

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

XEROX CORPORATION,)	
)	
Plaintiff,)	
)	C.A. No. 10-136-LPS
v.)	
)	JURY TRIAL DEMANDED
GOOGLE INC., and YAHOO! INC.,)	
)	
Defendants.)	

NOTICE OF SUBPOENA

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

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Dated: July 14, 2011
1020094 / 35374

EXHIBIT 1

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Xerox Corp.

Plaintiff

v.

Google, Inc. and Yahoo! Inc.

Defendant

Civil Action No. 10-136-JJF/MPT

(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 IN A CIVIL ACTION

To: NBC Universal
30 Rockefeller Center; New York, NY 10112

☒ **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: See Exhibit A.

Place: Quinn Emanuel Urquhart & Sullivan, LLP attn: Matthew Cannon (SFO) 51 Madison Ave.; New York, NY 10010	Date and Time: 07/25/2011 5:00 pm
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☐ **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.

Place:	Date and Time:
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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: 07/11/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Matthew D. Cannon

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Google, Inc., who issues or requests this subpoena, are:

Matthew D. Cannon
Quinn Emanuel Urquhart & Sullivan, LLP; 50 California Street, 22nd Floor; San Francisco, CA 94111
matthewcannon@quinnemanuel.com; (415) 875-6412

Civil Action No. 10-136-JJF/MPT

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 served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

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).

EXHIBIT A

I. DEFINITIONS

1. "YOU," or "YOUR" shall mean NBC Universal, including its agents, officers, employees, representatives and attorneys, and any and all of its predecessor or successor companies, corporations or business entities, including without limitation NBC Internet, NBC Interactive, and NBCi.

2. "XEROX" shall mean Xerox Corp., Plaintiff in the instant litigation.

3. "DEFENDANTS" shall mean Google Inc. and Yahoo! Inc., defendants in the instant litigation.

4. "FLYSWAT" shall mean Flyswat, Inc., including its agents, officers, employees, representatives and attorneys, and any and all of its predecessor or successor companies, corporations or business entities. Publicly available documents indicate that FLYSWAT was acquired by YOU in approximately May of 2000. "FLYSWAT APPLICATION" shall mean the program made and sold by FLYSWAT.

5. "DOCUMENT" or "DOCUMENTS" shall include all written, graphic or otherwise recorded material, including without limitation, microfilms or other film records or impressions, tape recordings or computer cards, floppy disks or printouts, any and all papers, photographs, films, recordings, memoranda, books, records, accounts, communications, letters, telegrams, correspondence, notes of meetings, notes of conversations, notes of telephone calls, inter-office memoranda or written communications of any nature, recordings of conversations either in writings or upon any mechanical or electrical recording devices, including electronic mail ("e-mail"), notes, papers, reports, analyses, invoices, canceled checks or check stubs, receipts, minutes of meetings, time sheets, diaries, desk calendars, ledgers, schedules, licenses, financial statements, telephone bills, logs, and any differing versions of any of the foregoing, whether so denominated, formal, informal or otherwise, as well as copies of the foregoing which differ in any way, including by the addition of handwritten notations or other written or printed matter of any nature, from the original. The foregoing specifically includes information stored in

a computer database and capable of being generated in documentary form, such as electronic mail.

6. "THING" as used herein means any physical object other than a "DOCUMENT."

7. "PERSON" refers to any individual, corporation, proprietorship, association, joint venture, company, partnership or other business or legal entity, including governmental bodies and agencies.

8. "REFLECT," "REFLECTING," "RELATE TO," "REFER TO," "RELATING TO," and "REFERRING TO" shall mean relating to referring to, concerning, mentioning, reflecting, pertaining to, evidencing, involving, describing, discussing, commenting on, embodying, responding to, supporting, contradicting, or constituting (in whole or in part), as the context makes appropriate.

9. "PATENT-IN-SUIT" shall mean U.S. Patent No. 6,778,979.

10. The "'979 PATENT" shall mean U.S. Patent No. 6,778,979.

11. "INVENTORS" shall mean the named inventors of the PATENT-IN-SUIT:

Gregory T. Grefenstette and James G. Shanahan.

12. The term "RELATED PATENTS/APPLICATIONS" shall mean (1) any United States or foreign patent or patent application related to the '979 PATENT by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisional, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

II. INSTRUCTIONS

1. If any portion of a DOCUMENT or THING is responsive to a request, the entire DOCUMENT or THING shall be produced, redacting only privileged material if any.

2. YOU are to produce the original and each non-identical copy of each DOCUMENT or THING requested herein that is in YOUR possession, custody or control.

3. DOCUMENTS produced pursuant to these requests shall be produced in the original files and shall not be shuffled or otherwise rearranged. DOCUMENTS which were stapled, clipped, or otherwise fastened together shall be produced in that form.

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

5. 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.

6. 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.

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

III. REQUESTS FOR PRODUCTION

1. DOCUMENTS sufficient to show the design, structure, function, or operation of any FLYSWAT APPLICATION.

2. All DOCUMENTS and THINGS RELATED TO YOUR acquisition of FLYSWAT.

3. All DOCUMENTS and THINGS RELATED TO the renaming of the FLYSWAT APPLICATION as QuickClick.

4. DOCUMENTS sufficient to show the design, structure, function, or operation of the QuickClick application.

5. All COMMUNICATIONS with anyone RELATED TO the '979 PATENT.

6. All COMMUNICATIONS with anyone RELATED TO the litigation styled *Xerox Corp. v. Google Inc. and Yahoo! Inc.*, Case No. 1:10-cv-136-LPS (D. Del.).

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

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on July 14, 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 hereby certify that on July 14, 2011, the attached document was electronically mailed to the following person(s)

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