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**BUSINESS/FINANCIAL DESK**

## Google Resists U.S. Subpoena Of Search Data

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SAN FRANCISCO, Jan. 19 - The Justice Department has asked a federal judge to compel Google, the Internet search giant, to turn over records on millions of its users' search queries as part of the government's effort to uphold an online pornography law.

Google has been refusing the request since a subpoena was first issued last August, even as three of its competitors agreed to provide information, according to court documents made public this week. Google asserts that the request is unnecessary, overly broad, would be onerous to comply with, would jeopardize its trade secrets and could expose identifying information about its users.

The dispute with Google comes as the government is moving aggressively on several fronts to obtain data on Internet activity to achieve its law enforcement goals, from domestic security to the prosecution of online crime. Under the antiterrorism law known as the USA Patriot Act, for example, the Justice Department has demanded records on library patrons' Internet use.

Those efforts have encountered resistance on privacy grounds.

The government's move in the Google case, however, is different in its aims. Rather than seeking data on individuals, it says it is trying to establish a profile of Internet use that will help it defend the Child Online Protection Act, a 1998 law that would impose tough criminal penalties on individuals whose Web sites carried material deemed harmful to minors.

The law has faced repeated legal challenges. Two years ago, the Supreme Court upheld an injunction blocking its

enforcement, returning the case to a district court for further examination of Internet-filtering technology that might be an alternative in achieving the law's aims.

The government's motion to compel Google's compliance was filed on Wednesday in Federal District Court in San Jose, Calif., near Google's headquarters in Mountain View. The subpoena and the government's motion were reported on Thursday by The San Jose Mercury News.

In addition to records of a week of search queries, which could amount to billions of search terms, the Google subpoena seeks a random list of a million Web addresses in its index.

Charles Miller, a spokesman for the Justice Department, said on Thursday that three Google competitors in Internet search technology -- America Online, Yahoo and MSN, Microsoft's online service -- had complied with subpoenas in the case.

Mr. Miller declined to say exactly how the data would be used, but according to the government's filings, it would help estimate the prevalence of material that could be deemed harmful to minors and the effectiveness of filtering software. Opponents of the pornography law contend that filtering software could protect minors effectively enough to make the law unnecessary.

The government's motion calls for Google to surrender the information within 21 days of court approval.

Although the government has modified its demands since last year, Google said Thursday that it would continue to fight. "Google is not a party to this lawsuit, and their demand for information overreaches," said Nicole Wong, Google's associate general counsel, referring to government lawyers. "We intend to resist their motion vigorously."

Philip B. Stark, a statistics professor at the University of California, Berkeley, who was hired by the Justice Department to analyze search engine data in the case, said in legal documents that search engine data provided crucial insight into information on the Internet.

"Google is one of the most popular search engines," he wrote in a court document related to the case. Thus, he said, Google's databases of Web addresses and user searches "are directly relevant."

But Danny Sullivan, editor of SearchEngineWatch, an online industry newsletter, questioned the need for a subpoena. "Is this really something the government needs Google to help them with?" he said.

As for Google's rivals, MSN declined to speak directly to the case but released a statement saying it generally "works closely with law enforcement officials."

Mary Osako, a Yahoo spokeswoman, said the company complied with the subpoena "on a limited basis." And Andrew Weinstein, a spokesman for AOL, said that company gave the Justice Department a generic list of anonymous search terms from a one-day period.

Susan P. Crawford, a professor at the Cardozo School of Law in New York, said she could understand why the companies complied. "There's this real perception that if you're not with us you're against us," she said. "So the major companies will cooperate with enormously burdensome requests just to avoid future vengeance being wreaked on them" by the Justice Department.

In its brief history, Google has made "Don't be evil" an operating principle, even as it has come to endure scrutiny and criticism over its increasing inroads into a variety of businesses beyond Web searches, from advertising to mapping.

And Google and its rivals have been criticized for their business practices in China, where Google and MSN have filtered keywords like "human rights" and "democracy" out of their search-engine results. Last fall, it was revealed that Yahoo had cooperated with authorities seeking the identity of a Chinese e-mail subscriber who had distributed a

government warning about protests; he is now serving a 10-year prison term.

While its court filings against the Justice Department subpoena have emphasized the burden of compliance and threat to its trade secrets, Google also pointed to a chilling effect on its customers.

"Google's acceding to the request would suggest that it is willing to reveal information about those who use its services," it said in an October letter to the Justice Department. "This is not a perception Google can accept. And one can envision scenarios where queries alone could reveal identifying information about a specific Google user, which is another outcome that Google cannot accept."

For its part, the Justice Department said the data received from Google's rivals showed that the search query information did not contain "any additional personal identifying information" and that trade secrets would be protected under procedures at the trial court.

"Google thus should have no difficulty in complying in the same way as its competitors have," the government's motion said.

Critics of the effort to subpoena Google say the immediate issue is not pornography or privacy, but whether the government has established its need for the information.

"The government's attitude, apparently, is that it's entitled to information without justification," said Aden Fine, an attorney for the American Civil Liberties Union, which has led the fight against the 1998 pornography law. "Like everyone else in litigation, they need to justify their request for information."

Even as the government has yet to put the 1998 law into effect, the pornography industry has faced a legal offensive on other fronts. Congress in recent years has increased the resources and sharpened the laws available to the Justice Department to go after makers of hard-core videos and other content.

At the same time, though, the industry is booming, recording \$12.6 billion in revenue in 2005 from distribution of sexually explicit content, and from other forms of entertainment, like strip clubs. A big reason for the growth is technology, with sales from Internet distribution hitting \$2.5 billion in 2005, according to testimony given to the Senate on Thursday.

American Web sites that show explicit content get as many as 60 million visitors a day, according to testimony given to the Senate Committee on Commerce, Science and Transportation by Paul Cambria, general counsel for the Adult Freedom Foundation, an organization that represents the interests of the pornography industry.

In fighting the 1998 law, the civil liberties union has argued that whether or not pornography is available on the Internet, the law is unconstitutional because it will limit the distribution of acceptable forms of free speech. Under the law, Web site operators face criminal charges for publishing sexually explicit material unless they have a way of verifying that viewers are over 17.

Whatever the courts ultimately decide on the pornography law at issue, however, Tim Wu, a professor at Columbia Law School, said the Google case pointed to a larger struggle for the identity of the Internet.

"Search engines are at the center of that battle, both here and in other countries," said Professor Wu. "By asserting its power over search engines, using threats of force, the government can directly affect what the Internet experience is. For while Google is fighting the subpoena, it's clear that if they lose, they will comply."

Photo: Google says a Justice Department request for search records is overbroad and could expose identifying information about its users. (Photo by Jae C. Hong/Associated Press)(pg. C4)