UNITED STATES FOREIGN
INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

IN RE MOTION FOR DECLARATORY JUDGMENT OF GOOGLE INC.'S FIRST AMENDMENT RIGHT TO PUBLISH AGGREGATE INFORMATION ABOUT FISA ORDERS	)	Docket No. _____

MOTION FOR DECLARATORY JUDGMENT OF GOOGLE INC.'S FIRST AMENDMENT RIGHT TO PUBLISH AGGREGATE INFORMATION ABOUT FISA ORDERS

COMES NOW Movant Google Inc. ("Google") pursuant to 28 U.S.C. § 2201 and Foreign Intelligence Surveillance Court ("FISC") Rule of Procedure 6(d) and respectfully moves this Court for declaratory judgment, or such other relief as appropriate, that Google may disclose limited, aggregate statistics regarding Google's receipt of orders issued by this Court, if any, without violating the Foreign Intelligence Surveillance Act ("FISA") or the FISC Rules of Procedure.[1]

I. FACTS

Google is an electronic services provider that offers a wide variety of products, services, and online tools such as Gmail and Search to millions of users around the globe. Transparency is a core value at Google and the company is committed to informing its users and the public about requests it receives from government agencies around the world for the production of users' information and/or communications. Google publishes a Transparency Report conveying this

[1] Nothing in this Motion is intended to confirm or deny that Google has received any order or orders issued by this Court.

information in aggregate form, available at http://www.google.com/transparencyreport/userdatarequests/. In 2013, for the first time, Google included in its Transparency Report the number of National Security Letters ("NSLs") it receives and the number of users/accounts specified, within a range and on an annual basis. The Federal Bureau of Investigation confirmed in writing that Google could so, and to Google's knowledge, no declassification of any such information was necessary.

On June 6, 2013, The Guardian newspaper published a story mischaracterizing the scope and nature of Google's receipt of and compliance with foreign intelligence surveillance requests. In particular, the story falsely alleged that Google provides the U.S. government with "direct access" to its systems, allowing the government unfettered access to the records and communications of millions of user. The story is available at http://www.guardian.co.uk/world/2013/jun/06/us-tech-giants-nsa-data. The Washington Post also published a misleading story that day, alleging that the U.S. government is "tapping directly into" Google's central servers in order to surreptitiously obtain user records and communications. The story is available at http://www.washingtonpost.com/investigations/us-intelligence-mining-data-from-nine-us-internet-companies-in-broad-secret-program/2013/06/06/3a0c0da8-cebf-11e2-8845-d970ccb04497_story.html.

On June 7, 2013, Google Chief Executive Officer Larry Page and Chief Legal Officer David Drummond posted a blog entry that responded to these allegations as best it could given the constraints imposed by the government's position that even general information regarding Google's receipt of and response to foreign intelligence surveillance orders, if any, cannot be disclosed. Google clarified that the government does not have direct access to Google's servers, that Google provides information to the U.S. and other governments only in accordance with the

law, and that Google carefully reviews each government request and complies only if the requests appear proper and lawful. The blog post is available at googleblog.blogspot.com/2013/06/what.html.

In light of the intense public interest generated by The Guardian's and Post's erroneous articles, and others that have followed them, Google seeks to increase its transparency with users and the public regarding its receipt of national security requests, if any. On June 11, 2013, Google requested that the Department of Justice and the Federal Bureau of Investigation permit Google to publish the aggregate numbers regarding the receipt of national security requests, as further described below. The Department of Justice and the FBI have not classified the aggregate numbers regarding the receipt of national security requests described above. Nonetheless, the Department of Justice and FBI maintain their position that publication of such aggregate numbers is unlawful.

Google's reputation and business has been harmed by the false or misleading reports in the media, and Google's users are concerned by the allegations. Google must respond to such claims with more than generalities. Moreover, these are matters of significant weight and importance, and transparency is critical to advancing public debate in a thoughtful and democratic manner.

II. ENTITLEMENT TO RELIEF

Google is a "communications carrier . . . or other specified person" subject to orders by this Court to assist the government in conducting electronic surveillance or other foreign intelligence collection activities pursuant to the Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1801-1881g ("FISA"). Google seeks to be transparent regarding FISA requests that may be

or have been served upon it, if any, and to respond to false or misleading statements about the scope of its compelled disclosure under national security authorities.

In particular, Google seeks a declaratory judgment that Google has a right under the First Amendment to publish, and that no applicable law or regulation prohibits Google from publishing, two aggregate unclassified numbers: (1) the total number of FISA requests it receives, if any; and (2) the total number of users or accounts encompassed within such requests.

Google's publication would disclose numbers as part of the regular Transparency Report publication cycle for National Security Letters, which covers data over calendar year time periods. There would be two new categories to cover requests made under FISA (50 U.S.C. §§ 1801-1881g): (a) total requests received and (b) total users/accounts at issue. Each of these entries will be reported as a range, rather than an actual number. That range would be the same as used by Google in its reporting of NSLs currently, in increments of one thousand, starting with zero. As with the NSL reporting, Google would have a Frequently Asked Questions ("FAQ") section that would describe the statutory FISA authorities themselves.

To be clear, Google would not state, either in the published statistics or the FAQ, which FISA authorities the government has actually invoked to compel production of data from Google.

This Court has the power to declare that aggregate data about such orders for all providers is protected by the First Amendment and is not classified or subject to any other legal limitation on disclosure. The Court may, pursuant to a rule or inherent in its own authority, make clear that providers can publish aggregate numbers of orders received and the aggregate number of affected users under such orders.

Accordingly, Google respectfully requests that this Court issue a declaratory judgment indicating that Google may lawfully disclose such information.

Pursuant to FISC Rule of Procedure 7(i), Google certifies that the following responsible employees for relevant matters hold security clearances: John Kent Walker Jr., General Counsel (FBI-Secret), and Richard Paul Salgado, Legal Director (FBI-Top Secret). These clearances were granted for the purpose of handling classified legal process. Google's undersigned counsel does not hold a security clearance.

DATED: June 18, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify this 18th day of June, 2013, that the foregoing document was served via hand delivery on the following:

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