FEDERAL COURT

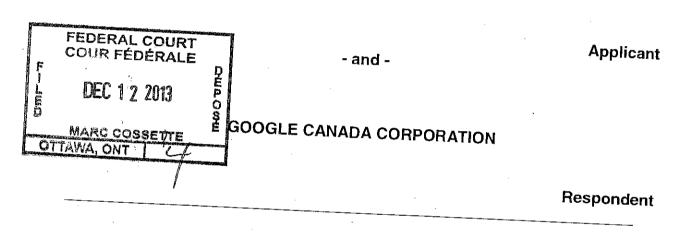
IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an inquiry under section 10 of the *Competition Act* relating to potentially anti-competitive conduct by Google Inc.:

AND IN THE MATTER OF an *ex parte* application by the Commissioner of Competition for an order requiring Google Canada Corporation to produce records pursuant to paragraph 11(1)(b) and subsection 11(2) of the *Competition Act* and to the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION



APPLICATION RECORD

John L. Syme (LSUC:29333H)
Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase 1
50 Victoria Street
Gatineau QC K1A 0C9

Tel: 819-953-3903
Fax: 819-953-9267
John.syme@cb-bc.gc.ca
Counsel to the Commissioner of
Competition

Court File No.

FEDERAL COURT

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended; **AND IN THE MATTER OF** an inquiry under section 10 of the *Competition Act* relating to potentially anti-competitive conduct by Google Inc.;

AND IN THE MATTER OF an ex parte application by the Commissioner of Competition for an order requiring Google Canada Corporation to produce records pursuant to paragraph 11(1)(b) and subsection 11(2) of the Competition Act and to make and deliver written returns of information pursuant to paragraph 11(1)(c) of the Competition Act.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

GOOGLE CANADA CORPORATION

Respondent

TABLE OF CONTENTS

Documents	Tab
Notice of Motion	1
Affidavit of Mark MacLachlan affirmed 11 December 2013	2
Written Representations	3
Draft Order	4

TAB 1

Court File No.: 7-2048-13

FEDERAL COURT

IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34 (as amended);

AND IN THE MATTER OF an inquiry under section 10 of the *Competition Act* relating to potentially anti-competitive conduct by Google Inc.;

AND IN THE MATTER OF an ex parte application by the Commissioner of Competition for an order requiring Google Canada Corporation to produce records pursuant to paragraph 11(1)(b) and subsection 11(2) of the Competition Act and to make and deliver written returns of information pursuant to paragraph 11(1)(c) of the Competition Act.

BETWEEN:

THE COMMISSIONER OF COMPETITION

FEDERAL COURT
COUR FÉDÉRALE

F
DEC 1 2 2013

MARC COSSETTE

OTTAWA, ONT

Applicant

- and -

GOOGLE CANADA CORPORATION

Respondent .

NOTICE OF MOTION

TAKE NOTICE THAT the Applicant will make an *ex parte* motion on notice to the Court on 18 December 2013 at 9:30 a.m. or as soon thereafter as the matter may be heard at the Federal Court of Canada, 90 Sparks Street, in Ottawa.

THE MOTION IS FOR:

- An order pursuant to paragraphs 11(1)(b), 11(1)(c) and subsection 11(2) of the Competition Act, R.S.C. 1985, c. C-34, as amended (the "Act") requiring Google Canada Corporation, the Respondent, to produce certain records, including records of its affiliate, Google Inc., and to provide written returns of information; and
- 2. Such other order as counsel may advise.

THE GROUNDS FOR THE APPLICATION ARE:

- The Applicant, the Commissioner of Competition, has commenced an inquiry under section 10 of the Act relating to potentially anti-competitive conduct by Google Inc. (the "Inquiry");
- 4. Google Canada Corporation has, or is likely to have, information relevant to the Inquiry;
- 5. Google Canada Corporation's affiliate, Google Inc., has records that are relevant to the Inquiry; and
- 6. Paragraphs 11(1)(b) and 11(1)(c) and subsection 11(2) of the Act, and Rule 361 and 364 of the Federal Court Rules, (SOR/98-106).

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- 7. The affidavit of Mark MacLachlan, affirmed 11 December 2013;
- 8. The Draft Order attaching Schedules I and II; and
- 9. Such further and other materials as counsel may advise and this Honourable Court may permit.

DATED at Gatineau, Québec, this 11th day of December 2013.

John Syme Department of Justice Competition Bureau Legal Services 50 Victoria Street, Gatineau QC

K1A 0C9

Tel: 819-953-3903 Fax: 819-953-9267

Counsel to the Commissioner of Competition

TABQ

FEDERAL COURT

IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an inquiry under section 10 of the *Competition Act* relating to potentially anti-competitive conduct by Google Inc.;

AND IN THE MATTER OF an *ex parte* application by the Commissioner of Competition for an order requiring Google Canada Corporation to produce records pursuant to paragraph 11(1)(b) and subsection 11(2) of the *Competition Act* and to make and deliver written returns of information pursuant to paragraph 11(1)(c) of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

GOOGLE CANADA CORPORATION

Respondent

AFFIDAVIT OF MARK MACLACHLAN

affirmed 11 December 2013

FEDERAL COURT
COUR FÉDÉRALE

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DEC 1 2 2013
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D
MARC COSSETTE
OTTAWA, ONT

- I, Mark MacLachlan, a Senior Competition Law Officer with the Competition Bureau, of the City of Ottawa in the Province of Ontario, AFFIRM THAT:
- 1. I make this affidavit in support of an ex parte application for an order pursuant to section 11 of the Competition Act, R.S.C., 1985, c. C-34 (the "Act").
- 2. I am an authorized representative of the Commissioner of Competition (the "Commissioner") for the purpose of this application.
- 3. I have been employed as a Competition Law Officer with the Competition Bureau (the "Bureau") for the past six years. During this time I have investigated whether companies and individuals are complying with the restrictive trade practices provisions under Part VIII of the Act. In the course of these investigations I have reviewed information and records pertaining to investigations and inquiries under Part VIII of the Act.
- 4. I am the lead officer of a team working on an inquiry into whether Google Inc. ("Google") has engaged in conduct reviewable under Part VIII of the Act. I therefore have personal knowledge of the matters to which I depose. Where I do not have personal knowledge of the matters to which I depose, I have set out the grounds for my belief.

I. THE COMMISSIONER HAS COMMENCED AN INQUIRY

- The Commissioner is an officer appointed by the Governor in Council under section 7 of the Act and is responsible for the administration and enforcement of the Act.
- 6. On 1 May 2013 the Commissioner commenced an inquiry under subparagraph 10(1)(b)(ii) of the Act on the basis that he has reason to

believe that grounds exist for the making of an order under Part VIII of the Act, specifically pursuant to section 79 of the Act and with respect to certain of Google's practices in respect of search and search advertising in Canada (the "Inquiry").

II. CIRCUMSTANCES OF THE INQUIRY

- 7. In Canada, among other places, Google provides Internet search and search advertising services to desktop and mobile Internet users. It provides search services through websites such as Google.ca; its mobile operating system, Android; and its web browser, Chrome. Google provides search advertising services to advertisers through its AdWords and AdSense platforms.
- 8. Based on his preliminary investigation (the "Commissioner's Preliminary Investigation"), the Commissioner has reason to believe that the manner in which Google operates its search engine and search advertising platforms, as well certain terms and conditions of its search-related agreements with third parties, taken independently or as a whole, amount to an abuse of a dominant position under the Act.

Background

9. Google searches can be performed directly on one of Google's websites; through Google search boxes on third party websites ("Search Syndication"); or through search applications installed on other software and hardware products, such as web browsers, mobile devices or tablets ("Search Distribution").

- 10. When a user conducts a Google search, a number of links or other information responsive to the search is returned. These search results include non-paid search results based, at least in part, on Google's algorithmic assessment of the most relevant information responsive to the user's query and may also include paid advertisements.
- 11. Google generates most of its revenue by selling advertising. In 2012, for example, 87% of Google's total worldwide revenue (approximately \$46 billion) was derived from advertising. Attached to my affidavit as Exhibit A is a copy of page 59 of Google's Form 10-K for the year ended 31 December 2012 filed with the U.S. Securities and Exchange Commission.
- 12. AdWords is Google's advertising platform that delivers, among other things, text-based advertisements in response to search queries. Advertisers use this service to bid on relevant keywords in search queries. In response to user queries, Google ranks and displays advertisements based on these bids, as well as a "quality score" that it assigns to each advertisement. Advertisers can also use AdWords to bid on advertisement placement on third party websites that elect to make use of Google's platform, such as About.com.
- 13. In addition, Google makes an Application Programming Interface for AdWords ("AdWords API") available to advertisers or third party software developers. The AdWords API facilitates the transfer of advertising campaign data between Google's AdWords platform and various software applications. This data is used by advertisers to optimize search advertising campaigns.
- 14. Finally, Google's AdSense program displays advertisements in response to searches conducted in Google search boxes on third party websites. These

websites "enroil" in AdSense through either a standard-form or negotiated agreement with Google. Revenue generated by clicks on the displayed advertisements is shared between Google and the website operator.

Substantial or Complete Control

- 15. The Commissioner has reason to believe that Google substantially or completely controls one or more markets related to the supply of Internet search and search advertising services in Canada.
- 16. In this regard, based on public information and information obtained in the course of the Commissioner's Preliminary Investigation, Google received in the order of 90% of all search queries submitted by Canadian Internet users in 2012. There is a close positive correlation between search query volume and search advertising revenue.

Anti-Competitive Practices

- 17. With respect to search services, the Commissioner has reason to believe that Google has engaged in and is engaged in a practice of anti-competitive acts that includes entering into exclusive or default Search Syndication and Search Distribution agreements with website operators and software and hardware vendors. Google has, for example, entered into exclusive or default global agreements, which apply to Canada, with certain mobile operating system developers, web publishers and web browser developers.
- 18. Also with respect to search services, the Commissioner has reason to believe that Google has engaged in and is engaged in a practice of anticompetitive acts that includes favouring its vertical services, which facilitate searches within a specific category of content (eg. Google News), over its vertical competitors on its search results pages. Google has, for example,

implemented universal search functionality which inserts expanded, "content rich" responses into search results pages, often at the top. As a result, query responses in the form of links to competing websites are pushed down the search results page.

- 19. With respect to advertising services, the Commissioner has reason to believe that Google has engaged in a practice of anti-competitive acts by placing anti-competitive restrictions on the use of Google's AdWords platform, including restrictions on the use of AdWords API data. For example, Google's AdWords API Terms and Conditions included clauses that prohibited third party licensees from offering software that allowed AdWords users to transfer advertising campaign data between Google and a third party.
- 20. As described below, these particular restrictive clauses were removed from the AdWords API Terms and Conditions applicable to businesses in Canada as a result of commitments Google made to the United States Federal Trade Commission ("FTC"). Despite these changes to Google's AdWords API Terms and Conditions, the Commissioner continues to have concerns regarding the original intent of the restrictive clauses and the capacity for Google to achieve similar effects through other changes to its AdWords API Terms and Conditions.

Substantial Prevention or Lessening of Competition

21. The Commissioner has reason to believe that Google's alleged practice of anti-competitive acts, independently and/or on a combined basis, have had, are having, or are likely to have the effect of preventing or lessening competition substantially in the market for search services and search advertising services in Canada.

Investigations in Other Jurisdictions

- 22. Antitrust authorities in other jurisdictions, including the FTC and the European Commission (the "EC") have investigated or are investigating Google for conduct similar to that which is the subject of the Inquiry.
- 23. The FTC investigation was terminated on 3 January 2013, after the FTC accepted Google's commitment to, among other things, remove clauses from the AdWords API Terms and Conditions that may have made it more difficult for advertisers to coordinate online advertising campaigns between AdWords and other search advertising platforms.
- 24. The FTC terminated its investigation into Google's alleged exclusive Search Syndication and Search Distribution agreements on the basis of its view that Google was not inducing its Search Syndication and Search Distribution partners into restrictive agreements and that the evidence suggested that these partners had no intention of switching to non-Google search services. Regarding the allegation that Google favours its vertical services over those of its competitors, the FTC was of the view that "in the main", Google adopted the measures at issue to improve search result quality and that any negative impact on competitors was incidental.
- 25. Further to its investigation, the EC adopted a preliminary assessment on 13 March 2013, in which it expressed the view that, among other things:
 - a. Google gives favorable treatment to its own vertical properties within its search results, when compared to competing services;
 - b. Google has entered into Search Syndication agreements that oblige website operators to obtain all or most of their search advertising requirements from Google; and

- c. Google places contractual restrictions on the management and transferability of search advertising campaigns across search advertising platforms.
- 26. On 26 April 2013, the EC announced that it was seeking comments regarding "commitments" Google proposed to address the EC's concerns. To date, the EC has not accepted any of the commitments proposed by Google, nor has it filed a "statement of objections".

Meetings with Google

- 27. The Bureau met with Google on 5 April 2011 and on 12 February 2013. Google emphasized that the FTC conducted a thorough investigation similar in scope to the Bureau's Inquiry and had terminated its investigation in view of, among other things, Google's commitments as described above.
- 28. More specifically, and in regard to its search result rankings, Google asserted, among other things, that its changes to its display and ranking of search results have direct consumer benefits as they provide direct answers to user queries and demote certain low quality websites. With respect to its AdWords API restrictions, Google asserted, among other things, that regardless of any restrictions, transferring Google AdWords campaigns/data to competing search advertising platforms is straightforward. Finally, with respect to Search Distribution and Search Syndication, Google argued, among other things, that its competitors had been successful in signing Search Distribution and Search Syndication agreements. Furthermore, Google asserted that these agreements account for a small share of overall searches and do not result in significant changes in market share.

III. GOOGLE CANADA CORPORATION HAS, OR IS LIKELY TO HAVE, INFORMATION THAT IS RELEVANT TO THE INQUIRY

- 29. Google Canada Corporation ("Google Canada") is a private Nova Scotia unlimited liability corporation. Its registered office is located at 900-1959 Upper Water Street, Halifax, Nova Scotia. Attached to my affidavit as Exhibit B is a copy of a search from Nova Scotia's Registry of Joint Stock Companies showing the corporate registration for Google Canada.
- 30. I believe that Google Canada has, or is likely to have, information that is relevant to the Inquiry. My belief is based on my review of available information, discussions with Google and from the fact that Google has offices in Toronto, Montreal and Waterloo and conducts a significant amount of business in Canada. However, I believe that it is likely that the majority of information and records relevant to the Inquiry are held by Google Canada's parent company, Google. Owing to the uncertainty regarding which entity has certain information relevant to the Inquiry, the Draft Order contains a number of duplicative questions in Schedules I (records) and II (written returns). However, Google Canada has been informed that if it provides written returns sufficient for the Commissioner's Inquiry he will waive the requirement to produce the corresponding records in Schedule I.

IV. GOOGLE INC. HAS RECORDS THAT ARE RELEVANT TO THE INQUIRY

31. Google is a public Delaware corporation headquartered at 1600 Amphitheatre Parkway, Mountain View, California. Attached hereto as Exhibit C a certified copy of Google's annual franchise tax report filed with the State of Delaware. I believe Google Canada is a subsidiary of Google within the meaning of subsection 2(3) of the Act, and that Google is an affiliate of Google Canada within the meaning of subsection 2(2) of the Act

based on the following:

- a. on 21 March 2011 the Honourable Mr. Justice Phelan of the Federal Court stated in the matter T-1591-09 that Google Canada is "a wholly-owned subsidiary" of Google and that Google "exercises executive level control" over Google Canada. A copy of the Honourable Mr. Justice Phelan's Reasons for Judgment and Judgment are attached hereto as Exhibit D;
- the Directors and President and Secretary listed for Google Canada in Nova Scotia's Registry of Joint Stock Companies each report a civic address of 1600 Amphitheatre Parkway, Mountain View, California, i.e. that of Google's corporate headquarters;
- c. in Exhibit 21.01 of its Form 10-K for the year ending 31 December 2009, Google lists Google Canada as a subsidiary. In subsequent years, including the year ended 31 December 2012, Google has omitted reporting any subsidiaries that, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary. Exhibit 21.01 of Google's Form 10-K for the years ending 31 December 2009 and 31 December 2012 are attached hereto as Exhibits E and F, respectively;
- d. the Statistics Canada Inter-corporate Ownership Database lists Google Canada as a subsidiary of Google, via Google LLC, a US corporation registered in the state of Delaware. A report generated by the Statistics Canada Inter-corporate Ownership Database showing this relationship and a certified copy of Google LLC's corporate registration from the State of Delaware are attached hereto as Exhibits G and H, respectively; and

- e. in records provided to the Bureau in a separate matter involving Google from 2008, there are documents that identify Google Canada as a subsidiary of Google. For reasons of confidentiality, these documents have not been produced as part of my affidavit, but can be made available to this Court on request.
- 32. Based on my review of publicly available information and records and information and records already provided by Google to the Bureau in this Inquiry that pertain to both search and search advertising globally and in Canada, I believe that Google has records that are relevant to the Inquiry.

