

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

**IN RE 2703(d) ORDER AND 2703(f)
PRESERVATION REQUEST RELATING
TO GMAIL ACCOUNT [REDACTED]**

) 2011 JAN 18 P 12:58
) Misc. No. 10G13793
) CLERK US DISTRICT COURT
) ALEXANDRIA, VIRGINIA
) FILED UNDER SEAL
)

**GOOGLE INC.'S MOTION TO MODIFY 2703(d) ORDER FOR PURPOSE OF
PROVIDING NOTICE TO USER AND MEMORANDUM IN SUPPORT**

I. INTRODUCTION

This matter involves a grand jury investigation of the Wikileaks publication of State Department cables and related matters. The fact of the investigation has been widely reported in the *New York Times* and other news publications, across the Internet and around the globe.¹ Demands have been made to third party service providers, including Google Inc. ("Google"), seeking compelled disclosure of information such as with whom the subject users of those services communicated and which computers they used to do so. The Google Gmail user [REDACTED] is the subject of the demand at issue here (the "Order").² Because of the already public nature of the Wikileaks investigation, the fact that a nearly identical order to another provider involving the same account identifier has been unsealed by this Court in the same Grand Jury proceeding, and for other reasons set forth herein, Google requests permission to provide notice

¹ See, e.g., Scott Shane and John F. Burns, *U.S. Subpoenas Twitter Over WikiLeaks Supporters*, N.Y. Times, Jan. 8, 2011, <http://www.nytimes.com/2011/01/09/world/09wiki.html> (last visited Jan. 13, 2011); Anthony Boadle, *U.S. orders Twitter to hand over Wikileaks records*, Reuters, Jan. 8, 2011, <http://www.reuters.com/article/idUSTRE70716420110108> (last visited Jan. 14, 2011); Ravi Somaiya, *Release on Bail of WikiLeaks Founder Is Delayed by Appeal*, N.Y. Times, Dec. 14, 2010, available at <http://www.nytimes.com/2010/12/15/world/europe/15assange.html?src=twrhp> (last visited Jan. 3, 2011); *Assange attorney: Secret grand jury meeting in Virginia on WikiLeaks*, CNN Justice, Dec. 13, 2010, http://articles.cnn.com/2010-12-13/justice/wikileaks.investigation_1_julian-assange-wikileaks-case-grand-jury?_s=PM:CRIME (last visited Jan. 3, 2011); Dan Goodin, *Grand jury meets to decide fate of WikiLeaks founder*, The Register, Dec. 13, 2010, available at http://www.theregister.co.uk/2010/12/13/assange_grand_jury/ (last visited Jan. 3, 2011).

² See Declaration of John K. Roche, Ex. 1 ("Roche Decl.").

of the Order to that Gmail user and the user's attorney far enough in advance to give them a meaningful opportunity to contest the request.

II. FACTUAL BACKGROUND

A. Summary

The Order in this matter was issued on January 4, 2011, and seeks information about the Gmail user [REDACTED]. A user with the account identifier [REDACTED] was also one of the targets of such an order issued on December 14, 2010 by this Court at the request of the government to Twitter pursuant to 18 U.S.C. § 2703(d) (the "Twitter Order").³ Twitter asked the government to unseal that order so that it might give its users notice and an opportunity to assert any privileges or rights to prevent such disclosures. The government agreed to do so on January 3, 2010, and Magistrate Judge Buchanan entered an order to unseal on January 5th.⁴

Having agreed on January 3 to unseal one order to Twitter involving account information for the Twitter user [REDACTED] the next day the government procured this Order under seal from this Court to compel Google to produce the identical type of user information and records previously sought from Twitter for the Google Gmail account [REDACTED] for the same period of November 1, 2009 to the present. This Order contains the identical perpetual nondisclosure provision that was present in the Twitter Order, prohibiting Google from "disclos[ing] the existence of the application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person, unless and until authorized to do so by the Court."

³ Roche Decl., Ex. 2.

⁴ *Id.* Ex. 3.

Pursuant to Google's policy and having learned through the extensive coverage of the unsealed Twitter Order that [REDACTED] account records had been sought and that motions to object are imminently due from the Twitter users whose data has been requested, Google promptly notified the government that it too sought to notify its user of the Order.⁵ The government declined to agree to a modification to allow this, purportedly because the Order involves a different investigation.⁶ The government also served a preservation demand on Google, and likewise, the government has declined to permit Google to notify the user of the demand.⁷

Google respectfully submits that this Order, like the Twitter Order, may present substantial free speech concerns and may implicate journalistic and academic freedom. Furthermore, the government's investigation of Wikileaks generally, and its interest in the [REDACTED] user name specifically, is a matter of public record, thus obviating the need for this Order's nondisclosure provision. In addition, Google has preserved the requested records, thus there is no danger of loss or destruction of the information sought. Accordingly, Google requests that the Court modify this Order to permit notice of the Order and preservation request to be given to Google's user and attorney and that the user be given 20 days from the date of the Court's order to seek any relief.

Google takes no position regarding the propriety of Wikileaks' actions or the government's investigation. It seeks to provide notice to the user and his legal representative so that the user has an opportunity to be heard. Google has preserved responsive information to the extent it exists pending the Court's ruling on this motion.

⁵ Roche Decl., ¶ 6.

⁶ *Id.*

⁷ *Id.*, Ex. 4.

