

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

PERSONALIZED USER MODEL, L.L.P., )  
 )  
 ) Plaintiff, )  
 )  
 ) v. )  
 )  
 ) GOOGLE INC., )  
 )  
 ) Defendant. )  
 \_\_\_\_\_ )  
 ) GOOGLE, INC. )  
 )  
 ) Counterclaimant, )  
 )  
 ) v. )  
 )  
 ) PERSONALIZED USER MODEL, LLP and )  
 ) YOCHAI KONIG )  
 )  
 ) Counterdefendants. )

C.A. No. 09-525-LPS

**JURY TRIAL DEMANDED**

**NOTICE OF AMENDED SUBPOENA**

PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, defendant Google Inc., will serve the attached amended subpoena (Ex. 1, hereto) in the above-referenced action.

POTTER ANDERSON & CORROON LLP

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Dated: June 3, 2011  
1015314 / 34638

By: /s/ David E. Moore

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*Attorneys for Defendant Google Inc.*

# EXHIBIT 1

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

Personalized User Model, L.L.P.

Plaintiff

v. Google Inc.

Defendant

Civil Action No. 09-525-LPS

(If the action is pending in another district, state where:

District of Delaware

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

To: Technology, Patents & Licensing, Inc., 2003 South Easton Road, Suite 208, Doylestown, PA 18901

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Table with 2 columns: Place (First Class Subpoena Services Inc., 1800 Callow Hill Street, Philadelphia, PA 19130) and Date and Time (06/10/2011 10:00)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 06/03/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of attorney

The name, address, e-mail, and telephone number of the attorney representing (name of party) Google Inc.

David E. Moore, Potter Anderson & Corroon LLP, 1313 North Market St., Wilmington, DE 19801, (302) 984-6147, dmoore@potteranderson.com

Civil Action No. 09-525-LPS

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the subpoena on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)*  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because \_\_\_\_\_; or

other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## ATTACHMENT A

### DEFINITIONS

As used in these Requests, the following terms have the meaning indicated:

A. "Google" means Google Inc., including its present and former corporate parents, predecessors in interest, successors in interest, shareholders, divisions, departments, subsidiaries, branches, affiliates, and its present and former officers, directors, executives, employees, partners, agents, principals, attorneys, trustees, representatives, and other persons acting or purporting to act on its behalf.

B. "PUM" refers to Personalized User Model, LLP, including its present and former corporate parents, predecessors in interest, successors in interest, shareholders, divisions, departments, subsidiaries, branches, affiliates, and its present and former officers, directors, executives, employees, partners, agents, principals, attorneys, trustees, representatives, and other persons acting or purporting to act on its behalf.

C. "Utopy" refers to Utopy, Inc., including its present and former corporate parents, predecessors in interest, successors in interest, shareholders, divisions, departments, subsidiaries, branches, affiliates, and its present and former officers, directors, executives, employees, partners, agents, principals, attorneys, trustees, representatives, and other persons acting or purporting to act on its behalf.

D. "Intellectual Ventures" refers to Intellectual Ventures Management, LLC, including its present and former corporate parents, predecessors in interest, successors in interest, shareholders, divisions, departments, subsidiaries, branches, affiliates, and its present and former officers, directors, executives, employees, partners, agents, principals, attorneys, trustees, representatives, and other persons acting or purporting to act on its behalf.

E. "Technology Patents," "You," or "Your," refers to Technology, Patents & Licensing, Inc., including its present and former corporate parents, predecessors in interest, successors in interest, shareholders, divisions, departments, subsidiaries, branches, affiliates, and its present and former officers, directors, executives, employees, partners, agents, principals, attorneys, trustees, representatives, and other persons acting or purporting to act on its behalf.

F. The "040 Patent" means U.S. Patent No. 6,981,040, entitled "Automatic, Personalized Online Information and Product Services," which issued on December 27, 2005 and which named Yochai Konig, Roy Twersky, and Michael Berthold as alleged inventors, together with the application on which it issued (Application No. 09/597,975), its entire prosecution history, and all foreign counterparts, including foreign applications and foreign prosecution histories.

