

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

AARON C. BORING AND CHRISTINE
BORING, husband and wife respec-
tively,

CIVIL DIVISION

Plaintiffs,

CASE NO. 08-cv-694 (ARH)

v.

GOOGLE, Inc., a California cor-
poration,

Defendant.

PLAINTIFFS' SECOND SET OF REQUESTS FOR DOCUMENTS AND THINGS

Plaintiff, pursuant to Rule 34 of the Federal Rules of Civil Procedure ("F.R.C.P.", or the "Rules", as the context requires), by its undersigned attorney, hereby requests the Defendant to respond to the following requests by producing the requested documents and things to Plaintiffs' representative's offices located at 429 Forbes Avenue, 7th Floor, Pittsburgh, PA 15219-1616 on June 23, 2010 at 10:00 a.m.

**I.
INSTRUCTIONS**

Please follow these instructions and use the following definitions in responding to this request for discovery.

a. Each of the following requests for discovery shall be responded to separately and fully in writing. The responses shall be signed and verified by the person making them. Objections, if any, shall be signed by the attorney making them. Where the space provided is insufficient, please attach and refer to a separate sheet of paper, sufficient to complete said answer.

b. Once any person, document or other matter required to be identified has been identified properly, it shall be sufficient thereafter, when identifying that same person, document or other matter, to state the name of the person, title of the document or sufficient information to refer to the previous response in which a complete identification has been given.

c. Where knowledge or information in possession of a party is requested, such request includes knowledge of such party's agents, employees, servants, officers, directors, accountants, attorneys (except only to whatever extent privileged), and any other person acting or purporting to act on behalf of the party to whom these requests for discovery are addressed. You must make inquiries of your agents, employees, etc., whenever such inquiry is necessary to enable you to respond to this request for discovery completely and accurately.

d. When, after a reasonable and thorough investigation, you are unable to answer any request for discovery, or any part thereof, because of lack of information available to you, specify in full and complete detail the reason the information is not available to you and what has been done to locate such information. In addition, specify what knowledge or belief you have concerning the unanswered portion of the request for discovery and set forth the facts upon which such knowledge or belief is based.

e. Where a request for discovery does not specifically request a particular fact, but where such fact or facts are necessary to make the response to discovery either comprehensible, or complete, or not misleading, you are required to include such fact or facts as part of the response, and the request shall be deemed specifically to require such fact or facts.

f. If, in responding to these requests for discovery, you encounter any ambiguity in a question, instruction, or definition, set forth the matter deemed ambiguous and the interpretation you used in responding.

g. If you assert a privilege, work product immunity, or decline to provide an answer on the basis of some other objection:

- i. identify and describe the document or communication in question;
- ii. describe the basis for the asserted privilege or objection;
- iii. identify every person to whom the document was sent, or every person present when the communication was made;
- iv. identify the present custodian of the document, if any; and
- v. include sufficient facts for the Court to make a full determination of whether the claim or objection is valid.

h. Unless otherwise indicated, these requests for discovery refer to the time, places and circumstances of the occurrences mentioned or complained of in pleading. If the responding party has filed (or intends to file prior to responding to these requests for discovery) any responsive pleadings, then unless otherwise indicated, these requests for production refer to the times, places and circumstances of the occurrences mentioned or complained of in said responsive pleadings.

i. These requests for discovery are deemed to be continuing to the fullest extent provided in the Rules.

j. To the extent that any request for discovery made herein duplicates any other request for production made in another request for discovery otherwise fully responded to, then you may specifically identify such the other response in lieu of providing a response for the request made herein.

j. The requests made herein are for documents and things in their native format, including, but not limited to, electronically stored information, including any metadata with the documents and things.

