



























United States & Co-Plaintiff States v. Google LLC

Plaintiffs' Closing Statement

Turned "History Off"



History Off By Default



Matthew Drake Redacted@google.com

9/16/2008 11:01:05 PM

Bill Coughran | Persisted @google.com]; Kent Walker | Redacted @google.com] Re: [Googlers] Business communications in a complicated world

Is there a way to override the "corporate default setting" so that all chars I" mart of are On The Record by default? I rely pretty heavily on chat history for day-to-day work since it is used interchangeably man all charses are not only the set of the

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.

On Tue, Sep 16, 2008 at 2:09 PM, Bill Coughran < basel agoogle.com> wrote: > Confidential/Please Do Not forward

- Confidential/Please Do Not Tormany Googles or Google continues to be in the midst of several significant > As you know, Google continues to be in the midst of several significant > As you know, Google continues to the interest of the continue of the c
- 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 waxy you wouldn't expect. Writing stuff that's
 sancastic, speculative, or not fully informed innevitably creates problems in
 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
 matters involving Google to the Friendly (albeit lawerly) folks
 at Reddcted Boogle.com
 Second, remember that these same rules apply not just to Gmail but also to
 soogle Talk and all other forms of electronic communication (for example
 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 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 chart regarding matters' > covered by that hold, please make sure that those chats are on the record'. Your chart partner will be the provided that the provided that have the provided that the provided that have the provided that have the provided that have the provided that have any questions. To help avoid inadvertent retention of instant messages, we have decided to

CONFIDENTIAL



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."

REDACTED FOR PUBLIC FILING

UPX1101 at -619.



Google Turned "History Off"



Dr. Pandu Nayak VP, Search

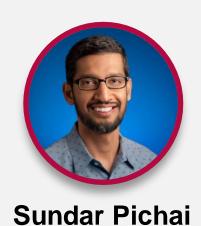


- Q. And from time to time, you asked people to turn history off before or during your chats?
- A. Well, I've certainly done that, because at the time there was a policy at Google to have history off.
- **Q.** And you –
- **A.** And I just wanted to be compliant with that policy.
- **Q.** You understood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

Tr. Testimony



Google Turned "History Off"



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.

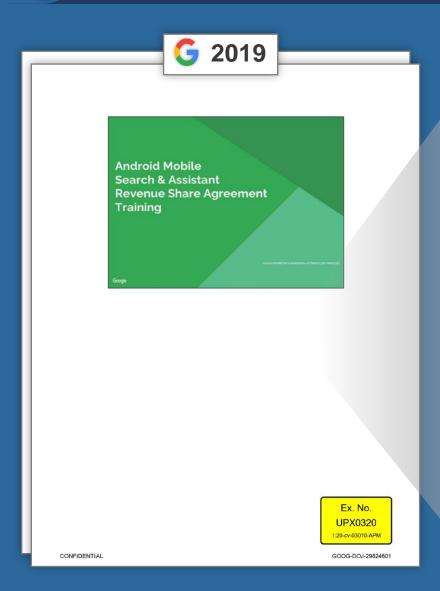
* * *

- 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



Google's Anticompetitive Intent



REMINDER OF CONFIDENTIALITY

Everything shared in this training is strictly confidential and proprietary

Additionally <u>any written communication</u> regarding
Rev Share and MADA should include Legal
(include Redacted of Redacted of and request guidance, mark content as "Confidential - Attorney Client Privileged")

Confidential & Proprietary

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UPX0320 at -605, -617, -681, -702.

Anticompetitive Intent



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:

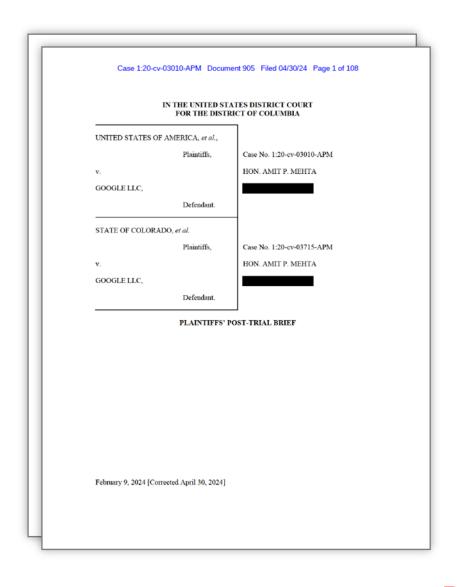
- (e)(1): Prejudice.
- (e)(2): Google's intent.

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This Is Wrong



Adverse Inferences



- 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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