

KRAMER DECLARATION EXHIBIT G

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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

10 3. Steven Schimmel
11 Google

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

14 4. Sukhinder Singh
15 Google

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

18 5. Jeffrey Dean
19 Google

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

21 6. Georges Harik
22 Google

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

24 7. Paul Bucheit
25 Google

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

27 8. David Drummond
28 Google

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

1 9. Salar Kamangar
2 Google

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

5 10. Susan Wojcicki
6 Google

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

10 11. Joan Braddi
11 Google

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

14 12. Tim Armstrong
15 Google

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

18 13. Jonathan Rosenberg
19 Google

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

22 14. Cindy McCaffrey
23 Google

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

26 15. Omid Kordestani
27 Google

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

1 16. Matt Cutts
2 Google

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

5 17. Sergey Brin
6 Google

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

10 18. Larry Page
11 Google

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

15 19. Eric Schmidt
16 Google

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

20 20. Jeffery Donovan
21 Google

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

24 21. Leslie Yeh
25 Google

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

27 22. Zhe (additional portioin of name unknown)
28 Google

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

23. Sridhar Ramasamy
Google

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

24. Jeremy Chau
Google

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

25. Amit Patel
Google

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

26. Dan Egnor
Google

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

27. Scott Benson
Google

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

28. Steve Berkowitz
Ask Jeeves

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

29. Jim Lanzone
Ask Jeeves

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

30. Persons identified in documents produced or in depositions

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

10 **RESPONSE:**

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

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

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

25 Many of the documents supporting this category are in Google's possession, custody or
26 control and will be obtained through discovery. Additionally, Digital Envoy has identified
27 documents in its possession which will support this category. Specifically, the documents
28

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%.
27
28

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.

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7 The documents supporting this category are in Google's possession, custody or control.

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 Digital Envoy will make such documents available as appropriate in this litigation.

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

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

19 The documents supporting this category are in Google's possession, custody or control.

20 To the extent Digital Envoy has any uniquely-sourced documents, they will have been identified
21 and produced in previous responses.
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D. For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

RESPONSE:

None.

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DATED: August 4, 2004

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



P. CRAIG CARDON
Attorneys for DIGITAL ENVOY, INC.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

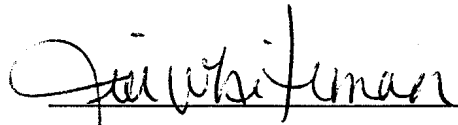
I am employed in the County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is Four Embarcadero Center, 17th Floor, San Francisco, California 94111.

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.



Jill Whiteman

TTI SF SHEPPARD MULLIN 15 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