V. THE ORDER SOUGHT

- 33. The records and written returns of information that the Commissioner seeks are set out in Schedules I and II of the Draft Order.
- 34. Based on the review of records and information that the Bureau has gathered to date, the Commissioner has reason to believe that Google has engaged in an abuse of a dominant position described in paragraphs 8 21 since at least 2005. In an effort to focus the order, the Commissioner seeks records created or modified during, or that concern, the period from 1 January 2011 to the date of issuance of this Order, and written returns for the period from 1 January 2010. In the case of Specifications 5(c) and 15 of Schedule I and Specification 4 of Schedule II, the Commissioner seeks records and written returns, whether created before or after 1 January 2011, related to agreements entered into or in force during the relevant period.
- 35. The Commissioner seeks records and written returns of information that relate to matters including the following:
 - a. the organizational structure and business operations of Google

Canada and its affiliates;

- b. the markets in which Google operates;
- c. whether Google is dominant in any of these markets;
- d. the contractual terms and conditions Google maintains in its agreements with its Search Distribution and Search Syndication partners;
- e. the circumstances and motivations for changes Google has made to its search engine and search advertising platforms;
- f. whether Google is engaging, or has engaged, in a practice of anticompetitive acts;
- g. the potential or actual effects of Google's conduct on competition; and
- h. the impact of remedy commitments undertaken or offered by Google in other jurisdictions in response to similar antitrust concerns.
- 36. The Commissioner seeks these records and written returns of information with the view of determining the facts about Google's business practices that are the subject of the Commissioner's Inquiry.
- 37. In the course of its investigation, the Bureau has obtained information from numerous sources, including from complainants and competitors of Google. In addition to providing information to the Bureau, one of the complainants provided the Bureau with a list of examples of questions that could be included in a section 11 order the Bureau could seek in respect of Google Canada and its affiliates. The Bureau considered this list, but arrived at its own independent determination as to the appropriate scope of the Draft

Order.

VI. INFORMATION IN THE COMMISSIONER'S POSSESSION

- 38. I have conducted a review of the Bureau's files to determine whether the Commissioner has records or information that are responsive to the Draft Order. I spoke with representatives of the Bureau's enforcement branches to determine if there were investigations or inquiries pursuant to which the Bureau received information that is responsive to the Draft Order. I then used the Bureau's Information Management System to search for investigations and inquiries pursuant to which the Bureau may have collected responsive records or information. Except as described below, I concluded that the Bureau has not received records or information responsive to the Draft Order.
- 39. On 6 March 2013, pursuant to this investigation, the Bureau sent a request for information to Google. Pursuant to this request, the Bureau has in its possession 78 records, as well as written returns of information detailing Google's conduct and market position ("RFI Information").
- 40. On 22 April 2013, Google provided a waiver to the FTC, pursuant to which the FTC provided the Bureau with 1,004 of the records collected by the FTC during its investigation ("FTC Records"). The majority of the FTC Records fall outside the relevant period of the Draft Order.
- 41. A small number of the records in the Bureau's possession may be partially responsive to the Draft Order.
- 42. I believe that the aforementioned records, written returns of information and other records and information gathered in the course of the Commissioner's Preliminary Investigation and the Inquiry are insufficient to determine the

facts with respect to the Commissioner's Inquiry under Part VIII of the Act. In particular, the RFI Information was provided by Google on a without prejudice basis and the Commissioner may not be able to rely on this information as evidence if a Competition Tribunal proceeding is required. Furthermore, neither the FTC Records nor the RFI Information cover the relevant period of the Draft Order in its entirety. Finally, the Commissioner cannot determine whether the information voluntarily provided by Google is complete and includes the most current records and information.

43. If Google Canada previously provided records to the Commissioner that are responsive to the Draft Order, paragraph 11 of the Draft Order allows the Commissioner to waive further production of these records. Paragraph 11 provides:

THIS COURT FURTHER ORDERS that where a Respondent previously produced a record to the Commissioner the Respondent is not required to produce an additional copy of the record or thing provided that the Respondent: (1) identifies the previously produced record or thing to the Commissioner's satisfaction; (2) makes and delivers a written return of information in which it agrees and confirms that the record was either in the possession of the Respondent, on premises used or occupied by the Respondent or was in the possession of an officer, agent, servant, employee or representative of the Respondent; and where this is not the case, the Respondent shall make and deliver a written return of information explaining the factual circumstances about the possession, power, control and location of such record; and (3) receives confirmation from the Commissioner that such records or things need not be produced. Where Google Inc. previously produced a record or thing to the Commissioner, the Respondent is not required to produce an additional copy of the record, provided that the Respondent complies with the three conditions above.

VII. COMMUNICATIONS WITH GOOGLE CANADA

- 44. On 6 May 2013, counsel for the Commissioner informed counsel for Google Canada by telephone that Google's conduct was the subject of the Inquiry.
- 45. On 3 December 2013, counsel for the Commissioner informed counsel for Google Canada by telephone that the Commissioner would be seeking a section 11 order.
- 46. On 4 December 2013, counsel for the Commissioner sent Google Canada a letter again setting out the Commissioner's intention to seek a section 11 order and attaching an earlier version of Schedules I and II to the Draft Order, attached hereto as Exhibits I and J, respectively.
- 47. On 5 December 2013, counsel for the Commissioner, myself, and other members of the team working on the Inquiry spoke with counsel for Google Canada over the phone to address some preliminary questions they had about the Commissioner's Inquiry as well as the draft specifications noted above.
- 48. On 9 December 2013, counsel for the Commissioner and Google Canada's counsel engaged in pre-motion dialogue regarding the draft specifications noted above. As a result of this discussion, certain clarifying changes were incorporated into Schedules I and II to the Draft Order based on comments made by Google Canada.

SWORN BEFORE ME at the City of Gatineau in the Province of Québec this 11th day of December 2013.

A Commissioner of Oaths

Mark MacLachlan

EXHIBIT "A"

AFFIRMED BEFORE ME in the City of) Gatineau, in the Province of Quebec,) this 11th day of December, 2013.

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A Commissioner of Oaths

Mwh Muleullh Mark MacLachlan

Google Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Google Inc. and Summary of Significant Accounting Policies

Nature of Operations

We were incorporated in California in September 1998. We were re-incorporated in the State of Delaware in August 2003. We generate revenues primarily by delivering relevant, cost-effective online advertising in our Google segment. In addition, as a result of our acquisition of Motorola Mobility Holdings, Inc. (Motorola) on May 22, 2012, we generate revenues from sales of mobile devices in our Motorola Mobile (Mobile) segment and digital settop boxes in our Motorola Home (Home) segment. In December 2012, we entered into an agreement to dispose Home, and the related financial results are presented as net loss from discontinued operations on the Consolidated Statements of Income. Assets and liabilities of Motorola Home are not presented as held for sale on the Consolidated Balance Sheets because they are not material.

Basis of Consolidation

The consolidated financial statements include the accounts of Google Inc. and our wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. Generally Accepted Accounting Principles (GAAP) requires us to make estimates and assumptions that affect the amounts reported and disclosed in the financial statements and the accompanying notes. Actual results could differ materially from these estimates. On an ongoing basis, we evaluate our estimates, including those related to the accounts receivable and sales allowances, fair values of financial instruments, intangible assets and goodwill, useful lives of intangible assets and property and equipment, fair values of stock-based awards, inventory valuations, income taxes, and contingent liabilities, among others. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities.

Revenue Recognition

The following table presents our revenues by revenue source (in millions):

	Year E	nded Decemi	ber 31,
	2010	2011	2012
Google: Advertising revenues: Google websites Google Network Members' websites	\$19,444 8,792	\$ 26,145 10,386	\$ 31,221 12,465
Total advertising revenues	28,236 1,085	36,531 1,374	43,686 2,353
Total Google revenues (advertising and other)	29,321	37,905	46,039
Motorola Mobile: Total Motorola Mobile revenues (hardware and other)	0	0	4,136
Total revenues	\$ 29,321	\$37,905	\$ 50,175

EXHIBIT "B"

AFFIRMED BEFORE ME in the City of) Gatineau, in the Province of Quebec,) this 11th day of December, 2013.

A Commissioner of Oaths

Mark MacLachian

Profile

→ Printer Version

▶ Profile Info
▶ People Info
▶ Activites Info
▶ Related Reg's Info

PROFILE - GOOGLE CANADA CORPORATION - as of: 2013-11-28 10:59 AM

Business/Organization Name:	GOOGLE CANADA CORPORATION	
Registry ID:	3268812	
Type:	N.S. Unlimited Liability	
Nature of Business:		
Status:	Active	
Jurisdiction:	Nova Scotia	
Registered Office:	900-1959 UPPER WATER ST. HALIFAX NS Canada B3J 3N2	
Mailing Address:	PO BOX 997 HALIFAX NS Canada B3J 2X2	

PEOPLE

Name	Position	Civic Address	Mailing Address
JAMES MAROCCO	Director	1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW CA 94043	
KENNETH YI	Director	1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW CA 94043	
KENNETH YI	PRESIDENT AND SECRETARY	1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW CA 94043	
CHARLES S. REAGH	Recognized Agent	900-1959 UPPER WATER ST. HALIFAX NS B3J 3N2	PO BOX 997 HALIFAX NS B3J 2X2

ACTIVITIES

Activity	Date
Change of Directors	2013-11-19
Change of Directors	2013-07-22

Printer Friendly Version -Registry of Joint Stock Companies

Effective Date of Amalgamation	2013-01-01
Date of Filing Amalgamation	2012-12-21
Appoint an Agent	2012-12-21
Change of Directors	2012-12-21
Address Change	2012-12-21

Show All <u>Collapse</u>

RELATED REGISTRATIONS

This Company	
PUSHLIFE INC.	Amalgamated From
POSTRANK INC.	Amalgamated From
GOOGLE CANADA CORPORATION	Amalgamated From

EXHIBIT "C"

AFFIRMED BEFORE ME in the City of
Gatineau, in the Province of Quebec,
this 11 th day of December, 2013.

A Commissioner of Oaths

Much Mu Ceully Mark MacLachlan

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF

DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND

CORRECT COPY OF THE ANNUAL REPORT OF "GOOGLE INC." AS FILED IN

THIS OFFICE.

3582691 8200

131375264

Jeffrey W. Bullock, Secretary of State

AUTHENTICATION: 0947678

DATE: 12-04-13

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware Annual Franchise Tax Report

CORPORATION NAME				2012
FILE NUMBER INCORPORATION DATE RENEW 3582691 2002/10/22	AL/REVOCATION DATE			
PRINCIPAL PLACE OF BUSINESS				PHONE NUMBER 650/253-0000
1600 Amphitheatre Park	cway			230, 233 3000
Mountain View CA 94043	3 United Sta	tes		
REGISTERED AGENT				AGENT NUMBE 900001
THE CORPORATION TRUST				
CORPORATION TRUST CENT 1209 ORANGE ST	TER			-
WILMINGTON	DE 1980			
AUTHORIZED STOCK BEGIN DATE END DATE	DESIGNATION/ STOCK CLASS	NO. OF SHARES	PAR VALUE/ SHARE	v
2012/08/09	COMMON	9,000,000,000	.001000	
,	COMMON	3,000,000,000	.001000 .001000	
	COMMON PREFERRED	3,000,000,000 100.000.000	.001000	
2012/06/22 2012/08/09		100,000,000 9,000,000,000	.001000	
2012,00,22 2012,00,00	COMMON	3,000,000,000	.001000	
	COMMON	3,000,000,000 100,000,000	.001000 .001000	
2004/08/24 2012/06/22	PREFERRED	6,000,000,000	.001000	
2004/08/24 2012/06/22	COMMON	3,000,000,000	.001000	
•	PREFFERED	100,000,000	.001000	
OFFICER NAME		107777777		TITLE
		STREET/CITY/STRIE/CIP		ITIEC
	•	STREET/CITY/STATE/ZIP		IIIEC
Larry Page		STREET/CTTW/STATE/CTP		
Larry Page 1600 Amphitheatre Par		STREET/CTTV/STATE/ZTV		
Larry Page 1600 Amphitheatre Par	kway			CE
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State of Delaware Annual Franchise Tax Report

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EXHIBIT "D"

AFFIRMED BEFORE ME in the City of) Gatineau, in the Province of Quebec,) this 11th day of December, 2013.

Murch Man Courth Mark MacLachlan

Federal Court



Cour fédérale

Date: 20110321

Docket: T-1591-09

Citation: 2011 FC 348

Ottawa, Ontario, March 21, 2011

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

PERFECT 10, INC.

Plaintiff

and

GOOGLE, INC. and GOOGLE CANADA CORPORATION

Defendants

REASONS FOR JUDGMENT AND JUDGMENT

I. <u>INTRODUCTION</u>

[1] This is an appeal by Google Inc. (Google US) and Google Canada Corp. (Google CA), the Defendants in the action, from a decision of the Learned Prothonotary dismissing the Defendants' motion for an order striking out the Statement of Claim, dismissing the action or otherwise for an order staying the action.

[2] This appeal was principally focused on the issue of whether or not a stay should be granted because the Plaintiff was pursuing the Google group of companies (including Google US and Google CA) in an action in the United States District Court for the Central District of California.

II. FACTUAL BACKGROUND

- [3] The Plaintiff, Perfect 10, Inc. (Perfect 10), is a California corporation conducting business out of California. Its business consists mainly of selling, on its website, "adult" images of mostly naked women. It does not have an office or any employees in Canada. It had 13 Canadian customers out of 600 worldwide at the time of this initial litigation.
- [4] The Defendant Google US is a Delaware company with its head office in California. It operates its web and image search services from outside Canada but such services are available through the domain name www.google.ca. It is the registrant of the domain name and is the trademark owner in Canada of the mark "GOOGLE".
- [5] The Defendant Google CA, a wholly-owned subsidiary of Google US, is a Nova Scotia corporation (an unlimited liability corporation) with offices in Canada consisting of a sales team targeting certain Canadian advertisers, publishers and enterprise customers as well as conducting research and development activities unrelated to its web and image search activities. Google US exercises executive level control over Google CA.

- [6] In 2004, the Plaintiff commenced the U.S. action alleging copyright and trade-mark infringement, trade-mark dilution, unfair competition, violation of publicity rights, unjust enrichment and misappropriation.
- [7] The gravamen of the U.S. action is that Google US (a term which draws no distinction between the various Google companies) copies Perfect 10's works from third party websites and then displays them on Google US's site either as thumbnails or full size images without requiring a searcher to go through Perfect 10's website or subscribe to Perfect 10's services.
- [8] Not only does the U.S. action not distinguish as to activities between Google US and its subsidiaries but it names Google CA as a defendant. Perfect 10 alleges that the Google group operates the internet website google.com, along with multiple foreign versions of that website that are accessible in the United States and throughout the world.
- [9] Perfect 10 has been unsuccessful in two injunction applications including one that sought a worldwide injunction. The U.S. action is well advanced, discoveries have occurred and summary judgment motions were pending.
- [10] In the U.S. action, the Defendants have pleaded the territorial limitation of the U.S. court and subject matter jurisdiction. Google CA is in the U.S. action principally for purposes of injunctive relief.

