

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

GALAXY INTERNET SERVICES, INC.,	)	
on behalf of themselves, their customers,	)	
and all others similarly situated within the	)	
Commonwealth of Massachusetts,	)	
	)	CIVIL ACTION NO. 1:10 10871WGY
Plaintiffs,	)	
v.	)	
	)	
GOOGLE INC.,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF DEFENDANT'S  
MOTION TO STAY PRETRIAL DEADLINES

Plaintiff Galaxy Internet Services, Inc. has initiated this putative class action against Google Inc. ("Google") claiming that Google violated the federal Wiretap Act, 18 U.S.C. § 2510 et seq., and state statutes by allegedly using its "Street View" vehicles to receive electronic data being transmitted over open wireless ("Wi-Fi") internet connections. Google is also the sole defendant in nine other actions pending in five different judicial districts, all of which are based on similar allegations concerning open Wi-Fi transmissions. The plaintiffs in one of those cases have filed a motion before the United States Judicial Panel on Multidistrict Litigation ("JPML" or "Panel") to consolidate pretrial proceedings in all pending and subsequently filed related actions.

In this case, on June 14, 2010, the Court allowed the parties' joint motion to extend through today the deadline to respond to plaintiff's complaint. At that time, Google represented as follows: "During the next two weeks, defendant will attempt to work out an agreed schedule with plaintiff and, failing that, may need to seek an extension or stay from the Court." (Memorandum in Support of Defendant's Assented-

To Motion To Extend Time To Respond to Plaintiff's Complaint, p. 2, ¶ 3 [Docket entry No. 6, filed on June 14, 2010])). Thereafter, plaintiff neither agreed to Google's subsequent proposal to him, presented in the motion filed herewith, nor declined to agree to it, and has not communicated with Google since Thursday, June 24, despite Google's repeated requests for a response. (See Rule 7.1 Certification in the motion filed herewith) Google therefore respectfully requests that this Court stay all pretrial proceedings in this action until the JPML rules on the transfer and consolidation motion, as proposed in detail in the motion filed herewith. The JPML hearing has set a hearing for July 29, and it typically rules shortly after the hearing. The ruling will have a direct bearing on the pendency of this action in this Court, and a temporary stay of this action will preserve judicial resources. Moreover, the modest stay sought will not prejudice any party.

## **I. FACTUAL BACKGROUND**

1. Plaintiff's complaint in this action, filed on May 25, 2010, is premised on allegations that it and its customers maintain "open" wireless Wi-Fi connections that they use to transmit and receive personal information and that Google has intercepted such data.

2. Nine other cases have been filed in five federal judicial districts which also allege that Google violated the federal Wiretap Act, among other laws, by allegedly using its Street View vehicles to receive data being transmitted over open Wi-Fi connections.

3. Google is the sole defendant in all of the Wi-Fi cases.

4. On June 14, 2010, pursuant to 28 U.S.C. § 1407, plaintiffs in the case of *Keyes v. Google Inc.*, No. 1:10-cv-0896-JDB (D.D.C.) moved the United States JPML for an order transferring the Google Wi-Fi Cases, as well as all subsequently-filed related actions, to the United States District Court for the District of Columbia for coordinated or

consolidated pretrial proceedings.

5. The JPML has set the *Keyes* plaintiffs' motion for transfer for a hearing on July 29. A ruling by the JPML on the pending motion to transfer is anticipated shortly after the hearing.

6. Google agrees with the *Keyes* plaintiffs that the cases should be consolidated but will ask the Panel to transfer all pending Google Wi-Fi Cases, as well as all subsequently-filed related actions, to the United States District Court for the Northern District of California for coordinated or consolidated pretrial proceedings. Google's response to the transfer motion is due on July 6. The plaintiff in this action is, of course, entitled to file its own response to that motion.

7. Plaintiffs in the other cases have so far all been willing to agree to stay their cases pending the JPML's determination. Indeed, most have agreed to the form of stipulation that Google proposed to the plaintiff here, which is replicated in the motion filed herewith.