B. Relevant Actors

Google provides electronic mail services to the public through its Gmail service. Google assiduously protects the privacy and free speech rights of its Gmail users, as evidenced by its opposition, with the support of the U.S. State Department, to the Chinese government's attack on the Gmail accounts of Chinese human rights activists.⁸

Google's general practice and preference, when addressing legal demands such as court orders, is to give notice to the account holders, whenever it is permissible and practical to do so. Even where the government asserts that disclosure to the user may have an adverse impact on an investigation, or where an order is sealed but nonetheless raises serious First Amendment concerns, Google may move to unseal the order or seek permission to notify its users.

Google recognizes that such notice is important because its users are better situated to assert their rights under the First Amendment or other applicable privileges and articulate their concerns to the Court. It is for those reasons that Google asks the Court to unseal the Order as the Court did for another provider in the same Grand Jury proceeding.

Wikileaks describes itself as a journalistic enterprise.⁹ Whether Wikileaks does in fact consist of journalists or engage in journalism is a matter of public debate, and an issue upon which Google does not comment.

⁸ Andrew Jacobs and Miguel Helft, *Google, Citing Attack, Threatens to Exit China*, N.Y. Times, Jan. 13, 2011, http://www.nytimes.com/2010/01/13/world/asia/13beijing.html?_r=1&pagewanted=print (last visited Jan. 13, 2011).

⁹ *Salmeron v. Enterprise Recovery Systems, Inc.*, 579 F.3d 787, 791 n.1 (7th Cir. 2009) ("[F]ounded by Chinese dissidents, journalists, mathematicians and startup company technologists, from the US, Taiwan, Europe, Australia and South Africa, Wikileaks styles itself as 'an uncensorable version of Wikipedia for untraceable mass document leaking and analysis.' <http://wikileaks.org/wiki/Wikileaks:About> (last visited July 16, 2009).")

Twitter is a real-time information network that has been described by one federal district court as “a social networking and micro-blogging service that invites its users to answer the question: ‘What are you doing?’” *U.S. v. Shelnett*, No. 4:09-CR-14 (CDL), 2009 WL 3681827, at *1 n.1 (M.D. Ga. Nov. 2, 2009) (“Twitter’s users can send and read electronic messages known as ‘tweets.’ A tweet is a short text post (up to 140 characters) delivered through Internet or phone-based text systems to the author’s subscribers. Users can send and receive tweets in several ways, including via the Twitter website.”).

Although Google does not comment on and could not confirm whether the Twitter account [REDACTED] is controlled by the same user as the Gmail [REDACTED] account, it is instructive to note that in a “tweet,” the Twitter user [REDACTED] indicates that since at least mid-December 2010 [REDACTED] has been well aware that a government investigation is underway.¹⁰

C. Procedural Posture

The Twitter Order was issued on December 14, 2010 and relates to the ongoing Wikileaks investigation, which is obviously an issue of great public interest.¹¹ The Twitter Order demanded the production of subscriber information and certain records and other non-content information for a number of Twitter account holders from November 1, 2009 to the present, including an account with the user name [REDACTED]. It also contained a non-disclosure provision. The grand jury investigation underlying the Twitter Order was widely reported in the *New York*

¹⁰ See [REDACTED] tweet of Dec. 17, 2010 @ 4:22 p.m. (“Unrelated to any travel issues - the FBI is now actively bothering my friends and questioning them inside the United States.”), [http://twitter.com/\[REDACTED\]/status/15879462465835008](http://twitter.com/[REDACTED]/status/15879462465835008) (last visited on Dec. 21, 2010); see also [REDACTED] tweet of Jan. 7, 2011 @ 9:26 p.m. (“Note that we can assume Google & Facebook also have secret US government subpoenas. They make no comment. Did they fold?”), [http://twitter.com/\[REDACTED\]/](http://twitter.com/[REDACTED]/) (last visited Jan. 18, 2011).

¹¹ Roche Decl., Ex. 2.

Times and other media outlets around the time the Twitter Order was issued.¹² Indeed, prior to issuance of the order, the Attorney General had acknowledged that the government was actively investigating Wikileaks.¹³

On January 5, 2011, upon motion by the government made at the behest of Twitter,¹⁴ Magistrate Judge Buchanan unsealed the Twitter Order and authorized Twitter to disclose it to its users, including Twitter user [REDACTED].¹⁵

In the days following January 5, 2011, the unsealed Twitter Order was posted on the Internet and widely discussed in the media.¹⁶ On January 7, 2011, a “tweet” from Twitter user [REDACTED] stated that “we can assume Google & Facebook also have secret US government subpoenas.”¹⁷

On January 4, 2011, the day after the government agreed to unseal the Twitter Order, it procured from this Court the Order in this matter, which is substantially identical to the Twitter

¹² Ravi Somaiya, *Release on Bail of WikiLeaks Founder Is Delayed by Appeal*, N.Y. Times, Dec. 14, 2010, <http://www.nytimes.com/2010/12/15/world/europe/15assange.html?src=twrhp> (last visited Jan. 3, 2011); see also *Assange attorney: Secret grand jury meeting in Virginia on WikiLeaks*, CNN Justice, Dec. 13, 2010, http://articles.cnn.com/2010-12-13/justice/wikileaks.investigation_1_julian-assange-wikileaks-case-grand-jury?_s=PM:CRIME (last visited Jan. 3, 2011); Dan Goodin, *Grand jury meets to decide fate of WikiLeaks founder*, The Register, Dec. 13, 2010, http://www.theregister.co.uk/2010/12/13/assange_grand_jury/ (last visited Jan. 3, 2011).

