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6 **IN THE COMPETITION**
7 **APPEAL TRIBUNAL**
8

Case No: 1606/7/7/23

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10 Salisbury Square House
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Monday 20th April 2026

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16 Before:

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18 The Honorable Mr Justice Meade
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21 (Sitting as a Tribunal in England and Wales)
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24 BETWEEN:
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27 **Nikki Stopford**

Class Representative

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29 v
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33 **Alphabet Inc and Others**
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Defendants
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41 **A P P E A R A N C E S**
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43 Ben Lask KC and Mehdi Baiou on behalf of Nikki Stopford (Instructed by Hausfeld & Co.
44 LLP)
45

46
47 Sarah Abram KC, David Gregory and Jenn Lawrence on behalf of Alphabet Inc and Others
48 (Instructed by Simmons and Simmons LLP)
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Monday, 20 April 2026

(10.27 am)

Submissions by MR LASK

THE CHAIR: Yes. Good morning.

MR LASK: Good morning. Sir, I appear for the class representative, Ms Stopford, with my junior, Mr Baiou. My learned friend, Ms Abram, appears for Google with Mr Gregory and Ms Lawrence, and my learned friend, Mr Carall-Green, on my left, appears for the PCR in the Brook claim.

May I just check, sir, that you have the hearing bundle, which is, if it's in hard copy, it's two volumes, or a single electronic volume.

Sir, the only agenda item that remains in dispute is the class representative's application for information regarding Google's disclosure landscape. We're of course in the Tribunal's hands but it may make sense to deal with that issue first --

THE CHAIR: Okay.

MR LASK: -- given that it's where the dispute lies.

So by way of overview, the application is, in my submission, a modest one. It does not seek any actual disclosure from Google at this stage. It simply seeks information about the documents held by Google that may be relevant to the core common issues in this case. That is information which we say should already have been provided by Google pursuant to the order made by the Tribunal following the last CMC but in any event, it should be provided now so that the parties can have constructive and informed discussions about disclosure.

Now, Google has, in the last few days, made certain concessions and we welcome those so far as they go but, in my submission, the proposals do not go anything like

1 far enough. Google's position, in essence, is that it's only prepared to provide
2 information on the disclosure repositories that it has already collated for the purposes
3 of other proceedings and it is not prepared to tell us anything at this stage about
4 relevant documents that may be held beyond those repositories. This reflects
5 Google's assertion, which is untested and currently untestable, that those repositories
6 should stand as the sole source of disclosure in this case.

7 Now, in my submission, Google's position is unsustainable. It ought to provide the
8 information required under the DR and the EDQ in relation to its full disclosure
9 landscape so far as the core common issues are concerned. That information is
10 needed so that the class representative can consider properly informed proposals
11 about disclosure, which may have to come from beyond the existing repositories, but
12 also so that she can assess whether those existing repositories are likely to be
13 sufficient, as Google proposes.

14 Without this information, we simply have no visibility as to Google's disclosure
15 landscape beyond the existing repositories. So that's the basic fault line between the
16 parties. I propose to structure my submissions in four parts.

17 First, I'd like to show you the directions that were made following the last CMC in July
18 last year. Second, I'll show you what Google provided in response to those directions.
19 Third, I'll make some general submissions on the application and Google's response
20 to it and fourth, I will walk through the individual requests, which are now helpfully set
21 out in a composite draft order, which I hope the Tribunal has but if it doesn't, I can
22 hand a copy up.

23 THE CHAIR: Yes, I have it.

24 MR LASK: Good. Thank you.

25 Dealing first with the orders made last summer. As the Tribunal will recall, the CPO in
26 the Stopford proceedings was granted in November 2024, and the first CMC took

1 place in July 2025. Since by that time, two advertiser claims had been issued, the
2 focus of that first CMC was on progressing disclosure so far as possible while waiting
3 for the advertiser proceedings to catch up.

4 THE CHAIR: Yes.

5 MR LASK: And the order made following that first CMC is at page 315 of the bundle
6 or B16 in hard copy. This is actually the order as amended in October 2025 to provide
7 a process for third-party confidentiality claims, but the amendments aren't material for
8 present purposes.

9 If one turns, please, to page 317, we see, at paragraph 1:

10 "By 31 July, the Class Representative and the Proposed Class Representatives in the
11 Advertiser Proceedings shall provide the Defendants a composite list of issues
12 comprising the key issues in dispute, which are common to their respective claims."

13 [as read]

14 Then paragraphs 2 and 3 provide for the remainder of that process of agreeing a list
15 of core common issues. The purpose of confining that list to common issues was to
16 facilitate disclosure in the Stopford case that would be equally relevant to any
17 advertiser claim that was certified in due course --

18 THE CHAIR: Yes.

19 MR LASK: -- because in that way, it would enable the Stopford case to progress and
20 would allow the advertisers to catch up more quickly while avoiding undue duplication.
21 Now, in relation to that list of issues, there was one outstanding area of disagreement,
22 which is why the list of issues is still on the agenda for this CMC, but Google indicated
23 in its skeleton that it has now dropped the remaining objection.

24 THE CHAIR: Yes.

25 MR LASK: So, the list of issues is now agreed.

26 Now, paragraph 4 of this order is important for the purposes of our application:

1 "By 4.00 pm on 19 December 2025, the Defendants shall file and serve a disclosure
2 report (as defined in rule 60(1)(b) of the Tribunal Rules) and an Electronic Disclosure
3 Questionnaire (as defined in rule 60_1)(c) of the Tribunal Rules), by reference to the
4 List of Core Issues." [as read]

5 I make three points in relation to that direction. First, its purpose ought to be
6 uncontroversial. It was to provide visibility as to the potentially relevant documents
7 held by Google, and thereby facilitate discussions over the disclosure that should be
8 given in due course.

9 Second, Google was only required to provide this information by reference to the core
10 common issues, for the reasons I've already given. And third, the order did not provide
11 for Google to confine the exercise to documents that it had already collated for the
12 purposes of other proceedings and to be fair to Google, it has not suggested otherwise.
13 It's common ground that Google did in fact confine the exercise for its existing
14 repositories and so whilst the application that we make doesn't rest on the point, we
15 do say that Google's approach was inconsistent with the order that was made in that
16 regard.

17 Now, we, of course, recognise that sometimes it's appropriate for directions to be
18 amended, for example, if they prove to be impracticable, but Google has never applied
19 to amend, and as I will show, it has not provided a properly evidenced or adequate
20 justification for confining the exercise in the way that it did.

21 The remainder of the order makes provision for initial disclosure and notifications to
22 the European Commission. I don't need to dwell on those provisions for present
23 purposes.

24 Just for completeness, a further disclosure order was made by the Tribunal in
25 December 2025. That's at tab D15, page 310. That made further provisions for initial
26 disclosure and third-party notifications. I don't need to go to it for present purposes.

1 But that was what was ordered, particularly in relation to the disclosure report and the
2 Electronic Disclosure Questionnaire.

3 If I can now turn to what Google provided: the disclosure report is at B7, page 18.

4 THE CHAIR: Yes.

5 MR LASK: And one sees question 1 at the top:

6 "Please describe in the table below or a separate document, all documents which exist
7 or may exist, which are relevant to the issues, [et cetera]." [as read]

8 And then over the page, Google responds to that with a schedule. That schedule
9 contains a list of broadly described documentary categories. All of them are
10 categories that were collated for the purposes of other proceedings. One sees
11 a subheading shaded grey at the top, near the first hole punch on page 19,
12 "Documents pertaining to the US proceedings", and then over the page, "Documents
13 pertaining to the Android case" and further down, "Documents pertaining to the CMA's
14 strategic market status investigation" and so on. Over the page, you have references
15 to the other CMA investigations.

16 This document, Google's answer to the disclosure report, was confined to these
17 existing repositories. The reason for its approach is explained in its response to the
18 Electronic Documents Questionnaire, which is at B8, page 23. One sees the first
19 question relates to date ranges:

20 "What date range do you consider that your searches for electronic documents should
21 cover?" [as read]

22 And then you have a narrative answer from Google. It refers in the first paragraph to
23 the US proceedings. At the end of that paragraph:

24 "Searches were undertaken across date ranges by reference to search strings and
25 custodians agreed between the parties to the US proceedings." [as read]

26 It gives a similar answer in relation to the CMA proceedings and the Commission

1 | proceedings.

2 | Then just below the second hole punch:

3 | "Google proposes that the US documents, CMA documents and EC documents stand
4 | as repositories of material for the sake of disclosure in this proceeding. Google notes
5 | that there is overlap between those repositories and duplication in the documents they
6 | hold. Having considered the scope of the US documents, CMA documents and EC
7 | documents, though it reserves its final position on the question, Google does not
8 | presently consider that further searches to identify electronic documents are
9 | reasonable or necessary. Google proposes to approach disclosure from the position
10 | that the combination of the US documents, CMA documents and EC documents, stand
11 | as its 'Disclosure Repository' and this EDQ and accompanying disclosure report have
12 | been completed on that basis." [as read]

13 | Just taking a step back, as, sir, you'll be aware, the EDQ is a pro forma document with
14 | a list of questions and, to state the obvious, those responsible for drafting it obviously
15 | thought that the information to be provided was likely to be helpful in facilitating
16 | discussions on disclosure. As I'll come to show you, the requests in our application
17 | track very closely the questions in the EDQ.

18 | But just in relation to Google's answer, that was a unilateral decision by Google to limit
19 | the exercise to its existing repositories. It wasn't discussed with the class
20 | representative in advance. You'll note that no date ranges were provided by Google,
21 | even for documents within its repositories. Google has now agreed to provide date
22 | ranges. But also no information was provided in relation to the searches undertaken
23 | in other proceedings, which I do say is quite remarkable in circumstances where
24 | Google is proposing to confine its disclosure to those proceedings. Google has now
25 | belatedly agreed to provide certain information in that regard though, as I'll come on
26 | to show you, by its own admission, it cannot provide complete information on the

1 searches undertaken in other proceedings. So that's its explanation for the approach
2 taken.

3 And then if one turns over the page, page 24, question 2, "Identify the custodians or
4 creators of your Electronic Documents whose repositories of documents you consider
5 should be searched". No custodians are provided by Google in answer to that
6 question, even in relation to its existing repositories. Again, Google has now agreed
7 to provide some information on custodians, but only for its existing repositories. So
8 question 2 of the EDQ remains in dispute and it's very important for reasons I'll come
9 on to.

10 Question 3 asks Google to identify those forms of electronic communications that were
11 in use during the relevant date range so far as relevant to the proceedings. The
12 relevance is an overarching qualifier for the response. And then you'll see columns A
13 to E in the table below. A is the communication type. As we understand it, Google's
14 answer in column A, "emails, Google Chat, SMS messages", as we understand it, that
15 answer only describes those forms of electronic communication that are contained in
16 the existing repositories. So it's not necessarily all forms of communication that were
17 in use during the relevant period, only those that appear in the existing repositories.

18 Just to be clear, Google has not said to us that there were no other forms of electronic
19 communication in use, let alone provided any evidence to that effect and it does seem
20 to us to be pretty basic information that it ought to be quite straightforward to provide.

21 Column B, "Was it in use during the date range?" "Yes, yes, yes". Column C, "Are
22 you searching for relevant documents in this category?" "Yes, the Disclosure
23 Repository contains emails", et cetera. Column D, "Where and on what type of
24 software equipment or media is this communication stored?" And then you have
25 a stock answer from Google:

26 "The Disclosure Repository is stored across Google's internal and external file hosting

1 systems." [as read]

2 I do submit that is a very vague answer, and it doesn't map easily onto the notes for
3 column D. If you look at question 3 above the table, you'll see "column D note":

4 "State the geographical location if known. Consider at least servers, desktop PCs,
5 laptops, [et cetera] ..." [as read]

6 So having an answer that is so high level obviously may make it more difficult to target
7 disclosure proposals to particular locations.

