

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

FUNCTION MEDIA, LLC	§	
	§	
Plaintiff,	§	Civil Action No. 2007-CV-279
	§	
vs.	§	
	§	
GOOGLE INC. AND YAHOO!, INC.	§	
	§	
Defendants.	§	JURY TRIAL DEMANDED

**NOTICE OF RULE 30(b)(6) VIDEOTAPED DEPOSITION OF GOOGLE INC
REGARDING U.S./INTERNATIONAL ISSUES AND FINANCIAL TOPICS
RELATED TO THE ACCUSED PRODUCTS**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, on a date to be later specified and in a place to be later specified, counsel for plaintiff will take the deposition(s) of the designated representative(s) of Google Inc. (“Google”) able to testify fully as to the topics listed in Exhibit 1. Google has a duty to designate one or more officers, directors, managing agents, or other persons with sufficient knowledge to testify fully regarding the topics listed in Exhibit 1.

The deposition(s) will be taken before a Notary Public or some other officer authorized by law to administer oaths for use at trial. The above deposition(s) will be videotaped and will continue from day to day until completed.

Dated: April 19, 2009

Respectfully submitted,

/s/ Max L. Tribble, Jr.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served on counsel of record, this 19th day of April, 2009.

/s/ Jeremy J. Brandon

Jeremy J. Brandon

EXHIBIT 1

Definitions

1. As used herein, the term “Accused Products” refers to Google AdWords, Google AdSense, and My Client Center.
2. The term “web page” includes any location on the World Wide Web where content is displayed to an Internet user. For example, a user who accesses example.com via a browser is viewing the example.com web page (regardless of whether the displayed content originates at a server owned by example.com or a server owned by somebody or something other than example.com).
3. The term “U.S. web page” means any web page that is accessed via a U.S.-assigned suffix (*e.g.*, “.com”). The term “international web page” means any web page that is not a U.S. web page (*e.g.*, “.uk”).
4. An Internet user is any person who accesses a web page.

Topics

1. The physical locations of the databases, servers, data centers, and/or server farms that are used in the operation of the Accused Products.
2. If and how the databases, servers, data centers, and/or server farms identified in Topic 1 are controlled, synchronized, and/or replicated, and the reasons for any such control, synchronization, and/or replication.
3. The origin of any software that is used in the operation of the databases, servers, data centers, and/or server farms identified in Topic 1, and any major differences in the software that is running on U.S. servers vs. the software that is running on international servers.

4. Whether any databases, servers, data centers, and/or server farms are “switched off” from time to time and, if so, how and where the operations of these databases, servers, data centers, and/or server farms are redirected.
5. The identity of any country or region for which the relevant databases, servers, data centers, web pages, and/or server farms are operated, housed, maintained, or controlled in whole or in part within the U.S.
6. With respect to the databases, servers, data centers, and/or server farms identified in Topic 1, a description of how those databases, servers, data centers, and/or server farms interact with one another (a) in the implementation and/or use of the Accused Products and (b) to bring about the display of advertisements on U.S. and international web pages.
7. With respect to any user of the Accused Products who is outside the U.S., the ability of that user to access and/or interact with the Accused Products via a U.S. web page, and the percentage of such users who do so.
8. With respect to international web pages on which “Ads by Google” appear, a description of the databases, websites, servers, data centers, and/or server farms that are touched, interacted with, or used at, before, or after the point in time in which (a) an Internet user accesses that web page from within the U.S.; and (b) an Internet user accesses that web page from outside the U.S.
9. With respect to U.S. web pages on which “Ads by Google” appear, a description of the databases, websites, servers, data centers, and/or server farms that are touched, interacted with, or used at, before, or after the point in time in which (a)

an Internet user accesses that web page from within the U.S.; and (b) an Internet user accesses that web page from outside the U.S.

10. With respect to international advertisers or their representatives who use AdWords or MCC, a description of the databases, websites, servers, data centers, and/or server farms that are touched, interacted with, or used (a) at, before, or after the point in time in which those advertisers or their representatives input information through an AdWords interface; (b) at, before, or after the point in time in which an Internet user accessing a U.S. web page views an “Ad by Google” that has been derived in part from the information inputted by the international user of AdWords or MCC; and (c) at, before, or after the point in time in which an Internet user accessing an international web page views an “Ad by Google” that has been derived in part from advertising content inputted by the international AdWords or MCC user. With respect to subparts (b) and (c), describe any differences that exist when the Internet user accesses the web page [1] from within the U.S. or [2] from outside the U.S.
11. With respect to U.S. advertisers or their representatives who use AdWords or MCC, a description of the databases, websites, servers, data centers, and/or server farms that are touched, interacted with, or used (a) at, before, or after the point in time in which those advertisers or their representatives input information through an AdWords interface; (b) at, before, or after the point in time in which an Internet user accessing a U.S. web page views an “Ad by Google” that has been derived in part from advertising content inputted by the U.S. user of AdWords or MCC; and (c) at, before, or after the point in time in which an Internet user

accessing an international webpage views an “Ad by Google” that has been derived in part from advertising content inputted by the U.S. user of AdWords or MCC. With respect to subparts (b) and (c), describe any differences that exist when the Internet user accesses the web page [1] from within the U.S. or [2] from outside the United States.

