



United States of America  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Matthew Drange  
The Bay Citizen  
126 Post St., Suite 500  
San Francisco, CA 91408

MAR 29 2013

Re: FOIA-2013-00369  
Google

Dear Mr. Drange:

This is in response to your request dated January 16, 2013, under the Freedom of Information Act seeking access to records pertaining to all written communication, between FTC staff and Google as it relates to Case No. 5:12-cv-04177-HRL (FTC Docket No. C-4336) from January 1, 2012 to the present. In subsequent email and telephone conversations, you amended your request to seek any documents, including but not limited to written communication such as emails, that show when the FTC and Google entered into settlement negotiations, as it relates to the Google antitrust case (FTC File No. 121 0120 and FTC File No. 111 0163) from January 1, 2012 to the present. In accordance with the FOIA and agency policy, we have searched our records as of January 16, 2013, the date we received your request in our FOIA office.

We have located approximately 80 pages of responsive records. I am granting partial access to the accessible records. Portions of these pages fall within the exemptions to the FOIA's disclosure requirements, as explained below.

Some responsive records contain staff analyses, opinions, and recommendations. Those portions are deliberative and pre-decisional and are an integral part of the agency's decision making process. They are exempt from the FOIA's disclosure requirements by FOIA Exemption 5.5 U.S.C. § 552(b)(5). See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975). Additionally, some records contain information prepared by an attorney in contemplation of litigation which is exempt under the attorney work-product privilege. See *Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947).

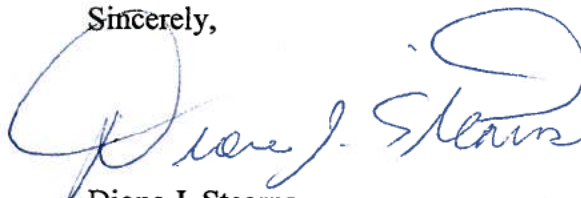
Some of the records contain personal identifying information compiled for law enforcement purposes. This information is exempt for release under FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), because individuals' right to privacy outweighs the general public's interest in seeing personal identifying information.

In your request, you also sought a waiver of all fees. There were no fees incurred in the processing of your request, and therefore, a determination regarding your request for a fee waiver was not required.

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580, within 30 days of the date of this letter. Please enclose a copy of your original request and a copy of this response. If you believe that we should choose to disclose additional materials beyond what the FOIA requires, please explain why this would be in the public interest.

If you have any questions about the way we handled your request or about the FOIA regulations or procedures, please contact Erin Mischler at (202) 326-3577.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dione J. Stearns". The signature is fluid and cursive, with a large loop at the end.

Dione J. Stearns  
Assistant General Counsel

Enclosures:  
Responsive Records

**Mischler, Erin**

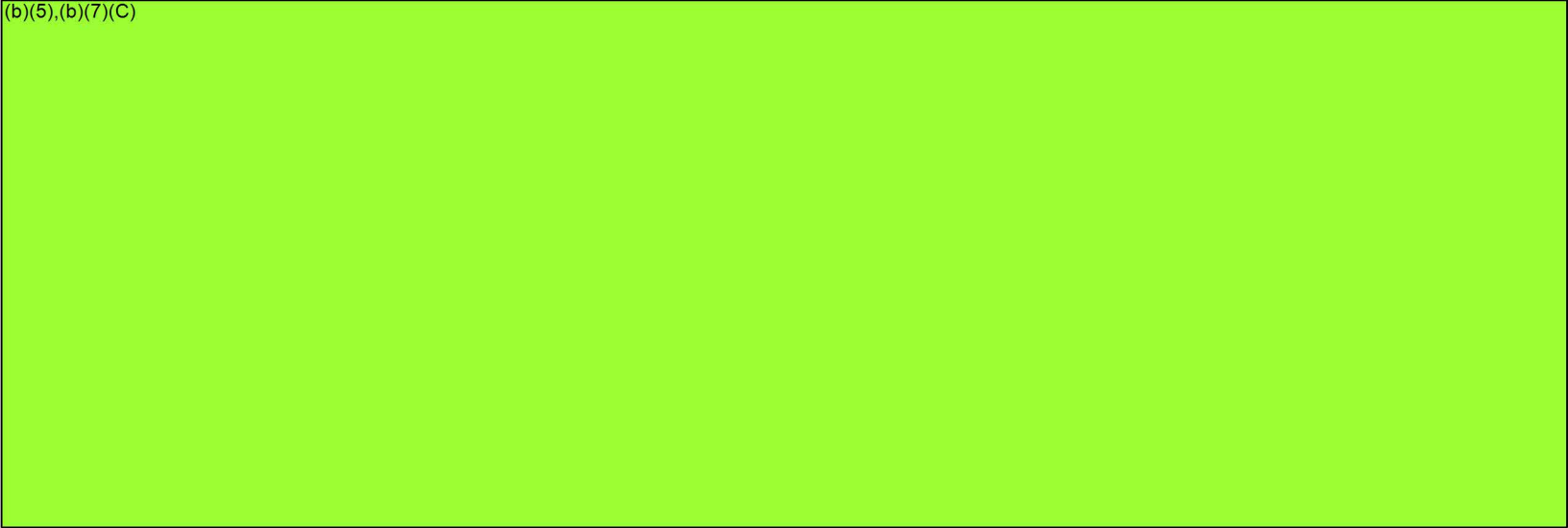
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**From:** Vladeck, David  
**Sent:** Tuesday, November 27, 2012 4:27 PM  
**To:** (b)(7)(C)  
**Subject:** FW: Outline of Google settlement discussions