II.
DEFINITIONS

All definitions provided in this Section II of this request for discovery shall apply to the term so defined, and also to such term whether or not capitalized, and also to grammatical variations (including, without limitation, mood, tense, number) of such term. Such definitions shall be broadly construed so that the construction provides the broadest request for discovery permitted under the Rules. Specific requests are intended to supplement the following definitions.

a. "You" (including "your" and "yourself"), and "Company" refers to the party to whom the request for discovery is addressed, acting in any capacity, and any person, including agents, representatives, attorneys (except only to whatever extent privileged), and each person acting or purporting to act on behalf of the party to whom the request for discovery is addressed. Additionally, if "you" is a corporation or other business entity, then "you" refers to each parent, predecessor, subsidiary, affiliate, and each present and former officer, employee, agent, representative, and attorney of the party to whom this request for discovery addressed.

b. "Representative" means any and all agents, employees, servants, officers, directors, attorneys, or other persons acting or purporting to act on behalf of the principal in question.

c. "Person" means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, or other units therein, and shall include, but not be limited to, a public or private corporation, limited liability company, business entity or association, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, estate, governmental agency, commission, bureau or department.

d. "Document" means any medium in which information, data or intelligence can be contained, recorded or retrieved, and includes, without limitation, the original (or copy if the original is unavailable), electronically stored information with metadata, regardless of origin and location, and all tangible things of every type and description, however produced, copied or reproduced, whether draft or final, original or reproduction, signed or unsigned, approved, sent, received, re-drafted, executed, erased or otherwise defaced or mutilated, from whom-ever and wherever obtained, along with all non-identical (or, by reason of subsequent annotation, no longer identical) copies, drafts, or versions thereof and all copies thereof containing any commentary, notations or markings, whatsoever, which is or was in your possession, custody or control, including, but not limited to: any book, pamphlet, periodical, email, letter, memorandum, (including any memorandum or report of a meeting or conversation), invoice, bill, magnetic media, order, form, receipt, financial statement, accounting entry, diary, calendar, telex, telegram, cable, report, record, contract, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing, sketch, graph, index, list, tape, photograph, microfilm, data sheet, or data processing card, or any other written, recorded, transcribed, punched, taped, filed, or graphic materials.

e. The word "identify" (including, without limitation, "identification" and "identity") when used in reference to:

i. a natural individual, requires you to state his or her full name, and present or last known residential address, business address, and telephone number;

ii. a corporation, requires you to state its full corporate name, and any names under which it does business, its state of incorporation, the address and telephone number of its principal place of business, and the name, address and telephone number for each and every officer;

iii. a business, other than a corporation, requires you to state the full name or style under which the business is conducted, the types of businesses in which it is engaged and the geographic areas in which it conducts those businesses, each business address, its telephone number, and the name, address and telephone number for each and every of person and/or business entity which owns, operates, and/or controls each such business;

iv. a document, requires you to state its title, its date, the names of its authors and/or recipients, number of pages and nature of the document, and its present or last known location and custodian, including any documents prepared subsequent to any time period; and

v. a communication, requires you: A) if any part of the communication was written, to identify the documents (as provided above) which refer to or evidence the communication; and B) to the extent that the communication is unwritten, to identify each and every person participating in, or otherwise present during, all or any part of the communication, and to describe the communication and to state the date, manner, place and substance of the communication. Where a communication occurs over the telephone, the location of such communication is requested, and state the location of the parties thereto.

f. "Communication" means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, correspondence, documents, email, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings.

g. When request for discovery requests that you "describe," or to "state the basis of," or to "state the facts" on which you rely to support a particular claim, contention, or allegation, state in your answer each and every fact and legal theory, and identify each and every communication and/or document, which you contend supports, refers to, or evidences such claim, contention, or allegation. When request for discovery requires you otherwise to describe or state the facts relating to any particular set of circumstances, act, event, transaction, occurrence, meeting, purchase, sale, agreement, contract, venture, relationship, conversation, representation, communication, or other item of information, state in your answer the facts (including dates and places) relating to such transaction, occurrence, relationship, set of

circumstances, etc., as the case may be; and identify any persons who are or were parties thereto or have knowledge thereof; and identify any communications and documents relating to, or evidencing, such transaction, occurrence, relationship, set of circumstances, etc., as the case may be.

h. "Or" appearing in a request for discovery should not be read so as to eliminate any part of the request for discovery, but, whenever applicable, it should have the same meaning as the word "and." For example, a request for discovery stating "support" or "refer" should be read as "support and refer" if a response that does both can be made.

i. Unless otherwise specified, any reference to a judicial pleading, including, without limitation, complaint, amended complaint, answer, new matter, and counterclaim, affirmative defenses, refers to such pleading as served in the same action for which this request for discovery relates.