¹³ Ellen Nakashima & Jerry Markon, *WikiLeaks founder could be charged under Espionage Act*, Wash. Post, Nov. 30, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/29/AR2010112905973.html> (last visited Jan. 3, 2011).

¹⁴ Perkins Coie LLP represents both Twitter and Google.

¹⁵ Roche Decl., Ex. 3.

¹⁶ See, e.g., Scott Shane and John F. Burns, *U.S. Subpoenas Twitter Over WikiLeaks Supporters*, N.Y. Times, Jan. 8, 2011, <http://www.nytimes.com/2011/01/09/world/09wiki.html> (last visited Jan. 13, 2011); Anthony Boadle, *U.S. orders Twitter to hand over Wikileaks records*, Reuters, Jan. 8, 2011, <http://www.reuters.com/article/idUSTRE70716420110108> (last visited Jan. 14, 2011).

¹⁷ See [REDACTED] tweet of Jan. 7, 2011 @ 9:26 p.m. (“Note that we can assume Google & Facebook also have secret US government subpoenas. They make no comment. Did they fold?”), [http://twitter.com/\[REDACTED\]](http://twitter.com/[REDACTED]) (last visited Jan. 18, 2011).

Order and compels Google to produce the identical information as the Twitter Order for the Google Gmail account [REDACTED].¹⁸ The perpetual nondisclosure provision in the Order is identical to the Twitter Order nondisclosure provision.

On January 12, 2011, the government issued a preservation request pursuant to 18 U.S.C. § 2703(f) “for the preservation of all stored communications, records, and other evidence” in Google’s possession regarding Gmail user [REDACTED] for November 2009 to the present.¹⁹

That same day, Google’s outside counsel spoke with several government attorneys regarding the nondisclosure provisions in this Order.²⁰ Google’s attorney notified the government that Google wished to immediately give notice of the Order to its user and requested that the government agree to so modify the Order.²¹ The government declined Google’s request saying only that the Order involves a different investigation than the one underlying the Twitter Order.²² No further explanation was provided.²³ The government offered to release Google from the notice constraint 90 days after it produced, with a provision allowing the government to petition for a further extension.²⁴ Google consequently notified the government that it intended to file this motion to unseal the order and to modify its nondisclosure provisions so that Google

¹⁸ See Roche Decl., Ex. 1.

¹⁹ *Id.*, Ex. 4.

²⁰ *Id.*, ¶ 6.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

could give immediate notice to its user.²⁵ Google's attorney and the government subsequently agreed on a schedule for filing and argument of this motion.

III. ARGUMENT

A. There is No Need for Secrecy of the Order or the Preservation Request

Nondisclosure orders are permitted in extraordinary circumstances under 18 U.S.C. § 2705. The Order in this matter relies upon the standard set forth in § 2705(b)(5), which provides for nondisclosure when notification will result in "seriously jeopardizing an investigation." Nondisclosure requests such as this are subject to the most demanding scrutiny, particularly when they are indefinite in scope:

If the recipients of [surveillance] orders are forever enjoined from discussing them, the individual targets may never learn that they had been subjected to such surveillance, and this lack of information will inevitably stifle public debate about the proper scope and extent of this important law enforcement tool. By constricting the flow of information at its source, the government dries up the marketplace of ideas just as effectively as a customer-targeted injunction would do. Given the public's intense interest in this area of law, such content-based restrictions are subject to rigorous scrutiny.

In re Sealing and Non-Disclosure of Pen/Trap/2703(d) Orders, 562 F. Supp. 2d 876, 882 (S.D. Tex. 2008) (setting a default 180 day period for sealing and non-disclosure of electronic surveillance orders) (internal citations omitted).

Google is not privy to what showing the government made in the affidavit in support of the application for the Order. Given that the government moved to unseal an order to another provider requesting the identical type of information on an account with an identical identifier, it

²⁵ See Roche Decl., ¶ 6.

is difficult to understand how the government could meet the “seriously jeopardizing” standard in this case. The government’s offer to release Google from the notice constraint after 90 days demonstrates that a limited nondisclosure provision could have been requested in the first place, and that this very public investigation is at or near an end, which further obviates the need for confidentiality.

Nor does the Order meet the traditional standard for grand jury confidentiality. Grand jury proceedings are traditionally confidential because

if preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment. Finally, by preserving the secrecy of the proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule.

Finn v. Schiller, 72 F.3d 1182, 1187 n.6 (4th Cir. 1996) (quoting *Douglas Oil Co. v. Petrol Stops N.W.*, 441 U.S. 211, 219 (1979)). Of course, “it is a ‘common-sense proposition that secrecy is no longer “necessary” when the contents of grand jury matters have become public.” *McHan v. C.I.R.*, 558 F.3d 326, 334 (4th Cir. 2009) (quoting *In re Grand Jury Subpoena*, 438 F.3d 1138, 1140 (D.C. Cir. 2006)).