8 Then column E:

9 "Are backups available, and if so, are you searching for them?" [as read]

10 No answer to that.

11 Question 4 is quite similar, but it relates to forms of electronic documents as opposed
12 to communications. Again, as we understand it, the answers in column A only
13 describe those forms of electronic documents that are contained in the existing
14 repositories, not all forms of documents that were created or stored during the relevant
15 period. Again, Google hasn't said, "Well, that's everything that was in use", so we're
16 left guessing. Again, you have a very vague set of answers in column D simply
17 referring to the repository being stored across internal and external file hosting
18 systems.

19 Question 5 on page 27:

20 "In the following table, identify database systems, including document management
21 systems, used by you during the date range and which may contain disclosable
22 electronic documents." [as read]

23 You'll see that Google's answer in the table below identifies a single database:
24 Google Drive. As we understand it, that is one database from which documents in the
25 existing repository were extracted. It doesn't tell us whether there are further
26 databases from which the existing repository may have been extracted. Importantly,

1 it doesn't tell us whether there are other databases which may contain relevant
2 documents, but which didn't provide any documents for the existing repository.

3 Question 6 is another really important one. Question 6 is about keywords:

4 "Do you consider that keyword searches should be used as part of the process of
5 determining which electronic documents you should disclose?" [as read]

6 Google hasn't ticked either yes or no, which may be an oversight because it then does
7 go on to answer, apparently on the premise that the answer is yes, the follow-on
8 question:

9 "If yes, please provide details of the keywords used or to be used (by reference, if
10 applicable, to individual custodians, creators, repositories, [et cetera] ...)" [as read]

11 Then you'll see Google's answer in the box:

12 "Google anticipates that it may perform keyword, date, range, and custodian searches
13 over some of the relevant repositories of documents listed in response to question 1
14 of the disclosure report to identify a subset of documents likely to be relevant to the
15 list of core issues." [as read]

16 So Google provided no information whatsoever as to the keywords that were used to
17 collate the existing repository, or more importantly, that it proposed to use to give
18 disclosure in these proceedings. No proposals at all.

19 Now, Google has now agreed to provide some information on the keywords that were
20 used to collate the existing repository, but it still refuses to provide any proposals as
21 to the keywords that it says should be used to give disclosure in these proceedings,
22 whether from within the existing repository or otherwise. I'll come on to explain why
23 that's a real problem.

24 Question 7 concerns other types of automated searches. It's page 28:

25 "Do you consider that automated searches or automated techniques other than
26 keyword searches should be used as part of the process of determining which

1 | electronic documents you should disclose?" [as read]
2 | Google has ticked "Yes". Then it's asked to:
3 | "Please provide details of the processes used or to be used." [as read]
4 | And it gives a similar answer to question 6:
5 | "Google considers that automated searches or automated techniques other than
6 | keyword searches may be used in the process of determining which electronic
7 | documents it should disclose. At this stage, it is unable to provide details of the
8 | proposed use of such tools, and its position is reserved." [as read]
9 | So again, a similarly limited response.
10 | I don't need to take you through the remaining questions in the EDQ, because the
11 | ones I've shown you are the ones to which the application relates. But I do wish,
12 | briefly, just to show you what it says at the end of the EDQ in the guidance notes. This
13 | is on page 34. Guidance Note 2 by the second hole punch:
14 | "The questions in the EDQ are not intended to give rise to any implication about how
15 | disclosure should or should not be carried out. They are intended only to provide
16 | information to other parties and to the court." [as read]
17 | So in other words, the EDQ is not the opportunity for a party to say, "Well, we think
18 | disclosure should be confined to this repository or that repository." It's intended to
19 | provide information to the other party and to the Tribunal to facilitate discussions. One
20 | sees a flavour of that in Guidance Note 4 as well:
21 | "The purpose of such questions is to assist the parties in identifying the points which
22 | may require elaboration in order for meaningful discussions to take place between
23 | them." [as read]
24 | So that brings me on to the third part of my submissions, my general submissions on
25 | the application in Google's position.
26 | As I've said, Google has now agreed to provide some further information in relation to

1 | how the existing repository was collated and how it approached the initial disclosure
2 | exercise over the last few months, but it still refuses to provide any of the information
3 | sought so far as it relates to Google's disclosure landscape beyond the existing
4 | repository, and it refuses to provide any proposals on keywords, even for disclosure
5 | from within the repository. I want to make three general submissions on why we say
6 | Google's position is unsustainable.

7 | First, Google's approach presupposes that the existing repository will be sufficient for
8 | disclosure purposes in this case, and necessarily confines the parties' discussions
9 | about disclosure to that pre-selected set of documents. It leaves the class
10 | representative in the dark about what else of relevance may be out there.

11 | Now, the class representative's objective -- which should not be controversial, in my
12 | submission -- is to be able to consider properly informed proposals for disclosure so
13 | that disclosure can be ordered, if not agreed, at a future CMC. We would hope that at
14 | least for the purposes of common issues, disclosure can be ordered at the first CMC
15 | after a certification decision in Brook.

16 | But more fundamentally, if we are only ever given information about the existing
17 | repository, then the disclosure proposals will by necessity be limited to the existing
18 | repository. Without knowing anything about Google's wider documentary landscape,
19 | the class representative is denied the opportunity even to consider proposals for
20 | disclosure from beyond the existing repository.

21 | Just to give a couple of examples. If we don't know what relevant custodians may
22 | exist beyond the existing repository, we cannot make proposals for those custodians'
23 | documents to be searched. If we do not know what databases may exist beyond the
24 | existing repository, we cannot make proposals for those databases to be searched.

25 | So Google's approach ties the class representative's hands and limits her to seeking
26 | disclosure only from within the existing repository.

1 Now, insofar as any particular disclosure proposals would require Google -- any
2 proposals we might make in due course if our application is granted -- insofar as they
3 might require Google to search for documents from beyond the repository, Google
4 might at that stage say, "Well, that would be disproportionate, because we've already
5 collated all these documents." There would then have to be a discussion about
6 whether it would be disproportionate or not, but it cannot be right, in my submission,
7 to preclude the class representative from even considering and discussing those
8 matters.

9 Google says that the existing repository contains a large number of documents
10 collated for the purposes of proceedings that overlap with these ones, but it does not
11 follow, and it cannot be assumed, that the existing repository will contain all of the
12 disclosure that is appropriate to give in this case.

13 It's common ground that there is overlap between Ms Stopford's case and the issues
14 arising in the other proceedings: the Commission proceedings, the CMA proceedings
15 and the US proceedings. But Google has not contended that the issues identified in
16 the list of issues that's now agreed are identical to the issues in those other
17 proceedings, and nor has it contended that the searches carried out in those
18 proceedings will necessarily have captured all material that could be relevant in this
19 case and proportionate to provide.

20 Just to give a rather obvious example. If I could ask you, please, to turn to tab B4,
21 page 2. This is the now agreed list of core common issues. If one turns to page 5,
22 you see the heading, "Causation, Loss and Damages."

23 THE CHAIR: Yes.

24 MR LASK: Following that heading, you have issues 15 to 27. So it's around half of
25 the issues in the list of issues. Half of those issues concern causation and loss. That
26 issue does not arise directly in the Commission, US or CMA proceedings. Those

1 cases have not needed to assess the loss and damage caused to advertisers or
2 consumers.

3 So whilst Google may have produced documents in those proceedings that also are
4 relevant to causation and loss, it seems unlikely that any of the searches in those
5 proceedings would have specifically targeted documents relevant to those issues.
6 Therefore, the existing repository may well contain gaps in that regard.

7 In addition, Google has emphasised in its evidence for this hearing the procedural
8 differences between those other proceedings and the present context. If I could just
9 show you Google's evidence, please, at B10. It begins on page 62.

10 THE CHAIR: Yes.

11 MR LASK: This is the first witness statement of Elizabeth Davison. If we go, please,
12 to page 84, paragraph 67:

13 "Second, the Class Representative has asked Google to provide "details of the scope
14 of the document searches undertaken by Google in the US proceedings, the CMA
15 proceedings and the EC proceedings", including details of the issues and/or requests
16 in relation to which the searches were undertaken, the repositories searched, the
17 custodians whose documents were searched and any date ranges and keywords
18 used."

19 "68. Google has again explained to the class representative that given the context in
20 which the EDQ and DR were prepared, it would have been (and remains)
21 disproportionate for Google to go into the level of detail the Class Representative has
22 requested in relation to the Existing Disclosure Repository." [as read]

23 So this is actually responding to that part of the application on which Google has now
24 made some concessions, but it's relevant for the purposes of my submissions:

25 "To the extent this request is maintained by the Class Representative, I note the
26 following matters by way of further context as to why that would be a challenging

1 exercise for Google to undertake." [as read]

2 Then if one looks at subparagraph (b):

3 "In particular, the Existing Disclosure Repositories were collated for the purposes of
4 regulatory investigations not subject to the disclosure rules and practices applicable in
5 these proceedings, and in the case of the US Productions and EC Materials in foreign
6 jurisdictions and not subject to English law. This means that the processes followed,
7 and by extension records of those processes, do not neatly mirror and align with what
8 the class representative has requested and what might typically be expected in the
9 context of English litigation." [as read]

10 It's of course unsurprising that the disclosure processes in other jurisdictions don't
11 mirror what might be expected in this litigation, but it underlines the risk in assuming
12 that the existing repository will be sufficient. In my submission, it's not appropriate to
13 confine discussions on disclosure to a particular repository based on a leap of faith.
14 Contrary to the mantra deployed by Google in its skeleton, the class representative is
15 absolutely not seeking to reinvent the wheel; we simply want to ensure that we are
16 driving with a full set of wheels as we go through the disclosure process.

17 That was the first of my three general submissions. Second: in order to assess
18 whether the existing repository is a sufficient source of disclosure for the purposes of
19 these proceedings, it is necessary to have information both as to how that repository
20 was collated, and information as to Google's broader documentary landscape, so that
21 appropriate comparisons can be made. They are two parts of the same puzzle.

22 If I could show you, please, two examples of that from the class representative's
23 evidence for the CMC contained in the witness statement of Mr Streatfeild, tab B9. If
24 the Tribunal could look, please, at page 53. This is in relation to request 2 of our
25 requests, which is about custodians, and if I could just ask you please, sir, to read
26 paragraph 39. (Pause)

1 THE CHAIR: Okay.

2 MR LASK: You'll see Mr Streatfield's point is that one needs to know who the relevant
3 custodians would be if Google's answer was not limited to the existing repository, so
4 that these can be compared to the custodians whose documents have been collected
5 in order to produce the existing repository. It may seem an obvious point; Google
6 hasn't contradicted it.

7 Another example is on page 57, paragraph 44. Again, if I could ask you please, sir, to
8 read that paragraph. (Pause)

9 THE CHAIR: Okay.

10 MR LASK: As you recall from the EDQ, Google's answer to that part of the EDQ was
11 that the existing repository was extracted from Google Drive. And Mr Streatfield's
12 point is that the class representative needs to understand what, if any, other databases
13 might hold relevant documents in order to assess, in order to help assess, whether the
14 existing repository is likely to be adequate. Again, Google has not contradicted that.
15 Just before leaving this witness statement, could I ask you, please, to look at
16 paragraph 36 on page 52 where Mr Streatfield addresses the general difficulties
17 created by Google's approach to these matters. Paragraph 36 on page 52. (Pause)

18 THE CHAIR: Yes.

19 MR LASK: Now, as we saw from paragraph 67 and 68 of Ms Davison's witness
20 statement, Google itself says that it's actually quite challenging for Google to provide
21 a comprehensive explanation of how the existing repository was collated. It is going
22 to provide some information on that, but it can't provide a comprehensive explanation.
23 But if we cannot know for certain how the existing repository was put together, that
24 makes it all the more important for us to have a holistic view of Google's broader
25 documentary landscape, because if no information is provided as to that broader
26 landscape, it's impossible to know whether relevant material may have been missed.