12. With respect to international publishers who use AdSense, a description of the databases, websites, servers, data centers, and/or server farms that are touched, interacted with, or used (a) at, before, or after the point in time in which those publishers input information through an AdSense interface; (b) at, before, or after the point in time in which an “Ad by Google” is displayed on the international publisher’s web page using information that has been inputted by a U.S. user of AdWords or MCC; and (c) at, before, or after the point in time in which an “Ad by Google” is displayed on the international publisher’s website using information that has been inputted by an international user of AdWords or MCC. With respect to subparts (b) and (c), describe any differences that exist when the Internet user accesses the web page [1] from within the U.S. or [2] from outside the U.S.
13. With respect to U.S. publishers who use AdSense, a description of the databases, websites, servers, data centers, and/or server farms that are touched, interacted with, or used (a) at, before, or after the point in time in which those publishers input information through an AdSense interface; (b) at, before, or after the point in time in which an “Ad by Google” is displayed on the U.S. publisher’s website using information that has been inputted by a U.S. user of AdWords or MCC; and

- (c) at, before, or after the point in time in which an “Ad by Google” is displayed on the U.S. publisher’s website using information that has been inputted by an international user of AdWords or MCC. With respect to subparts (b) and (c), describe any differences that exist when the Internet user accesses the web page [1] from within the U.S. or [2] from outside the U.S.
14. A description of how Google realizes, recognizes, and classifies revenues from the Accused Products, including a description of Google’s methodology for characterizing revenue as U.S. or international for U.S. tax purposes.
 15. Google’s accounting practices pertaining to the Accused Products and/or the advertisements generated thereby, including Google’s methods of accounting for revenues, costs, profits, methods of depreciation, allocation of expenses, inventory measurements, profit allocation, losses, and assignments of debt.
 16. As to sales, use, or monetization of the Accused Products and/or the advertisements they generate, Google’s revenues, assigned costs, profit margins, and total profits.
 17. Google’s revenues, costs, and margins related to the Accused Products specifically associated with (a) text-based advertisements; (b) video advertisements; and (c) image advertisements.
 18. The average, range, and median revenue generated monthly by Seller.
 19. The participation of Internet Media Venues in pricing decisions for placement of advertisements.

20. The countries in the world in which any of the Accused Products (including components thereof or advertisements generated thereby) are sold, subscribed to, used, or monetized.
21. The amount of sales, use, subscriptions, monetization, costs, or revenue related to the Accused Products purportedly occurring outside the United States, and the basis for any contention that such sales, uses, subscriptions, monetization, costs, or revenues occur outside the United States.
22. As to the financial records and/or summary documents produced by Google in this litigation that purport to reflect Google's revenues from sales, use, or monetization of the Accused Products and/or the advertisements generated thereby, including in particular G061036-061041, the circumstances under which those records were generated, the accounting methods and practices employed in generating such records, the underlying data from which such records were generated, the explanation of any terms or legends in such records, the basis and any purported justification for characterizing the figures as "United States" vs. "International," and the reconciliation of those figures to "Advertising Revenues" from "Google Network web sites" as publicly disclosed in Google's SEC filings, including the definitions and amounts of any deductions and allowances necessary for reconciliation.
23. As to the financial records and/or summary documents produced by Google in this litigation that purport to reflect Google's revenues from sales, use, or monetization of the Accused Products and/or advertisements generated thereby, including in particular G061036-061041, any cost and/or profit information

- related to any revenue figures in such records, including the definition and amount of “Traffic acquisition costs related to AdSense arrangements” as the term is used by Google in its public disclosures to the SEC.
24. License agreements and royalty agreements relating to internet search, internet advertising, or the Accused Products that Google (or its affiliates or assigns) has entered into from 2002 to the present.
 25. From 2002 to the present, Google’s evaluation of patents or other proprietary technology relating to internet search, internet advertising, or Accused Products, and the methodologies used by Google for determining values or royalty rates for licensing of such technology.
 26. Any patents or proprietary technology owned or exclusively licensed by you.
 27. Google’s policies and practices concerning licensing, including any standard or preferred terms for license agreements and the process by which Google determines the nature, scope, and terms of license agreements in which Google (or its affiliates or assigns) is a licensee.
 28. From 2002 to the present, Google’s marketing and financial plans, market studies, reports, forecasts, surveys, strategies, and projections for the sale, use, or monetization of the Accused Products and/or advertisements generated thereby, including a general description of Google’s media and advertising campaigns relating to the Accused Products.
 29. Google’s market studies, reports, forecasts, and surveys concerning the Accused Products and/or any competing products or services offered by any of Google’s competitors, including Yahoo!, Inc.

30. Google's acquisitions of technologies (including but not limited to acquisitions or mergers with companies previously holding such technology), including a description of amounts paid for any such acquisition and any analyses performed by Google and/or third parties forming a basis for said amounts; a description of the circumstances surrounding the acquisition; a description of the acquired technologies; any intellectual property held by the acquired company; any analysis related to the intellectual property or technology held by the acquired company done by Google (including any person paid by Google to advise on the acquisition or merger such as consultants, investment bankers, and also any affiliates) or a third party prior to the merger or acquisition; functionalities, features, or products related to search or advertising; and a description of the efforts undertaken by Google to implement any technology, functionality, feature, or products into Google's products.
31. The importance of the Accused Products in relation to Google's revenues, profit, and strategy.
32. Discussions between Google and Yahoo regarding internet advertising and pricing.
33. The extent to which ad agencies or third parties participate in AdWords, and the revenue, costs, and profits generated from such activity.
34. Google's patent-clearing policies and procedures, as well as policies and procedures for reviewing potential licensing needs.