FYI. The David in the email is "David Drummond" of Google. D

(b)(5)





**From:** Levitas, Pete

**Sent:** Wednesday, November 28, 2012 5:37 PM

**To:** Shelanski, Howard; Vladeck, David; (b)(7)(C); Shonka, David C.

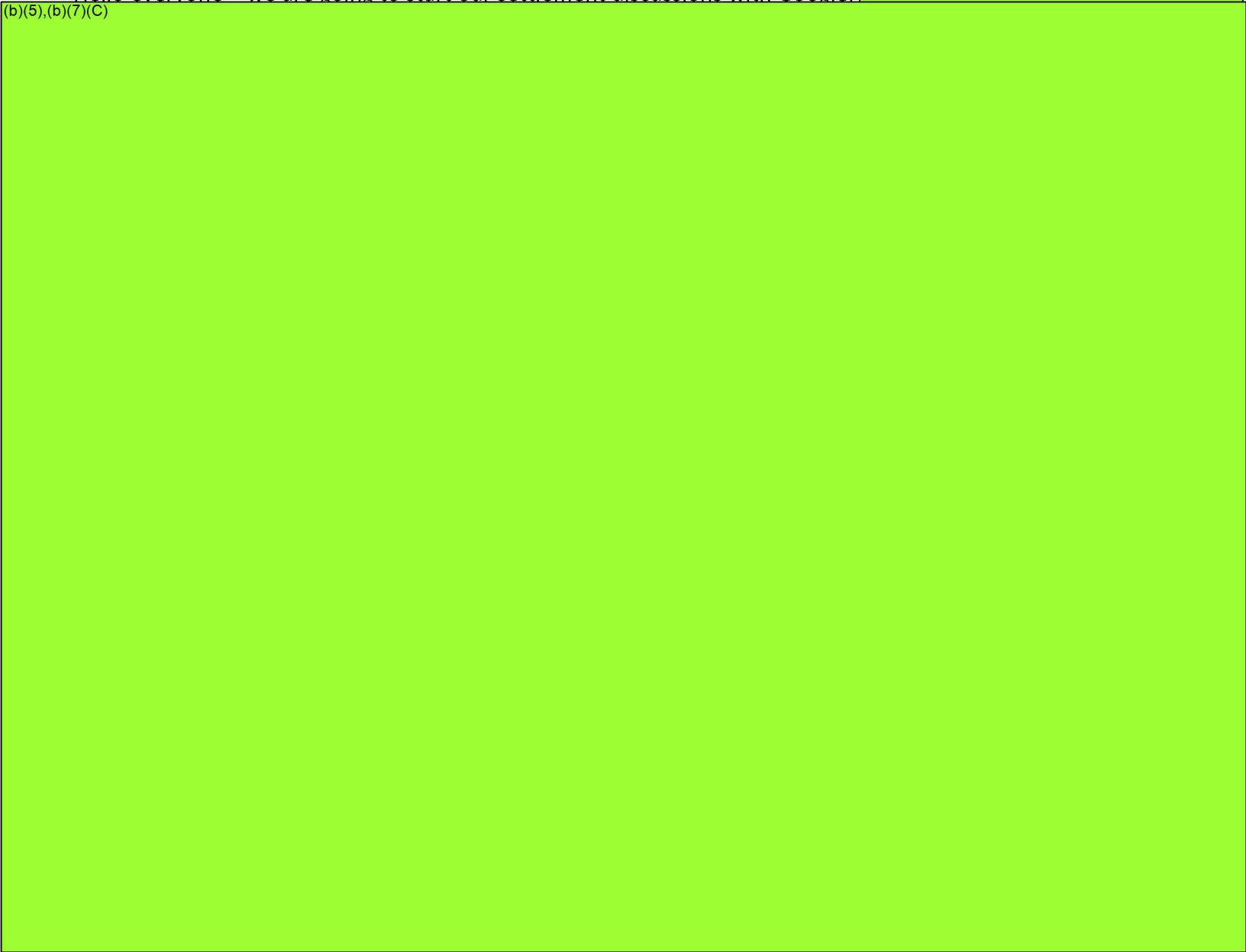
**Cc:** Feinstein, Richard; Wilkinson, Beth; Prewett, Cecelia; (b)(7)(C); JDL; (b)(7)(C)