1 My third general submission is that Google's objection to providing the information
2 requested does not withstand scrutiny. The core objection -- one sees this from
3 Google's skeleton argument at paragraph 23 -- is that providing the information would
4 be disproportionate due to the time and cost involved, but Google has adduced no
5 evidence as to what the exercise would involve in terms of time and cost. Google's
6 skeleton does not cite any evidence in support of its proportionality argument. The
7 only evidence we could find that may be relevant is in Ms Davison's statement at
8 paragraph 66(c). This is at B10, page 84:

9 "(c). Google does not rule out that it may be reasonable or necessary for it to provide
10 a description of its "disclosure landscape" beyond the Existing Disclosure Repositories
11 in due course. It would, however, be a significant exercise for Google to undertake as
12 Google has explained to the Class Representative. It would also be an exercise that,
13 if undertaken at this stage, would inevitably have to be repeated in some manner
14 following certification of any advertiser claim, to cover any issues unique to that claim
15 (which Google has, again, explained to the Class Representative), which Google will
16 not be in a position to identify definitively until the identity of any certified advertiser
17 claim is known, and the parties to that claim have exchanged pleadings in the usual
18 manner." [as read]

19 So far as proportionality is concerned, all that's said here is that it would be
20 a significant exercise. There is a reference there to a letter from Google's solicitors
21 dated 27 March -- it's in the bundle at tab F42, page 515 -- but all that letter says at
22 paragraph 7 is that it would be an, "extensive, time consuming and significantly costly
23 exercise". In my submission, that is a strikingly vague assertion -- and I'm looking at
24 the witness statement now -- in a witness statement running 31 pages, that is
25 a strikingly vague assertion, and it is a wholly inadequate basis on which to argue that
26 the exercise would be disproportionate, particularly where the exercise in question is

1 one that Google has already been ordered to carry out.

2 Now, one would expect at the very least, to see some explanation of what the exercise
3 would involve, how many fee earners it would require, how long it would be expected
4 to take, but there is nothing to that effect. More importantly, is there any attempt to
5 explain the concern by reference to individual requests? It's all put at a very, very high
6 level indeed. And for your -- well, you've seen it, I showed you paragraph 39 of
7 Mr Streatfield's statement where he says it shouldn't be difficult to identify relevant
8 custodians. Google's evidence doesn't say otherwise.

9 THE CHAIR: Well, it might be. I mean --

10 MR LASK: But yet we have no details.

11 THE CHAIR: Right.

12 MR LASK: No details. It can only take Google so far, to say it would be a significant
13 exercise. To say it's disproportionate, a lot more detail would be required to make
14 good that argument. And it bears emphasis, as one sees in paragraph 66(c), that
15 Google seems to accept that it may be reasonable or necessary to provide
16 a description of its wider disclosure landscape in due course, but it says, "Well, it
17 shouldn't be done now, as it would inevitably have to be repeated in some manner to
18 cover any issues that are unique to the advertiser claim". And one sees in the following
19 subparagraph what it says should happen as a result. It says:

20 "Google has therefore proposed that if an advertiser claim is certified, the Class
21 Representative and the advertiser class representative liaise following the close of
22 pleadings in the certified advertiser claim, and seek to agree the scope of any further
23 EDQ and DR that may be required at that stage to provide a description of Google's
24 landscape of documents beyond the Existing Repositories." [as read]

25 There are two answers to that. First: the reason the Tribunal directed the parties to
26 produce a list of common issues, and ordered Google to produce its DR and EDQ by

1 reference to that list, was to mitigate the concerns expressed by Google at the last
2 CMC around duplication. And the class representative's application today goes no
3 further than that. As with the order made last time, it's anchored to the list of core
4 common issues, and so in those circumstances, it's very unclear why granting the
5 application should entail any material duplication on Google's part. So absent any
6 further explanation in Google's evidence, I do submit that its concern in that regard
7 should not be given any weight.

8 Secondly, and in any event, Google's concern needs to be balanced against the need
9 to make meaningful progress on disclosure. We are already at CMC 2. It is nearly
10 18 months since the CPO was granted. The CPO hearing in Brook is listed for 8 July
11 this year, and if similar timescales applied in Brook as in Stopford, one might expect
12 a judgment on certification in September or October 2026, and pleadings to close in
13 around February or March 2027. So on Google's proposal, the parties wouldn't even
14 begin liaising on the production of a full DR and EDQ until some ten months from now,
15 and by then it will be roughly two years and three months since the CPO was granted
16 in Stopford. I do submit that that would be an unacceptable level of delay. As you'll
17 recall, sir, the Tribunal Rules envisage a DR and EDQ being ordered at the first CMC,
18 and there's, obviously, good reason for that.

19 THE CHAIR: Well, it's a more complicated landscape.

20 MR LASK: It is, but the reason the Rules envisage that is because they recognise that
21 disclosure can be a lengthy process, so you do need to be getting on with it.

22 THE CHAIR: Yes.

23 MR LASK: As I say, we're already at the second CMC and it's quite wrong, in my
24 submission, for Google to try and punt this off to the third CMC or beyond.

25 Now we do acknowledge, as you just alluded to, sir, that the presence of the Brook
26 claim means that the Stopford claim can't proceed as expeditiously as it otherwise

1 would, but where there are appropriate steps that can be taken now to facilitate
2 progress on disclosure without giving rise to a significant risk of duplication, those
3 steps should be taken without further delay.

4 Just before finishing this point, as you'll see from the draft composite order I'm going
5 to come on to, Google has agreed our proposals as to the process and timing for next
6 steps following its provision of information. The first step is to provide information by
7 19 June, but Google's agreement is on the premise that it only needs to provide the
8 information it's agreed to provide. And it says in its skeleton argument -- although not,
9 I think, in its evidence -- at paragraph 26 that, if our application is granted, much more
10 time would be needed.

11 THE CHAIR: Yes, it does say that a couple of times.

12 MR LASK: Yes. Now, the only evidence before the Tribunal as to how long an
13 exercise like this should take is from Mr Streatfeild, and I don't need to show you it,
14 but in paragraph 50 of his statement he says:

15 "Based on [his] experience, [he'd] expect the process to take several weeks, but not
16 several months." [as read]

17 So the suggestion that much more time would be needed is troubling, given that
18 19 June is several weeks away. It is troubling in circumstances where it should have
19 been doing this in the second half of 2025, but it also reinforces the need to get on
20 with it now.

21 THE CHAIR: Yes.

22 MR LASK: So those are my general submissions. The fourth and final part of my
23 application is submissions on individual requests.

24 THE CHAIR: Yes.

25 MR LASK: And I think you said, sir, that you have the --

26 THE CHAIR: Yes, I've just only had time to glance.

1 MR LASK: -- the draft composite order.

2 THE CHAIR: Yes, I've got the red and green version.

3 MR LASK: That's right, I'm going to turn to that now. I want to make two preliminary
4 submissions before getting into the detail.

5 THE CHAIR: Okay.

6 MR LASK: First, as I've mentioned a couple of times, Google has made certain
7 concessions on the application shortly before the deadline for skeletons, and whilst
8 those concessions are welcome, I do say it's regrettable that the class representative
9 had to issue an application in order to extract them, because the substance of the
10 requests contained in the application were first sent to Google on 2 February. That's
11 Hausfeld's letter at tab F33 and the enclosed annex at F34.

12 The hope at that stage was that directions for further disclosure could be formulated
13 and considered at this CMC.

14 THE CHAIR: Yes.

15 MR LASK: Requiring the class representative to issue an application drives up costs
16 and generates delay, so we do hope that Google will engage constructively at an
17 earlier stage in the future.

18 Second, as I'll show you, it's clear when one actually looks at the individual requests
19 that they are targeted, reasonable and based firmly on the EDQ itself, so Google's
20 description of the application in its skeleton argument as a broad and lengthy wish list
21 of information is, in my submission, detached from reality.

22 THE CHAIR: Well, that just depends on the individual (overspeaking).

23 MR LASK: Well, I'll come on to make the point good. But as I've already submitted,
24 Google's evidence makes no attempt to grapple with the individual requests and
25 explain why they should be difficult to comply with.

26 So with that, you'll see from the key, black text is agreed, green text is proposed by

1 Ms Stopford but opposed by Google, and red text is proposed by Google but opposed
2 by Ms Stopford.

3 THE CHAIR: Yes.

4 MR LASK: Beginning on page 3 --

5 THE CHAIR: Yes.

6 MR LASK: -- at paragraph 1, we have the subparagraphs which contain the numbered
7 requests.

8 THE CHAIR: Yes.

9 MR LASK: Request 1 is largely agreed. It is simply a request that Google answers
10 question 1 of the EDQ without limiting its answer to the existing repositories. You'll
11 recall that Google didn't provide any date ranges in its answer to question 1.

12 THE CHAIR: Right, yes.

13 MR LASK: So Google says this one is now agreed in substance.

14 THE CHAIR: Right.

15 MR LASK: We understand Google to have agreed to provide date ranges for its full
16 documentary landscape, but we wrote on Friday seeking confirmation of that and
17 Ms Abram can no doubt tell us whether we've misunderstood.

18 THE CHAIR: Sorry, I don't follow that. What do you mean?

19 MR LASK: So what we seek there, is the relevant date range is not limited to the
20 existing repositories. What would be the relevant date ranges if Google was doing the
21 exercise as we said it should have done by reference to its full documentary
22 landscape.

23 THE CHAIR: I mean, they might say, in responding to this, they might say that it is the
24 ones in the repository but that's for them to decide.

25 MR LASK: Yes. The reason -- they might do. But they have to -- what we say is they
26 have to give us the relevant date ranges would apply --

1 THE CHAIR: Yes.

2 MR LASK: -- if it wasn't limited to the existing repository. That's what we're seeking.

3 THE CHAIR: Yes.

4 MR LASK: So don't confine the exercise to the repository.

5 THE CHAIR: No.

6 MR LASK: You need to give us --

7 THE CHAIR: It might turn out to be the same answer.

8 MR LASK: It might be. Yes. So that's --

9 THE CHAIR: Do I have to worry about the little bit of green and red skirmishing at the
10 beginning? It just seems that they've taken a consistent line that the order should just
11 be the order and not reference to the questions in the EDQ.

12 MR LASK: The reason we say it's important to reference the questions in the EDQ, is
13 because we want Google to do what the EDQ requires it to do. And so we saw from
14 the EDQ earlier there are specific questions. There are notes; there are pro forma
15 tables. We are not trying to reinvent the wheel here. We want Google to answer the
16 EDQ simply without limiting its answers to the existing repositories.

17 THE CHAIR: I see. But then those opening introductory few words to each of the
18 paragraphs sort of carry with it a depth of direction. It's not just explanatory. You
19 mean -- you're sort of implying that it means you've got to give this and it has to comply
20 with question 1 of the EDQ.

21 MR LASK: That's absolutely what we're seeking.

22 THE CHAIR: Okay. I mean, I have to say, I'm not sure that's quite what those words
23 mean, but anyway, there we are. All right, I understand it.