## **II. ANALYSIS**

The modest stay sought by Google until the JPML renders its decision on the pending motion to transfer and consolidate would promote judicial economy, benefit the parties, and not impose any prejudice. If the JPML grants the pending motion and consolidates all Wi-Fi actions for pretrial proceedings, the stay requested by Google will have avoided an unnecessary and possibly redundant response to plaintiffs' complaint. If the cases are transferred, it is all but certain that plaintiffs will file—indeed, the transferee court might require—a consolidated complaint. In the unlikely event that the Panel denies the Motion, the brief intervening stay will not have harmed plaintiff.

"Even without explicit statutory authority to do so, a court, in its sound discretion,

may stay any case pending before it as an exercise of its inherent power to control its own docket." *Cannavo v. Enterprise Messaging Services, Inc.*, 982 F. Supp. 54, 59 (D. Mass. 1997) (citing *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936)). Thus, as district courts within the First Circuit have noted, "courts frequently grant stays pending a decision by the [JPML] regarding whether to transfer a case." *Good v. Altria Group, Inc.*, 624 F. Supp. 2d 132, 134 (D. Me. 2009) (internal citation and quotation marks omitted) (alteration in original); *see also D'Amico v. Guidant Sales Corp.*, 2007 WL 3003181, at \*\*2 (D. R. I., Oct. 11, 2007) ("In the context of MDL litigation in particular, 'the decision to grant or deny a temporary stay of proceedings pending a ruling on the transfer of the matter to the MDL court lies within this Court's discretion.'" (quoting *New Mexico State Investment Council v. Alexander*, 317 B.R. 440, 443 (D.N.M. 2004))).

Generally, a court considers three factors in deciding whether to grant a stay: "(1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party without a stay; and (3) judicial economy." *Good*, 624 F. Supp. 2d at 134. Here, all of the factors favor issuance of the stay. First, plaintiff will suffer no prejudice by a stay. This action, filed on May 25, 2010, has only been pending for a short time, and will move forward expeditiously shortly after the JPML rules.<sup>1</sup> *See id.* at 134 (even where underlying case had been pending for nearly four years, the Court concluded that, "[i]f the parties are correct and the JPML issues a transfer ruling soon after the hearing, the delay will be measured in weeks, which, though regrettable, cannot cause a significant hardship in a case of unusual complexity"). Second, Google may suffer unnecessary

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<sup>1</sup> As set forth in the accompanying motion, Google asks to answer or otherwise respond to plaintiff's complaint within either: (1) thirty days of denial of the motion to transfer by the JPML, or (2) thirty days of the filing of a master consolidated complaint in the transferee district (or a decision by the transferee court that no consolidated complaint need be filed).

hardship if no stay is issued. Absent a stay, Google may be required to answer or otherwise respond to plaintiff's complaint and initiate discovery, all of which may be redundant if the Panel consolidates all Google Wi-Fi actions and the transferee district establishes a uniform case schedule.

Finally, judicial economy would be promoted by a stay awaiting the JPML's ruling. If the Panel grants the transfer motion, the transferee court will be well-situated to assess the status of each of the pending Wi-Fi cases and decide how to best coordinate pretrial proceedings and discovery. *Id.*, 624 F.Supp.2d at 135. Absent a stay, pretrial proceedings in this case—including the filing of an answer or responsive motion that may be either duplicative or a nullity if transfer is ordered—would needlessly waste the parties' and this Court's resources. Indeed, given the efficiencies to be gained by consolidating similar actions before an MDL Panel, and the minimal harm attendant to awaiting the JPML's ruling on a transfer motion, the court in *Good* noted that exercising discretion to issue a brief stay under such circumstances "is not a close question." *Id.*, 624 F. Supp. 2d at 136; *see also id.* ("Thus, even if the Court were inclined to speculate that transfer is unlikely, considerations of judicial economy weigh heavily in favor of imposing a brief stay.").

### CONCLUSION

For the foregoing reasons, Google respectfully request that the Court stay all proceedings in this action pending the JPML's resolution of whether the Google Wi-Fi cases, including this case, should be transferred to a single judicial district for coordinated or consolidated pretrial proceedings.

GOOGLE INC.,  
By its attorneys,

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Dated: June 29, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing. The ECF system presently indicates that there are no non-registered participants.

/s/ James B. Conroy  
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