- [11] In the Canadian action in this Court, Perfect 10 alleges copyright infringement against
 Google US and Google CA related to their actions and service in Canada. The allegation is that
 Google US offers search functions through its sites which directly and/or indirectly reproduce
 infringing copies of the images in which Perfect 10 claims copyright. Perfect 10 alleges that Google
 CA sells advertising in Canada on the Google US site and both Google companies reproduce,
 distribute and communicate copies of Perfect 10's materials in Canada.
- [12] The infringing conduct is alleged to occur in Canada and constitutes breaches of s. 27(1), (2) (b)-(e), and 3(1)(a), (b) of the Canadian Copyright Act.
- [13] On July 15, 2010, the Learned Prothonotary dismissed the Defendants' motion, the critical findings being:
 - the copyright infringement claims in either jurisdiction are in respect of rights under separate national legislative schemes;
 - it is not for this Court, at this time, to decide the potential for extra-territorial enforcement or other practical effects of a decision;
 - separate copyright infringement actions alone are not abuse of process;
 - while the evidence and impugned conduct may be the same before the U.S. and
 Canadian courts, the legal meaning and the rights invoked may be different;
 - on the matter of *forum non conveniens*, the Learned Prothonotary based her conclusion in part on the absence of geographical overlap of the Plaintiff's two actions, the availability of different defences and the absence of a request to the U.S. court for rehef in respect of activities in Canada;

[14] The Defendants have appealed the Learned Prothonotary's decision.

III. <u>LEGAL ANALYSIS</u>

[15] The Defendants argue that the issues in this appeal are: (1) Did the Learned Prothonotary err by elevating certain of the *forum non conveniens* factors to be threshold conditions; and (2) Is there any reason to have two parallel cases proceeding at the same time.

The Defendants frame the issues in this manner because they contend that the standard of review is correctness because the decision is one of law.

[16] The Plaintiff frames the issues as (1) Was the Learned Prothonotary clearly wrong in concluding that the claims are not the same; and (2) Was the Learned Prothonotary clearly wrong when she concluded that this action was not an abuse of process.

A. Standard of Review

- [17] The applicable test is set forth in Canada v Aqua-Gem Investments Ltd. (C.A.), [1993] 2 FC 425, and referred in Merck & Co., Inc. v Apotex Inc. (F.C.A.), [2004] 2 FCR 459, in respect of discretionary orders. Such orders are not to be disturbed as de novo review unless:
 - (a) the questions raised are vital to the final issue in the case or

- (b) the decision is clearly wrong in that it was based upon a wrong principle or misapprehension of facts.
- [18] There are two aspects of the Learned Prothonotary's decision at issue: (a) the decision not to strike a claim for abuse of process and (b) a decision not to stay the proceedings. Both decisions are discretionary and the Court should respect (defer to) the authority of the Learned Prothonotary except in limited circumstances.
- [19] The arguments before the Court, and perhaps before the Learned Prothonotary, tended to conflate the abuse of process issue, with s. 50(1)(a) and (b) issues, with the *forum non conveniens* considerations. While there is some overlap, it is important to keep the separate issues in mind.

B. Abuse of Process

- [20] The Learned Prothonotary's conclusion on this issue is not a matter which this Court should review. Rule 221 is a discretionary matter based principally on mixed fact and law appropriately within the purview of the Learned Prothonotary.
 - 221. (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it
- 221. (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas:
- (a) discloses no reasonable cause of action or defence, as the case may be,
- a) qu'il ne révèle aucune cause d'action ou de défense valable;
- (b) is immaterial or redundant,
- b) qu'il n'est pas pertinent ou qu'il est redondant;

- (c) is scandalous, frivolous or vexatious,
- c) qu'il est scandaleux, frivole ou vexatoire;
- (d) may prejudice or delay the fair trial of the action,
- d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
- (e) constitutes a departure from a previous pleading, or
- e) qu'il diverge d'un acte de procédure antérieur;
- (f) is otherwise an abuse of the process of the Court, and may order the action be dismissed or judgment entered accordingly.
- f) qu'il constitue autrement un abus de procédure. Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.
- (2) No evidence shall be heard on a motion for an order under paragraph (1)(a).
- (2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).
- [21] The effect of a finding of abuse of process would have been to strike the claim in its entirety. It would mean that, at this early stage, the Court would have to conclude that the U.S. and Canadian cases are so similar in fact, law and scope or reach that to allow the Canadian claim to proceed would be abusive.
- [22] The Learned Prothonotary examined the pleadings, noted the difference in legislative regimes between the U.S. and Canada, the different rights which potentially flow therefrom, the differences in parties and the potential scope and limitation of jurisdiction and enforcement.
- [23] The Learned Prothonotary is entitled to deference in respect of these conclusions. I see no error in principle or misapprehension of fact at this early stage.

- [24] As noted in *Ridgeview Restaurant Ltd. v Canada (Attorney General)*, 2010 FC 506, the Court is not always consistent on the question of whether a refusal to strike a pleadings is "vital to the final issues of the case". This is not surprising because what is "vital" depends on the particular case. Rigid categorization is not helpful; the conclusion of what is vital must depend on the circumstances of each case. Modern tort law arose from a motion to strike (*Donoghue v. Stevenson*, [1932] AC 562 (HL)) and given the circumstances, regardless of the result, it is arguable that the issue of "duty of care" at that time in legal developments was vital.
- [25] No such parallel exists on these facts. The Learned Prothonotary's determination not to strike was based on accepted legal principles and did not strike at the core of the action.

C. Section 50/Forum Non Conveniens

- [26] Section 50(1) requires the Court to consider two matters in exercising its discretion to stay a proceeding: (1) that the claim is before another court or jurisdiction; (2) for other reasons it is in the interests of justice to grant a stay.
 - **50.** (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter
 - (a) on the ground that the claim is being proceeded with in another court or jurisdiction; or
 - (b) where for any other reason it is in the interest of justice that the proceedings be stayed.

- **50.** (1) La Cour d'appel fédérale et la Cour fédérale ont le pouvoir discrétionnaire de suspendre les procédures dans toute affaire :
- a) au motif que la demande est en instance devant un autre tribunal;
- b) lorsque, pour quelque autre raison, l'intérêt de la justice l'exige.

- (2) The Federal Court of Appeal or the Federal Court shall, on application of the Attorney General of Canada, stay proceedings in any cause or matter in respect of a claim against the Crown if it appears that the claimant has an action or a proceeding in respect of the same claim pending in another court against a person who, at the time when the cause of action alleged in the action or proceeding arose, was, in respect of that matter, acting so as to engage the liability of the Crown.
- (3) A court that orders a stay under this section may subsequently, in its discretion, lift the stay.

(Underlining by Court)

- (2) Sur demande du procureur général du Canada, la Cour d'appel fédérale ou la Cour fédérale, selon le cas, suspend les procédures dans toute affaire relative à une demande contre la Couronne s'il apparaît que le demandeur a intenté, devant un autre tribunal, une procédure relative à la même demande contre une personne qui, à la survenance du fait générateur allégué dans la procédure, agissait en l'occurrence de telle façon qu'elle engageait la responsabilité de la Couronne.
- (3) Le tribunal qui a ordonné la suspension peut, à son appréciation, ultérieurement la lever.
- [27] The matter of "forum non conveniens" falls within the 2nd branch of the s. 50(1) analysis, as potentially do a number of other legal principles directed at interest of justice generally. Section 50(1)(b) is a broad provision to give the Court the jurisdiction to control its process. The principle of forum non conveniens principally engages an analysis of prejudice to one or more parties or to the administration of justice.
- [28] The Court has developed a number of factors which the Court will consider under the "interests of justice" test. It has further refined the factors to consider in the context of specifically forum non conveniens arguments.

- [29] The Learned Prothonotary's decision in respect of these issues and particularly s. 50(1) becomes problematic when the Learned Prothonotary concludes that having decided that the Defendants have not met the test of s. 50(1)(a) (claim proceeding in another jurisdiction), she held that she did not have to engage in an "interest of justice" analysis. In this regard, with great respect, I cannot concur.
- [30] Section 50(1) interposes "or" between the distinctly different concepts of "same claim" and "interests of justice". To give effect to Parliament's intent, the Court is to consider both concepts or branches in the exercise of discretion whether to stay a proceeding.
- [31] In respect of stays, the Federal Court of Appeal, in confirming the decision in *Tractor Supply Co. of Texas, LP v TSC Stores L.P.*, 2010 FC 883, reinforced the applicability to stays generally of *White v E.B.F. Manufacturing Ltd.*, 2001 FCT 713, paragraph 5:
 - 5 Paragraph 50(1)(a) of the Act provides that the Court may in its discretion stay proceedings in any cause or matter on the ground that the claim is being proceeded within another Court or jurisdiction. The jurisprudence in the matter has established several useful criteria to determine whether such a stay should be granted. (Discreet Logic Inc. v. Canada (Registrar of Copyrights) 1993 CarswellNat 1930, 51 C.P.R. (3d) 191, affirmed (1994), 55 C.P.R. (3d) 167 (Fed. C.A.); Plibrico (Canada) Limited v. Combustion Engineering Canada Inc., 30 C.P.R. (3d) 312 at page 315; Ass'n of Parents Support Groups v. York, 14 C.P.R. (3d) 263; Compulife Software Inc. v. Compuoffice Software Inc., 1997 CarswellNat 2482, 77 C.P.R. (3d) 451, 143 F.T.R. 19; 94272 Canada Ltd. v. Moffatt, 31 C.P.R. (3d) 95 and General Foods v. Struthers, [1974] S.C.R. 98). They are abridged and assembled as follows for convenience.
 - 1. Would the continuation of the action cause prejudice or injustice (not merely inconvenience or extra expense) to the defendant?

- 2. Would the stay work an injustice to the plaintiff?
- 3. The onus is on the party which seeks a stay to establish that these two conditions are met;
- 4. The grant or refusal of the stay is within the discretionary power of the judge;
- 5. The power to grant a stay may only be exercised sparingly and in the clearest of cases;
- 6. Are the facts alleged, the legal issues involved and the relief sought similar in both actions?
- 7. What are the possibilities of inconsistent findings in both Courts?
- 8. Until there is a risk of imminent adjudication in the two different forums, the Court should be very reluctant to interfere with any litigant's right of access to another jurisdiction;
- 9. Priority ought not necessarily be given to the first proceeding over the second one or, *vice versa*.
- [32] The Federal Court had noted the potentially limited relevance of the *RJR-MacDonald* (*RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311) analytical framework. The parties in this case agree that *RJR-MacDonald* is not helpful here and I concur.
- [33] As to the Learned Prothonotary's conclusions on the first branch of s. 50(1) the same claim proceeding in another court or jurisdiction I see no reviewable error in the Learned Prothonotary's consideration. For much the same reasons as reached in respect of abuse of process, the conclusion that the U.S. and Canadian actions are not the same is reasonable.

- [34] In the exercise of discretion, it is reasonable to conclude that this Court (which has jurisdiction over the claim) ought not to defer to a foreign court in respect to matters arising in Canada. Google US, by operating in Canada, directly and/or through a subsidiary subjected itself to Canadian law.
- [35] With respect to the 2nd branch of the s. 50(1) test, given the Learned Prothonotary's decision not to consider it, the Court ought to *de novo* address that issue by addressing the nine factors listed in *White*, above.
- [36] The Court concludes as follows:
 - 1. While there may be inconvenience and extra expense, there is no prejudice or injustice to either party.
 - 2. A stay could well prejudice the Plaintiff by delaying or preventing Canadian based claims.
 - 3. The Defendant had the burden on these two matters which it failed to satisfy.
 - 4. The Court is in a position to properly deal with the stay motion.
 - 5. This is not a clear case where a stay should be granted because of real prejudice.
 - 6. For reasons given earlier and found by the Learned Prothonotary, the two actions are not sufficiently similar.
 - 7. Because of the differences in legal regimes, there is a real possibility of inconsistent findings.
 - 8. The two actions are at different stages.
 - 9. Neither party enjoys a priority of filing date.

- [37] As to the issue of *forum non conveniens*, the doctrine is not strictly applicable because neither the U.S. nor Canadian courts can necessarily assume or exercise jurisdiction over the actions in the other country. Justice Lemieux in *Ford Aquitaine Industries SAS v Canmar Pride (The)*, 2005 FC 431, set out the basic tenet of the doctrine that each forum must be able to exercise the necessary jurisdiction.
 - As pointed out by Mr. Justice Sharpe for the Ontario Court of Appeal in *Muscutt et al. v. Courcelles et al.*, [2002] O.J. No. 2128, 60 O.R. (3d) 20, the doctrine of *forum non conveniens* does not speak to the issue whether a forum has jurisdiction or should assume jurisdiction but rather is a discretionary doctrine which recognizes that there may be more than one forum capable of assuming or exercising jurisdiction and may decline to exercise that jurisdiction on the grounds there is a more appropriate forum to entertain (or try) the action. In *Muscutt*, *supra*, Mr. Justice Sharpe was dealing with a case where Ontario assumed jurisdiction and not either a presence-based jurisdiction or a consent-based jurisdiction.

(Underlining by Court)

- [38] Justice Lemieux also endorsed the 10 factors noted in *Spar Aerospace Ltd. v American*Mobile Satellite Corp., [2002] 4 SCR 205. There is no suggestion that the list is exhaustive but they provide a useful guideline. They are:
 - 1. The parties' residence, that of witnesses and experts;
 - 2. The location of the material evidence;
 - 3. The place where the contract was negotiated and executed;
 - 4. The existence of proceedings pending between the parties in another jurisdiction;
 - 5. The location of Defendant's assets;
 - 6. The applicable law;

- 7. Advantages conferred upon Plaintiff by its choice of forum, if any;
- 8. The interest of justice;
- 9. The interest of the parties; and
- 10. The need to have the judgment recognized in another jurisdiction.

[39] Applying those factors, I conclude:

- The issue of residence of Defendants, witnesses and experts favours the U.S.
 although Google CA is resident in Canada.
- 2. Location of material evidence would again, on balance, favour the U.S. although evidence of actions in Canada would be highly relevant.
- 3. The place of contract is not as relevant as the place of infringement. As the infringement on the internet potentially occurs in a number of places, including on the server, on the customers' screen and in the marketing in Canada, the matter is balanced.
- 4. The existence of proceedings between the parties in the U.S. has been addressed including the differences between the actions.
- 5. The evidence on the Defendants' assets is limited but the U.S. would appear to dominate both Google US and Google CA. Clearly the assets of significance are in the U.S.
- 6. The applicable law is a critical matter as Canadian law clearly applies to the Federal Court action. It is this law which the Plaintiff wishes to assert as a central legal basis for its claim.

- 7. The advantage to the Plaintiff by its choice of this forum is the benefit of Canadian law and its enforcement in Canada as the choice of the U.S. court accords similar benefits of U.S. law and enforcement in that jurisdiction.
- 8. As to the interests of justice, there is significant force to the contention that the interests of justice in Canada favour Canadian proceedings. Foreign owners of intellectual property are recognized as having the right to commence actions in Canada for infringements occurring here under Canadian law. The Defendants accepted that possibility in doing business here and ought not to be able to shield themselves from Canadian legal process.
- 9. The interests of the parties are clearly split.
- 10. The potential problem of recognition of a foreign judgment is a substantive concern in both countries given the legal regimes, different defences and potential outcomes. The absence of proven foreign law in this instance is not fatal as it is not necessary to know as a fact what the U.S. law may be. The Court can take judicial notice that the laws are neither identical nor applied in the same way the precise details of those differences are not critical at this juncture.
- [40] In my view, weighing all these factors together, I cannot see that the U.S. court is more convenient and appropriate for dealing with rights under Canadian law even assuming a U.S. court could or would make such a determination. The situation is analogous to other instances of actions based on intellectual property rights proceeding in two or more national courts at the same time. It is not forum shopping to assert Canadian rights in Canadian courts and U.S. rights in U.S. courts.

[41] Therefore, the Defendants have not satisfied me that this Court should exercise its discretion to stay this Federal Court action on the grounds of *non forum conveniens*.

