

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

FUNCTION MEDIA, L.L.C.

vs.

GOOGLE INC. AND YAHOO, INC.

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CASE NO. 2:07-CV-279

**ORDER**

Pending before the court is the plaintiff Function Media, L.L.C. (“FM”) emergency motion for adverse inference instruction (Dkt. No. 364). FM argues that the defendant Google Inc. (“Google”) failed to retain and produce instant messages and certain e-mails. FM’s motion is CARRIED. The court shall address FM’s motion for an adverse inference instruction prior to closing arguments. During trial, FM is prohibited from mentioning Google’s alleged failure to produce instant messages and e-mail, absent further order from the court.

SIGNED this 19th day of January, 2010.

  
CHARLES EVERINGHAM IV  
UNITED STATES MAGISTRATE JUDGE