G. The "031 Patent" means U.S. Patent No. 7,320,031, entitled "Automatic, Personalized Online Information and Product Services," which issued on January 15, 2008 and which named Yochai Konig, Roy Twersky, and Michael Berthold as alleged inventors, together with the application on which it issued (Application No. 11/316,785), its entire prosecution history, and all foreign counterparts, including foreign applications and foreign prosecution histories..

H. The "276 Patent" means U.S. Patent No. 7,685,276, entitled "Automatic, Personalized Online Information and Product Services," which issued on March 23, 2010 and which named Yochai Konig, Roy Twersky, and Michael Berthold as alleged inventors, together with the application on which it issued (Application No. 12/008,148), its entire prosecution history, and all foreign counterparts, including foreign applications and foreign prosecution histories.



I. The “patents-in-suit” mean the ‘040 Patent, the ‘031 Patent, and the ‘276 Patent, both separately and/or collectively.

J. “Related Applications” means any patent application that claims priority to the ‘040 Patent, the ‘031 Patent, and/or the ‘276 Patent, and any patent application from which a claim of priority has been made in the ‘040 Patent, the ‘031 Patent, and/or the ‘276 Patent, including any divisional, continuation, CPA, or CIP application, any reissue, reexamination or extension thereof, any foreign counterpart application, and any patent issuing from any of the foregoing.

K. The term “Document” is used in its broadest sense to include everything that is contemplated by Rules 26 and 34 of the Federal Rules of Civil Procedure, including without limitation any written, recorded or tangible graphic matter, or any other means of preserving data, expression, facts, opinions, thought, images, or other information of any kind, including without limitation all non-identical copies, drafts, out takes, subsequent versions, worksheets and proofs, however created or recorded, including without limitation audio tapes, annotations, calendars, correspondence, data or information of any kind recorded on compact disks, digital video diskettes, or any other type or form of diskettes for use with computers or other electronic devices, or any hard drive, diary entries, electronic recordings of any kind, e-mail, memoranda, notes, photographs, reports, telephone slips and logs, video cartridges and videotapes, and sites, databases, or other means of information storage or retrieval on the Internet or the World Wide Web. The term “Document” also includes, but is not limited to, documents stored in electronic form, such as electronic mail, computer source code, object code and microcode, and documents stored on any media accessible by electronic means. A comment or notation appearing on any Document that is not part of the original text is to be considered a separate “Document.”

L. “Thing” means any tangible object other than a Document.

M. "Person" or "Entity" includes not only natural Persons, but also, without limitation, firms, partnerships, associations, corporations, and other legal entities, and divisions, departments, or other units thereof.

N. "Infringement" refers to any form of infringement actionable under United States law, including without limitation, direct infringement, contributory infringement, inducement to infringe, literal infringement, and infringement under the doctrine of equivalents.

O. "This Action" refers to the case captioned Personalized User Model, LLP v. Google Inc., Civil Case No. 09-525 (D. Del.)

P. "Relates to," "Relating to" and "Related to" mean describing, discussing, evidencing, concerning, reflecting, comprising, illustrating, containing, embodying, constituting, analyzing, stating, identifying, referring to, commenting on, connected with, substantiating, establishing, memorializing, proving, disproving, contradicting, mentioning, regarding, reflecting, dealing with, in any way pertaining to, or supporting, directly or indirectly.

Q. "Communication" means any occurrence whereby data, expression, facts, opinions, thought or other information of any kind is transmitted in any form, including without limitation any conversation, correspondence, discussion, e-mail, fax, meeting, memorandum, message, note, or posting or other display on the Internet or the World Wide Web.

R. "Inventor" and/or "Inventors" refers to any and/or all named inventors of patents-in-suit, including Yochai Konig, Roy Twersky, and Michael Berthold.

S. "All" shall be construed to include "any" and "each," "any" shall be construed to include "all" and "each," and "each" shall be construed to include "all" and "any," in each case as is necessary to bring within the scope of these Interrogatories that might otherwise be construed as outside their scope.

T. "And" and "or" shall be construed conjunctively or disjunctively, in each case as is necessary to bring within the scope of these Interrogatories that might otherwise be construed as outside their scope.

