

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

**FUNCTION MEDIA, L.L.C.,**

**v.**

**GOOGLE, INC. AND YAHOO!, INC.**

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**Civil Case No. 2:07-CV-279 (CE)**

**JURY TRIAL DEMANDED**

**GOOGLE'S REPLY TO ITS MOTION *IN LIMINE* NO. NINE: MOTION TO  
PRECLUDE ARGUMENT THAT GOOGLE HINDERED FUNCTION MEDIA OR ITS  
EXPERT FROM TESTING OR ANALYZING THE ACCUSED PRODUCTS**

Google agrees that it would be improper for either party to use the agreement regarding testing or analyzing the accused products against the other party. It would be difficult, however, to discern whether one party's criticism of the other expert's testing should fairly open the door to argument that the agreement was the cause of the deficiency. For example, there may have been tests that could have been performed under the agreement but were not or were not performed rigorously. Rather than potentially setting up disputes regarding which kinds of tests were or were not possible under the parties' agreement, Google proposes that criticism by either party of the other expert's failure to perform certain tests should be off limits. This would obviate the need for any argument that the parties' agreement to limit testing may or may not have been the cause.

Accordingly, the Court should grant Google's Motion *in Limine* No. 9 and further preclude either party from offering criticism of the other party's testing of the accused products.

Dated: November 25, 2009

Respectfully submitted,  
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By: /s/ Amy H. Candido

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Counsel for Defendant and Counter-Claimant  
GOOGLE INC.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 25, 2009 to counsel of record via ECF/PACER.

*/s/ Amy H. Candido*

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Amy H. Candido