



April 18, 2012

VIA FACSIMILE: 202-418-0521
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RE: Freedom of Information Act Request and Request for Expedited Processing

Dear FOIA Officer,

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”). EPIC seeks the unredacted Notice of Apparent Liability for Forfeiture against Google, Inc. published by the Federal Communications Commission (“FCC”) on April 13, 2012 and related documents.

Background

Beginning in May 2007 Google deployed vehicles equipped with digital cameras and other devices to capture images in designated location in thirty countries around the world. Privacy advocates raised numerous objections to the program, focused primarily on the collection of images by the Google Street View digital cameras.¹ However, Google “Street View” vehicles also collected a vast amount of data from users of private Wi-Fi networks in homes and businesses. Google collected MAC addresses (the unique device ID for Wi-Fi hotspots), network SSIDs (the user-assigned network ID name) tied to location information for private wireless networks, and Wi-Fi “payload” data – the content of Internet communications – including e-mail and text messages, passwords, Internet usage history, and other highly sensitive personal information.²

On May 18, 2010, EPIC urged the Commission to undertake an investigation. EPIC explained that, but for the efforts of German data protection authorities, Google’s Wi-Fi interception might never have been revealed, and that Google’s actions “could easily constitute a violation of Title III of the [Wiretap Act].”³ The FCC Director of Consumer and Regulatory Affairs acknowledged that Google’s behavior “clearly infringes on consumer privacy.”⁴ The FCC Chairman further told members of Congress that the Commission had opened an investigation that “seeks to determine whether

¹ See generally EPIC, *Ben Joffe v. Google*, <http://epic.org/amicus/google-street-view/>.

² See *WiFi Data Collection: An Update*, Google Blog (May 14, 2010), <http://googleblog.blogspot.com/2010/05/wifi-data-collection-update.html>.

³ Letter from Marc Rotenberg, Executive Director, Electronic Privacy Information Center, to Julius Genachowski, Chairman, Federal Communications Commission, May 18, 2010, https://epic.org/privacy/cloudcomputing/google/EPIC_StreetView_FCC_Letter_05_21_10.pdf.

⁴ Joel Gurin, *Consumer View: Staying Safe from Cyber Snoops*, FCC Blog, June 11, 2010, <http://reboot.fcc.gov/blog?entryId=493624>.

Google's actions were inconsistent with any rule or law within the Commission's jurisdiction."⁵

On April 13, 2012, the FCC released a Notice of Apparent Liability for Forfeiture against Google, Inc. ("FCC Report").⁶ In the FCC Report, the Commission laid out the details of its investigation against Google and ultimately found that "[f]or many months, Google deliberately impeded and delayed the Bureau's investigation."⁷ According to the FCC Report, due to Google's unwillingness to comply with the agency's investigation, the FCC was unable to gather sufficient evidence to find the company in violation of the Wiretap Act.⁸

The FCC report was heavily redacted, obscuring the details of Google's actions and the Commission's investigation.⁹ For example, the FCC redacted information about the total volume of private data collected.¹⁰ The FCC also redacted important information related to Google's intent in capturing private Wi-Fi data, such as the purposes for which a Google engineer initially reviewed payload data.¹¹

Documents Requested

EPIC requests the following documents:

1. The full, unredacted version of the FCC's Notice of Apparent Liability for Forfeiture against Google, Inc. released April 13, 2012;
2. Any internal documents created by the FC as part of this investigation;
3. Any communications related to specific redactions in the FCC Report;
4. Any communications or briefings to members of Congress regarding this investigation;
5. Any communications with other agencies regarding Google's Wi-fi interception.

Request for Expedited Processing

This request warrants expedited processing because it is made by "a person primarily engaged in disseminating information ..." and it pertains to a matter about which there is an "urgency to inform the public about an actual or alleged federal

⁵ Letter from Julius Genachowski, Chairman, Federal Communications Commission, to Representative Tom Graves, June 22, 2011, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308300A1.pdf.

⁶ FCC, Notice of Apparent Liability for Forfeiture against Google, Inc., Apr. 13, 2012, *available at* http://www.wired.com/images_blogs/threatlevel/2012/04/googfccenforcement.pdf.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 11.

¹¹ *Id.* at 13.

Request for Expedited Processing

This request warrants expedited processing because it is made by “a person primarily engaged in disseminating information ...” and it pertains to a matter about which there is an “urgency to inform the public about an actual or alleged federal government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

EPIC is “primarily engaged in disseminating information.” *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

There is a particular urgency for the public to obtain a full copy of the FCC Report. In the four days since the agency released this report, nearly every major newspaper has covered the story,¹² many with editorials critical of the agency’s report.¹³ Several members of Congress have released statements condemning the agency’s findings and calling for further investigation by the Justice Department and state attorneys general.¹⁴ It is critical that lawmakers and the public have all the information in order to make an informed evaluation of Google’s practices and the quality of the FCC’s investigation.

Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes. *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on our status as a “news media” requester, we are entitled to receive the requested record with only duplication fees assessed. Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” any duplication fees should be waived.

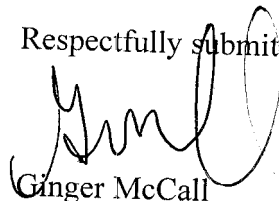
¹² See e.g. Reuters, *Google Fined \$25,000 for Impeding FCC Investigation*, Apr. 16, 2012, <http://www.reuters.com/article/2012/04/16/net-us-google-fine-idUSBRE83F00Q20120416>; David Streitfeld and Edward Wyatt, *Unanswered Questions in FCC’s Google Case*, New York Times, Apr. 15, 2012, <http://www.nytimes.com/2012/04/16/technology/fccs-google-case-leaves-unanswered-questions.html>.

¹³ See e.g., John P. Mello, Jr., *FCC’s Ruling that Google’s WiFi Snooping is Legal Sets Horrible Precedent*, Computerworld, Apr. 16, 2012, http://www.computerworld.com/s/article/9226237/FCC_39_s_Ruling_that_Google_39_s_WiFi_Snooping_is_Legal_Sets_Horrible_Precedent.

¹⁴ Dina ElBoghdady, *FCC Metes Out Light Penalty for Google in Street View Case*, Washington Post, Apr. 16, 2012, http://www.washingtonpost.com/business/economy/fcc-metes-out-light-penalty-for-google-in-street-view-case/2012/04/16/gIQAERYRMT_story.html; Josh Smith, *Congressional Privacy Hawks Not Impressed with Google’s FCC Fine*, The National Journal, Apr. 16, 2012, <http://www.nationaljournal.com/tech/congressional-privacy-hawks-not-impressed-with-google-s-fcc-fine-20120416>.

Thank you for your consideration of this request. As 6 C.F.R. § 5.5(d)(4) provides, I will anticipate your determination on our request within ten (10) calendar days. For questions regarding this request I can be contacted at 202-483-1140 ext. 102 or foia@epic.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ginger McCall', written over the typed name.

Ginger McCall
Director
EPIC Open Government Project