IV. CONCLUSION

- [42] I come to the same result as the Learned Prothonotary from a similar perspective and also on the basis of grounds which she did not consider. As such, the order dismissing the Defendants' motion is upheld and this appeal will be dismissed.
- [43] While the Plaintiff is entitled to its costs, the parties indicated that they wished to address costs separately. The Plaintiff shall file its costs submissions within twenty-one (21) days of this decision and the Defendants may respond fourteen (14) days thereafter with five (5) days for reply.

JUDGMENT

THIS COURT'S JUDGMENT is that the order dismissing the Defendants' motion is upheld and this appeal is dismissed.

"Michael L. Phelan"
Judge

2011 FC 348 (CanUII)

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-1591-09

STYLE OF CAUSE:

PERFECT 10, INC.

and

GOOGLE, INC. and GOOGLE CANADA

CORPORATION

PLACE OF HEARING:

Toronto, Ontario

DATE OF HEARING:

December 1, 2010

REASONS FOR JUDGMENT

AND JUDGMENT:

Phelan J.

DATED:

March 21, 2011

APPEARANCES:

Mr. Christopher Wilson

FOR THE PLAINTIFF

Ms. Marguerite Ethier

FOR THE DEFENDANTS

Ms. Katherine McGrann

SOLICITORS OF RECORD:

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FOR THE PLAINTIFF

Barristers & Solicitors

Vancouver, British Columbia

LENCZNER SLAGHT ROYCE

FOR THE DEFENDANTS

SMITH GRIFFIN LLP

Barristers & Solicitors Toronto, Ontario

EXHIBIT "E"

AFFIRMED BEFORE ME in the City of) Gatineau, in the Province of Quebec,) this 11th day of December, 2013.

A Commissioner of Oaths

Mark MacLachlar

EX-21.01 2 dex2101.htm LIST OF SUBSIDIARIES OF REGISTRANT

Exhibit 21.0

LIST OF SUBSIDIARIES OF REGISTRANT GOOGLE INC. A DELAWARE CORPORATION

Subsidiaries	Jurisdiction
@Last Software, Inc.	Delaware
AdScape Media, Inc.	Delaware
Android, Inc.	Delaware
AppJet Inc.	Delaware
dMarc Broadcasting, Inc.	Delaware
DoubleClick Holding Corp.	Delaware
DoubleClick International Holding LLC	Delaware
DoubleClick Real Property LLC	Delaware
FeedBurner, Inc.	Delaware
Gizmo5 Technologies, Inc.	Delaware
Google Affiliate Network Inc.	Illinois
Google Airwaves Inc.	Delaware
Google International LLC	Delaware
Google LLC	Delaware
Google Payment Corp.	. Delaware
Google Spectrum Investments Inc.	Delaware
GrandCentral Communication, Inc.	Delaware
Green Border Technologies, Inc.	Delaware
ImageAmerica, Inc.	Missouri
ImageAmerica Aviation, Inc.	Delaware
JotSpot Inc.	Delaware
MessageMedia US/Europe Inc.	Delaware
Nevengineering, Inc.	Delaware
Omnisio, Inc.	Delaware
Orkut.com LLC	Delaware
Picasa LLC	Delaware
Postini, Inc.	Delaware
Postini Canada Holding Co.	Delaware
reCAPTCHA Inc.	Delaware
Scott Concepts, LLC	Delaware
Scott Studios, LLC	Delaware
Teracent Corporation	Delaware
Tonic Systems, Inc.	Delaware
Urchin Software Corporation	Delaware
WebAd Corporation	Delaware
YouTube, LLC	Delaware

Google Egypt LLC

Subsidiaries Jurisdiction United Kingdom @Last Software UK Ltd. Canada AdScape Media (Canada), Inc. Ireland Aegino Limited Germany At Last Software GmbH allPAY GmbH Germany bruNET GmbH Germany Germany bruNET Holding AG bruNET Schweiz GmbH Switzerland Digital Advertising and Marketing Limited United Kingdom DoubleClick Asia Ltd. Hong Kong DoubleClick Australia Pty Ltd Australia United Kingdom DoubleClick Europe Limited DoubleClick Hispania SL Spain Netherlands DoubleClick International Asia BV **Netherlands Antilles** DoubleClick International Asia Holding NV DoubleClick International Internet Advertising Limited Ireland DoubleClick International TechSolutions Limited Ireland Ireland DoubleClick Internet Ireland Limited Sweden DoubleClick Sweden AB. Singapore DoubleClick Technology Pte. Ltd. People's Republic of China DoubleClick TechSolutions (Beijing) Co. Ltd. Switzerland Endoxon AG. India Endoxon (India) Private Ltd. Germany Endoxon (Deutchland) GmbH Switzerland Falk eSolutions GmbH United Kingdom Falk eSolutions Ltd. Hong Kong Google (Hong Kong) Limited Turkey Google Advertising and Marketing Limited Argentina Google Argentina S.R.L. Australia Google Australia Pty Ltd. Austria Google Austria GmbH Belgium Google Belgium NV Bermuda Google Bermuda Limited Bermuda Google Bermuda Unlimited Brazil Google Brasil Internet Ltda. Google Canada Corporation Canada Chile Google Chile Limitada Czech Republic Google Czech Republic s.r.o. Denmark Google Denmark ApS

Egypt

Tonic Systems Pty. Ltd.

Australia

Subsidiaries	Jurisdiction
Google Finland OY	Finland
Google France SarL	France
Google Information Technology Services Limited Liability Company	Hungary
Google FZ LLC	United Arab Emirates
Google Germany GmbH	Germany
Google India Private Limited	India
Google Ireland Holdings	Ireland
Google Ireland Limited	. Ireland
Google Israel Ltd.	Israel
Google Italy s.r.l.	ltaly
Google Japan Inc.	Japan
Google Korea, LLC.	Korea
Google Limited Liability Company-Google OOO	Russia
Google Mexico S. de R.L. de C.V.	Mexico
Google Netherlands B.V.	Netherlands
Google Netherlands Holdings B.V.	Netherlands
Google New Zealand Ltd.	New Zealand
Google Norway AS	Norway
Google Payment Ltd.	United Kingdom
Google Payment Hong Kong Limited	Hong Kong
Google Payment Singapore Pte. Ltd.	Singapore
Google Poland Sp. z o.o.	Poland
Google Holdings Pte. Ltd.	Singapore
Google Singapore Pte. Ltd.	Singapore
Google South Africa (Proprietary) Limited	South Africa
Google Spain, S.L.	Spain
Google Sweden AB	Sweden
Google Sweden Tecnique AB	Sweden
Google Switzerland GmbH	Switzerland
Google UK Limited	United Kingdom
Jaiku Ltd.	Finland
MessageMedia Europe BV	Sweden
MessageMedia GmbH	Germany
Neven Vision KK	Japan
Neven Vision Germany GmbH	Germany
Leonberger Holdings B.V.	Netherlands
3147015 Nova Scotia Company	Canada
Postini Switzerland GmbH	Switzerland
Postini UK Limited	United Kingdom
Skydocks GmbH	Germany
Takin O. A. Dr. 191	

EXHIBIT "F"

AFFIRMED BEFORE ME in the City of) Gatineau, in the Province of Quebec,) this 11th day of December, 2013.

A Commissioner of Oaths

Much Mark MacLachlan

EX-21.01 3 d452134dex2101.htm SUBSIDIARIES OF THE REGISTRANT

Exhibit 21.0

SUBSIDIARIES OF THE REGISTRANT

The following is a list of subsidiaries of Google Inc., omitting subsidiaries which, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of December 31, 2012:

Name of Subsidiary
Google Ireland Holdings
Google Ireland Limited

Jurisdiction of Incorporation or Organization Ireland Ireland

EXHIBIT "G"

AFFIRMED BEFORE ME in the City of) Gatineau, in the Province of Quebec,) this 11th day of December, 2013.

A Commissioner of Oaths

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BUFFERBOX INC. USA	f	BUFFER	BOX IN	IC. USA				
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EXHIBIT "H"

AFFIRMED BEFORE ME in the City of) Gatineau, in the Province of Quebec,) this 11th day of December, 2013.

A Commissioner of Oaths

Mul Mu Ceulle Mark MacLachlan

Delaware

1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "GOOGLE LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE EIGHTH DAY OF JANUARY, A.D. 2002, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FIFTH DAY OF MAY, A.D. 2006, AT 2:34 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID LIMITED LIABILITY COMPANY, "GOOGLE LLC".

3478111 8100H

131375667

You may verify this certificate online at corp.delaware.gov/authver.shtml

DATE: 12-05-13

Jeffrey W. Bullock, Secretary of State AUTHENTICATION: 0949317

CERTIFICATE OF FORMATION

OF

GOOGLE LLC

(Pursuant to 6 Del. C. ' 18-201)

FIRST: The name of the limited liability company formed hereby is:

GOOGLE LLC

SECOND: The address of the company's registered office in the State of Delaware is 30 Old Rudnick Lane, in the City of Dover, County of Kent, Zip Code 19901. The name of the company's registered agent at such address is Lexis Document Services Inc.

THIRD: The purpose of the company is to engage in any lawful act or activity for which a limited liability company may be organized under the Delaware Limited Liability Company Act (the "Act").

FOURTH: The company shall be managed in accordance with the terms of its limited liability company agreement.

FIFTH: No member of the company shall be obligated personally for any debt, obligation or liability of the company solely by reason of being a member of the company.

SIXTH: The company reserves the right to amend or repeal any provision contained herein in the manner now or hereafter prescribed by law and in the company's limited liability company agreement.

THE UNDERSIGNED, as an authorized person, hereby executes this Certificate of Formation for the purpose of forming a limited liability company under the Act (6 <u>Del.C.</u> '18-101 <u>et seq.</u>) The undersigned hereby declares that to the best of the undersigned's knowledge and belief, the facts stated above are true, and accordingly executes this Certificate of Formation as of January 8, 2002.

/s/ Omid Kordestani
Omid Kordestani, Authorized Person

Google Inc., a California corporation Name of Member

STATE OF DELAWARE CERTIFICATE OF AMENDMENT

The Certificati	e of Formation of the lin	nited liability company is hereby am
as follows: Stri	ke out the statement relating	to the limited liability company's registered
	ent and substitute in lieu there	
"The address of th	e registered office and the na	ame and the address of the registered agent
limited liability co	mpany required to be mainta	ined by Section 18-104 of the Delaware Lir
Liability Company	Act are Corporation Service	Company, 2711 Centerville Road, Suite 40
Wilmington, DE		
IN WITNESS V		
IN WITNESS The 18th	WHEREOF, the unders	igned have executed this Certificate, A.D. 2006
IN WITNESS The 18th	day of May	
IN WITNESS Vihe 18th	day of May	
IN WITNESS The 18th	day of May By: /s	, A.D. 2006 David Drummond

EXHIBIT "1"

AFFIRMED BEFORE ME in the City of) Gatineau, in the Province of Quebec,) this 11th day of December, 2013.

A Commissioner of Oaths

Murh Meu Ceulle Mark MacLachlan



Ministère de la Justice Canada

Bureau de la concurrence Services juridiques

Place du Portage, Tour I 22e étage 50, rue Victoria Gatineau QC K1A 0C9 Department of Justice Canada

Competition Bureau Legal Services

Place du Portage, Phase I 22nd Floor 50 Victoria Street Gatineau, QC K1A 0C9 Cote de sécurité - Security classification:

CONFIDENTIAL

Notre référence - Our file:

Date: 2013-12-6

Téléphone/Télécopieur (819) 953-9267

Telephone/Fax (819) 953-3903

CONFIDENTIAL VIA EMAIL

Mr George Addy Davies Ward Phillips & Vineberg LLP 155 Weilington Street West Toronto, ON M5V 3J7

Dear Mr Addy:

Re: Application to produce records and to make and deliver written returns of information pursuant to section 11 of the Competition Act

Further to our telephone conversation of 3 December 2013, we confirm that the Commissioner of Competition ("Commissioner") will be seeking an order from the Federal Court of Canada on an *ex parte* basis pursuant to section 11 of the Competition Act (the "Act"). The order is sought further to the Commissioner's inquiry under section 10 of the Act, which Google Inc. was advised of on May 6, 2013.

Specifically, the Commissioner will be seeking an order to obtain records, pursuant to paragraph 11(1)(b) and subsection 11(2) of the Act, from Google Canada Corporation, including certain records of Google Inc. In addition, the Commissioner will be seeking to obtain written returns of information pursuant to paragraph 11(1)(c) of the Act.

Attached are the draft schedules to the order the Commissioner will be seeking. The Bureau wishes to schedule a conference call for 9 December 2013 to:

ensure that Google understands the information requests;

- discuss whether the records contemplated by the attached schedules are maintained in the form requested in the schedules and to discuss how records are kept and who has access to those records;
- determine whether there are alternative sources or forms of information that may respond more directly to the Commissioner's requests for records and information, subject to the Commissioner being satisfied that such alternatives, if any, allow him to advance his inquiry to determine the facts; and
- ascertain whether there are any other factors that might impair the ability of Google Canada Corporation to comply with the specifications of the schedules.

The call is not intended to serve as a forum for debate or negotiation on the merits of the inquiry or the relevance of particular document or information requests found in the draft schedules.

Please contact me to discuss the scheduling of the conference call.

Yours truly,

John Syme)

Department of Justice

Enclosures (draft schedules)

EXHIBIT "J"

AFFIRMED BEFORE ME in the City of) Gatineau, in the Province of Quebec,) this 11th day of December, 2013.

A Commissioner of Oaths

Mul Mul Culle Mark MacLachlan

SCHEDULE I

RECORDS TO BE PRODUCED PURSUANT TO PARAGRAPH 11(1)(b) AND SUBSECTION 11(2) OF THE COMPETITION ACT

Notice Concerning Obstruction

Any person who in any manner impedes or prevents or attempts to impede or prevent any inquiry or examination under the *Competition Act* (the "Act"), or who destroys or alters or causes to be destroyed or altered any record or thing that is required to be produced under section 11 of the Act, may be subject to criminal prosecution for obstruction of justice, contempt of court or other federal criminal violations. Where a corporation commits such an offence, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence may also be prosecuted. Conviction of any of these offences is punishable by fine or imprisonment or both.

Relevant Period

For the purpose of Schedule I, the Respondent shall produce records created or modified during, or that concern, the period from 1 January 2011 to the date of issuance of this Order, unless otherwise specified in this Schedule.

Definitions

For the purpose of Schedule I, the following definitions shall apply:

- a. "Act" means the Competition Act, R.S.C. 1985, c. C-34, as amended;
- b. "Advertiser" means any Person that purchases or otherwise obtains placement of an advertisement in any medium;
- c. "Affiliate" has the meaning ascribed to it in section 2 of the Act;
- d. "Agreement" means any Search Syndication or Search Distribution contract, agreement or arrangement that relates to those services being offered to Persons in Canada, excluding Online AdSense Agreements, between the Company and another Person;

- e. "and" and "or" have both conjunctive and disjunctive meanings;
- f. "any" means one or more, and is mutually interchangeable with "ail" and each term encompasses the other;
- g. "API Licensee" means any Person that has licensed the Company's AdWords Application Programming Interface;
- h. "Company" means Google Canada Corporation, its Relevant Affiliates, predecessors, and all directors, officers, and employees of the foregoing;
- i. "Competitor" means any Person, excluding the Company, that offers a product or service similar to those offered by the Company;
- j. "Control" means "control" as defined in section 2 of the Act or the ability to direct the economic behaviour of another Person;
- k. "Draft Agreement" means any Agreement proposed or drafted within the Relevant Period that has not yet been executed;
- "including" means including but not limited to and "include" means includes but not limited to;
- m. "IP Address" means a location-specific label assigned to devices that connect to the Internet;
- n. "Multi-Homing" means the simultaneous use of multiple Search Advertising Platforms by an Advertiser or third party;
- Online AdSense Agreement" means any contract, agreement or arrangement between the Company and another Person entered into through a standard online process that relates to the Company's AdSense for Search program;
- p. "Person" means any individual, firm, sole proprietorship, corporation, trust, unincorporated organization, association, cooperative (public or private), joint venture, partnership, governmental entity or other entity, whether alone or acting in concert with another Person;
- q. "Record" has the meaning ascribed to it in section 2 of the Act;
- r. "related to", "relating to" or "in relation to" means in whole or in part constituting, containing, concerning, pertaining to, discussing, describing, analyzing, identifying or stating;

- s. "Relevant Affiliate" means any domestic or foreign Affiliate of Google Canada Corporation that is engaged in or otherwise involved in the markets for search and search advertising in Canada;
- t. "Relevant Period" means from 1 January 2011 to the date of issuance of this order, inclusively;
- u. "Search Advertising Platform" means an online advertising technology that facilitates the sale and display of keyword-specific online advertisements that are returned in response to a Search Query;
- v. "Search Algorithm" means the procedure that determines the ranking of websites or other relevant information on a Search Results Page;
- w. "Search Distribution" means the supply and placement of a Search Tool on any software or hardware not controlled by the Company, including mobile devices and web browsers;
- x. "Search Engine" means any service that generates a context-specific list of related websites or other relevant information in response to a user's input;
- y. "Search Query" means any input submitted to a Search Engine for the purpose of obtaining a Search Results Page;
- z. "Search Results Page" means a webpage generated in response to a user's input to a Search Engine that displays a list of related websites, advertisements or other relevant information:
- aa. "Search Syndication" means the placement of a Search Tool on any website not controlled by the Company;
- bb. "Search Tool" means any point through which a user can enter a Search Query;
- cc. "Senior Officer" means any Person having or exercising the duties, functions or authority of chairperson, president, chief executive officer, vice-president, secretary, treasurer, chief financial officer, chief operating officer, general manager or managing director of the Company;
- dd. "Syndication Partner" means any Person that places a Company Search Tool on any website not controlled by the Company; and
- ee. "Universal Search" means the insertion into a Search Results Page of direct answers or enhanced functionality beyond mere links to websites.

