

**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 defendant Google Inc.'s ("Google") emergency motion to enforce order and prohibit damages expert testimony (Dkt. No. 391). Google argues that the plaintiff Function Media L.L.C.'s ("FM") damages expert, Walter Bratic, should be precluded from testifying that the jury should award FM 65% of Google's profits, which is 12% of Google's gross revenue. Google also seeks to prevent FM from asking for \$607 million in damages in its opening statement. Google's motion is DENIED. Google may address FM's damages theory through cross-examination of Mr. Bratic and in its own opening statement.

SIGNED this 19th day of January, 2010.

  
CHARLES EVERINGHAM IV  
UNITED STATES MAGISTRATE JUDGE