J. If the subject-matter of Defendant's response has been otherwise responded to under a prior request for production by Defendant, Defendant may so state and/or incorporate by reference the prior response, with a reference to that particular request.

III. REQUESTS

1. Plaintiffs hereby request any and all documents and things which embody data, and/or document, contain, or otherwise report on data or other information, of any nature, which was recorded, accessed, intercepted, copied, received or retrieved by camera or other electronic or mechanical device of and/or while on, gaining access to or exiting Oakridge Lane, Allegheny County, Pittsburgh, PA 15237.

Without limiting the generality of the foregoing, "gaining access" and "exiting" means the 200 feet on Reis Run Road immediately adjacent to the Oakridge Lane/Reis Run Road junction. This request expressly includes, but is not limited to:

- a) any pictorial data, moving or static recordings of any nature;
- b) Wi-Fi and/or electronic data transmitted from Plaintiffs' Wi-Fi and/or wireless device(s);
- c) Wi-Fi and/or electronic data transmitted irrespective of transmitting source.

2. Defendant Google stated in its Brief for Protective Order [Docket 81, p. 4] that its defense is based upon:

[T]he implied consent given by general custom, that absent a locked gate or other express notice not to enter, the public may drive up the driveway or otherwise approach a private home without liability for trespass.

[This statement and the related claim referred hereafter individually and jointly, as "Google's Defense."] Plaintiffs hereby request any and all documents and things that are relied upon by Defendant Google to support Google's Defense, whether or not Defendant Google otherwise intends to use such documents and things at trial or otherwise.

3. Plaintiffs hereby request any and all documents and things that are relied upon by Defendant Google to support that Plaintiffs are, in particular, part or within the scope of the "implied consent given by general custom" regarding the Google's Defense, whether or not Defendant Google otherwise intends to use such documents and things at trial or otherwise. [That is, the evidence that supports, irrespectively of the "general custom," the Plaintiffs are particularly within and not excepted from, the stated "general custom."]

4. Plaintiffs hereby request any and all documents and things that are bear upon Google Defense's that:

a) that the implied consent includes the right to acquire data in the form of pictorial data, moving or static recordings of any nature;

b) that the implied consent includes the right to acquire data, in the form of Wi-Fi and/or electronic data transmitted from Plaintiffs' Wi-Fi and/or wireless device(s);

c) that the implied consent includes the right to acquire data, in the form of Wi-Fi and/or electronic data transmitted irrespectively of transmitting source; and/or

d) that the implied consent includes the right to acquire any data for storage (permanent or temporary), indexing, and/or worldwide publication.

5. Plaintiffs hereby request any and all documents and things that are relied upon by Defendant Google to support an implied license, whether or not Defendant Google otherwise intends to use such documents and things at trial or otherwise.

6. Plaintiffs hereby request any and all documents and things that are relied upon by Defendant Google to support an express license, whether or not Defendant Google otherwise intends to use such documents and things at trial or otherwise.

7. Plaintiffs hereby request any and all documents and things that support or bear upon any contention that Defendant Google, while on Oakridge Lane accessed, took, transferred, concealed, or retained possession of data (pictorial or otherwise) under an express or implied claim of license or other legal right or authority.

8. Plaintiffs hereby request any and all documents and things that contain information regarding a) the selection, qualification, acquisition, management, and training of Street View drivers; and b) the purpose, policies, procedures, of training and teaching programs for the Google Street View program.

