



United States & Co-Plaintiff States v. Google LLC

Plaintiffs' Closing Statement

REDACTED FOR PUBLIC FILING

Turned “History Off”

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History Off By Default

 2008

Message

From: Matthew Drake [Redacted@google.com]
Sent: 9/16/2008 11:01:05 PM
To: Bill Coughran [Redacted@google.com]; Kent Walker [Redacted@google.com]
Subject: Re: [Googlers] Business communications in a complicated world

Is there a way to override the "corporate default setting" so that all chats I'm part of are on "The Record by default"? I rely pretty heavily on chat history for day-to-day work since it is used interchangeably with email and I lookup the same sorts of information I'd find in my email (links, decisions we made, how to do things, etc.) If the corporate default setting of "off the record by default" means that every single chat I am part of I'll need to "go on the record" for, that'll be a huge decrease in my productivity - a ton of time spent clicking the same checkbox. This may make sense as a corporate default but definitely not as a default for myself.

There is a Gmail chat setting around "saving chat history in gmail" but its not clear whether this is the setting that controls the default value or whether chat history is accessible from within gmail. If this is indeed the setting that needs to be marked as "on" so that all my chats are on-the-record, I want to make sure that it won't suddenly get turned off since I've explicitly changed the setting to be on.

- Matt

On Tue, Sep 16, 2008 at 2:09 PM, Bill Coughran [Redacted@google.com] wrote:
> Confidential/Please Do Not Forward

> Googlers --
> As you know, Google continues to be in the midst of several significant legal and regulatory matters, including government review of our deal with Yahoo!, various copyright, patent, and trademark lawsuits, and lots of other claims. Given our continuing commitment to developing revolutionary products and doing disruptive things, we're going to keep facing these kinds of challenges. So we've got two requests of you and one change to announce.
>
> First, please write carefully and thoughtfully. We're an email and instant-messaging culture. We conduct much of our work online. We believe that information is good. But anything you write can become subject to review in legal discovery, misconstrued, or taken out of context, and may be used against you or us in ways you wouldn't expect. Writing stuff that's sarcastic, speculative, or not fully informed inevitably creates problems in litigation. In your communications, please avoid stating legal conclusions.
> Speculation about whether something might breach a complex contract, or whether it might violate a law somewhere in the world, is often wrong and rarely helpful. So please do think twice before you write about hot topics.
> don't comment before you have all the facts, and direct questions regarding continuing litigation holds and any legal and/or regulatory matters involving Google to the friendly (albeit lawyerly) folks at [Redacted@google.com].
> Second, remember that these same rules apply not just to Gmail but also to Google Talk and all other forms of electronic communication (for example wiki's, doc's, spreadsheets, etc.). We end up reviewing millions of pages of these communications as part of producing documents in regulatory and litigation matters -- and we're working together to streamline and simplify that process.
>
> To help avoid inadvertent retention of instant messages, we have decided to make "off the record" the Google corporate default setting for Google Talk.
> we'll also be providing this option to our Google Apps enterprise customers. You should see this new default setting taking effect over the next few days. You will still be able to save Talk conversations that are useful to you -- but please remember that "on the record" conversations become part of your (more or less) permanent record and are added to Google's long-term document storehouse. If you've received notice that you're subject to a litigation hold, and you must chat regarding matters covered by that hold, please make sure that those chats are "on the record".
> Finally, remember that even when you're "off the record", your chat partner may be recording the conversation, so always take care with what you write.
> Thanks for your help and understanding on this. Let one of us know if you have any questions.

Ex. No.
UPX1101
1:20-cv-03010-APM

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GOOG-DOJ-29864619

 **Kent Walker**
Chief Legal Office & President of
Global Affairs

“As you know, **Google continues to be in the midst of several significant legal and regulatory matters** We’re an email and instant-messaging culture. We conduct much of our work online. We believe that information is good. But anything you write can become subject to review in legal discovery, misconstrued, or taken out of context, and may be used against you or us in ways you wouldn’t expect. . . . We end up reviewing millions of pages of these communications as part of producing documents in regulatory and litigation matters -- and we’re working together to streamline and simplify that process. **To help avoid inadvertent retention of instant messages, we have decided to make ‘off the record’ the Google corporate default setting for Google Talk.**”

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Google Turned “History Off”



**Dr. Pandu
Nayak**
VP, Search



- Q.** And from time to time, **you asked people to turn history off** before or during your chats?
- A.** Well, **I’ve certainly done that, because at the time there was a policy at Google to have history off.**
- Q.** And you –
- A.** And I just wanted to be compliant with that policy.
- Q.** You understood Google’s policy was that history off for chats amongst Google employees?
- A.** Yes.

Tr. Testimony

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Google Turned “History Off”



Sundar Pichai
CEO



- Q. As CEO, you knew that **all Google employees, even those under a litigation hold, had their chats default to delete after 24 hours**, correct?
- A. **I was aware**, you know, **when I became CEO this is how it worked**. This was not an area I was focused on, yeah.

* * *

- Q. And as CEO, you **never took any steps to change** the policy to delete chats after 24 hours in order to ensure that Google was meeting its obligations to preserve documents for discovery?
- A. **This was not a change**, yeah, that came to my attention or I considered.

Tr. Testimony

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Google's Anticompetitive Intent

 2019



Ex. No.
UPX0320
1:20-cv-03010-APM

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GOOG-DOJ-29824601

REMINDER OF CONFIDENTIALITY

Everything shared in this training is strictly confidential and proprietary

Additionally any written communication regarding Rev Share and MADA should include Legal (include Redacted @ or Redacted @ and request guidance, mark content as "Confidential - Attorney Client Privileged")

Confidential & Proprietary

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Anticompetitive Intent

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Google Violated Rule 37(e)

Uncontested:

- Google failed to preserve chats.
- Google failed to take reasonable steps to preserve chats.
- Deleted chats irrecoverable.

Plaintiffs proved:

- (e)(1): Prejudice.
- (e)(2): Google's intent.

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This Is Wrong

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Adverse Inferences

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, <i>et al.</i> , Plaintiffs,	Case No. 1:20-cv-03010-APM
v.	HON. AMIT P. MEHTA
GOOGLE LLC, Defendant.	[REDACTED]

STATE OF COLORADO, <i>et al.</i> , Plaintiffs,	Case No. 1:20-cv-03715-APM
v.	HON. AMIT P. MEHTA
GOOGLE LLC, Defendant.	[REDACTED]

PLAINTIFFS' POST-TRIAL BRIEF

February 9, 2024 [Corrected April 30, 2024]

1. Presumption that deleted chats were unfavorable to Google regarding the intent behind and effect of Google's contracts.
2. Presumption that Google's proffered justifications are pretextual.
3. Presumption that Google intended to maintain its monopoly.
4. Prohibition on argument by Google that the absence of evidence is evidence of its absence.
5. Any other relief the Court finds proper.

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Sanctions

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United States & Co-Plaintiff States v. Google LLC

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