In this case, the grand jury’s investigation of the Twitter user [REDACTED] is public record. Moreover, Google has preserved all records and content related to the Gmail user [REDACTED] account. Accordingly, there is no risk of destruction evidence, and none of the other interests served by the traditional secrecy of grand jury proceedings would be undermined in any way by disclosure of this Order or the preservation request.

B. The Order May Raise Significant Free Speech and Other Privilege Issues

Grand jury proceedings are not exempt from the limits of the First Amendment. *Branzburg v. Hayes*, 408 U.S. 665, 707-08 (1972). Accordingly, courts must “strike[] the essential balance between the purposes of the grand jury and the protections of the First Amendment” by requiring the grand jury to “show a strong possibility that the requested [information] will expose criminal activity.” *In re Grand Jury Subpoena: Subpoena Duces Tecum*, 829 F.2d 1291, 1305 (4th Cir. 1987) (Wilkinson, J., concurring).

Shielded by the First Amendment, the press “has been a mighty catalyst in awakening public interest in governmental affairs, exposing corruption among public officers and employees and generally informing the citizenry of public events and occurrences.” *Estes v. Texas*, 381 U.S. 532, 539 (1965). Hence, journalists are entitled to certain free speech protections in order “to ensure a free and vital press, without which an open and democratic society would be impossible to maintain.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000). Likewise, “[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment” *Keyishian v. Board of Regents of University of State of N. Y.*, 385 U.S. 589, 603 (1967).

To the extent that the Gmail user [REDACTED] is a journalist or engaged in other constitutionally protected activities, the user may wish to assert First Amendment rights or any applicable journalistic, academic or other privileges or defenses to which the user is entitled. Google is not properly positioned to do so on behalf of users.

The Department of Justice itself recognizes that “the prosecutorial power of the government should not be used in such a way that it impairs a reporter’s responsibility to cover as broadly as possible controversial public issues,” and has thus enacted special procedures for obtaining information from or about members of the news media. See 28 C.F.R. § 50.10; see also U.S. Attorney’s Manual, § 9-13.400. Therefore, given the extraordinary controversy and newsworthiness surrounding Wikileaks’ alleged actions, the applicability of any privilege may be heightened. *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141, 1164 (D.C. Cir. 2006 (“I believe that the consensus of forty-nine states plus the District of Columbia – and even the Department of Justice – would require us to protect reporters’ sources as a matter of federal common law were the leak at issue either less harmful or more newsworthy.”) (Tatel, J., concurring)).

Had Gmail user ██████ rather than Google, been the recipient of the Order or similar legal process, there is no doubt that the user would have the right to assert any objections directly. *Id.* at 1164 (“given that any witness – journalist or otherwise – may challenge [an unreasonable or oppressive] subpoena, the majority [in *Branzburg*] must have meant, at the very least, that the First Amendment demands a broader notion of ‘harassment’ for journalists than for other witnesses.”) (Tatel, J., concurring). It is therefore within the sound discretion of the Court to modify the Order for the purpose of allowing Google to give notice to its affected user so that the user may decide whether to object to Google’s production of the documents and information demanded therein.

IV. CONCLUSION

Google takes no position regarding the propriety of Wikileaks’ alleged actions or the government’s investigation, but given the extraordinary nature of the issues surrounding the

Wikileaks matter, Google requests only that the Court modify the Order to permit notice of the Order and preservation request to be given to Google's user and the user's attorneys. Google further requests that it be permitted to discuss the Order with its user and the user's attorneys and that the user be given 20 days from the date of the Court's order to file an appropriate response. In the meantime, Google has preserved responsive information, and will produce that information if its user does not file a motion or other pleading in opposition within 20 days of the Court's order.

DATED this 18th day of January, 2011.

Respectfully submitted

By 

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Attorneys for Google Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of January, 2011, the foregoing document was sent via hand delivery and email to the following persons:



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FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2011 JAN 18 P 12:58

IN RE 2703(d) ORDER AND 2703(f)
PRESERVATION REQUEST RELATING
TO GMAIL ACCOUNT [REDACTED]

)
) Misc. No. 10-1279
) CLERK US DISTRICT COURT
) ALEXANDRIA, VIRGINIA
) FILED UNDER SEAL

**DECLARATION OF JOHN K. ROCHE IN SUPPORT OF GOOGLE INC.'S MOTION
TO MODIFY 2703(d) ORDER FOR PURPOSE OF PROVIDING NOTICE TO USER**

I, John K. Roche, declare as follows:

1. I am an attorney licensed to practice in the Commonwealth of Virginia and the District of Columbia, and am admitted to practice before this Court. I am an associate in the law firm of Perkins Coie LLP, counsel of record for Google Inc. ("Google") in this action. As one of the attorneys with responsibility for the representation of Google in this matter, I have personal knowledge of the facts set forth below and am competent to testify about the matters stated herein.

2. Attached hereto as Exhibit 1 is the January 4, 2011 order of this Court issued to Google pursuant to 18 U.S.C. § 2703(d) (the "Order") in the above-referenced matter.

3. Attached hereto as Exhibit 2 is the December 14, 2010 order of this Court issued to Twitter pursuant to 18 U.S.C. § 2703(d) (the "Twitter Order") in the above-referenced matter.

4. Attached hereto as Exhibit 3 is the January 5, 2011 order of this Court unsealing the Twitter Order.

5. Attached hereto as Exhibit 4 is the January 12, 2011 preservation request issued to Google pursuant to 18 U.S.C. § 2703(f) in the above-referenced matter.