24 MR LASK: If the Tribunal is prepared to make a direction that Google answers these
25 questions in accordance with the EDQ --

26 THE CHAIR: Right.

1 MR LASK: -- then we'll very happily improve the drafting.

2 THE CHAIR: Right.

3 MR LASK: But that's certainly what --

4 THE CHAIR: Anyway, that's the gist of the difference between you there.

5 MR LASK: Yes.

6 THE CHAIR: Okay.

7 MR LASK: So that's request 1. Request 2 is about custodians and it's completely in
8 green because Google is refusing to answer it. I've already shown you Mr Streatfeild's
9 evidence on why a proper answer to this is so important.

10 THE CHAIR: Yes.

11 MR LASK: As well as assessing the adequacy of the existing repository, we need to
12 be able to consider proposals for disclosure that aren't necessarily limited to the
13 existing repository. As I said earlier, if Google considers that such proposals that we
14 might make are disproportionate it can make that argument at the time. We can have
15 a discussion about it, but it isn't right to preclude the discussion altogether.

16 Now, Google has agreed, with some caveats, to provide information regarding
17 custodians in relation to the existing repository, and you'll see that from request 3. It's
18 refusing to provide any information on custodians beyond the existing repository.
19 That's request --

20 THE CHAIR: Give me a moment to process that.

21 MR LASK: At 3(iii). (Pause)

22 THE CHAIR: Right.

23 MR LASK: The reason request 2 is entirely in green is because Google refuses to
24 provide information on custodians beyond the existing repository.

25 THE CHAIR: Okay.

26 MR LASK: No specific reasons have been given for that refusal, which suggests that

1 Google relies on its overarching complaint about proportionality. That complaint is
2 unfounded, in my submission, for the reasons I've already given.

3 Request 3 -- and there is a degree of common ground now on request 3 -- this
4 concerns the nature and scope of the existing repository itself, and the reason it's in
5 the application is because until last week, Google refused to provide even any
6 information on how that was put together, that existing repository, which was
7 a remarkable stance for it to take, given its position that that repository should stand
8 as the sole source of disclosure, but it has now agreed to provide some of the
9 information under request 3.

10 You'll see there is a degree of disagreement as to how far its obligations should be
11 watered down. In broad terms, request 3, as set out here, is the proposal made by
12 Google subject to the green text. There are two amendments we would ask for.

13 First is in relation to request 3(i), where we seek a proper narrative description of
14 whether and how the repository was -- whether and how it relates to the core issues
15 rather than simply a summary. Because we think a proper narrative description will
16 better equip the class representatives to assess the adequacy of the existing
17 repository and make proposals.

18 And then the second modification we would seek relates to (ii) and (iii). You'll see in
19 (iii) we have in green the word "proportionate" instead of the words "readily available".

20 We say Google should provide this information to the extent proportionate. That is the
21 standard touchstone for disclosure exercises. If it's proportionate, Google should
22 provide it. We have some concerns over the qualifier "readily available" because we
23 are concerned that if that is all Google is required to do, we will end up with a very
24 limited amount of information.

25 The same point applies to (ii). The reason you don't see the word "proportionate" in
26 green in (ii) is because we only received Google's wording on (ii) this morning. So

1 | it's --

2 | THE CHAIR: So you say "proportionate" should go in there.

3 | MR LASK: "Proportionate" should be in (ii) as well.

4 | THE CHAIR: Yes.

5 | MR LASK: That's request 3.

6 | Request 4, I don't need to dwell on because that is agreed. That relates to the initial

7 | disclosure exercise.

8 | Then we come on to request 5 and request 5 seeks information on all forms of

9 | electronic communications in use during the relevant period without limitation to the

10 | existing repository. Google says it's provided this information in -- well, we know it's

11 | provided this information in relation to the existing repository. We saw that in the EDQ.

12 | Google says it wouldn't be efficient to consider what documents may exist beyond the

13 | existing repository. You may have seen the annex to its skeleton, which sets out its

14 | position on each request, and it provides that same answer for requests 5, 6 and 7.

15 | We don't understand that objection because Google hasn't provided any specific

16 | explanation, whether in its evidence or submissions, as to why this information should

17 | be difficult to provide. It's provided the information for documents within the existing

18 | repository. Receiving that same information for the broader landscape is important so

19 | that the class representative can assess the adequacy of the existing repository. For

20 | example, by ascertaining whether there are any forms of electronic communications

21 | that were excluded from the existing repository but are otherwise available as part of

22 | the wider pool. So we say that request 5 shouldn't be difficult to comply with, and it's

23 | important that Google does so.

24 | Request 6 is similar. It seeks information on all forms of electronic --

25 | THE CHAIR: Well, these are all -- documents 5, 6 and 7 are (overspeaking).

26 | MR LASK: 5, 6 and 7 are all --

1 THE CHAIR: Basically raise the same points.

2 MR LASK: Pretty similar. Yes. Google relies on the same answer.

3 THE CHAIR: Yes.

4 MR LASK: So I don't need to dwell on those.

5 Request 8 is in two parts. Request 8 concerns keywords. Request 8(i) is agreed.

6 That concerns the keywords used by Google in providing its initial disclosure. That's

7 the disclosure it's provided since the last CMC.

8 THE CHAIR: Yes.

9 MR LASK: You'll also recall under request 3, Google's going to be providing the

10 keywords that it used or some of the keywords that it used to collate the existing

11 repository.

12 THE CHAIR: Yes.

13 MR LASK: But it still refuses to provide any proposals for keywords that should be

14 used from now on to search for relevant documents, whether from within the existing

15 repository or otherwise. That's why request 8(ii) is in green and, in my submission,

16 that's a remarkable and wholly unhelpful stance for Google to adopt. It accepts that

17 keyword searches may be appropriate, says so in its answer to the EDQ, but its refusal

18 to provide any proposals makes it really difficult for the parties to formulate practical

19 disclosure proposals. And it's contrary to the EDQ itself, which asks the party

20 answering it to set out its proposals. There is a reason why the EDQ does that.

21 Because the party giving disclosure is much better placed to know the keywords or

22 project names that it uses internally.

23 If I could just show you what Mr Streatfeild says about this, please, back in tab B9,

24 page 58.

25 THE CHAIR: Yes.

26 MR LASK: You'll see subparagraph B in the top half of that page.

1 THE CHAIR: Yes.

2 MR LASK: That's dealing with this part of request 8:

3 "Second, it asks Google to set out the keywords that it intends to apply as part of its
4 search for documents, not limited to searches within the existing repository, by
5 reference to the issues in the list of core common issues. This is so that the class
6 representative can assess and comment on their adequacy and be provided with
7 a reference point for her own proposals. This would allow the class representative to
8 make progress on disclosure from both within and beyond the disclosure repository."

9 [as read]

10 And then at paragraph 47:

11 "The process of agreeing keyword searches is a routine and central part of the
12 disclosure exercise, which can only be efficiently begun by the disclosing party. For
13 example, only Google knows which keywords and/or code/project names it uses
14 internally in relation to specific matters." [as read]

15 And there's some repetition there. So I don't need to read the rest of it.

16 Again, there's no evidence to contradict that. Google's evidence does not identify any
17 particular difficulties in proposing keywords. Ms Davison's witness statement does not
18 address keywords specifically.

19 Now, in its skeleton, in the annex, Google says it would be disproportionate to identify
20 all keywords that Google proposes to use for all disclosure on all issues and from all
21 repositories in the case.

22 Now, as already submitted, Google hasn't substantiated its concerns around
23 proportionality, and nor has it provided any alternative proposals as to how it might
24 comply with request 8(ii). But in any event, the argument is a straw man, because
25 request 8(ii) requires Google's proposals for keywords in relation to the issues
26 identified in the list of core common issues. The purpose of the EDQ is to provide

1 a starting point for meaningful discussions in the formulation of disclosure proposals.
2 So request 8(ii) doesn't rule out that there may have to be further discussions on
3 keywords in due course. So Google's objection is, in my submission, a straw man.
4 Ultimately, there can be no reasonable objection, in my submission, to request 8(ii)
5 being granted.

6 Now, for completeness, in correspondence, Google said it would be premature to
7 identify keywords now, because the process might have to be repeated following the
8 certification in Brook, and that was in its letter of 13 February, paragraph 7(e) at
9 tab F35. But in my submission, that was and remains a bad point, because any
10 keyword proposals would, by definition, be limited to common issues. Moreover, as
11 we explained to Google in correspondence, the Brook PCR, who is represented here
12 today, confirmed earlier this year that she would be willing to engage in discussions
13 about keywords now, thereby dispelling any concerns that Google may have around
14 duplication.

15 Then finally, request 9 concerns automated searches or techniques other than
16 keywords, and similar points to request 8:
17 "Google has agreed to provide details of the automated techniques that it used in the
18 provision of its initial disclosure." [as read]

19 Just pausing there, you'll see the red text in request 9. That's the point I've just made.
20 That should be in black, because we would like that information. We're not objecting
21 to Google giving us that; we would like it to give us that.

22 So the red text should be --

23 THE CHAIR: Yes, that might be of no return. I mean, (inaudible), but anyway.

24 MR LASK: Yes, it might be. But Google still refuses to provide any proposals for
25 automated techniques that should be used in the future for search for relevant
26 documents, again either within the existing repository or otherwise.

1 THE CHAIR: Okay.

2 MR LASK: In its skeleton argument in the annex, it says:

3 "[It] cannot meaningfully identify what automated searches or techniques may be used
4 for future searches in the abstract without knowing what the nature and scope of those
5 searches might be." [as read]

6 But insofar as we can understand that point, it does appear to be self-serving, because
7 it's Google's refusal to provide all of the other information we're requesting that is
8 preventing meaningful discussion around the nature and scope of the searches that
9 should be undertaken.

10 But in any event, if Google can tell us what techniques it used for the initial disclosure,
11 as it has agreed to, it ought to be able to tell us whether in principle it would propose
12 to use those techniques or similar techniques or different ones going forward. So in
13 my submission, it should be required to provide this information for all the reasons I've
14 given.

15 THE CHAIR: Okay.

16 MR LASK: Unless I can assist the Tribunal, that's all I have to say at this stage.

17 THE CHAIR: Okay, (inaudible).

18 Yes, Ms Abram.

19

20 Submissions by MS ABRAM

21 MS ABRAM: I'd like to do three things. I'll start by setting out in a nutshell Google's
22 understanding that it came away with from the last CMC in July last year as to the
23 purpose of the DR and EDQ in this case and what that was pursuing.

24 Then I'll respond to Mr Lask's comments regarding our approach so far, and then I'll
25 address the detail of those disclosure requests. I won't say anything about the detail
26 of the process or the timings for now, because I see that you've got the point, that --

1 THE CHAIR: The process or the timings of ...?

2 MS ABRAM: The process to be undertaken. So we've agreed to provide the
3 information by 19 June and the dates thereafter are agreed on the basis of the scope
4 of what we've agreed to provide. I've heard that you've got the point that if we had to
5 provide more information, then we'd need more time (overspeaking).

6 THE CHAIR: Oh, okay. Yes, okay.

7 MS ABRAM: So I won't address that for now.
8 But just to set out our understanding in the light of the Tribunal's ruling at the last CMC,
9 we had understood that the purpose of the DR and the EDQ in this case was to enable
10 the CR to understand what materials were going to be produced in the first tranche
11 and to correlate those materials against the common issues in the case, so as to work
12 out what further disclosure to seek. We took that from the Tribunal's ruling, which is
13 actually probably most conveniently quoted in the CR's skeleton on page 6 at
14 paragraph 10. I think it is in the bundle.