(b)(7)(C); Blank, Barbara; (b)(7)(C)

(b)(7)(C)

**Subject:** Google settlement discussions

Hello everyone – we are going to start our settlement discussions with Google. (b)(5),(b)(7)(C)



**Mischler, Erin**

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**From:** (b)(7)(C)  
**Sent:** Wednesday, January 02, 2013 1:54 PM  
**To:** Ramirez, Edith  
**Cc:** (b)(7)(C)  
**Subject:** FW: Google Commitment Letter  
**Attachments:** Google Letter to Chairman Leibowitz (with signature page).pdf

FYI

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**From:** (b)(7)(C)  
**Sent:** Wednesday, January 02, 2013 1:49 PM  
**To:** (b)(7)(C)  
**Cc:** Feinstein, Richard; Levitas, Pete  
**Subject:** Google Commitment Letter

Attached is the signed letter from Google on API and Scraping. We will formally circulate it as well.

Thanks,

(b)(7)(C)

(b)(7)(C)





December 27, 2012

The Honorable Jon Leibowitz  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

**Re: Google Inc., File No. 111-0163**

Dear Chairman Leibowitz:

We understand that the Federal Trade Commission (“FTC” or the “Commission”) has decided to close the above-captioned investigation of the business practices of Google Inc. (“Google”). Google is confident that our practices are entirely consistent with all applicable laws and regulations. However, in connection with the closing of the FTC’s investigation, Google is making the commitments described below with respect to its display of content from third-party websites and with respect to its AdWords API Terms and Conditions. Google will honor these commitments for a period of five years from the date of this letter.

Google will publish the commitments on our website in a location easily accessible to the relevant audiences. Google understands that these commitments are important; and Google agrees that a material violation of these commitments would be actionable by the FTC under Section 5 of the FTC Act, 15 U.S.C. §45, and that the jurisdictional elements of such an action by the Commission would be satisfied. As more fully described below, Google will cooperate with the FTC to ensure that Google is complying with its commitments under this letter.

## **I. GOOGLE’S DISPLAY OF THIRD-PARTY CONTENT**

Within 90 days, Google will make available a web-based notice form that provides website owners with the option to opt out from display on Google’s Covered Webpages<sup>1</sup> of content from their website that has been crawled by

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<sup>1</sup> “Covered Webpages” means only Google’s (i) current Shopping, G+ Local, Flights, Hotels, and Advisor webpages, and any successors unless such successors do not have the primary purpose of connecting users with merchants in a manner substantially similar to Google’s current Shopping, G+ Local, Flights, Hotels, and Advisor webpages; and (ii) future or modified non-experimental specialized webpages launched within three years of the date of this letter that are linked to from the google.com search results page and that have the primary purpose of connecting users with merchants in a manner substantially similar to Google’s current Shopping, G+ Local, Flights, Hotels, and Advisor webpages. All other Google

Google.<sup>2</sup> When a website owner exercises this option, Google will cease displaying crawled content from the domain name designated by the website owner on Covered Webpages on the google.com domain in the United States.

Website owners will be able to exercise the opt-out described above by completing a web-based notice form. Google will implement the opt-out within 30 business days of receiving a properly completed notice form.

Exercise of this option will not (1) prevent content from the website from appearing in conventional search results on the google.com search results page, or (2) be used as a signal in determining conventional search results on the google.com search results page.

Beyond these specific commitments, nothing described above will impact Google's ability to (i) display content that it has sourced or derived independently even if it is the same as or overlaps with content from the opting-out web site, or (ii) otherwise crawl, organize, index and display information from the Internet or innovate in search.

## **II. ADWORDS API TERMS AND CONDITIONS**

Within 60 days, Google will remove from its AdWords API Terms and Conditions the AdWords API Input and Copying Restrictions currently contained within Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions for all AdWords API licensees with a primary billing address in the United States.<sup>3</sup> In addition, Google will not add any new provisions to its AdWords API Terms and Conditions, or adopt new technical requirements in connection with use of the AdWords API, that prevent an AdWords API client from (a) showing input fields for the collection or transmission of AdWords API campaign management data in the same tab or screen with (i) the content of third party ad networks or (ii) input fields for the collection or transmission of campaign management data to third party ad

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webpages (including but not limited to Google's current News, Image Search, Video Search, Maps, Book Search, Finance, and future or modified Google webpages falling outside of the parameters in (ii) above) are not Covered Webpages.