6. On January 12, 2011, I spoke with several government attorneys regarding the nondisclosure provisions in the Order. I notified the government that Google wished to

immediately give notice of the Order to its user and requested that the government agree to so modify the Order. The government declined that request saying only that the Order involves a different investigation than the one underlying the Twitter Order. No further explanation was provided. The government offered to release Google from the notice constraint 90 days after it produced, with a provision allowing the government to petition for a further extension. I consequently notified the government that Google intended to file this motion to unseal the Order and to modify its nondisclosure provisions so that Google could give immediate notice to its user. We subsequently agreed on a schedule for filing and argument of this motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 18th day of January, 2011.



John K. Roche

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of January, 2011, the foregoing document was sent via hand delivery and email to the following persons:



**Assistant United States Attorney
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EXHIBIT 1



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United States Attorney

Eastern District of Virginia

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FACSIMILE TRANSMISSION
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DATE: 1/5/11

TO: Google, Inc

PHONE: Attn: Custodian of Records

TO FAX NO.: (650) 649-2939 / (650) 249-3429

SENDER: [Redacted] Assistant to [Redacted]

SENDER'S PHONE NO.: (703) 299 [Redacted]

SENDER'S FAX NO.: (703) 299 [Redacted]

NUMBER OF PAGES: 3

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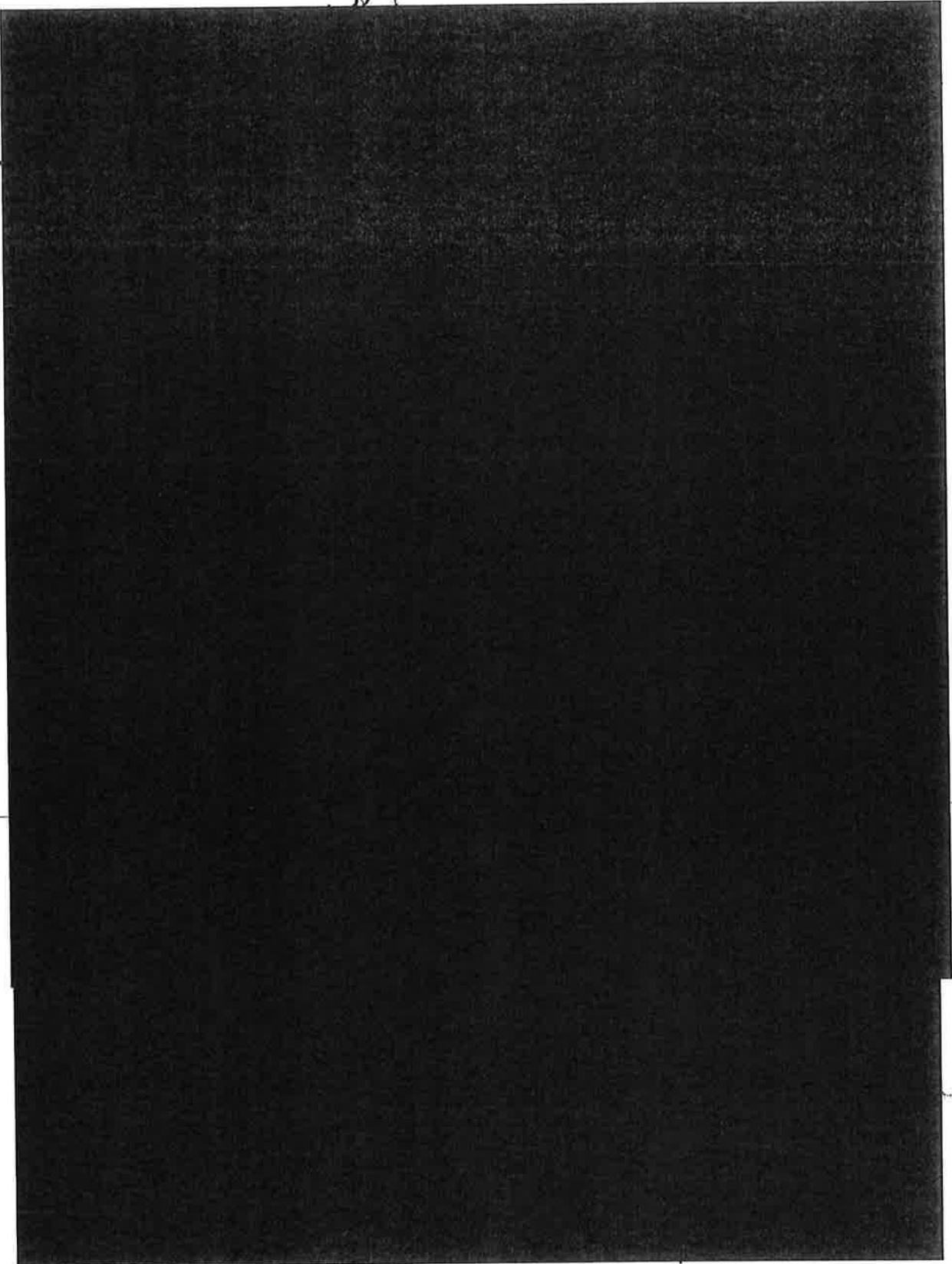
Level of Transmitted Information:

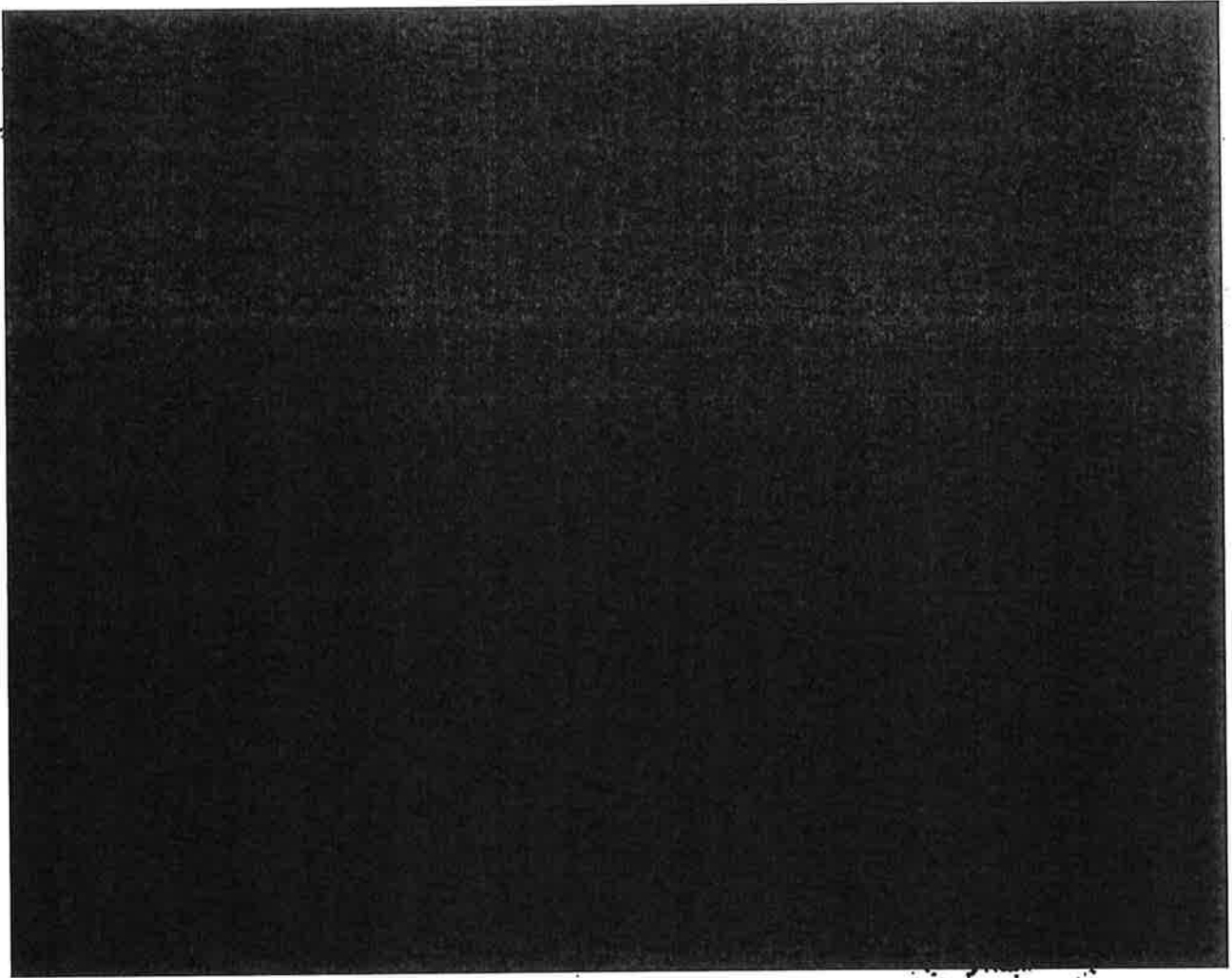
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- Grand Jury Information
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- Law Enforcement Information
- Victim Witness Information