15 THE CHAIR: (Inaudible).

16 MS ABRAM: So it's tab 1 of the bundle and it should be page SKEL/1, I think. You
17 don't have it elsewhere, sir.

18 THE CHAIR: Oh, sorry. Beg your pardon? Yes, it's just that the new index has
19 (inaudible). What did you say?

20 MS ABRAM: So paragraph 10 on page 6 of the skeleton, which is page SKEL/7.

21 THE CHAIR: Right.

22 MS ABRAM: So on paragraph 10, could I just ask you to remind yourself of what you
23 said there? (Pause)

24 THE CHAIR: Right.

25 MS ABRAM: As you've understood it, the key passage in that was about halfway
26 through that paragraph, so just above the first hole punch, where you say at the end

1 of a line, "The reason for giving". Have you got that?

2 THE CHAIR: Mm-hmm.

3 MS ABRAM: "The reason for giving Google an opportunity not to put that in [so that's
4 the DR and EDQ] until the core issues and core categories have been provided is so
5 that exercise can be simplified and reduced for Google if it has been able to be
6 engaged and helpful in the process up to then. For example, if generous, sensible
7 and useful categories of core documents are provided which the Tribunal can be
8 satisfied covers a lot of the territory needed for disclosure in a proportionate way, then
9 the EDQ will be a much easier job to do and can probably be much simpler. Whereas
10 on the other hand, if they are not as helpful, then more case management will be
11 appropriate." [as read]

12 THE CHAIR: Right.

13 MS ABRAM: Of course, I can't tell you what you had in mind, but the understanding
14 that Google came away with from that ruling was that if generous, sensible and useful
15 categories of core disclosure were provided in this initial tranche, then the EDQ and
16 DR could appropriately focus on those.

17 THE CHAIR: Right.

18 MS ABRAM: In particular, it wasn't understood -- and we still don't understand -- that
19 the DR and the EDQ were requiring, come what may, a full mapping of the universe
20 of Google documents, because that seemed to be at odds with the indication that the
21 scope of the DR and the EDQ would depend on what Google had produced upfront.

22 THE CHAIR: Right.

23 MS ABRAM: So that was the understanding we had. So we say that reliance on
24 rule 60(1), for example, of the Tribunal Rules, which talks in a general sense about
25 EDQs and DRs and what they may cover, doesn't get the CR very far one way or
26 another.

1 It's really established in this Tribunal that the scope of disclosure in any particular case
2 is really tailor-made to the requirements of the case. So we're a world away from
3 standard disclosure, as in many other fields of litigation. So we don't take any force
4 from that reference in 60(1) for the full mapping of what might be out there, and that
5 wasn't Google's understanding.

6 More than that, we respectfully submit that that approach, which we understood had
7 been the Tribunal's, was the right one, as a matter of principle. Because there's
8 actually no utility in mapping the full universe of documents within Google for
9 disclosure by reference to the list of core issues, if, or to the extent that, it will be
10 agreed, or it will be found that the existing disclosure repositories are actually sufficient
11 to provide disclosure on particular issues.

12 So to that extent, work done by Google, costs expended by Google, for which the CR,
13 the CR's ATE insurers, the CR's funder, may ultimately be held liable. So this is
14 a position of interest to both parties. Those will be costs that will be thrown away in
15 that scenario.

16 That is the understanding that has guided Google's approach to the CR's request for
17 the CMC as well, because what we've agreed to do, and readily agreed to do it, is to
18 provide the further information that we can provide about the existing disclosure
19 repositories, about the scope of the initial disclosure, with a view to furthering the
20 purpose that we understood was set out at that prior CMC. So making sure that the
21 CR understands what it's got, understands how what it's got has been collated so that
22 it can take a view about whether what it's got is sufficient or whether it needs to ask
23 more questions.

24 THE CHAIR: Okay.

25 MS ABRAM: If one looks at the list of issues, one can see how potentially onerous
26 a broader exercise of mapping the entire universe of Google documents might be.

1 This is no criticism at all of the list of core issues, which are at the usual level of
2 abstraction as opposed to granularity. But they are really, really vague, and it would
3 be really hard to jump off from them, straight to saying, "Well, these are the
4 custodians", in a business the size of Google. If you take, for example -- just taking
5 an example from issue 1, which is in tab 4 of the bundle, page 3.

6 THE CHAIR: Yes.

7 MS ABRAM: So issue 1, as in almost every list of issues in a competition case, is:
8 "What is the definition of the relevant product and geographic markets?" [as read]
9 To be fair, that is fleshed out a little bit more in the claimant's pleaded case and the
10 CR's pleaded case, so I should show you that as well. So that's in tab 11, page 124.

11 THE CHAIR: Right.

12 MS ABRAM: So this is their case as to market definition. It's just four paragraphs. If
13 you have a look at paragraphs 109 to 112 to give yourself a flavour of what they say.

14 THE CHAIR: Right. (Pause)

15 Okay.

16 MS ABRAM: So they say that the relevant market definition is for general internet
17 search services. Now that is Google's core business, so inquiring about which
18 custodians might hold documents relevant to who Google competes with in general
19 internet search services, is so intractable in the abstract as to be almost meaningless.
20 If you ask Mr Lask now what kind of documents Google should be mapping for the
21 purpose of that issue on the list of core issues, I'd venture he might be able to give
22 a couple of examples of the sorts of documents that he might be looking for.

23 THE CHAIR: Right.

24 MS ABRAM: But giving a full, comprehensive answer, purporting to give one, would
25 be extremely difficult in the abstract of really understanding what the issues are in this
26 case. It's certainly not for Google to take the first step towards anticipating what the

1 claimant might want to say about those things. One can look at an existing repository
2 of documents and say, "Is that a document that's potentially relevant to market
3 definition? Yes or no?" But the broader question of going out into the world and
4 looking for a needle, or many needles, in a haystack of what the relevant repositories
5 of documents might be, is a really formidable task.

6 THE CHAIR: It feels like that issue must have been an issue in some of the other
7 proceedings. You decided which custodians you were going to look at in the other
8 proceedings, so you must have an idea of who the custodians are. I don't understand
9 you saying now that it's impossible to come up with the list of custodians when you
10 must have done the same exercise before in the other proceedings.

11 MS ABRAM: So, the question --

12 THE CHAIR: You could respond to that meaningfully by saying, "We did the same job
13 in the US proceedings; the custodians we came up with this are so and so; it's very,
14 very unlikely that there's another custodian who would have a meaningful repository".
15 You could have done that already or you could do it in response to this question, but
16 to say, "The issue is too broad and it's impossible so we're not going to do it", I've got
17 a bit of a problem with that.

18 MS ABRAM: Yes. In fact, that eliminates what we understand, of course, of the
19 exercise that we've engaged on and that we've agreed to do would be, because we
20 anticipate that that exercise will get the CR to the place where -- that you've just put to
21 me. If one looks, for example, at request 3, in the draft order -- we're in paragraph 1(iii)
22 on pages 3 to 4 of the draft order, so just ignoring the red and the green for now -- the
23 broad thrust of this is that the parties are agreed that Google will identify the issues to
24 which each existing disclosure repository relates, and will identify the parameters of
25 the exercise that was undertaken to the extent possible. I'll come on to the forensic
26 searches and the proportionate limitations on that, but that is where we hope that the

1 exercise will take the CR. We say that that's the appropriate way to do it, by that
2 targeted approach that looks at the initial disclosure repositories, rather than by going
3 out into the world as if one is starting from a clean sheet.

4 THE CHAIR: No, no, what I mean is that you could say, "We did the previous exercise,
5 we came up with all of these custodians and it's incredibly unlikely that there's anything
6 else". That does relate to the broader universe because you're saying that you
7 assessed at the time and it remains the case that there won't be anything else.

8 MS ABRAM: Yes. Yes, sir --

9 THE CHAIR: That's different from saying, "Here's how we got to where we got to, full
10 stop".

11 MS ABRAM: That isn't the exercise that has been proposed that we should do, and
12 by the CR.

13 THE CHAIR: Right.

14 MS ABRAM: The CR has proposed that we should go out with the blank sheet in
15 addition to doing the initial disclosure repository and exercise, but I hear what you say
16 about that, sir.

17 If I may just continue.

18 THE CHAIR: Yes, go on.

19 MS ABRAM: In relation to the point that's connected to that, that was put to me by
20 Mr Lask, which is that Google has effectively unilaterally purported to decide whether
21 it should constrain its disclosure to the existing disclosure repositories as opposed to
22 the wider universe, it's important I'm clear that that's not at all the intention that
23 Google's pursuing. Google's position is that the existing disclosure repositories will be
24 an adequate repository.

25 Of course, it will be for the Tribunal to decide whether that's right or not. The fact that
26 the exercise so far has been focused on the existing disclosure repositories is simply

1 a function of what we understood to be directed at the prior CMC, rather than an
2 attempt to say, "Right, well, we're going to tell you that the only place that documents
3 can be searched for in these proceedings is in these repositories".

4 THE CHAIR: Right.

5 MS ABRAM: That's also relevant in relation to delay, because a further point that's
6 put against me is: if one pursues the process that Google advocates for, and by
7 focusing on the initial disclosure or existing disclosure repositories to begin with, then
8 that will engender delay because one then has to look ahead to whether the Brook
9 proceedings are certified.

10 We don't accept that either, because the parties have agreed -- subject to what
11 precisely the timings will be -- this process where Google will provide the information,
12 the CR will come back with its requests, and some of those requests may be, "Well,
13 actually we, the CR, don't think that this existing disclosure repository is sufficient on
14 issue X or Y, and we want Google to look elsewhere to tell us what other documents
15 it's got".

16 Of course, there's nothing that closes the CR off from making that sort of request as
17 part of the process that the parties have agreed should follow now.

18 I want then to respond, if I may, to some of the CR's criticisms of our approach. I've
19 already addressed the point about the universe of documents, but the second kind of
20 broad criticism was the idea that even in respect of the initial disclosure, or the existing
21 disclosure repositories, incomplete information was provided in the EDQ. That is not
22 a fair criticism, with respect, when one sees the order and chronology in which matters
23 have unfolded since this case was last before the Tribunal.

24 It simply wouldn't have been possible, as matters have turned out, for Google to
25 provide in December last year -- when we did the DR and EDQ -- the information that
26 we've now agreed to provide, because the chronology just hasn't worked out the way

1 that you, or anyone, expected at the CMC in July last year.

2 THE CHAIR: Right.

3 MS ABRAM: So the order that you made in July contemplated that initial disclosure
4 would be given in the months following that CMC. You ordered the ISA and the
5 amendments to it, that core agreement with Apple, in the weeks after the CMC. That
6 was done.

7 Then you ordered that the CMA and the US materials should be provided by the end
8 of October.

9 THE CHAIR: Yes.

10 MS ABRAM: Then you said, "Well, the Commission materials should come within
11 a couple of months of the confidentiality ring order being approved, absent an
12 objection from the Commission".

13 THE CHAIR: Yes.

14 MS ABRAM: Then the idea for the architecture of the proceedings was that the EDQ
15 and the DR would follow afterwards in December. That was the order. But, actually,
16 despite huge effort and vast expense -- you've seen the documents -- the initial
17 disclosure process transpired to be much more complicated and to take much longer.
18 That was for three main reasons, which were just outside of Google's control, and
19 outside of anyone's reasonable control.

20 THE CHAIR: Yes.

21 MS ABRAM: The first is that the third-party notification process in this case has been
22 wider and more burdensome by several orders of magnitude, frankly than any other
23 case I've ever seen.

24 THE CHAIR: Okay.

25 MS ABRAM: There are literally hundreds of third parties that have needed to be
26 notified in this case, and the parties have agreed a process for that going forward,

1 | which we think will help, but the bottom line is: it's taken a huge amount of time, a huge
2 | amount of effort and a huge amount of expense.

3 | THE CHAIR: Yes.