Without limiting the generality of the foregoing, this request includes drafts and distributed training materials; equipment usage guides and materials; executed agreements and drafts thereof for drivers and/or any outsourced driving companies; applications/resumes of drivers; necessary qualifications, employment advertisements for drivers; training attendance lists; recordings of training sessions; internal and external correspondence regarding driver training; training materials directly or indirectly to or for drivers or potential drivers or any company/companies outsourced to perform Street View services of data acquisition; documents and things that embody statements or positions bearing upon Google training procedures regarding the express consent and/or the "implied consent given by general custom" asserted by Google.

9. Plaintiffs hereby request any and all documents and things regarding filtering and redaction of data acquired from Street View vehicles, whether or not part of training materials.

10. All documents and things that reference or use the term "custom" or "implied consent" relating to "Street View."

11. All documents and things to or from the Street View driver(s) or any person under Google's direction or authority who entered onto Oakridge Lane from January 1, 2007, through the present, at any time of day or night within such period, whether directly to such driver(s) or to any company for whom such driver(s) were employed, hired or otherwise engaged, including any physical media submitted by the driver(s) to Defendant Google containing the subject-matter requested in Request No. 1.

12. Plaintiffs hereby request any and all documents and things that embody, contain or otherwise reference requests and/or demands to Google regarding Street View: a) contemporaneously or in advance, to not enter land, depart from land, to not trespass and/or not to acquire data (pictorial or otherwise); b) after-the-fact requests or demands for removal and/or destruction of data from Street View or data acquired by Street View drivers; and/or c) claims made and disputes regarding publication of data on Street View and/or regarding data acquired by Street View drivers. Without limiting the generality of the foregoing, this request includes all items, and all data from the mitigation removal website (referred to by Google in the record), for the past 5 years. Without limiting the foregoing, this request includes: i) any documents and things regarding lawsuits

(arbitrations/disputes/threats of lawsuits, etc.); ii) questions received from individuals or responses/answers by Defendant Google regarding removal and procedures therefore; iii) by any person, including, but not limited to, individuals or entities, commercial or noncommercial, government or private.

13. Plaintiffs hereby request any and all documents and things that express, comment upon, state the or relate to the purpose and explanation for the "mitigation" information removal website. Without limiting the generality of the foregoing, this request includes any and all documents and things that contain information and/or communications reconciling the need for a mitigation removal website in light of Google's Defense.

14. Plaintiffs hereby request any and all documents and things that embody any media article, correspondence or other reproduction of media (e.g., text, video, audio) in which a Google employee or other representative is directly quoted regarding Street View.

15. Plaintiffs hereby request any and all documents and things that contradict the reason why Defendant Google does not seek advance data about private roads is because it would slow down deployment. [See, Larry Yu, *The Press Democrat*, <http://news.google.com/newspapers?nid=1673&dat=20080821&id=lbAjAAAAIBAJ&sjid=qSQEAAAAIBAJ&pg=6937,4285450>]

16. Plaintiffs hereby request any and all documents and things that contradict that common sense dictates that only the person who films and uploads a video to a hosting platform could take the steps necessary to protect the privacy and obtain the consent of the people they are filming. [See, Matt Sucherman, *CNN/Money* http://money.cnn.com/2010/02/24/technology/Google_Italy_privacy_conviction.]

17. Plaintiffs hereby requests Defendant Google to produce for inspection the a) vehicle(s); b) all electronic or mechanical device(s) referenced in Request No. 1; and c) the entire original source physical media (e.g., digital cassette) delivered to Google by the driver for Plaintiffs' property.

Dated: May 24, 2010

s/Gregg R. Zegarelli/
Gregg R. Zegarelli, Esq.
PA I.D. #52717

s/Dennis M. Moskal/
Dennis M. Moskal, Esq.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies service of process of a true and correct copy of this document on May 24, 2010 as follows:

The following person or persons were served by depositing the foregoing document in the United States mail, postage prepaid:

Brian P. Fagan, Esq.
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