[Remainder of the page intentionally left blank]

Specifications

- Provide organization charts:
 - a. showing Google Canada Corporation and its relationship to each of its Relevant Affiliates and their relationship to each other; and
 - b. identifying the Senior Officers of the Company.
- In respect of the Company's business in Canada, provide monthly
 financial statements showing the Company's revenues, costs, profits and
 losses, or any similar or equivalent financial Records maintained by the
 Company, audited where available and separated by business segment.
- Provide all marketing, business, pricing and strategic plans, studies or analyses prepared or received by a Senior Officer relating to the markets for search or search advertising and the competitive position, including competitive advantages or disadvantages, of the Company and any Advertiser, API Licensee or Competitor.

4. Provide:

- a. all Agreements entered into or in force during the Relevant Period;
- b. the most recent version, as of the date of this order, of each distinct Draft Agreement;
- each distinct version of an Online AdSense Agreement between the Company and a Person with a primary billing address in Canada entered into or in force during the Relevant Period;
- d. all Records prepared or received by a Senior Officer, whether during or before the Relevant Period, relating to the Agreements specified in Specification 4(a) of this Schedule I and in Specification 3 of Schedule II, in respect of:
 - i. the negotiation of such Agreements;
 - ii. the purpose or business objective of such Agreements; and
 - iii. the effect or potential effect of such Agreements on any Person in Canada or any Competitor servicing, or potential Competitor that could service, the Canadian market in respect of search and search advertising; and

- all Records prepared or received by a Senior Officer relating to the Draft Agreements specified in Specification 4(b) of this Schedule I, in respect of:
 - i. the negotiation of such Draft Agreements;
 - ii. the purpose or business objective of such Draft Agreements; and
 - iii. the potential effect of such Draft Agreements on any Person in Canada or any Competitor servicing, or potential Competitor that could service, the Canadian market in respect of search and search advertising.
- 5. Provide all Records prepared or received by a Senior Officer relating to any requirement that prevents or impedes a Search Advertising Platform not controlled by the Company from placing advertisements on a Search Results Page returned in response to a Search Query submitted to a Company Search Tool on a website controlled by a Syndication Partner, in respect of:
 - a. the purpose or business objective of the requirement; and
 - the effect or potential effect of the requirement on any Person in Canada or any Competitor servicing, or potential Competitor that could service, the Canadian market in respect of search and search advertising.
- 6. Provide all versions of the Company's AdWords API Terms and Conditions to which API Licensees with a primary billing address in Canada are or have been subject.
- 7. Provide all Records prepared or received by a Senior Officer relating to any requirement in any version of the Company's AdWords API Terms and Conditions, as identified in response to specification 6 of this Schedule I, that could prevent or restrict Multi-Homing, in respect of:
 - a. the purpose or business objective of any such requirement; and
 - b. the effect of any such requirement on any Person in Canada or any Competitor servicing, or potential Competitor that could service, the Canadian market in respect of search and search advertising.

- Provide all Records prepared or received by a Senior Officer relating to the Company's introduction of AdWords Enhanced Campaigns, announced 6 February 2013, in respect of:
 - a. the purpose or business objective of AdWords Enhanced Campaigns; and
 - the effect or potential effect of AdWords Enhanced Campaigns on any Person in Canada or any Competitor servicing, or potential Competitor that could service, the Canadian market in respect of search and search advertising.
- Provide all Records prepared or received by a Senior Officer relating to the Company's implementation and modification of Universal Search, in respect of:
 - a. the purpose or business objective of Universal Search; and
 - b. the effect or potential effect of Universal Search on any Person in Canada or any Competitor servicing, or potential Competitor that could service, the Canadian market.
- 10. Provide all Records prepared or received by a Senior Officer in respect of any actual or considered change to the Company's Search Algorithm for the purpose of lowering the placement of a Competitor's website or raising the placement of a Company website on a Search Results Page.
- 11. Provide all Records prepared or received by a Senior Officer relating to any situation where a Competitor was given less than full feature parity with the Company for mobile applications using the Company's YouTube service, in respect of:
 - a. the purpose or business objective of this action; and
 - b. the effect or potential effect of this action on any Person in Canada or any Competitor servicing, or potential Competitor that could service, the Canadian market.
- 12. Provide all Records prepared or received by a Senior Officer relating to any requirement that prevents or impedes a Person from designating a Search Engine not controlled by the Company as the default Search Engine on a device using the Company's Android mobile device operating system, in respect of:
 - a. the purpose or business objective of this requirement; and

- b. the effect or potential effect of this requirement on any Person in Canada or any Competitor servicing, or potential Competitor that could service, the Canadian market.
- 13. Provide all Records prepared or received by a Senior Officer relating to any proposed or implemented commitments with respect to search and search advertising made by the Company to the European Commission or the United States Federal Trade Commission, in respect of potential and actual effects of such commitments on the Company, Persons in Canada or Competitors servicing, or potential Competitors that could service, the Canadian market.
- 14. For each Agreement specified in specification 4(a) of this Schedule I provide records, whether created during or before the Relevant Period, sufficient to show:
 - a. the number of Search Queries, originating from Canadian IP Addresses, processed pursuant to the Agreement;
 - the gross revenues accrued by the Company pursuant to the Agreement from Search Queries that originate from Canadian IP Addresses; or
 - c. the fixed and variable costs incurred by the Company for the provision of responses to Search Queries from Canadian IP Addresses pursuant to the Agreement.
- 15. Provide records related to Persons with a primary billing address in Canada that have entered into an Online AdSense Agreement with the Company sufficient to show:
 - a. the number of Search Queries, originating from Canadian IP Addresses, processed pursuant to the Online AdSense Agreements;
 - the gross revenues accrued by the Company pursuant to the Online AdSense Agreements from Search Queries that originate from Canadian IP Addresses; or
 - c. the fixed and variable costs incurred by the Company for the provision of responses to Search Queries from Canadian IP Addresses pursuant to the Online AdSense Agreements.

- 16. For all API Licensees with a primary billing address in Canada and all API Licensees that develop a custom API AdWords client for use by customers in Canada, provide records sufficient to show:
 - a. the name and primary billing address of each API Licensee;
 - b. whether each API Licensee develops a custom API AdWords client for use by customers in Canada; and
 - c. which version of the Company's AdWords API Terms and Conditions is applicable to each API Licensee.
- 17. Provide records sufficient to show the number of Advertisers in Canada and advertising agencies with customers in Canada that use the Company's Search Advertising Platform and the revenue accruing to the Company from those Advertisers or advertising agencies for each category of search advertising (e.g. desktop, mobile and tablet).

[Remainder of the page intentionally left blank]

SCHEDULE II

WRITTEN RETURNS OF INFORMATION TO BE MADE AND DELIVERED PURSUANT TO PARAGRAPH 11(1)(c) OF THE COMPETITION ACT

Notice Concerning Obstruction

Any person who in any manner impedes or prevents or attempts to impede or prevent any inquiry or examination under the *Competition Act* (the "Act"), or who destroys or alters or causes to be destroyed or altered any record or thing that is required to be produced under section 11 of the Act, may be subject to criminal prosecution for obstruction of justice, contempt of court or other federal criminal violations. Where a corporation commits such an offence, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence may also be prosecuted. Conviction of any of these offences is punishable by fine or imprisonment or both.

Relevant Period

For the purpose of Schedule II, the Respondent shall make and deliver written returns of information for the period from 1 January 2010 to the date of issuance of this Order, unless otherwise specified in this Schedule.

Definitions

For the purpose of Schedule II, the following definitions shall apply:

- a. "Act" means the Competition Act, R.S.C. 1985, c. C-34, as amended;
- b. "Advertiser" means any Person that purchases or otherwise obtains placement of an advertisement in any medium;
- c. "Affiliate" has the meaning ascribed to it in section 2 of the Act;
- d. "Agreement" means any Search Syndication or Search Distribution contract, agreement or arrangement that relates to those services being offered to Persons in Canada, excluding Online AdSense Agreements, between the Company and another Person;

- e. "and" and "or" have both conjunctive and disjunctive meanings;
- f. "any" means one or more, and is mutually interchangeable with "all" and each term encompasses the other;
- g. "API Licensee" means any Person that has licensed the Company's AdWords Application Programming Interface;
- h. "Company" means Google Canada Corporation, its Relevant Affiliates, predecessors, and all directors, officers, and employees of the foregoing;
- "Control" means "control" as defined in section 2 of the Act or the ability to direct the economic behaviour of another Person;
- "Draft Agreement" means any Agreement proposed or drafted within the Relevant Period that has not yet been executed;
- k. "including" means including but not limited to and "include" means includes but not limited to:
- "IP Address" means a location-specific label assigned to devices that connect to the Internet;
- m. "Online AdSense Agreement" means any contract, agreement or arrangement between the Company and another Person entered into through a standard online process that relates to the Company's AdSense for Search program;
- n. "Person" means any individual, firm, sole proprietorship, corporation, trust, unincorporated organization, association, cooperative (public or private), joint venture, partnership, governmental entity or other entity, whether alone or acting in concert with another Person;
- o. "related to", "relating to" or "in relation to" means in whole or in part constituting, containing, concerning, pertaining to, discussing, describing, analyzing, identifying or stating;
- "Relevant Affiliate" means any domestic or foreign Affiliate of Google Canada Corporation that is engaged in or otherwise involved in the markets for search and search advertising in Canada;
- q. "Relevant Period" means from 1 January 2010 to the date of issuance of this order, inclusively;

- r. "Search Advertising Platform" means an online advertising technology that facilitates the sale and display of keyword-specific online advertisements that are returned in response to a Search Query;
- s. "Search Distribution" means the supply and placement of a Search Tool on any software or hardware not controlled by the Company, including mobile devices and web browsers;
- "Search Engine" means any service that generates a context-specific list of related websites or other relevant information in response to a user's input;
- u. "Search Query" means any input submitted to a Search Engine for the purpose of obtaining a Search Results Page;
- "Search Results Page" means a webpage generated in response to a user's input to a Search Engine that displays a list of related websites, advertisements or other relevant information;
- w. "Search Syndication" means the placement of a Search Tool on any website not controlled by the Company;
- x. "Search Tool" means any point through which a user can enter a Search Query;

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Specifications

- 1. Identify all Relevant Affiliates and provide a detailed description of each Relevant Affiliate's relationship to Google Canada Corporation.
- 2. For Google Canada Corporation and each Relevant Affiliate, provide:
 - a. the Person's legal name and address;
 - b. a detailed description of each of its principal business activities;
 - c. a description of each of the principal categories of products, as defined by the Person in its day-to-day operations, that it produces, supplies or distributes; and
 - d. for each principal category of products listed in response to Specification 2(c) of this Schedule II, provide:
 - i. the total annual volume or dollar value of purchases from and sales to all suppliers and customers;
 - ii. the twenty most important current suppliers, by expenditure, and twenty most important customers, by revenue, the contact names, telephone numbers and addresses of those suppliers and customers, and the annual volume or dollar value of purchases from and sales to those suppliers and customers; and
 - iii. the geographic regions of sales.
- Identify and provide a detailed description of any non-written Agreements entered into or in force during the Relevant Period.
- 4. For each Agreement specified in response to specification 4(a) of Schedule I and specification 3 of this Schedule II, provide, for each year of the Agreement, whether during or before the Relevant Period:
 - a. the number of Search Queries, originating from Canadian IP Addresses, processed pursuant to the Agreement;
 - b. the gross revenues accrued by the Company pursuant to the Agreement from Search Queries that originate from Canadian IP Addresses; and
 - c. the fixed and variable costs incurred by the Company for the

provision of responses to Search Queries from Canadian IP Addresses pursuant to the Agreement.

- Provide, as a combined total for all Persons with a primary billing address in Canada that have entered into an Online AdSense Agreement with the Company:
 - a. the number of Search Queries, originating from Canadian IP Addresses, processed pursuant to the Online AdSense Agreements for each year of the Relevant Period;
 - b. the gross revenues accrued by the Company pursuant to the Online AdSense Agreements from Search Queries that originate from Canadian IP Addresses, for each year of Relevant Period; and
 - c. the fixed and variable costs incurred by the Company for the provision of responses to Search Queries from Canadian IP Addresses pursuant to the Online AdSense Agreements, for each year of the Relevant Period.
- 6. For all API Licensees with a primary billing address in Canada:
 - a. provide the name and primary billing address;
 - b. identify which API Licensees develop custom API AdWords clients for use by customers; and
 - c. identify which version of the Company's AdWords API Terms and Conditions is applicable to each API Licensee.
- 7. For all API Licensees that develop a custom API AdWords client for use by customers and have a primary billing address outside Canada:
 - a. provide the name and primary billing address; and
 - b. identify which version of the Company's AdWords API Terms and Conditions is applicable to each API Licensee.
- 8. Describe how the Company determines which version of its AdWords API Terms and Conditions is applicable to licensees conducting business in various parts of the world, including the treatment of Canadian API Licensees that conduct business in English or French.
- 9. For each month of the Relevant Period and for each category of search advertising (e.g. desktop, mobile and tablet), provide, in electronic format.

the number of Advertisers and revenue for the Company's Search Advertising Platform by spending threshold in the following format:

Spending	advertising agencies		Advertisers .	
threshold (in) thousands of Canadian Dollars)	# off. advertising 3.	Total spend in CAN\$	# of Advertisers	Total spend in CANS
0-10				
10-20				
20-50				
50-100				
100-200				
200-300				
300-400				
400-500				
500-1,000	`			
>1,000				

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TAB 3

Court File No.: 7- 2048-13

FEDERAL COURT

IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34 (as amended);

AND IN THE MATTER OF an inquiry under section 10 of the Competition Act relating to potentially anti-competitive conduct by Google Inc.;

AND IN THE MATTER OF an *ex parte* application by the Commissioner of Competition for an order requiring Google Canada Corporation to produce records pursuant to paragraph 11(1)(b) and subsection 11(2) of the *Competition Act* and to make and deliver written returns of information pursuant to paragraph 11(1)(c) of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

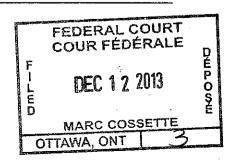
Applicant

and -

GOOGLE CANADA CORPORATION

Respondent

WRITTEN REPRESENTATIONS



OVERVIEW

- 1. The Commissioner of Competition (the "Commissioner") has commenced an inquiry under section 10 of the Act relating to certain practices of Google Inc. ("Google") in relation to Internet search and search advertising.
- 2. The Commissioner seeks an ex parte order pursuant to paragraphs 11(1)(b) and 11(1)(c) and subsection 11(2) of the Competition Act, R.S.C. 1985, c. C-34 (the "Act"). The Commissioner seeks this order to require Google Canada Corporation ("Google Canada") to produce records, including the records of its affiliate, Google, and to make and deliver written returns of information.
- 3. The Respondent, Google Canada has or is likely to have information that is relevant to the Commissioner's inquiry. Its affiliate, Google, has records that are relevant to the inquiry.