4 | MS ABRAM: So that's led to some delay.

5 | The second factor that made things much more complicated is that the review of the
6 | Commission materials for privilege, which, as you'll be aware, has a wider meaning
7 | under English law (overspeaking).

8 | THE CHAIR: Yes, you said that in your skeleton.

9 | MS ABRAM: Yes, that's been a really burdensome and lengthy process. That was
10 | partly because of the size of the Commission file. So the silver lining of the number of
11 | documents that the CR has got has come with a cloud, which is that there have been
12 | a lot of documents to review for privilege. There were some complications around the
13 | practicalities of that process as well, due to document formats.

14 | Then the third factor that was unforeseen in July last year that has made things more
15 | complicated is that that order was made on the basis that there would be categories
16 | of known relevant documents within the US and CMA pools of materials. That has
17 | transpired just not to be the case.

18 | THE CHAIR: Okay.

19 | MS ABRAM: I can show you the reasons for that if that would be helpful. It's not in
20 | dispute.

21 | THE CHAIR: Please, tell me.

22 | MS ABRAM: So, effectively, the expectation at the CMC -- I wasn't there, but it's clear
23 | from the transcript -- was that the proposal developed collaboratively at the CMC. The
24 | expectation is that there would be caches of documents within the materials that have
25 | been produced to the regulator that related to specific categories, specific issues, and
26 | could be pre-identified as relevant and lifted and dropped to the CR. That just wasn't

1 the case. It wasn't the way that the documents were stored, the way that the
2 documents were housed or the way that they were searched for. The number of
3 documents was huge.

4 What Google did, understanding what the Tribunal was aiming to achieve, which was
5 that the CR should get those key groups of documents that were clearly relevant to
6 the issues, was to say, "Well, right, let's just step back from the generality of those big
7 pools of documents from the regulatory investigations and say there are one of the
8 subcategories, subtypes of documents that were provided to the regulators that we
9 can say we can review for clear relevance". And that's been done, but I hope you can
10 tell from the description of it that there's just a much more onerous and involved
11 exercise than was anticipated that CMC. The practical upshot has been that the
12 disclosure has been given on a rolling basis since August last year, and therefore the
13 DR and the EDQ in December ended up preceding quite a lot of the disclosure, rather
14 than following the disclosure in the way that had been anticipated at that hearing.

15 THE CHAIR: Right.

16 MS ABRAM: The consequence is that it just wouldn't have been possible in December
17 last year to give some of the information that we're now agreeing to provide as part of
18 this order. I'll just give you a simple example, if I may, a kind of accessible example
19 from the draft order. If you look on page 6 of the draft order, point 8(i).

20 THE CHAIR: Yes.

21 MS ABRAM: We agreed there to provide details of the keywords that we used to do
22 the initial disclosure exercise. That relates primarily to the CMA and the US materials,
23 those ones where there were meant to be categories of known relevant documents
24 and there weren't. In December last year, we were in the foothills of giving that initial
25 disclosure, so we couldn't meaningfully have answered that part of the EDQ in relation
26 to that disclosure. What we did instead was, and Mr Lask has shown you this bit of

1 the EDQ, we said "We do anticipate using keywords; we do anticipate using automated
2 search techniques, but we're not in a position to tell you what they were yet". And now
3 we can.

4 THE CHAIR: Okay.

5 MS ABRAM: So the short point is that in December, the process was simply -- not
6 through the fault of Google, not through the fault of CR -- at a much earlier stage than
7 had been expected when the order was made in July, and the DR and the EDQ just
8 had to reflect that because it had to reflect the point the proceedings had reached.

9 The third kind of general criticism that I want to address -- perhaps before the
10 transcribers break, before I come back to the specific paragraphs -- is this slight
11 flavour in my learned friend's submissions of a suggestion that Google hasn't made
12 real efforts on disclosure in this case. It's important that I repudiate that with real
13 strength and clarity, because the volume of disclosure that's already been given, and
14 the length that Google has gone to in order to give that disclosure, tell a really different
15 story in my submission.

16 We've given the statistics at paragraph 2 of our skeleton on page 2 there.

17 THE CHAIR: Yes.

18 MS ABRAM: You can see £2.4 million was spent by Google on disclosure. Thirty-two
19 fee earners have been dedicated to this task. Over 6,000 hours. We've sent
20 confidentiality notifications to over 400 third parties so far.

21 THE CHAIR: Yes.

22 MS ABRAM: And you'll have seen in the papers that there are 750 third parties
23 engaged by the CMA and US materials. We've disclosed nearly 120,000 documents
24 running to more than half a million pages. So the extent and the expense of that
25 process go far beyond what could have been in the contemplation of anyone at that
26 July CMC. It's important that I say that Google does take very significant exception to

1 any insinuation that it hasn't taken disclosure in this case seriously. But having said
2 that, we're very happy to answer the further requests and perhaps it will take me
3 a few minutes to go through them. So --

4 THE CHAIR: Yes, sure. Take a break. Okay. Thank you very much.

5 (11.48 am)

6 (A short break)

7 (12.01 pm)

8 THE CHAIR: Yes.

9 MS ABRAM: So getting into the detail, then, and turning to the composite draft order.
10 So issue 1(i) on the draft order, there were two minor points on that raised by Mr Lask.
11 The first is whether we -- our agreement to identify the relevant date ranges is by
12 reference to the full universe of materials as opposed to just the existing disclosure
13 repositories. The easy answer to that is yes, that's not an issue that's limited to the
14 existing disclosure repositories. Although, as you say, sir, it may very well be that that
15 answer is the date range that is covered by the existing disclosure repository.

16 Second point there is that preliminary wording in relation to question whatever of the
17 EDQ and that of course recurs throughout. We hadn't understood in fact, the reasons
18 for the PCR wanting to include those words until this morning. We were just confused
19 by them because we thought that they didn't either narrow or broaden the requests
20 and so we weren't sure why they were in there. We are somewhat perturbed by the
21 idea that they are intended to import something further from the EDQ, because the
22 requests don't actually map precisely across to the EDQ. So our understanding is that
23 there is going to be an order that sets out in the body of the order what we're required
24 to do and we submit that's the appropriate approach. We don't see there's any need
25 for additional words there. So that's request 1.

26 I'll come back to custodians and request 2, if I may, for a reason that will become clear

1 in a moment, but just skipping over to 3. This is the question of how the existing
2 disclosure repositories were created. It's essentially agreed just subject to two main
3 points.

4 In (i), our proposal is for there to be a summary identifying the core issues to which
5 each existing disclosure repository relates. We thought that a summary was a clearer
6 word to use than a narrative description. Our slight concern, residual concern, about
7 this, number of concerns about this, is that in the Ad Tech proceedings, a huge amount
8 of money has been spent, over £1 million, just on describing what was done in order
9 to create existing disclosure repositories or the equivalent. The scope of that exercise
10 is very significant. We want it to be clear what the scope of the exercise is and we're
11 content to agree to provide a summary and we will do so. Of course, if it's said that
12 the summary provided is inadequate, that would be a question -- a point that's raised
13 by the CR but a narrative description is a word that slightly sets alarm bells ringing for
14 us.

15 THE CHAIR: Right. I just get the impression that a summary, according to the red
16 wording, will just be a list of the numbers of the issues versus the repository and I also
17 suspect that it will end up with every issue against every repository. I don't know that
18 that will have any utility.

19 MS ABRAM: That is not our intention. So we ought to be able to relay that, we say,
20 in the wording. It may be that what one needs is the best of both worlds and to say
21 a "narrative summary".

22 THE CHAIR: This isn't a narrative of how the repositories were created. I mean it's
23 clearly not there.

24 MS ABRAM: So this subsection, no, it's a summary identifying how they match across
25 to the core issues. But in (ii) is the narrative description (inaudible).

26 THE CHAIR: Yes. I mean, Mr Lask says that's cured by adding "proportionate".

1 MS ABRAM: Yes. So on that, that's the second point, and that goes to both (ii) and
2 (iii) there. This question about "readily available" versus "proportionate".

3 THE CHAIR: Yes.

4 MS ABRAM: The reason why there needs to be some limitation is that -- I think it's
5 common ground -- full information is not necessarily readily available. We prefer the
6 words "readily available" because they describe the nature of the proportionality
7 limitation. Whereas if one uses the word "proportionate" that stores up scope for an
8 argument at a future CMC where we say, "Well, we thought it would be
9 disproportionate to go to lengths X, Y, and Z because the information wasn't readily
10 available" and the CR says, "Well, actually you were required to go beyond what was
11 readily available". So we say that it's reasonable to limit that exercise to what's readily
12 available. Mr Lask took you to paragraph 68 in Ms Davison's witness statement a little
13 bit earlier, which sets out the precise reasons for that.

14 THE CHAIR: Yes. Okay.

15 MS ABRAM: So that's what we say about that. And then important to highlight (iii)(b),
16 which identifies the individual custodians whose documents were searched. This is
17 the bit effectively of request 2 which we've agreed to. Request 2 seeks information
18 about the custodians that we consider appropriate for the disclosure exercise and in
19 request 3(iii)(b) we've agreed to give information in relation to the existing disclosure
20 repositories insofar as there were forensic document searches, which are those where
21 you have identified custodians, and we haven't agreed to give that information in
22 respect of the wider universe.

23 THE CHAIR: Fine.

24 MS ABRAM: But, sir, we heard what you said before the short transcribers' break and,
25 on reflection, we're content to propose a middle path in relation to that question that
26 you identified whether those custodians are sufficient.

1 THE CHAIR: Right.

2 MS ABRAM: So what we propose is added to perhaps the bottom of request 3 -- we
3 can figure that out -- is an additional subcategory, whether for each issue, Google
4 considers that the custodians identified as in response to (iii)(b) are sufficient and why.

5 THE CHAIR: How does that differ from 2 as currently drafted?

6 MS ABRAM: Well, 2 asks us to go out with a clean sheet and to identify all of the
7 potentially relevant custodians. The point that you made to me was, "Well, you might
8 not need to do that for a particular issue. What you might be able to say is, 'Well, look,
9 we shouldn't have to go out into the world because we think that the exercise was
10 sufficient in those regulatory investigations to identify the relevant custodians and we'll
11 tell you why'".

12 THE CHAIR: Right. Okay. Just help me then with how that maps on -- given
13 Mr Lask's point that there are issues in these proceedings that weren't in play in the
14 other proceedings?

15 MS ABRAM: Yes. So two points about that. The first is that would be a question for
16 us to consider as part of answering that request.

17 THE CHAIR: Right.

18 MS ABRAM: So, to the extent that the exercises done in the other investigations didn't
19 cover issues, then we will have to consider whether the custodians were sufficient.

20 The second point is, though, we don't accept, respectfully, that the gap is as big as
21 Mr Lask identified.

22 THE CHAIR: It doesn't matter -- as long as it's not completely trivial, it doesn't really
23 matter whether it's enormous or tiny. It's just that there are issues. You've got to think
24 again about issues that are in play in these proceedings that weren't in play in the
25 other proceedings.

26 MS ABRAM: Yes, sir. Although, when we talk about an enormous versus tiny gap,

1 the issues that Mr Lask took you to were the issues about causation and quantum.

2 THE CHAIR: Yes.

3 MS ABRAM: And of course one thing that regulators do absolutely have to consider
4 is the effects of an alleged anti-competitive bit of behaviour. There's a very, very close
5 overlap between causation and, to a lesser extent, quantum -- so causation and
6 effects of anti-competitive conduct. And so we are some way away from Mr Lask in
7 terms of the starting point on those issues. But --

8 THE CHAIR: Well, then you might say in what you put that, in fact, those issues
9 effectively were in play and that's a reason why all of the custodians have already
10 been considered.