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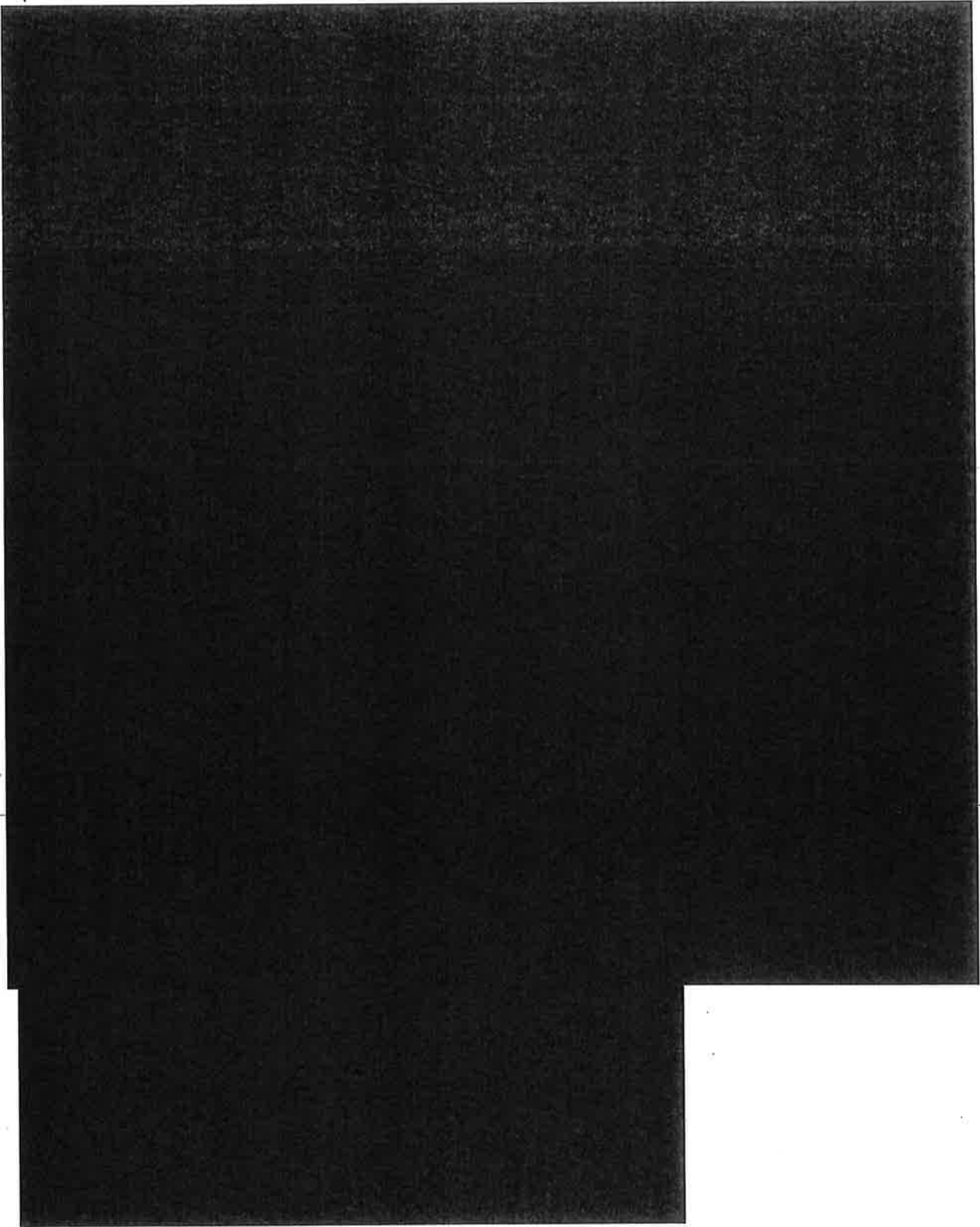


EXHIBIT 2



U.S. Department of Justice

United States Attorney

Eastern District of Virginia

Justin W. Williams United States Attorney's Building
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FACSIMILE TRANSMISSION
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DATE: 12/14/10

TO: Twitter Attn: Trust & Safety

PHONE:

TO FAX NO.: (415) 222-9958

SENDER: [Redacted] Assistant to [Redacted]

SENDER'S PHONE NO.: 703 299 [Redacted]

SENDER'S FAX NO.: 703 299 [Redacted]

NUMBER OF PAGES: 4

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE APPLICATION OF THE
UNITED STATES OF AMERICA FOR
AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

MISC. NO. 10GJ3793

Filed Under Seal

ORDER

This matter having come before the Court pursuant to an application under Title 18, United States Code, Section 2703, which application requests the issuance of an order under Title 18, United States Code, Section 2703(d) directing Twitter, Inc., an electronic communications service provider and/or a remote computing service, located in San Francisco, California, to disclose certain records and other information, as set forth in Attachment A to this Order, the Court finds that the applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

IT APPEARING that the information sought is relevant and material to an ongoing criminal investigation, and that prior notice of this Order to any person of this investigation or this application and Order entered in connection therewith would seriously jeopardize the investigation;

IT IS ORDERED pursuant to Title 18, United States Code, Section 2703(d) that Twitter, Inc. will, within three days of the date of this Order, turn over to the United States the records and other information as set forth in Attachment A to this Order.

IT IS FURTHER ORDERED that the Clerk of the Court shall provide the United States Attorney's Office with three (3) certified copies of this application and Order.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court, and that Twitter shall not disclose the existence of the application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person, unless and until authorized to do so by the Court.

[Redacted Signature]

United States Magistrate Judge

12/14/10
Date

AT THE
CLERK U.S. COURT
BY [Redacted Signature] DEPUTY CLERK

ATTACHMENT A

You are to provide the following information, if available, preferably as data files on CD-ROM, electronic media, or email [REDACTED] or otherwise by facsimile to [REDACTED]

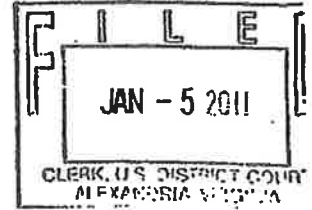
A. The following customer or subscriber account information for each account registered to or associated with [REDACTED] for the time period November 1, 2009 to present:

1. subscriber names, user names, screen names, or other identities;
2. mailing addresses, residential addresses, business addresses, e-mail addresses, and other contact information;
3. connection records, or records of session times and durations;
4. length of service (including start date) and types of service utilized;
5. telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
6. means and source of payment for such services (including any credit card or bank account number) and billing records.