II. SECTION 11 OF THE ACT

- 4. Subsection 11(1) of the Act provides in relevant part as follows:
 - 11. (1) If, on the *ex parte* application of the Commissioner or his or her authorized representative, a judge of a superior or county court is satisfied by information on oath or solemn affirmation that an inquiry is being made under section 10 and that a person has or is likely to have information that is relevant to the inquiry, the judge may order the person to
 - (b) produce to the Commissioner or the authorized representative of the Commissioner within a time and at a place specified in the order, a record, a copy of a record certified by affidavit to be a true copy, or any other thing, specified in the order; or
 - (c) make and deliver to the Commissioner or the authorized representative of the Commissioner, within a time specified in the order, a written return under oath or solemn affirmation showing in detail such information as is by the order required.

Act, s 11(1), at Tab 5, Book of Authorities.

5. Subsection 11(2) of the Act provides:

Records in possession of affiliate

11(2) Where the person against whom an order is sought under paragraph (1)(b) in relation to an inquiry is a corporation and the judge to whom the application is made under subsection (1) is satisfied by information on oath or solemn affirmation that an affiliate of the corporation, whether the affiliate is located in Canada or outside Canada, has records that are relevant to the inquiry, the judge may order the corporation to produce the records.

Act, s 11(2), at Tab 5, Book of Authorities.

6. Section 11 of the Act has been interpreted by this Court as not authorizing the issuing of an order where the Commissioner commenced an inquiry on a "whim". The provision has also been interpreted as permitting a court to refuse to grant an order where there is insufficient evidence to support a conclusion that a *bona fide* inquiry has been commenced. This Court has stated that a bald assertion by the Commissioner that an inquiry has been commenced is insufficient; a court is likely to require some description of the nature of the alleged conduct that is the subject of the inquiry, the basis of the Commissioner's decision to commence an inquiry, and his reason for believing that conduct to which the inquiry is addressed has occurred.

Canada (Commissioner of Competition) v. Air Canada [2001] 1 FC 219 at para 31, at Tab 1, Book of Authorities.

7. Notwithstanding the foregoing, the court may not second guess the Commissioner's decision that he has reason to believe that the conduct that is the subject of the inquiry in question has occurred.

Air Canada, supra, at para 31, Tab 1, Book of Authorities.

8. Even where the statutory requirements of section 11 are met, the court retains a residual discretion to decide whether to issue an order.

Air Canada, supra, at para 31, at Tab 1, Book of Authorities; RBC Life Canada (National Revenue) v. RBC Life Insurance Company, 2011 FC 1249 at para 22, aff,d 2013 FCA 50 at para 36, Tab 2, 3, Book of Authorities; Canada (Commissioner of Competition) v. Labatt Brewing Co, 2008 FC 1249 at paras 50-52, at Tab 4 Book of Authorities; Act, s 11, at Tab 5, Book of Authorities.

III. THE COMMISSIONER HAS COMMENCED AN INQUIRY

9. Subparagraph 10(1)(b)(ii) of the Act provides that the Commissioner shall, when he has reason to believe that grounds exist for the making of an order under Part VII.1 of the Act, cause an inquiry to be made into all such matters that the Commissioner considers necessary to inquire into with the view of determining the facts.

Act, s 10, at Tab 5, Book of Authorities.

10. On 1 May 2013, the Commissioner commenced an inquiry under subparagraph 10(1)(b)(ii) of the Act on the basis that he has reason to believe that grounds exist for the making of an order under Part VIII of the Act, specifically pursuant to section 79 of the Act and with respect to certain of Google's practices in respect of search and search advertising in Canada.

Affidavit of Mark MacLachlan, affirmed 11 December 2013 ("MacLachlan Affidavit"), at para 6; Act, s 10, s 79, at Tab 5, Book of Authorities

11. Based on his preliminary investigation (the "Commissioner's Preliminary Investigation"), the Commissioner has reason to believe that the manner in which Google operates its search engine and search advertising platforms, as well certain terms and conditions of its search-related agreements with third parties, taken independently or as a whole, amount to an abuse of a dominant position under the Act.

MacLachlan Affidavit, at para 8

- 12. Amongst other things, the Commissioner has reason to believe that:
 - a. Google substantially or completely controls one or more markets related to the supply of Internet search and advertising services in Canada;
 - b. Google has engaged in and is engaged in a practice of anticompetitive acts, including:
 - i. entering into exclusive or default search syndication and search distribution agreements with web publishers and software and hardware vendors; and
 - ii. manipulating web search results to favour Google's "vertical" services (related to searches within a specific category of content, such as news or travel) and/or penalize Google's vertical competitors; and
 - c. Google has engaged in a practice of anti-competitive acts, including placing restrictions on the use of Google's AdWords, including restrictions on the use of AdWords application programming interface ("API") data; and
 - d. These practices have had, are having or are likely to have the effect of preventing or lessening competition substantially in the markets for Internet search and Internet search advertising in Canada.

MacLachian Affidavit, at paras 15-21

Investigations in Other Jurisdictions

13. Antitrust authorities in other jurisdictions, including the United States Federal Trade Commission (the "FTC") and the European Commission (the "EC") have investigated or are investigating Google for conduct similar to that which is the subject of the Inquiry.

MacLachlan Affidavit, at para 22

- 14. The FTC investigation was terminated on 3 January 2013, after, among other things, the FTC:
 - a. accepted Google's commitment to, among other things, remove clauses from the AdWords API Terms and Conditions that may have made it more difficult for advertisers to coordinate online advertising campaigns between AdWords and other search advertising platforms;
 - concluded, with respect to Google's allegedly exclusive search syndication and distribution agreements, that Google was not inducing its search syndication and distribution partners into restrictive agreements; and
 - c. concluded, with respect to allegations that Google favoured its vertical services over those of its competitors, that Google adopted the impugned measures primarily to improve search result quality and any impact on competitors was incidental.

MacLachlan Affidavit, at paras 23, 24

- 15. The EC investigation is ongoing, the EC having adopted a preliminary assessment on 13 March 2013, in which it expressed the view that:
 - a. Google gives favorable treatment to its own vertical properties within its search results, when compared to competing services;

- b. Google uses third party content without permission in its own vertical search results;
- Google has entered agreements that oblige web publishers to obtain all or most of their search advertising requirements from Google; and
- d. Google places contractual restrictions on the management and transferability of search advertising campaigns across search advertising platforms.

MacLachlan Affidavit, at paras 25, 26

Meetings with Google

16. The Bureau met with Google on 5 April 2011 and on 12 February 2013. Google emphasized that the FTC conducted a thorough investigation similar in scope to the Bureau's Inquiry and had terminated its investigation in view of, among other things, Google's commitments as described above. At both of those meetings, Google set out the basis upon which it maintained that its conduct did not represent an abuse of dominance under the Act.

MacLachlan Affidavit, at paras 27, 28

IV. GOOGLE HAS OR IS LIKELY TO HAVE INFORMATION THAT IS RELEVANT TO THE INQUIRY

 Google Canada is a private Nova Scotia unlimited liability corporation. Its registered office is located at 900-1959 Upper Water Street, Halifax, Nova Scotia.

MacLachlan Affidavit, at para 29

18. Google Canada has, or is likely to have, information that is relevant to the Inquiry based on the following: discussions the Competition Bureau had with Google; other publicly available information; and the fact that Google Canada has offices in and conducts a business in Canada.

MacLachlan Affidavit, at para 30; Act, ss. 11(1), at Tab 5.

V. GOOGLE HAS RECORDS THAT ARE RELEVANT TO THE INQUIRY

Google is a public Delaware corporation headquartered in Mountain View,
 California.

MacLachlan Affidavit, at para 31

20. Google Canada is a subsidiary of Google. Accordingly, Google is an affiliate of Google Canada under the Act.

MacLachlan Affidavit, at para 31; Act, ss 2(2) and 2(3), at Tab 5, Book of Authorities

21. Google has records relevant to the Inquiry based on the following: discussions the Competition Bureau had with Google; the fact that Google has already provided information and records to the Bureau in this Inquiry that pertain to both search and search advertising globally and in Canada; and, other publicly available information.

MacLachlan Affidavit, at para 32; Act, ss 11(2), at Tab 54, Book of Authorities

VI. THE ORDER SOUGHT

22. The Commissioner requires certain records and information for purposes of the Inquiry. The Commissioner seeks an order requiring Google Canada to produce those records and to make and deliver written returns of information in accordance with the terms of this order.

MacLachian Affidavit, at paras 33, 36

23. The records and written returns of information that the Commissioner seeks are set out in Schedules I and II of the Draft Order. The Commissioner has reason to believe that Google has engaged in an abuse of a dominant position as described in paragraph 12 since at least 2005. In an effort to focus the order, the Commissioner seeks records created or modified during, or that concern, the period from 1 January 2011 to the date of issuance of this Order, and written returns for the period from 1 January 2010. In the case of Specifications 5(c) and 15 of Schedule I and Specification 4 of Schedule II, the Commissioner seeks records and written returns, whether created before or after 1 January 2011, related to agreements entered into or in force during the relevant period.

MacLachlan Affidavit, at para 33, 34

- 24. The Commissioner seeks records and written returns of information that relate to matters including the following:
 - a. the organizational structure and business operations of Google Canada and its affiliates;
 - b. the markets in which Google operates;
 - whether Google is dominant in any of these markets;
 - d. the contractual terms and conditions Google maintains in its agreements with its Search Distribution and Search Syndication partners;

- e. the circumstances and motivations for changes Google has made to its search engine and search advertising platforms;
- f. whether Google is engaging, or has engaged, in a practice of anti competitive acts;
- g. the potential or actual effects of Google's conduct on competition;
 and
- h. the impact of remedy commitments undertaken or offered by Google in other jurisdictions in response to similar antitrust concerns.

MacLachlan Affidavit, at para 35

A. INFORMATION IN THE COMMISSIONER'S POSSESSION

25. A review was conducted of the Bureau's files to determine whether the Commissioner has records or information that are responsive to the Draft Order. Except as described below, the Bureau has not received records or information that are responsive to the Draft Order.

MacLachlan Affidavit, at para 38

26. On 6 March 2013, pursuant to this investigation, the Bureau sent a request for information to Google. Pursuant to this request, the Bureau has in its possession 78 records, as well as written returns of information detailing Google's conduct and market position ("RFI Information").

MacLachlan Affidavit, at para 39

27. On April 22, 2013, Google provided a waiver to the FTC, pursuant to which the FTC provided the Bureau with 1,004 of the records collected by the FTC

during its investigation ("FTC Records"). The majority of the FTC Records fall outside the relevant period of the Draft Order.

MacLachlan Affidavit, at para 40

28. A small number of the records in the Bureau's possession may be partially responsive to the Draft Order.

MacLachlan Affidavit, at para 41

29. In the course of its investigation, the Bureau has obtained information from numerous sources, including from complainants and competitors of Google. In addition to providing information to the Bureau, one of the complainant/competitors provided the Bureau with a list of examples of questions that could be included in a section 11 order the Bureau could seek in respect of Google Canada and its affiliates. The Bureau considered this list, but arrived at its own independent determination as to the appropriate scope of the Draft Order. The Commissioner is prepared to identify the referenced complainant at the direction of this Court. The complainant has asked that, if the Court wishes the complainant to be identified, it be provided with an opportunity to make submissions with respect to whether or not its name should be placed on the public record.

MacLachlan Affidavit, at para 37

30. The FTC Records, the RFI Information and other records and information gathered in the course of the Commissioner's Preliminary Investigation and the Inquiry are insufficient to determine the facts with respect to the Commissioner's Inquiry under Part VIII of the Act. In particular, the RFI Information was provided by Google on a without prejudice basis and the Commissioner may not be able to rely on this information as evidence if a

Competition Tribunal proceeding is required. Furthermore, neither the FTC Records nor the RFI Information cover the relevant period of the Draft Order in its entirety. Finally, the Commissioner cannot determine whether the information voluntarily provided by Google is complete and includes the most current records and information.

MacLachlan Affidavit, at para 42

31. If Google Canada previously provided records to the Commissioner that are responsive to the Draft Order, paragraph 11 of the Draft Order allows the Commissioner to waive further production of these records. Paragraph 11 provides:

> THIS COURT FURTHER ORDERS that where a Respondent previously produced a record to the Commissioner the Respondent is not required to produce an additional copy of the record or thing provided that the Respondent: (1) identifies the previously produced record or thing to the Commissioner's satisfaction; (2) makes and delivers a written return of information in which it agrees and confirms that the record was either in the possession of the Respondent, on premises used or occupied by the Respondent or was in the possession of an officer, agent, servant, employee or representative of the Respondent; and where this is not the case, the Respondent shall make and deliver a written return of information explaining the factual circumstances about the possession, power, control and location of such record; and (3) receives confirmation from the Commissioner that such records or things need not be produced. Where Google Inc. previously produced a record or thing to the Commissioner, the Respondent is not required to produce an additional copy of the record, provided that the Respondent complies with the three conditions above.

> > MacLachlan Affidavit, at para 43

VIII. COMMUNICATIONS WITH GOOGLE CANADA

32. On 6 May 2013, counsel for the Commissioner informed counsel for Google Canada by telephone that Google's conduct was the subject of the Inquiry.

MacLachlan Affidavit, at para 44

33. On 3 December 2013, counsel for the Commissioner informed counsel for Google Canada by telephone that the Commissioner would be seeking a section 11 order.

MacLachlan Affidavit, at para 45

34. On 4 December 2013, counsel for the Commissioner sent Google Canada a letter again setting out the Commissioner's intention to seek a section 11 order and attaching an earlier version of Schedules I and II to the Draft Order, attached hereto as Exhibits I and J, respectively.

MacLachlan Affidavit, at para 46

35. On 5 December 2013, counsel for the Commissioner, myself, and other members of the team working on the Inquiry spoke with counsel for Google Canada over the phone to address some preliminary questions they had about the Commissioner's Inquiry as well as the draft specifications noted above.

MacLachlan Affidavit, at para 47

36. On 9 December 2013, counsel for the Commissioner and Google Canada's counsel engaged in pre-motion dialogue regarding the draft specifications noted above. As a result of this discussion, certain clarifying changes were

incorporated into Schedules I and II to the Draft Order based on comments made by Google Canada.

MacLachlan Affidavit, at para 48

IX. THE ORDER SOUGHT IS APPROPRIATE

- 37. The Order sought is appropriate because the Commissioner is on Inquiry under section 10 of the Act; Google Canada has or is likely to have records and information that is relevant to the Inquiry; and its affiliate, Google has records that are relevant to the Inquiry.
- 38. For these reasons, the Commissioner requests that this court issue the Order sought in the form of the Draft Order filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of December, 2013 at Gatineau, Quebec.

John Syme

General Counsel

Department of Justice Canada

50 Victoria Street

Gatineau, Quebec, K1A 0C9

Tel: 819-953-3903 Fax: 819-953-9267

Counsel for the Commissioner of Competition

Table of Authorities

- A. Canada (Commissioner of Competition) v. Air Canada (2000), 8 C.P.R. (4th) 372 (F.C.T.D.).
- B. Canada (National Revenue) v. RBC Life Insurance Company, 2011 FC 1249,
- C. Canada (National Revenue) v. RBC Life Insurance Company, 2013 FCA 50.
- D. Canada (Commissioner of Competition) v. Labatt Brewing Co., 2008 F.C. 59 (F.C.T.D.).