11 MS ABRAM: It might well be. Yes.

12 THE CHAIR: Right.

13 MS ABRAM: The bit that we're not agreeing to do that isn't within the scope of what
14 I've just proposed is if or to the extent our answer is no, this issue wasn't sufficiently
15 covered --

16 THE CHAIR: Yes.

17 MS ABRAM: -- then we're not proposing now to go out with a clean sheet and to
18 identify additional custodians for that issue. That's because it's an extremely onerous
19 and wide reaching exercise and what the Tribunal will need to do is consider the extent
20 to which disclosure on any specific issue is really necessary, by reference to what
21 other disclosure is available. That may require some more information from the CR
22 as well as from Google.

23 Because the issues are identified at such a high level of abstraction -- again, no
24 criticism -- it's maybe that a proportionate conversation about whether there should be
25 additional custodians would require more information from the CR first, for example,
26 about how their experts intend to advance their economic case on things like causation

1 and quantum. That would enable a more targeted conversation about further
2 custodians insofar as they aren't already covered.

3 We hope that what we're proposing, this middle way, that you triggered the thought of
4 in the course of my submissions, would enable real progress to be made without us
5 doing that needle in a haystack exercise, that's what concerns us.

6 THE CHAIR: Okay.

7 MS ABRAM: So that's 3. Just a word on timing there. That exercise of identifying
8 whether we think the custodians are sufficient and why is significant. If the rest of the
9 order were to remain as we proposed, but we added that exercise, we would still be
10 able to do the other tasks by 19 June, but we'd ask for an extra six weeks to do this
11 additional task (overspeaking).

12 THE CHAIR: So which one? The --

13 MS ABRAM: The additional one that I'm proposing. So whether for each issue, we
14 consider the custodians identified as sufficient and why, we'd ask for the end of July
15 to do that.

16 THE CHAIR: That's for the middle way one, you mean.

17 MS ABRAM: The middle way, yes.

18 THE CHAIR: Right.

19 MS ABRAM: Yes. It would take very, very significantly longer to do everything that
20 the CR has asked. If we were ordered to do everything, we'd be asking for six months
21 to do it all. If we were asked to propose every keyword for every potential search,
22 every custodian, every issue in these proceedings, that is a really significant scale task
23 given the vagueness of the list of issues, the size of the Google business. We're in
24 the business here of trying to identify something sensible that can be done in
25 proportionate time limits.

26 So that disposes of requests 2 and 3 on that basis, because 2 would fall away and

1 | you'd amend 3. 4 is agreed. 5 to 7, as you noted earlier, can be taken together
2 | because they raise effectively the same issue. And what they're asking for is
3 | information about the type of each sort of document used within the Google business.
4 | It's common ground that we've answered this in respect of the existing disclosure
5 | repositories. The incremental proposed task is to do it in respect of the wider Google
6 | universe of documents.

7 | THE CHAIR: Sorry, just ...

8 | MS ABRAM: So if you look at the EDQ to see where we did this for the existing
9 | disclosure repositories, that's tab 8, page 24.

10 | THE CHAIR: Right.

11 | MS ABRAM: So if you look at 3, for example, on communications, Mr Lask showed
12 | you that we actually have answered these questions for the existing disclosure
13 | repositories.

14 | THE CHAIR: Right, and that means, "and there weren't any others" as well, was it?

15 | MS ABRAM: It means there weren't any others within the existing disclosure
16 | repository.

17 | THE CHAIR: Yes, that's what I mean.

18 | MS ABRAM: Yes, we haven't answered it for the wider universe of Google documents.

19 | THE CHAIR: So that means there were not any WhatsApps.

20 | MS ABRAM: In the existing disclosure repositories, yes.

21 | THE CHAIR: They were looked for and not found. So the disclosure was done and
22 | nothing else was found; these were the only ones that turned up in the existing
23 | repositories (inaudible)?

24 | MS ABRAM: They're the only types of documents that are in the existing disclosure
25 | repositories.

26 | THE CHAIR: Yes, (inaudible). Did you look for any others, is my question.

1 MS ABRAM: Yes, whether WhatsApps were searched for within the existing
2 disclosure repositories, I don't know the answer to that.

3 THE CHAIR: In other words, my question is were the searches for the existing
4 repositories limited?

5 MS ABRAM: I don't know the answer to that. I suppose that is reflective of the fact
6 that they don't include the wider Google universe of documents.

7 THE CHAIR: Say that again. It's reflective of ...?

8 MS ABRAM: Well, what we've done in order to answer this question is to look at what
9 types of documents are in the existing disclosure repositories. What we haven't done
10 is gone into the Google universe and see what other documents are available in the
11 Google universe; other types of documents that are available.

12 The omission of WhatsApps, for example, might be because that's just not used within
13 Google, or it might be because the US regulator didn't ask for WhatsApps. I'm just
14 saying I don't know the answer to that question.

15 But let me show you, if I may, why we're worried about this request.

16 THE CHAIR: Right.

17 MS ABRAM: Because on one level, it could just be seen as, "Well, it's a list of different
18 types of documents", and it seems innocuous. But it's not quite so innocuous as that
19 if one looks at the evidence that's submitted in support of this application. So if you
20 look at Mr Streatfeild's witness statement, which is in tab 9, on page 56 of the bundle.

21 THE CHAIR: Right.

22 MS ABRAM: And look at paragraph 43. (Pause)

23 THE CHAIR: Right.

24 MS ABRAM: So four lines up from the bottom, the final sentence of this paragraph:
25 "The CR needs Google to share information about which categories of documents
26 exist, which are important for the issues in the case, and information from a practical

1 perspective as to whether they can be retrieved and searched." [as read]
2 It's the phrase in the middle of that sentence that's troubling to us, "which are important
3 to the issues in the case", because that suggests that the CR's looking some sort of
4 qualitative analysis of which types of documents are going to be important to the case,
5 to the issues in the case, which requires us potentially to read the documents, to speak
6 to custodians or potential custodians, and to express that kind of qualitative view. That
7 just isn't -- I mean, it's not required by the EDQ normally, but those aren't the full
8 tramlines of the exercise that's to be done here. That's not something that is
9 reasonable to ask Google to do at this stage. So we're concerned about the purpose
10 and motivation of this request, and we don't agree to that.

11 THE CHAIR: Yes, but I mean, you could either in correspondence or for this hearing
12 have put in a narrative statement, a witness statement, saying, "Here are the three
13 types that do exist. We imagine there's probably some informal and unpermitted use
14 of WhatsApp, but we've got no reason to think it has anything in it." You could say,
15 "There is lots of WhatsApp, but we ...", something else, but there's no -- it's just
16 a completely dead bat at the moment.

17 MS ABRAM: At present, we don't have any information -- we, the legal team -- beyond
18 what's in that EDQ, and so to find more information, we'd have to go into the business
19 and find it. Now, there's one thing, which is identifying types of documents, like say,
20 you use Excel or say you use Microsoft Word (inaudible).

21 THE CHAIR: Right, yes.

22 MS ABRAM: Another thing is to give a sort of statement about how important we think
23 any documents that may exist may be. That requires a process of engaging with
24 custodians, and that's the thing that set alarm bells ringing for us.

25 THE CHAIR: I may have misunderstood what you just said, but you're supposed to
26 go into the business and find these things out to do the EDQ. When you say that your

1 | legal team only has the EDQ and the stuff in the existing repository, well, maybe that's
2 | so, but that's not how it should be. I mean, I'm a bit baffled by that, to be honest.

3 | MS ABRAM: So the point we're taking exception to is this idea of doing a qualitative
4 | analysis of how important the documents are likely to be, so beyond saying the
5 | documents exist or don't exist.

6 | THE CHAIR: Right, yes.

7 | MS ABRAM: That isn't a question that's ordinarily part of the EDQ process. It may be
8 | a question for discussion at disclosure CMCs -- I'm not disputing that -- but it isn't one
9 | of the questions that the EDQ asked. So what worried us about this request is the gap
10 | between the drafting of the order and the drafting of Mr Streatfeild's witness statement,
11 | which seemed to be asking for something more.

12 | THE CHAIR: That may be your concern about the request, but my query about the
13 | process is: why is it appropriate to just list three types of document when it would be
14 | pretty easy to say to the business, "Are these the only three types of document"?

15 | MS ABRAM: If that were as far as the request went --

16 | THE CHAIR: I know, but never mind what the request meant. Why has that not been
17 | done? I mean, that's a normal part of the EDQ, so that the class representative can
18 | say to you, "I'd like to see the", whatever, "Excel spreadsheets" and you can say, "Well,
19 | there'll be a million Excel spreadsheets for zero returns, so no." But they can't even
20 | ask that question at the moment, because you've just simply described what's in the
21 | existing repositories.

22 | MS ABRAM: The reason it wasn't done before now is the understanding -- like I said
23 | (inaudible) the start -- that the focus of the EDQ and DR was intended to be the existing
24 | disclosure repositories. But of course, it would be possible to take the further step.

25 | THE CHAIR: Right.

26 | MS ABRAM: What I'm saying is that Google doesn't particularly object to taking that

1 further factual step of identifying what the further documents are; it's the qualitative
2 aspect that's implied by the application that would be extremely onerous and that does
3 concern us. Onerous and vague, I suppose, as well.

4 THE CHAIR: Okay. All right.

5 MS ABRAM: So that's 5 to 7. We can also take 8 and 9 together. So 8 is keywords.
6 We've agreed to identify the keywords used for the initial disclosure searches. That's
7 the example that I gave you earlier where I said we couldn't have done that in
8 December --

9 THE CHAIR: I understand that point.

10 MS ABRAM: -- and we've agreed to do that now.

11 THE CHAIR: That's because you didn't know until you'd got on top of the disclosure
12 what the keywords that had gone into getting that collection of documents were.

13 MS ABRAM: It's not quite that actually, because the question that's been asked for us
14 here is, what did we do with the existing disclosure repositories to produce the initial
15 disclosure? So in December, we have --

16 THE CHAIR: Sorry, just give me a second.

17 MS ABRAM: So the CR's asking --

18 THE CHAIR: Okay, no, all right. Fair enough. Yes, yes. I've got you, yes.

19 MS ABRAM: Yes, we're still in that process.

20 THE CHAIR: No, I'm with you. Yes, yes.

21 MS ABRAM: So 8(ii) asked for keywords that we propose should be used for the rest
22 of the disclosure exercise. 9 asked for automated search techniques that we propose
23 should be used for the rest of the disclosure exercise.

24 We don't agree to provide those for two reasons. The first is that it would just be
25 inapposite for Google to make proposals as to keywords or automated search
26 techniques at this stage, because we're not proposing any further disclosure searches.

1 The process that's been agreed with the CR is that we provide further information, and
2 then the ball is in the CR's court to say, "Well, I think there should be further disclosure
3 on issue X or Y" or, "You ought to look for other repositories on issues A or B."

4 It's not Google's position that there ought to be further disclosure searches, and this
5 isn't a case where standard disclosure is ordered or where it would be appropriate.

6 So it's not for Google to fit in the abstract and think about every potential keyword that
7 might be applied to every potential search on every potential issue.

8 THE CHAIR: Well, keywords is 8, right?

9 MS ABRAM: It's 8(ii), yes.

10 THE CHAIR: Yes, so 9 is not keywords, right?

11 MS ABRAM: 9 is not keywords, but much the same applies there, in a less granular
12 way. Because the nature of the automated search techniques you use will depend on
13 the nature of the searches. So if there are, for example, very few, very targeted
14 searches that can be carried out, followed by a manual review, perhaps you don't need
15 any automated search technique at all. But if you've got a much bigger exercise, you
16 might really need to think carefully about automated search techniques.