B. All records and other information relating to the account(s) and time period in Part A, including:

1. records of user activity for any connections made to or from the Account, including the date, time, length, and method of connections, data transfer volume, user name, and source and destination Internet Protocol address(es);
2. non-content information associated with the contents of any communication or file stored by or for the account(s), such as the source and destination email addresses and IP addresses.
3. correspondence and notes of records related to the account(s).

EXHIBIT 3



IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN THE MATTER OF THE
§2703(d) ORDER RELATING TO
TWITTER ACCOUNTS:



)
)
)
)
)

MISC. NO. 10GJ3793

ORDER TO UNSEAL THE
ORDER PURSUANT TO 18 U.S.C. §2703(D)

This matter having come before the Court pursuant to an application under Title 18, United States Code, §2703(d), it appearing that it is in the best interest of the investigation to unseal the Court's Order of December 14, 2010 and authorize Twitter to disclose that Order to its subscribers and customers, it is hereby ORDERED that the above-captioned Order of December 14, 2010 pursuant to 18 U.S.C. §2703(d) be UNSEALED and that Twitter is authorized to disclose such Order. In all other respects, the Court's Order of December 14, 2010 remains in effect.



UNITED STATES MAGISTRATE JUDGE

Date: 1/5/11
Alexandria, Virginia

EXHIBIT 4

JAN. 12. 2011 2:10PM

NO. 2813 P. 1/3

FAX TRANSMISSION

United States Attorney
Eastern District of Virginia
Justin W. Williams U.S. Attorney's Office Building
2100 Jamieson Ave.
Alexandria, VA 22314



To Custodian of Records
Google

Fax 650-849-2939; 650-249-3429

From [REDACTED] **Voice** 703-298-3700
Assistant United States Attorney

Fax 703-298-3781

Date January 12, 2011 **Pages** 3, including this page

Subject Preservation letter under 18 U.S.C. sec. 2703(f)

JAN. 12. 2011 2:10PM

NO. 2813 P. 2/3



U.S. Department of Justice

United States Attorney
Eastern District of Virginia

Justin W. Williams U.S. Attorney's Office Building
3100 Jamleston Ave.
Alexandria, VA 22314
PHONE: 703-399-3712

January 12, 2011

Google
1600 Amphitheatre Parkway
Mountain View, CA 94043

Attn: Custodian of Records
Facsimile: 650-649-2939; 650-249-3429

Re: Request for Preservation of Records

Dear Google:

Pursuant to Title 18, United States Code, Section 2703(f), this letter is a formal request for the preservation of all stored communications, records, and other evidence in your possession regarding the following email account pending further legal process: [REDACTED] ("the Account") November 2009 to the present.

I request that you not disclose the existence of this request to the subscriber or any other person, other than as necessary to comply with this request. If compliance with this request might result in a permanent or temporary termination of service to the Account, or otherwise alert any user of the Account as to your actions to preserve the information described below, please contact me as soon as possible and before taking action.

I request that you preserve, for a period of 90 days, the information described below currently in your possession in a form that includes the complete record. This request applies only retrospectively. It does not in any way obligate you to capture and preserve new information that arises after the date of this request. This request applies to the following items, whether in electronic or other form, including information stored on backup media, if available:


1. The contents of any communication or file stored by or for the Account and any associated accounts, and any information associated with those communications or files, such as the source and destination email addresses or IP addresses.
2. All records and other information relating to the Account and any associated accounts including the following:
 - a. subscriber names, user names, screen names, or other identities;

- b. mailing addresses, residential addresses, business addresses, e-mail addresses, and other contact information;
- c. length of service (including start date) and types of service utilized;
- d. records of user activity for any connections made to or from the Account, including the date, time, length, and method of connections, data transfer volume, user name, and source and destination Internet Protocol address(es);
- e. telephone records, including local and long distance telephone connection records, caller identification records, cellular site and sector information, GPS data, and cellular network identifying information (such as the IMSI, MSISDN, IMEI, MEID, or ESN);
- f. telephone or instrument number or other subscriber number or identity, including temporarily assigned network address;
- g. means and source of payment for the Account (including any credit card or bank account numbers) and billing records;
- h. correspondence and other records of contact by any person or entity about the Account, such as "Help Desk" notes; and
- i. any other records or evidence relating to the Account.

If you have questions regarding this request, please call me at 703-299-

Sincerely,


UNITED STATES ATTORNEY


Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

FILED

2011 FEB -3 P 3:59

IN RE APPLICATION OF THE
UNITED STATES OF AMERICA FOR
AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA


MISC. NO. 10GJ3793
11-DM-2


Filed Under Seal

To: John K. Roche, Esquire
Perkins Coie LLP
700 13th St., N.W., Suite 600
Washington, D.C. 20005-3960
PHONE: 202.434.1627
FAX: 202.654.9106
E-MAIL: JRoche@perkinscoie.com

You are hereby notified that on Wednesday, February 9, 2011, at 11:30 a.m., a hearing will be held before The Honorable Ivan D. Davis, Magistrate Judge on the Fourth Floor at the U.S. District Court, Alexandria, Virginia, on the Government's Motion to Continue Hearing filed on February 3, 2011; and Google, Inc.'s Motion to Modify 2703(d) Order filed on January 18, 2011.

Executed on 2/3/2011


United States Attorney


Assistant United States Attorney
Justin W. Williams U.S. Attorney's Building
2100 Jamieson Avenue
Alexandria, VA 22314
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