Statutes

- D. Competition Act, R.S.C. 1985, c. 34, as amended, sections 2, 10, 11, 78 and 79.
- E. Federal Courts Rules, SOR/98-106 (as amended), Rules 361 and 364.

TABY

FEDERAL COURT

IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an inquiry under section 10 of the Competition Act relating to potentially anti-competitive conduct by Google Inc.;

AND IN THE MATTER OF an ex parte application by the Commissioner of Competition for an order requiring Google Canada Corporation to produce records pursuant to paragraph 11(1)(b) and subsection 11(2) of the Competition Act and to make and deliver written returns of information pursuant to paragraph 11(1)(c) of the Competition Act.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

GOOGLE CANADA CORPORATION

Respondent

ORDER FOR THE PRODUCTION OF RECORDS AND WRITTEN RETURNS OF INFORMATION

UPON the *ex parte* application made by the Commissioner of Competition (the "Commissioner") for an Order pursuant to paragraphs 11(1)(b), 11(1)(c) and subsection 11(2) of the *Competition Act*, R.S.C., 1985, c. C-34, as amended (the "Act"), which was heard this day at the Federal Court, Ottawa, Ontario;

AND UPON reading the affidavit of Mark MacLachlan sworn on XX December 2013 (the "Affidavit");

AND UPON being satisfied that an inquiry is being made under section 10 of the Act relating to an alleged abuse of a dominant position by Google Inc. (the "Inquiry");

AND UPON being satisfied that Google Canada Corporation (the "Respondent"), has or is likely to have information that is relevant to the Inquiry;

AND UPON being satisfied that the Respondent's affiliate, Google Inc., has records relevant to the Inquiry:

- THIS COURT ORDERS that the Respondent shall produce to the Commissioner all records and any other things specified in this Order, in accordance with the terms of this Order.
- 2. THIS COURT FURTHER ORDERS that the Respondent shall make and deliver to the Commissioner all written returns of information specified in this Order, in accordance with the terms of this Order.
- 3. THIS COURT FURTHER ORDERS that in order to facilitate the handling, use, and orderly maintenance of records and to ensure the accurate and expeditious return of records, other things specified in this Order and written returns of information produced pursuant to this Order, the Respondent shall comply with the following requirements:

- a. the Respondent shall produce records, other things and information in the possession, control or power of the Respondent and Google Inc.;
- the Respondent shall make and deliver all written returns of information in such detail as is required to disclose all facts relevant to the corresponding Specification in this Order;
- all written returns of information made by the Respondent shall be made under oath or solemn affirmation by a duly authorized representative of the Respondent;
- d. unless otherwise specified, the Respondent shall produce records created or modified during, or that concern, the period from 1 January 2011 to the date of issuance of this Order; and written returns of information in respect of the period 1 January 2010 to the date of issuance of this Order;
- e. the Respondent shall produce all records that are stapled or attached in any manner to a record that is responsive to this Order;
- f. if a portion of a record is responsive to any Specification in this Order, the Respondent shall produce the record in its entirety, including any covering records and attachments to the record;
- g. if a record is responsive to more than one Specification in this Order, the Respondent shall produce the record only once;
- h. the Respondent may utilize de-duplication or email threading software or services to produce records pursuant to this Order if the Respondent identifies the proposed software or service to the

satisfaction of the Commissioner and receives confirmation from the Commissioner that the Respondent may utilize that service or software:

- each record or thing produced by the Respondent shall be an original or a true copy of the original;
- j. the Respondent shall produce records in the order in which they appear in its files and shall not shuffle or otherwise rearrange records;
- k. the Respondent shall identify all calendars, appointment books, telephone logs, planners, diaries, and items of a similar nature that are produced in response to this Order with the name of the person or persons by whom they were used and the dates during which they were used;
- I. if the Respondent produces a record or makes and delivers a written return of information containing data that are recorded based on a period other than the calendar month or year, the Respondent shall identify in a written return of information the period used in the record or written return of information;
- m. if a record contains information that the Respondent claims is privileged, the Respondent shall produce the record with the privileged information redacted and in accordance with paragraph 5 of this Order;
- n. the Respondent shall produce all electronic records in their original format or as described below:

- i. the Respondent shall produce database records as a flat file,
 in a non-relational format, exported as a comma-delimited
 (CSV) text file;
- ii. the Respondent shall produce spreadsheets in MS Excel format;
- iii. the Respondent shall produce word processing files in MS Word or searchable PDF format;
- iv. the Respondent shall produce e-mail records and attachments in a native email format, such as Outlook Express EML format, Outlook MSG format, PST format, or searchable PDF format;
- v. the Respondent shall produce map records in a MS MapPoint or MS Streets & Trips format; and

in the event that the Respondent cannot deliver an electronic record in a format described above, the Respondent shall produce the electronic record along with such instructions and other materials, including software, as are necessary for the retrieval and use of the record;

o. notwithstanding subparagraph 3(n), the Respondent may produce litigation application exports by providing a cross-reference file (e.g., CSV, Dii, or MDB database) and related images (e.g., single page TIFF files) and/or electronic records and, where available, additional field information (e.g., title, description, date, etc.).

Where feasible, the Respondent shall produce electronic records in the predefined Ringtail MDB format;

- p. the Respondent shall produce electronic records on portable storage media that is appropriate to the volume of data (e.g., USB drive, CD, DVD, or hard drive) and that shall be identified with a label describing the contents. The Respondent shall produce files (e.g., native files or images or combinations of both) in batches of no more than 250,000 files;
- q. before producing records pursuant to this Order, and in order to facilitate receipt of documents in electronic format, a representative of the Respondent responsible for producing electronic records in accordance with subparagraphs 3(n) to (p) of this Order shall contact François Brabant at (819) 994-5173 and provide particulars regarding how it will comply with subparagraphs 3(n) to (p) of this Order. The Respondent shall make reasonable efforts to address any additional technical requirements the Commissioner may have relating to the production of electronic records in accordance with subparagraphs 3(n) to (p) of this Order;
- r. the Respondent shall define, explain, interpret or clarify any record or written return of information whose meaning is not self-evident;
- s. the Respondent shall make all written returns of information, including those relating to revenues, costs and margins, in accordance with generally accepted accounting principles ("GAAP"), International Financial Reporting Standards ("IFRS"), or other accounting principles that the Respondent uses in its financial statements. Where the Respondent produces a record or makes

and delivers a written return of information using accounting principles other than GAAP or IFRS, the Respondent shall explain the meaning of all such accounting terms;

- t. use of the singular or the plural in this Order shall not be deemed a limitation, and the use of the singular shall be construed to include, where appropriate, the plural; and vice versa; and
- u. use of a verb in the present or past tense in this Order shall not be deemed a limitation, and the use of either the present or past tense shall be construed to include both the present and past tense.
- 4. THIS COURT FURTHER ORDERS that the Respondent shall make and deliver, in written returns of information, two indices in which the Respondent identifies:
 - a. all records (or parts of records) that are responsive to the Specifications in Schedule I of this Order for which no privilege is claimed; and
 - b. all records (or parts of records) that are responsive to the Specifications in Schedule I of this Order for which privilege is claimed.

The indices shall include the title of the record, the date of the record, the name of each author, the title or position of each author, each addressee and recipient, the title or position of each addressee and recipient, and the paragraphs or subparagraphs of Schedule I of the Order to which the record is responsive. In lieu of listing the title or position of an author, addressee or recipient for each record, the Respondent may make and

deliver a written return of information listing such persons and their titles or positions.

- 5. THIS COURT FURTHER ORDERS that where the Respondent asserts a legal privilege in respect of all or part of a record, the Respondent shall, in a written return of information:
 - a. produce, for each record, a description of the privilege claimed and the factual basis for the claim in sufficient detail to allow the Commissioner to assess the validity of the claim; and
 - b. identify by name, title and address, all persons to whom the record or its contents, or any part thereof, have been disclosed.

Without restricting any other remedy he may seek, the Commissioner may, by written notice to the Respondent, at any time require the Respondent to produce records for which solicitor-client privilege is claimed to a person identified in subsection 19(3) of the Act.

6. THIS COURT FURTHER ORDERS that the Respondent shall make and deliver a written return of information confirming that the records produced pursuant to this Order were either in the possession of or on premises used or occupied by the Respondent or in the possession of an officer, agent, servant, employee or representative of the Respondent. If a record produced by the Respondent pursuant to this Order does not meet the above conditions, the Respondent shall make and deliver a written return of information explaining the factual circumstances about the possession, power, control and location of such record. The Respondent shall provide the same information for the records of its affiliate produced pursuant to this Order.

- 7. THIS COURT FURTHER ORDERS that the Respondent shall make and deliver a written return of information stating whether, upon having conducted a diligent search and made appropriate enquiries, it has reason to believe that the Respondent is not producing pursuant to this Order a record, thing, type of record or type of thing that was formerly in the possession, control or power of the Respondent or Google Inc. and that the record, thing, type of record or type of thing would be responsive to a Specification of this Order if the Respondent or Google Inc. had continued to have possession, control or power over the record, thing, type of record or type of thing. The Respondent shall state in this written return of information (a) when and how the Respondent or its affiliate lost possession, control and power over a record, thing, type of record or type of thing; and (b) the Respondent's best information about the present location of the record, thing, type of record or type of thing.
- 8. THIS COURT FURTHER ORDERS that the Respondent shall make and deliver a written return of information stating whether, upon having conducted a diligent search and made appropriate enquiries, it has reason to believe that the Respondent or Google Inc. never had possession, control or power over a record, thing, type of record or type of thing responsive to a Specification in this Order, that another person not otherwise subject to this Order has possession, control or power over the record, thing, type of record or type of thing, and that the record, thing, type of record or type of thing would be responsive to a Specification of this Order if the Respondent or Google Inc. possessed the record, thing, type of record or type of thing. The Respondent shall state in this written return of information the Respondent's best information about (a) the Specification to which the record, thing, type of record or type of thing is

responsive, (b) the identity of the person who has possession, control or power of the record, thing, type of record or type of thing, and (c) that person's last known address.

- 9. THIS COURT FURTHER ORDERS that the Respondent shall make and deliver a written return of information stating whether, upon having conducted a diligent search and made appropriate enquiries, it has reason to believe that a record, thing, type of record or type of thing responsive to this Order has been destroyed and that the record, thing, type of record or type of thing would have been responsive to a Specification of this Order if it had not been destroyed. The Respondent shall in this written return of information state whether the record, thing, type of record or type of thing was destroyed pursuant to a record destruction or retention policy, instruction or authorization and shall produce that policy, instruction or authorization.
- 10. THIS COURT FURTHER ORDERS that the Respondent shall make and deliver a written return of information stating whether, upon having conducted a diligent search and made appropriate enquiries, it has reason to believe the Respondent or its affiliate identified in Schedule I of this Order does not have records, things or information responsive to a Specification in this Order because the record, thing or information never existed. The Respondent shall, upon request of the Commissioner, make and deliver a further written return of information explaining why the record or thing never existed.
- 11. **THIS COURT FURTHER ORDERS** that where the Respondent previously produced a record to the Commissioner the Respondent is not required to produce an additional copy of the record or thing provided that the

Respondent: (1) identifies the previously produced record or thing to the Commissioner's satisfaction; (2) makes and delivers a written return of information in which it agrees and confirms that the record was either in the possession of the Respondent, on premises used or occupied by the Respondent or was in the possession of an officer, agent, servant, employee or representative of the Respondent; and where this is not the case, the Respondent shall make and deliver a written return of information explaining the factual circumstances about the possession, power, control and location of such record; and (3) receives confirmation from the Commissioner that such records or things need not be produced. Where Google Inc. previously produced a record or thing to the Commissioner, the Respondent is not required to produce an additional copy of the record, provided that the Respondent complies with the three conditions above.

- 12. THIS COURT FURTHER ORDERS that where the Respondent produces records, things or delivers written returns of information that are, in the opinion of the Commissioner, adequate for the purposes of the Inquiry, the Commissioner may, by written notice, waive production of any additional records, things or information that would have otherwise been responsive to the Order.
- 13. THIS COURT FURTHER ORDERS that the Respondent shall make and deliver a written return of information that:
 - a. describes the authority of the person to make the written return of information on behalf of the Respondent;
 - b. includes a statement that, in order to comply with this Order, the person has made or caused to be made:

- i. a thorough and diligent search of the records and things in the possession, control or power of the Respondent and Google Inc.; and
- ii. appropriate enquiries of the Respondent's personnel and the personnel of Google Inc.; and
- c. includes a statement that the person believes that the Respondent has complied with the terms of this Order.
- 14. THIS COURT FURTHER ORDERS that all the requirements herein, including the returns of records, things and written returns of information, shall be completed by 28 February 2014, provided that the production of records and things and delivery of written returns of information shall be conducted on a "rolling" basis, with the first production of records and things and delivery of written returns of information taking place no later than 31 January 2014.
- 15. THIS COURT FURTHER ORDERS that the Respondent shall produce all records and things and deliver all written returns of information to the Commissioner at the following address:

Competition Bureau Civil Matters Branch 50 Victoria Street, 15th Floor Gatineau, Quebec K1A 0C9

Attention: Mark MacLachlan, Senior Competition Law Officer

16. THIS COURT FURTHER ORDERS that communications or inquiries regarding this Order shall be addressed to:

John Syme General Counsel Department of Justice Competition Bureau Legal Services 50 Victoria Street Gatineau, Québec K1A 0C9

Phone #: (819) 953-3903 Fax #: (819) 953-9267

17. THIS COURT FURTHER ORDERS that this Order may be served by means of facsimile machine, electronic mail (with acknowledgement of receipt) or registered mail on a duly authorized representative of the Respondents or on counsel for the Respondents who have agreed to accept such service.

Judge of the Federal Court

SCHEDULE!

RECORDS TO BE PRODUCED PURSUANT TO PARAGRAPH 11(1)(b) AND SUBSECTION 11(2) OF THE COMPETITION ACT

Notice Concerning Obstruction

Any person who in any manner impedes or prevents or attempts to impede or prevent any inquiry or examination under the *Competition Act* (the "Act"), or who destroys or alters or causes to be destroyed or altered any record or thing that is required to be produced under section 11 of the Act, may be subject to criminal prosecution for obstruction of justice, contempt of court or other federal criminal violations. Where a corporation commits such an offence, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence may also be prosecuted. Conviction of any of these offences is punishable by fine or imprisonment or both.

Relevant Period

For the purpose of Schedule I, the Respondent shall produce records created or modified during, or that concern, the period from 1 January 2011 to the date of issuance of this Order, unless otherwise specified in this Schedule.

