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Mountain View, California 94043



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FACSIMILE TRANSMITTAL SHEET

**TO:**

**COMPANY:**

**FAX NUMBER:**

**PHONE NUMBER:**

**RE:**

Subpoena dated

**FROM:**

Audrey Kim

**DATE:**

2012

**TOTAL NUMBER OF PAGES INCLUDING COVER: 3**

**SENDER'S FAX NUMBER:**

**SENDER'S EMAIL ADDRESS:**

GOOGLE-LEGAL-SUPPORT@GOOGLE.COM

Notes/Comments:

Subpoena dated (Internal Ref. No.

Google, Inc.  
1600 Amphitheatre Parkway  
Mountain View, California 94043



File: 650.867.1673  
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012

Via

Re

Doe Nos. 1-5, United States District Court for the Central District of California,  
(Internal Ref. No. [redacted])

Dear [redacted]

We have received your subpoena for documents, dated [redacted] 2012, in the above-referenced matter. As we understand it, you are seeking documents related to several Checkout accounts.

This letter is to advise you that Google has forwarded notice of this matter, including your name and contact information, to the users at the email addresses provided by the users.

Please be aware that because Google is a California resident and the vast majority of documents and information regarding its business is retrievable and will be produced only from its headquarters in Mountain View, California, USA, Google believes it is under no obligation to respond to a subpoena not issued from a Court in this jurisdiction. Google accepts subpoenas issued from the Northern District of California Federal Court via personal service on the Google Custodian of Records for Google, Inc. at 1600 Amphitheatre Parkway, Mountain View, California, 94043. See F.R.C.P. 45(b).

Section 2702(a) of the federal Electronic Communications Privacy Act prohibits Google from disclosing the content of electronic communications, including content from Gmail, pursuant to a subpoena. 18 U.S.C. § 2702(a); Theofel v. Farey-Jones, 359 F.3d 1066 (9th Cir. 2004); see also In re Subpoena Duces Tecum to AOL, LLC., 550 F.Supp.2d 606, 611 (E.D. Va. 2008); Flagg v. City of Detroit, 252 F.R.D. 346, 366 (E.D. Mich. 2008); Viacom Int'l Inc. v. YouTube Inc., 253 F.R.D. 256 (S.D.N.Y. 2008); O'Grady v. Superior Court of Santa Clara, 139 Cal. App. 4th 1423, 1441-43 (2006). The appropriate way to seek such content is to direct your request to the account holder who has custody and control of the data in the account. O'Grady, 139 Cal. App. 4th at 1446-47. Furthermore, if the account holder is a party to the underlying litigation, you may serve a document request on the account holder for the content sought. See id.; see also Flagg, 252 F.R.D. at 348, 366-67.

Google objects to the requests in the subpoena to the extent they seek information already in Plaintiff's possession or available to Plaintiff from some other source that is more convenient, less burdensome or less expensive, including information available to Plaintiff from public sources. This means that if you are seeking account or other information from Google that is

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equally available from a party in the litigation, Google objects to that request on that basis. Google also objects to the requests to the extent they seek information containing confidential financial, proprietary or trade secret information, or any information subject to a confidentiality agreement or protective order. While Google does not require a protective order for production of its non-confidential information, Google will only produce information it deems confidential pursuant to a confidentiality agreement or protective order that it deems suitable for the protection of its confidential information. Please provide a confidentiality agreement or protective order if you intend to seek confidential documents of Google in your requests, as we will not produce confidential information without entry of a protective order that we deem suitable to protect the confidentiality of our documents.

Google further objects to the requests to the extent they seek information protected by any privilege, including the attorney-client privilege, work product immunity doctrine, common interest privilege, or any other applicable privilege, immunity, or restriction on discovery. We also object to the requests to the extent that they are irrelevant, overly broad, vague, ambiguous, unlimited in time or scope, fail to identify the information sought with reasonable particularity, or impose an undue burden on Google. Google objects to the requests to the extent that they seek information that is not relevant or reasonably likely to lead to the discovery of admissible evidence.

If you have any questions, please feel free to contact the Legal Support Department at [GOOGLE-LEGAL-SUPPORT@GOOGLE.COM](mailto:GOOGLE-LEGAL-SUPPORT@GOOGLE.COM). Thank you.

Very truly yours,

Audrey Kim

Legal Investigations Support