Digital Envoy to suffer actual damages, including  
9 lost income, licensing and business opportunities. The extent of Digital Envoy's damages is  
10 unknown and this disclosure will be supplemented as appropriate after further discovery and  
11 investigation.

12 Digital Envoy further notes that the damages included in this category are on going and, in  
13 fact, Google has increased its activities bringing harm to Digital Envoy.

14 Much of the information required to determine Digital Envoy's actual damages is in the  
15 possession, custody or control of Google. Specifically, Google possesses, and Digital Envoy will  
16 obtain through discovery, the identity of third parties with whom Google has shared Digital  
17 Envoy's technology, or otherwise provided data contained therein. Google also possesses the  
18 nature and extent of use made by each of these third parties.

19 With this information, Digital Envoy intends to determine the amount of lost income  
20 through lost business opportunities, and otherwise determine the fair value of Google's wrongful  
21 use of Digital Envoy's technology. To the extent sufficient specificity of this category of damages  
22 cannot be achieved, Digital Envoy will claim recovery under the disgorgement theories of  
23 recovery.

24 Many of the documents supporting this category are in Google's possession, custody or  
25 control and will be obtained through discovery. Additionally, Digital Envoy has identified  
26 documents in its possession which will support this category. Specifically, the documents  
27  
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1 identified in items 1, 5, 6, 8, 9 and 10 of Attachment C hereto as containing documents which  
2 support this category of damages.

3 **2. Disgorgement of Google's profits — recoverable under Counts I, II and IV**

4 Digital Envoy contends that, under the causes of action identified, it is entitled to a  
5 judgment in the amount of Google's profits obtained through the wrongful use of Digital Envoy's  
6 technology. This damage category includes Google's total profit on any revenue producing act  
7 which includes Digital Envoy as a portion of the service provided by Google, as apportionment of  
8 a lesser amount attributed to Digital Envoy's technology is inappropriate.  
9

10 The extent of Google's profits gained through the wrongful use of Digital Envoy's  
11 technology is currently unknown and will be supplemented as appropriate after further discovery  
12 and investigation. Google has the information in its possession, custody or control necessary to  
13 calculate the exact amount claimed in this category, and Digital Envoy anticipates collecting this  
14 information from Google  
15

16 Digital Envoy further notes that the amounts included in this category are accumulating  
17 and, in fact, Google has increased its activities which result in an acceleration of recoverable  
18 amounts in this category.

19 In 2003, Google received \$144,411,000 in net revenues from placing advertisements on  
20 Google Network web sites. In the first quarter 2004, Google already received \$82,246,000 for the  
21 same thing. These revenues are net of money paid to the Google Network members as a share in  
22 the revenue generated by the advertisement. A large percentage of this revenue was from  
23 advertisements for which geographic targeting was enabled.  
24

25 Google's profit on this revenue is substantial. In 2003, the cost of revenue was only 12.7%  
26 of the net revenue. In the first quarter of 2004, the cost of revenue was 13.7%.  
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1 From 2002 through first quarter 2004, Google's net revenue less the cost of revenue for  
2 advertising placed on Google Network web sites was \$207,915,000.

3 Digital Envoy's damages can be calculated by applying a percentage of revenues generated  
4 by advertisements in which geotargeting was enabled. Since Google promotes geographic  
5 targeting on its AdWords website and makes enablement obvious and easy when enrolling for the  
6 AdWords program, Digital Envoy expects this percentage to be significant.

7  
8 The documents supporting this category are in Google's possession, custody or control.  
9 To the extent Digital Envoy has any uniquely-sourced documents, they will have been identified  
10 and produced in previous responses.

11 **3. Treble damages — recoverable under Count II**

12 Digital Envoy contends it is entitled to treble damages under Count II. This will be a  
13 mathematical calculation using the damage amounts determined in items 1 and 2 herein. There are  
14 no documents other than previously identified supporting the determination of the amount of this  
15 category.

16  
17 **4. Return of money earned — recoverable under Count V**

18 Digital Envoy contends that, under the Count V, it is entitled to a judgment in the amount  
19 of Google's earnings obtained through the wrongful use of Digital Envoy's technology. This  
20 damage category includes Google's total revenues from any act which includes Digital Envoy as a  
21 portion of the service provided by Google, as apportionment of a lesser amount attributed to  
22 Digital Envoy's technology is inappropriate.

23  
24 The extent of Google's earnings gained through the wrongful use of Digital Envoy's  
25 technology is currently unknown and will be supplemented as appropriate after further discovery  
26 and investigation. Google has the information in its possession, custody or control necessary to  
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1 calculate the exact amount claimed in this category, and Digital Envoy anticipates collecting this  
2 information from Google

3 Digital Envoy further notes that the amounts included in this category are accumulating  
4 and, in fact, Google has increased its activities which result in recoverable amounts in this  
5 category.

6 The documents supporting this category are in Google's possession, custody or control.  
7  
8 To the extent Digital Envoy has any uniquely-sourced documents, they will have been identified  
9 and produced in previous responses.

10 **5. Attorney's fees — recoverable under Counts II, III and IV**

11 Digital Envoy contends it is entitled to recover its attorney's fees under the counts  
12 identified. The amount recoverable in this category will be on-going up to trial of this matter, and  
13 will be the proper subject of further discovery and disclosure as appropriate.

14 The documents supporting this category will be the fee bills and evidence of payment.  
15  
16 Digital Envoy will make such documents available as appropriate in this litigation.

17 **6. Punitive damages — recoverable under Counts I and IV**

18 Digital Envoy contends it is entitled to punitive damages under the counts identified. The  
19 amount recoverable in this category is to be determined by the enlightened conscience of the jury.

20 The documents supporting this category are in Google's possession, custody or control.  
21  
22 To the extent Digital Envoy has any uniquely-sourced documents, they will have been identified  
23 and produced in previous responses.

1 **D. For inspection and copying as under Rule 34 any insurance agreement under which**  
2 **any person carrying on an insurance business may be liable to satisfy part or all of a**  
3 **judgment which may be entered in the action or to indemnify or reimburse for**  
4 **payments made to satisfy the judgment.**

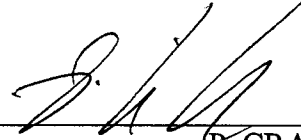
5 **RESPONSE:**

6 None.

7 DATED: August 4, 2004

8 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

9  
10 By



11 P. CRAIG CARDON

12 Attorneys for DIGITAL ENVOY, INC.  
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is Four Embarcadero Center, 17<sup>th</sup> Floor, San Francisco, California 94111.

On **August 4, 2004**, I served the following document(s) described as **DIGITAL ENVOY, INC.'S RULE 26(a)(1) DISCLOSURES** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

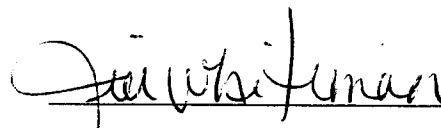
David H. Kramer  
David L. Lansky  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94303-9300

**BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.

**BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 415-434-3947. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine (or the machine used to forward the facsimile) issued a transmission report confirming that the transmission was complete and without error. Pursuant to Rule 2008(e), a copy of that report is attached to this declaration.

**FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **August 4, 2004**, at San Francisco, California.



Jil Whiteman

TTI SF SHEPPARD MULLIN15 4154343947

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David H. Kramer/David L. Lansky Wilson Sonsini Goodrich & Rosati	650-493-6811	650-493-9300

From: P. Craig Cardon

Re: Google, Inc. v. Digital Envoy, Inc.  
United States District Court  
Northern District of California  
San Jose Division  
Case No. C 04 01497 RS