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Jim Kolotouros - /tick-43521194/email/jimk/Jim Kolotouros

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**From:** Joan Braddi <sup>Redacted</sup>@google.com>  
**To:** Jim Kolotouros <sup>Redacted</sup>@google.com>  
**Sent:** Tue, 24 Sep 2013 13:00:33 -0700  
**Subject:** Re: Summary of NYC Commercial discussion  
**Cc:** Claudia Walsh <sup>Redacted</sup>@google.com>

(- Patrick to keep to just the commercial items)  
My comments/edits below in blue.

On Tue, Sep 24, 2013 at 11:17 AM, Jim Kolotouros <sup>Redacted</sup>@google.com> wrote:

**\*\* ATTORNEY CLIENT PRIVILEGED \*\***

hello Joan,

Below please find a summary. I tried to keep it short but I erred on the side of comprehensive. And it is easy to add additional options if any come to mind.

Claudia: did I miss anything?

thanks.

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### **Commercial Agreement**

#### **Key issues:**

**A. NYC wants right to terminate the cross-license if we fail to pay the bonus payment or revshare payments.**

**B. Search - two main areas of disagreement:**

(1) What queries is NYC obligated to send to Google? (i.e., for which search access points is NYC committed to set Google as default? just queries that originate from within Safari? just queries that are intended for general search engines?)

(2) How should "default" search status be implemented?

iOS 7, nyc removed "google" name/brand from the search bar -now called "smart search"; introduced default favorites which include Y!, Disney, ESPN, Apple to the user before they search. We believe this creates confusion to the user (are they getting Google if they use the "smart search" or are they getting something else. Should they choose Y! instead. Question - is Apple being paid by Y! or Bing to change them to default or when queries are sent via these offers to the user.

Google wants: Clear articulation of when we will be set as Default to ensure we are made whole; no direct or indirect payments from competitors if nyc offers/encourages the user to change settings. No offering users options during a search.

NYC wants: limited obligation and total flexibility.

**C. Additional search issue:**

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#### **Concerns:**

- Can NYC successfully divert search queries away from Safari and towards apps and/or the OS?
- Can NYC (or a third party search partner) encourage a user to change their default search engine within Safari?
- We want to prevent NYC from using the revenue share client ID for queries that should not qualify for revenue share. (this is our problem to fix on how we track and audit what they are sending us. The contract language should be clear on the obligation, we need to do the job to test this randomly to see if they are complying).

#### **Options:**

(1) Require that all search access points (as defined by Google to minimize user confusion) utilize Google as default (as defined by Google to ensure proper default configuration). (WHAT DOES THIS MEAN? WHAT ARE WE OFFERING NYC AS THE REQUIREMENT FOR THIS OPTION).

(2) Give NYC more flexibility with respect to i) queries they are obligated to send to Google and/or ii) default implementation. If NYC achieves annual and/or quarterly revenue threshold, qualifies for revenue share. If threshold is missed, materially lower revenue share applies. (DO WE WISH TO JUST REDUCE REVSHARE AS THEY COULD BE MAKING MORE FROM OTHERS. WOULDN'T WE WANT A BREACH IF THEY DON'T HIT THE MIN OR A PAYMENT TO US TO MAKE UP THE DELTA?)

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(3) Shorter term to lessen the risk of prolonged exposure to non-optimal implementations. (EVEN IF WE AGREE TO SHORTER TERM, WE HAVE TO TIGHTEN THE DEFAULT LANGUAGE - SO IS THIS REALLY AN OPTION?)

(4) In return for revenue share, allow NYC the flexibility to i) send queries to alternate search providers, and/or ii) implement default search in a more liberal way, so long as NYC does not receive any financial or non-financial, direct or indirect benefit from the third party search provider.

(6) (REMOVE THIS AS IT IS NOT AN OPTION) Current deal as understood by NYC; they are only obligated to send Google queries that originate from within the Safari browser and in return receive revenue share. And NYC also qualifies for any elective search access points (within any territory and on any device) where it sets Google as default. (YES WE HAVE AGREED TO THIS BUT WE WANT THEM TO TELL US IF THEY ARE SETTING US AS DEFAULT SO WE CAN TRACK. WE ALSO WISH TO ENSURE IT IS A TRAFFIC REFERRAL IMPLEMENTATION TO [GOOGLE.COM](http://GOOGLE.COM) AND NOT ANOTHER FORM IN ORDER TO RECEIVE REVSHARE).

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