<sup>2</sup> Website owners will be permitted to exercise the opt-out on a domain name basis. For instance, a website owner may designate [[www.example.com](http://www.example.com)] to subject all content on that domain name to the opt-out. A website owner may not designate only individual sub-domains (such as [[sub.example.com](http://sub.example.com)]) or individual directories within a domain (such as [[www.example.com/sub](http://www.example.com/sub)]) for the opt-out. Google may use reasonable authentication measures to ensure that website owners selecting the opt-out are the legitimate owners of the website that is the subject of the web form notice.

<sup>3</sup> The current version of the AdWords API Terms and Conditions is located at <https://developers.google.com/adwords/api/docs/terms>.

networks; or (b) offering functionality that copies campaign management data between AdWords and a third party ad network. Google will not treat AdWords API licensees differently from similarly situated licensees with respect to the provision or administration of the AdWords API as a result of their development or distribution of AdWords API clients that implement the functionality currently prohibited by Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions.

Nothing in the foregoing will prevent or otherwise restrict Google from maintaining minimum functionality requirements as they currently exist or as they may be modified in the future as part of Google's AdWords API Terms and Conditions or in any other provisions governing the use of the AdWords API, so long as such modifications do not have the effect of reinstating the restrictions described above.

\* \* \*

Within 60 days, Google will file with the Secretary of the FTC, with a copy to the Bureau of Competition's Compliance Division, a report describing in reasonable detail how Google has complied with its commitments, and Google will file an update to this report annually during the duration of its commitments.

If Google receives written notice from the Commission that the Commission believes Google has acted contrary to its commitments on the display of third-party content or the AdWords API Terms and Conditions, Google will, within 60 days, address the Commission's concerns or explain to the Commission why it believes that it has acted in a manner consistent with its commitments.

In addition, if the FTC has reason to suspect that Google has violated its commitments and with reasonable prior written notice from FTC staff, subject to claims of any legally recognized privilege, Google will (1) make available electronic and paper documents related to compliance with the above commitments, and (2) in the presence of Google's legal counsel, Google will permit FTC staff to interview its officers, directors, employees and agents on subjects related to Google's compliance with these commitments.

Sincerely,



David Drummond  
Google Inc.  
Senior Vice President of Corporate Development  
and Chief Legal Officer



**Mischler, Erin**

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**From:** (b)(7)(C)  
**Sent:** Tuesday, January 01, 2013 2:15 PM  
**To:** Ramirez, Edith  
**Subject:** Fw: Google

----- Original Message -----

**From:** (b)(7)(C)  
**Sent:** Tuesday, January 01, 2013 01:43 PM  
**To:** (b)(7)(C)  
**Subject:** Google

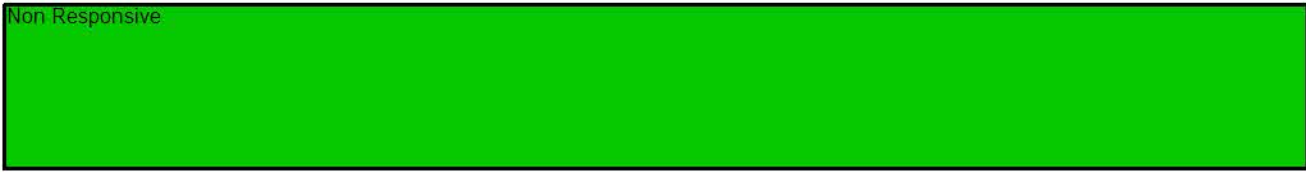
Signed and sent the commitment letter on APIs and scraping this morning.

## Mischler, Erin

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**From:** Feinstein, Richard  
**Sent:** Monday, March 18, 2013 8:02 AM  
**To:** Mischler, Erin  
**Subject:** FW: [FOR SIGNATURE] Commitments Letter  
**Attachments:** IMG.pdf

Non Responsive



**From:** Kent Walker [<mailto:kwalker@google.com>]  
**Sent:** Tuesday, January 01, 2013 11:20 AM  
**To:** Feinstein, Richard  
**Subject:** Fwd: [FOR SIGNATURE] Commitments Letter

Rich --

Good to talk with you. Here's the signature page for the commitment letter. With that, I think you have everything you need from us, but let me know if there's anything outstanding on our end. We're currently assuming that the Commission will announce on Thursday, so if Wednesday starts to look more likely, please let us know as soon as you can. Also, we're happy to have the press people in touch whenever it's appropriate.

Thanks, and all the best for the new year.  
-- Kent

networks; or (b) offering functionality that copies campaign management data between AdWords and a third party ad network. Google will not treat AdWords API licensees differently from similarly situated licensees with respect to the provision or administration of the AdWords API as a result of their development or distribution of AdWords API clients that implement the functionality currently prohibited by Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions.

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Sincerely,



David Drummond  
Google Inc.  
Senior Vice President of Corporate Development  
and Chief Legal Officer