U. The singular form of a word shall include the plural, and the plural shall include the singular.

V. The use of the present tense includes the past tense and vice versa.

W. References to the masculine gender shall include references to the feminine gender and vice versa.

### INSTRUCTIONS

1. In responding to this subpoena, you are requested to furnish all documents or things in your possession, custody, or control.

2. In producing documents or things for inspection, you are requested to produce the original of each document or things together with all non-identical copies and drafts of that document or thing.

3. If any portion of a document or thing is responsive to a request, the entire document or thing should be produced, redacting only privileged material if any.

4. All documents that are maintained in electronic form should be produced in electronic form even if a paper copy of the same document was produced.

5. Documents attached to each other should not be separated.

6. Things produced pursuant to these requests shall be produced in their present form and shall not be changed or modified in any way.

7. In the event that any document or thing called for by these requests or subsequent requests is to be withheld on the basis of a claim of privilege or immunity from discovery, that document or thing is to be identified by stating:

- (a) the author(s), addressee(s) and any indicated or blind copyee(s);
- (b) the document's or thing's date, number of pages and attachments or appendices;
- (c) the subject matter(s) of the document;
- (d) the nature of the privilege or immunity asserted; and
- (e) any additional facts upon which you would base your claim of privilege or immunity.

8. In the event that any document or thing called for by these requests or subsequent requests has been destroyed or discarded, that document or thing is to be identified by stating:

- (a) the author(s), addressee(s) and any indicated or blind copyee(s);
- (b) the document's or thing's date, number of pages and attachments or appendices;
- (c) the document's or thing's subject matter;
- (d) the date of destruction or discard, manner of destruction or discard, and reason for destruction or discard;
- (e) the persons who were authorized to carry out such destruction or discard; and
- (f) whether any copies of the document or thing presently exist and, if so, the name of the custodian of each copy.

9. Please produce documents or things responsive to these requests as they are kept in the usual course of business or, alternatively, organized and labeled to correspond to each request to which the documents or things are responsive.

10. These Requests shall be deemed continuing so as to require further and supplemental production in accordance with the Federal Rules of Civil Procedure.

## REQUESTS FOR PRODUCTION

1. All documents or things that relate to the patents-in-suit and Related Applications.
2. All documents or things relating to PUM, Utopy, the Inventors, agents thereof, and/or affiliated entities.
3. All documents or things relating to any communications or correspondence between you and any other party relating to the patents-in-suit, Related Applications, PUM, Utopy, the Inventors, agents thereof, and/or affiliated entities.
4. All documents or things relating to any potential or actual agreements, including any negotiation, invitation, ask, offer or expression of interest between or amongst you, PUM, Utopy, the Inventors, agents thereof, and/or affiliated entities.
5. All documents or things relating to any potential or actual agreements, including any negotiation, invitation, ask, offer or expression of interest between or amongst you and Intellectual Ventures, relating to the patents-in-suit.
6. All documents or things that relate to any search, analysis, investigation or opinion that relates to the patents-in-suit and/or Related Applications, including but not limited to those that relate to patentability, enforceability, validity, infringement, or valuation.
7. All documents or things relating to any potential or actual valuation that You performed regarding any asset, ownership interest, right or potential right held at any time by PUM, Utopy, the Inventors, agents thereof, and/or affiliated entities, including but not limited to the patents-in-suit.
8. All documents or things relating to any potential or actual valuation of any asset, ownership interest, right or potential right held at any time by PUM, Utopy, the Inventors, agents thereof, and/or affiliated entities.

9. All documents relating to any information provided to You by Intellectual Ventures, PUM, Utopy, the Inventors, agents thereof, and/or affiliated entities, relating to the patents-in-suit.

10. All documents relating to any advice or recommendations provided by You to Intellectual Ventures, PUM, Utopy, the Inventors, agents thereof, and/or affiliated entities, relating to the patents-in-suit.

11. All prior art to the patents-in-suit and/or Related Applications.

12. All documents or things relating to any communications or correspondence between you and any third party regarding this Action, the patents-in-suit, Related Applications, PUM, Utopy, the Inventors, agents thereof, and/or affiliated entities.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**

I, David E. Moore, hereby certify that on June 3, 2011, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on June 3, 2011, the attached document was Electronically Mailed to the following person(s):

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