

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

<b>FUNCTION MEDIA, L.L.C.,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Civil Action No. 2007-CV-279</b>
	§	
<b>vs.</b>	§	
	§	
<b>GOOGLE, INC. AND YAHOO, INC.,</b>	§	
	§	
<b>Defendants.</b>	§	<b>JURY TRIAL DEMANDED</b>

**MOTION TO EXPEDITE  
MOTION FOR ADVERSE INFERENCE INSTRUCTION  
REGARDING GOOGLE'S DESTRUCTION OF DOCUMENTS**

Function Media respectfully requests that this Court hear argument on this Motion for Adverse Inference before trial, whether at the hearing on Tuesday at 1:30 or otherwise. Function Media has filed this Motion as soon as possible after learning of Google's spoliation at the deposition of Susan Wojcicki on Thursday afternoon Pacific time, January 7. On Saturday, Function Media informed Google of its intention to file this Motion, and it asked Google to respond on whether it would oppose by 8 PM Central on the expectation that Function Media could file this Motion soon thereafter. Despite Function Media's continuing requests for an answer from Google and the need to file a Motion as soon as possible, Google did not indicate its opposition until after 10:15 AM on Monday. Function Media filed the underlying Motion as soon as possible thereafter.

Google has indicated it opposes this Motion and states that it needs more time to prepare a Response. Given that trial is in one week, and Function Media has filed this Motion as soon as possible after learning of Google's continuing destruction of documents, Function Media requests a hearing before Opening Statements, whether at the hearing on Tuesday afternoon or otherwise. Function Media also represents that due to Google's scheduling of the deposition of

Sergey Brin on Thursday, January 14, it will be unavailable for a hearing from Wednesday afternoon until at least 3:30 PM on Friday assuming no delay in flight time.

Respectfully submitted,

/s/ Max L. Tribble, Jr.

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**CERTIFICATE OF CONFERENCE**

This is to certify that Function Media has met and conferred with Google about this Motion. Google has indicated its opposition.

*/s/ Max L. Tribble, Jr.* \_\_\_\_\_  
Max L. Tribble, Jr.

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served via ECF.

*/s/ Max L. Tribble, Jr.* \_\_\_\_\_  
Max L. Tribble, Jr.