Definitions

For the purpose of Schedule I, the following definitions shall apply:

- a. "Act" means the Competition Act, R.S.C. 1985, c. C-34, as amended;
- b. "Advertiser" means any Person that purchases or otherwise obtains placement of an advertisement in any medium;
- c. "Affiliate" has the meaning ascribed to it in section 2 of the Act;

- d. "Agreement" means any Search Syndication or Search Distribution contract, agreement or arrangement that relates to those services being offered to Persons in Canada, excluding Online AdSense Agreements, between the Company and another Person;
- e. "and" and "or" have both conjunctive and disjunctive meanings;
- f. "any" means one or more, and is mutually interchangeable with "all" and each term encompasses the other;
- g. "API Licensee" means any Person that has licensed the Company's AdWords Application Programming Interface;
- h. "Company" means Google Canada Corporation, its Relevant Affiliates, predecessors, and all directors, officers, and employees of the foregoing;
- i. "Competitor" means any Person, excluding the Company, that offers a product or service similar to those offered by the Company;
- "Control" means "control" as defined in section 2 of the Act or the ability to direct the economic behaviour of another Person;
- k. "Draft Agreement" means any Agreement proposed or drafted within the Relevant Period that has not yet been executed;
- "including" means including but not limited to and "include" means includes but not limited to;
- m. "IP Address" means a location-specific label assigned to devices that connect to the Internet:
- n. "Multi-Homing" means the simultaneous use of multiple Search Advertising Platforms by an Advertiser or third party;
- "Online AdSense Agreement" means any contract, agreement or arrangement between the Company and another Person entered into through a standard online process that relates to the Company's AdSense for Search program;
- p. "Person" means any individual, firm, sole proprietorship, corporation, trust, unincorporated organization, association, cooperative (public or

private), joint venture, partnership, governmental entity or other entity, whether alone or acting in concert with another Person;

- q. "Record" has the meaning ascribed to it in section 2 of the Act;
- r. "related to", "relating to" or "in relation to" means in whole or in part constituting, containing, concerning, pertaining to, discussing, describing, analyzing, identifying or stating;
- s. "Relevant Affiliate" means any domestic or foreign Affiliate of Google Canada Corporation that is engaged in or otherwise involved in the markets for search and search advertising in Canada;
- t. "Relevant Period" means from 1 January 2011 to the date of issuance of this order, inclusively;
- u. "Search Advertising Platform" means an online advertising technology that facilitates the sale and display of keyword-specific online advertisements that are returned in response to a Search Query;
- v. "Search Algorithm" means the procedure that determines the ranking of websites or other relevant information on a Search Results Page;
- w. "Search Distribution" means the supply and placement of a Search Tool on any software or hardware not controlled by the Company, including mobile devices and web browsers;
- x. "Search Engine" means any service that generates a context-specific list of related websites or other relevant information in response to a user's input;
- y. "Search Query" means any input submitted to a Search Engine for the purpose of obtaining a Search Results Page;
- z. "Search Results Page" means a webpage generated in response to a user's input to a Search Engine that displays a list of related websites, advertisements or other relevant information;
- aa. "Search Syndication" means the placement of a Search Tool on any website not controlled by the Company;
- bb. "Search Tool" means any point through which a user can enter a Search Query;

- cc. "Senior Officer" means any Person having or exercising the duties, functions or authority of chairperson, president, chief executive officer, vice-president, secretary, treasurer, chief financial officer, chief operating officer, general manager or managing director of the Company;
- dd. "Syndication Partner" means any Person that places a Company Search Tool on any website not controlled by the Company; and
- ee. "Universal Search" means the insertion of direct answers or enhanced functionality, beyond mere links to websites, within the space on a Search Results Page typically designated for non-paid search results. For greater certainty, this would include search result boxes such as the Company's Hotel Finder or other enhanced functionality search results that include sponsored or advertised listings.

[Remainder of the page intentionally left blank]

Specifications

- 1. Provide organization charts:
 - a. showing Google Canada Corporation and its relationship to each of its Relevant Affiliates and their relationship to each other; and
 - b. identifying the Senior Officers of the Company.
- Provide monthly financial statements showing the Company's revenues, costs, profits and losses, or any similar or equivalent financial Records maintained by the Company in respect of the Company's search and search advertising business in Canada, audited where available and separated by business segment.
- Provide all marketing, business, pricing and strategic plans, studies or analyses prepared or received by a Senior Officer relating to the markets for search and search advertising and the competitive position, including competitive advantages and disadvantages, of the Company and any Competitor.
- 4. Provide all marketing, business, pricing and strategic plans, studies or analyses prepared or received by a Senior Officer relating to the markets for search and search advertising and the negotiating, bargaining, or countervailing power of any Advertiser or API Licensee in relation to the Company.

5. Provide:

- a. all Agreements entered into or in force during the Relevant Period;
- the most recent version, as of the date of this order, of each distinct Draft Agreement;
- each distinct version of an Online AdSense Agreement between the Company and a Person with a primary billing address in Canada entered into or in force during the Relevant Period;
- d. all Records prepared or received by a Senior Officer, whether during or before the Relevant Period, relating to the Agreements specified in Specification 5(a) of this Schedule I and in Specification 3 of Schedule II, in respect of:

- the negotiation of such Agreements;
- ii. the purpose or business objective of such Agreements; and
- iii. the effect or potential effect of such Agreements on any Person in Canada or any Competitor servicing, or potential Competitor that could service, Canada in respect of search and search advertising; and
- e. all Records prepared or received by a Senior Officer relating to the Draft Agreements specified in Specification 5(b) of this Schedule I, in respect of:
 - i. the negotiation of such Draft Agreements;
 - ii. the purpose or business objective of such Draft Agreements; and
 - iii. the potential effect of such Draft Agreements on any Person in Canada or any Competitor servicing, or potential Competitor that could service, Canada in respect of search and search advertising.
- 6. Provide all Records prepared or received by a Senior Officer relating to any requirement that prevents or impedes a Search Advertising Platform not controlled by the Company from placing advertisements on a Search Results Page returned in response to a Search Query submitted to a Company Search Tool on a website controlled by a Syndication Partner, in respect of:
 - a. the purpose or business objective of the requirement; and
 - b. the effect or potential effect of the requirement on any Person in Canada or any Competitor servicing, or potential Competitor that could service, Canada in respect of search and search advertising.
- 7. Provide all versions of the Company's AdWords API Terms and Conditions to which API Licensees with a primary billing address in Canada are or have been subject.

- 8. Provide all Records prepared or received by a Senior Officer relating to any requirement in any version of the Company's AdWords API Terms and Conditions, as identified in response to specification 6 of this Schedule I, that could prevent or restrict Multi-Homing (including, but not limited to, sections II.3.a, III.2.c.i, III.2.c.ii, and III.9 of the current version of Google AdWords API Terms and Conditions), in respect of:
 - a. the purpose or business objective of any such requirement; and
 - b. the effect of any such requirement on any Person in Canada or any Competitor servicing, or potential Competitor that could service, Canada in respect of search and search advertising.
- Provide all Records prepared or received by a Senior Officer relating to the Company's introduction of AdWords Enhanced Campaigns, announced 6 February 2013, in respect of:
 - a. the purpose or business objective of AdWords Enhanced Campaigns; and
 - the effect or potential effect of AdWords Enhanced Campaigns on any Person in Canada or any Competitor servicing, or potential Competitor that could service, Canada in respect of search and search advertising.
- 10. Provide all Records prepared or received by a Senior Officer relating to the Company's implementation and modification of Universal Search, in respect of:
 - a. the purpose or business objective of Universal Search; and
 - b. the effect or potential effect of Universal Search on any Person in Canada or any Competitor servicing, or potential Competitor that could service, Canada.
- 11. Provide all Records prepared or received by a Senior Officer in respect of any actual or considered change to the Company's Search Algorithm for the purpose of lowering the placement of a Competitor's website or raising the placement of a Company website on a Search Results Page.
- 12. Provide all Records prepared or received by a Senior Officer relating to any situation where a Competitor was given less than full feature parity

with the Company for mobile applications using the Company's YouTube service, in respect of:

- a. the purpose or business objective of this action; and
- b. the effect or potential effect of this action on any Person in Canada or any Competitor servicing, or potential Competitor that could service, Canada.
- 13. Provide all Records prepared or received by a Senior Officer relating to any requirement that prevents or impedes a Person from designating a Search Engine not controlled by the Company as the default Search Engine on a device using the Company's Android mobile device operating system, in respect of:
 - a. the purpose or business objective of this requirement; and
 - b. the effect or potential effect of this requirement on any Person in Canada or any Competitor servicing, or potential Competitor that could service. Canada.
- 14. Provide all Records prepared or received by a Senior Officer relating to any proposed or implemented commitments with respect to search and search advertising made by the Company to the European Commission or the United States Federal Trade Commission, in respect of potential and actual effects of such commitments on the Company's Canadian business, Persons in Canada or Competitors servicing, or potential Competitors that could service, Canada.
- 15. For each Agreement specified in specification 5(a) of this Schedule I provide records which, by their combination, whether created during or before the Relevant Period, are sufficient to show:
 - a. the number of Search Queries, originating from Canadian IP Addresses, processed pursuant to the Agreement;
 - the gross revenues accrued by the Company pursuant to the Agreement from Search Queries that originate from Canadian IP Addresses; and
 - c. the fixed and variable costs incurred by the Company for the provision of responses to Search Queries from Canadian IP

Addresses pursuant to the Agreement.

- 16. Provide records related to Persons with a primary billing address in Canada that have entered into an Online AdSense Agreement with the Company which, by their combination, are sufficient to show:
 - a. the number of Search Queries, originating from Canadian IP Addresses, processed pursuant to the Online AdSense Agreements;
 - b. the gross revenues accrued by the Company pursuant to the Online AdSense Agreements from Search Queries that originate from Canadian IP Addresses; and
 - c. the fixed and variable costs incurred by the Company for the provision of responses to Search Queries from Canadian IP Addresses pursuant to the Online AdSense Agreements.
- 17. For all API Licensees with a primary billing address in Canada and all API Licensees that develop a custom API AdWords client for use by customers in Canada, provide records sufficient to show:
 - a. the name and primary billing address of each API Licensee;
 - b. whether each API Licensee develops a custom API AdWords client for use by customers in Canada; and
 - c. which version of the Company's AdWords API Terms and Conditions is applicable to each API Licensee.
- 18. Provide records sufficient to show the number of Advertisers in Canada and advertising agencies with customers in Canada that use the Company's Search Advertising Platform and the revenue accruing to the Company from those Advertisers or advertising agencies for each category of search advertising (e.g. desktop, mobile and tablet).

SCHEDULE II

WRITTEN RETURNS OF INFORMATION TO BE MADE AND DELIVERED PURSUANT TO PARAGRAPH 11(1)(c) OF THE COMPETITION ACT

Notice Concerning Obstruction

Any person who in any manner impedes or prevents or attempts to impede or prevent any inquiry or examination under the *Competition Act* (the "Act"), or who destroys or alters or causes to be destroyed or altered any record or thing that is required to be produced under section 11 of the Act, may be subject to criminal prosecution for obstruction of justice, contempt of court or other federal criminal violations. Where a corporation commits such an offence, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence may also be prosecuted. Conviction of any of these offences is punishable by fine or imprisonment or both.

Relevant Period

For the purpose of Schedule II, the Respondent shall make and deliver written returns of information for the period from 1 January 2010 to the date of issuance of this Order, unless otherwise specified in this Schedule.

Definitions

For the purpose of Schedule II, the following definitions shall apply:

- a. "Act" means the Competition Act, R.S.C. 1985, c. C-34, as amended;
- b. "Advertiser" means any Person that purchases or otherwise obtains placement of an advertisement in any medium;
- c. "Affiliate" has the meaning ascribed to it in section 2 of the Act;

- d. "Agreement" means any Search Syndication or Search Distribution contract, agreement or arrangement that relates to those services being offered to Persons in Canada, excluding Online AdSense Agreements, between the Company and another Person;
- e. "and" and "or" have both conjunctive and disjunctive meanings;
- f. "any" means one or more, and is mutually interchangeable with "all" and each term encompasses the other;
- g. "API Licensee" means any Person that has licensed the Company's AdWords Application Programming Interface;
- h. "Company" means Google Canada Corporation, its Relevant Affiliates, predecessors, and all directors, officers, and employees of the foregoing;
- i. "Control" means "control" as defined in section 2 of the Act or the ability to direct the economic behaviour of another Person;
- j. "Draft Agreement" means any Agreement proposed or drafted within the Relevant Period that has not yet been executed;
- k. "including" means including but not limited to and "include" means includes but not limited to;
- I. "IP Address" means a location-specific label assigned to devices that connect to the Internet;
- m. "Online AdSense Agreement" means any contract, agreement or arrangement between the Company and another Person entered into through a standard online process that relates to the Company's AdSense for Search program;
- n. "Person" means any individual, firm, sole proprietorship, corporation, trust, unincorporated organization, association, cooperative (public or private), joint venture, partnership, governmental entity or other entity, whether alone or acting in concert with another Person;
- o. "related to", "relating to" or "in relation to" means in whole or in part constituting, containing, concerning, pertaining to, discussing, describing, analyzing, identifying or stating;

- p. "Relevant Affiliate" means any domestic or foreign Affiliate of Google Canada Corporation that is engaged in or otherwise involved in the markets for search and search advertising in Canada;
- q. "Relevant Period" means from 1 January 2010 to the date of issuance of this order, inclusively;
- r. "Search Advertising Platform" means an online advertising technology that facilitates the sale and display of keyword-specific online advertisements that are returned in response to a Search Query;
- s. "Search Distribution" means the supply and placement of a Search Tool on any software or hardware not controlled by the Company, including mobile devices and web browsers;
- t. "Search Engine" means any service that generates a context-specific list of related websites or other relevant information in response to a user's input;
- u. "Search Query" means any input submitted to a Search Engine for the purpose of obtaining a Search Results Page;
- "Search Results Page" means a webpage generated in response to a
 user's input to a Search Engine that displays a list of related websites,
 advertisements or other relevant information;
- w. "Search Syndication" means the placement of a Search Tool on any website not controlled by the Company;
- x. "Search Tool" means any point through which a user can enter a Search Query;

[Remainder of the page intentionally left blank]

Specifications

- 1. Identify all Relevant Affiliates and provide a detailed description of each Relevant Affiliate's relationship to Google Canada Corporation.
- 2. For Google Canada Corporation and each Relevant Affiliate, provide:
 - a. the Person's legal name and address;
 - b. a detailed description of each of its principal business activities;
 - a description of each of the principal categories of products, as defined by the Person in its day-to-day operations, that it produces, supplies or distributes; and
 - d. for each principal category of products listed in response to Specification 2(c) of this Schedule II, provide:
 - i. the total annual volume or dollar value of purchases from and sales to all suppliers and customers;
 - ii. the twenty most important current suppliers, by expenditure, and twenty most important customers, by revenue, the contact names, telephone numbers and addresses of those suppliers and customers, and the annual volume or dollar value of purchases from and sales to those suppliers and customers; and
 - iii. the geographic regions of sales.
- 3. Identify and provide a detailed description of any non-written Agreements entered into or in force during the Relevant Period.
- 4. For each Agreement specified in response to specification 5(a) of Schedule I and specification 3 of this Schedule II, provide, for each year of the Agreement, whether during or before the Relevant Period:
 - a. the number of Search Queries, originating from Canadian IP Addresses, processed pursuant to the Agreement;
 - b. the gross revenues accrued by the Company pursuant to the Agreement from Search Queries that originate from Canadian IP

Addresses; and

- c. the fixed and variable costs incurred by the Company for the provision of responses to Search Queries from Canadian IP Addresses pursuant to the Agreement.
- Provide, as a combined total for all Persons with a primary billing address in Canada that have entered into an Online AdSense Agreement with the Company:
 - a. the number of Search Queries, originating from Canadian IP Addresses, processed pursuant to the Online AdSense Agreements for each year of the Relevant Period;
 - b. the gross revenues accrued by the Company pursuant to the Online AdSense Agreements from Search Queries that originate from Canadian IP Addresses, for each year of Relevant Period; and
 - c. the fixed and variable costs incurred by the Company for the provision of responses to Search Queries from Canadian IP Addresses pursuant to the Online AdSense Agreements, for each year of the Relevant Period.
- 6. For all API Licensees with a primary billing address in Canada:
 - a. provide the name and primary billing address;
 - b. identify which API Licensees develop custom API AdWords clients for use by customers; and
 - c. identify which version of the Company's AdWords API Terms and Conditions is applicable to each API Licensee.
- 7. For all API Licensees that have a primary billing address outside Canada and develop a custom API AdWords client for use by customers that advertise to Canadians:
 - a. provide the name and primary billing address; and
 - b. identify which version of the Company's AdWords API Terms and Conditions is applicable to each API Licensee.

- 8. Describe how the Company determines which version of its AdWords API Terms and Conditions is applicable to licensees conducting business in various parts of the world, including the treatment of Canadian API Licensees that conduct business in English or French.
- 9. For the Company's Search Advertising Platform, for each month of the Relevant Period and for each category of search advertising (e.g. desktop, mobile and tablet), provide, in electronic format, the revenue generated by Search Queries originating from Canadian IP Addresses, and the corresponding number of Advertisers or advertising agencies, by revenue range, in the following format:

van 191	advertising agencies		Advertisers	
Revenue range (in thousands of Canadian Dollars)	# of advertising agencies	Total revenue from agencies (in Canadian Dollars)	# of Advertisers	Total revenue from Advertisers (in Canadian Dollars)
0-10				
10-20				
20-50				
50-100			7.77.7	
100-200				
200-300		-		
300-400				
400-500				
500-1,000				
>1,000		-		