17 Again, we don't know the answers to those questions in the abstract. It's for the CR
18 to tell us what they think the disclosure should be, and then we can have a discussion
19 working from there.

20 THE CHAIR: Right.

21 MS ABRAM: So we have a slight worry about these disclosure requests -- or these
22 requests in 8 and 9 -- that they would be a way of kind of racking up expense on
23 Google setting out proposals, without there really being any targeted purpose to them
24 in the context of the proceedings. (Pause)

25 THE CHAIR: Right, okay.

26 MS ABRAM: That's all I wanted to say, sir.

1 THE CHAIR: Okay.

2 Yes, Mr Lask.

3

4 Reply submissions by MR LASK

5 MR LASK: Thank you, sir.

6 It may be most helpful if I make my reply submissions by reference to the individual

7 requests that we've all been looking at in the draft order, the composite draft order.

8 THE CHAIR: Okay.

9 MR LASK: So starting with request 1, I'm grateful for the clarification that the date

10 ranges will be provided by reference to the entire landscape, not just the existing

11 repository. In relation to the words in green in request 1 which appear in a number of

12 places throughout in relation to the EDQ, Google says they're not necessary; they

13 don't add anything. As one sees from the EDQ, for example questions -- if we go to

14 the EDQ at tab B8.

15 THE CHAIR: Right.

16 MR LASK: You'll see, for example, questions 3, 4, and 5 on communications,

17 documents, databases.

18 THE CHAIR: Yes.

19 MR LASK: You have a table that needs to be filled out, and there's a question in each

20 column that needs to be answered.

21 THE CHAIR: Yes.

22 MR LASK: That's why we do think it's important that the order that is made now on

23 our application is anchored in the EDQ, so that when Google comes to comply with

24 the order, it is answering the questions set out in the EDQ. That's always been our

25 concern.

26 So it may not be quite as significant on question 1 -- on request 1 -- but if you look at

1 request 5, for example, our request 5, which corresponds to question 3 of the EDQ. If
2 you deleted the wording from request 5 that refers to the EDQ, it might be open to
3 Google only to provide an answer to column A of question 3 of the EDQ without
4 actually answering the remaining columns, and those remaining columns are
5 important. (Pause)

6 We'd be very happy --

7 THE CHAIR: Sorry, just give me a second. (Pause)

8 Right, just give me one second. (Pause)

9 Okay, all right.

10 MR LASK: I'll come on to my learned friend's other submissions on questions 5 to 7,
11 but that's just taking it in order, the requests. That was request 1.

12 My learned friend made reference to the Ad Tech proceedings and the concerns that
13 Google has about the cost of providing information in the Ad Tech proceedings. We
14 don't understand the relevance, given that those are different proceedings raising
15 entirely different issues. Ms Davison refers to the Ad Tech proceedings at
16 paragraph 68F of her witness statement, but there's no suggestion in her evidence
17 that the exercise in this case, or anything that we're seeking in this case, would require
18 a similar level of work.

19 THE CHAIR: Well, I think that's the question. I think what was Ms Abram is saying is
20 that they've learned from experience in those proceedings that giving a long and very
21 detailed description of how they did it in the other proceedings is very expensive, so
22 they don't want to do that if it's --

23 MR LASK: The point I'm making is the fact that it was very expensive in the other
24 proceedings doesn't really tell you very much about what it might cost in these
25 proceedings, and we don't have any evidence on what it might cost or how long it
26 might take.

1 THE CHAIR: No, I don't think it matters because I don't think you've actually got
2 a request that says, "You, Google, must write a long witness statement about how you
3 did it".

4 MR LASK: No.

5 THE CHAIR: No.

6 MR LASK: Request 2: custodians. As I previously submitted, this is a really important
7 request. Google have now proposed, what my learned friend called, "a middle path"
8 or "a middle way". We do say that that proposal is wholly insufficient because what
9 Google is proposing is that it has until the end of July to consider and tell us whether
10 the existing custodians are sufficient. If it decides that the existing custodians are
11 insufficient, it will simply tell us that at the end of July and it won't tell us what other
12 relevant custodians might be out there. That obviously puts us in an impossible
13 position because we need to know what other custodians might be out there in order
14 to assess the adequacy, for ourselves, of the existing repository, and in order to
15 formulate proposals for disclosure potentially from beyond that repository.

16 What Google seems to be envisaging is a scenario in which, at the end of July, it tells
17 us, "Actually the custodians aren't sufficient" then we have to wait until the next CMC,
18 which will probably be towards the end of 2026, to come back and ask the Tribunal to
19 order Google to tell us who the custodians are, and Google says that's then going to
20 take another six months.

21 THE CHAIR: Yes.

22 MR LASK: With respect, it's a wholly unacceptable level of delay that's envisaged by
23 Google's proposal.

24 Now, we don't say that they have to start from scratch. The fact that they've gone
25 through an exercise of identifying relevant custodians for the purposes of the existing
26 repository ought to provide a useful starting point for telling us about its custodians

1 more generally. It's not starting with a blank sheet of paper, but what it does need to
2 do is ask itself whether there are potentially other relevant custodians out there, and if
3 there are, it needs to tell us.

4 THE CHAIR: Yes. I think my practical question is: what are the limitations on how far
5 they -- and with what expectation of reward do they have to pursue this? There must
6 come a point when they go and ask the attorneys who did it in the States before who
7 gave them a list of 100 custodians and they say, "Well, what about this core issue?",
8 and the US attorneys say, "Well, that's not in consultation(?) with Google", and say,
9 "Well, it's not impossible, but that's really unlikely". What's the standard to which they
10 have to go looking for all these other custodians?

11 MR LASK: Firstly, it strikes us as very difficult to understand how you can ascertain
12 the existing custodians are sufficient without asking yourself what other custodians
13 might be out there. It's hard for us to know what goes on behind the scenes with
14 Google and how it perceives these enquiries, but if it was to go to Google's officers
15 that were responsible for helping provide the disclosure for the existing repository and
16 say, "Well, which custodians did you look at for any particular issue?", and the officer
17 says, "Well, custodians A, B, and C", Google then has to establish whether those
18 custodians are sufficient.

19 Perhaps it asks the officer concerned, "Might there be any others out there?" If the
20 officer concerned says, "Yes, there might be", then we need to know who they are.
21 That's the problem. If Google comes back and says, "Actually, we've thought about
22 this really carefully, these are the custodians we looked at for this issue and we are
23 pretty certain that they are sufficient", then it's quite hard for us to go behind that.

24 THE CHAIR: Yes. My question is a slightly different one: if they say, "Well, we didn't
25 ask Ms Smith in that office last time round, but looking at the delta between the issues
26 there and the core issues now, it's really unlikely that that's going to pay off".

1 MR LASK: Then it should tell us that. At least in that scenario, we know that there is
2 a Ms Smith in that office, and that can help form the basis for our discussions and
3 proposals going forward. What's not acceptable, in my submission, is not to be told
4 anything about the other custodians that might be added. That's the problem; we're
5 completely in the dark.

6 It's a submission I made earlier: there is obviously scope, in due course, for Google to
7 say to the class representative, "We don't think this particular line of enquiry or this
8 particular disclosure proposal is proportionate", and we can have a discussion about
9 that, but what's not acceptable in my submission is to be left in the dark as to potential
10 lines of inquiry.

11 THE CHAIR: Yes, no, I understand that. It's just that the way, for example,
12 paragraph 2 of the draft order is framed might be said to put an unconditional
13 obligation on them to tell you all the custodians for every issue, no matter how unlikely
14 it is that they've actually got something useful.

15 MR LASK: What it can do, in my submission, is in identifying those custodians, it can
16 tell us whether it thinks that it might not be fruitful or proportionate to pursue disclosure
17 with some of them. That's the discussion and that's why the EDQ is a starting point
18 for disclosure discussions; it's not the end of the line.

19 If Google wants to tell us, "Well, there are these custodians who might have relevant
20 material. This subset of custodians have already been spoken to for the purposes of
21 the existing repository. We don't think the remaining custodians are going to have
22 much to add, but here they are, here's where they are, here are their roles", then that's
23 a starting point for discussion and a starting point for proposals.

24 THE CHAIR: Okay.

25 MR LASK: Request 3: there was an exchange, sir, between my learned friend and
26 yourself, about readily available versus proportionate. I don't want to belabour the

1 point but --

2 THE CHAIR: Where are you at now?

3 MR LASK: Request 3(ii) and (iii). I don't want to --

4 THE CHAIR: Yes. No, I'm going to prefer proportionate, actually, because that's a sort
5 of concept that's built into the rules. I'm not saying it doesn't have a number of
6 discussions around it, but that's a concept that we all understand. Okay?

7 MR LASK: I'm grateful. I won't dwell on it.

8 Then requests 5 to 7 --

9 THE CHAIR: Yes.

10 MR LASK: Google's objection to answering these requests seems to boil down to
11 something that is said in Mr Streatfeild's witness statement at paragraph 43, where he
12 discusses what it is a class representative needs to know. Just to be clear, what we
13 are seeking is the information that is set out in the requests as set out in the draft
14 composite order. We are not saying that those requests are sort of somehow
15 expanded by the supporting witness evidence. What the supporting witness evidence
16 is intending to do is explain the rationale for the requests, and in some places, in
17 anticipation of where the discussions might go and what we might hope to obtain from
18 the discussions, if provided with adequate answers to these requests.

19 THE CHAIR: Right.

20 MR LASK: So the witness evidence, in my submission -- Mr Streatfeild's witness
21 evidence -- is not a basis for Google to object to the requests as drafted in the
22 composite draft order.

23 Indeed, I've made the submission that we think it is important that the order refers to
24 the EDQ so that the scope of Google's obligations are clear: that Google knows that
25 what we're requiring it to do is what the EDQ requires. The submission made by
26 reference to Mr Streatfeild's evidence sort of underlines that, really. We're saying it's

1 actually helpful for Google to know that what we're seeking is what's set out in the
2 EDQ.

3 Then requests 8 and 9. My learned friend said, "Well, Google doesn't think there
4 needs to be anything -- it's not Google's position that there needs to be any further
5 searches for disclosure, so it's not for Google to propose keywords."

6 We find that rather hard to understand. There has been initial disclosure in this case,
7 but no one is suggesting that disclosure that's taken place is sufficient for the purposes
8 of these proceedings.

9 THE CHAIR: Right.

10 MR LASK: Just to give an obvious example, as you'll recall from the last CMC, Google
11 says there are around 5 million documents in the US productions and the CMA
12 proceedings. We've had about 1,000 disclosed to us so far from those repositories,
13 which may suggest that there is more to come or there is going to be more needed
14 when one does a proper disclosure process.

15 We do say that even on Google's case, there's going to need to be further disclosure
16 from within the existing disclosure repository. Google says that's sufficient. We are
17 in no position to agree or disagree with that at the moment until we have the
18 information we're seeking. But even on Google's case, there's going to have to be
19 a disclosure exercise from within the existing repository. As Google says in the EDQ,
20 keywords are likely to be a part of that process. For the reasons I gave earlier, in order
21 to progress that disclosure, we are going to need to know Google's proposals as to
22 keywords, because it's Google that's in a much, much better position than the class
23 representative to know what those keywords might look like.

24 THE CHAIR: Yes, so just looking at question 8.

25 8(i) is keywords used for providing the initial disclosure by reference to the list of core
26 issues.

1 (ii) is all of the keywords for any further disclosure, whether it's from within the existing
2 repository or not, in relation to the list of core common issues.

3 MR LASK: Yes, so it's delineated by the list of core common issues. But we do say
4 we need Google's proposals as to keywords that would apply whether or not disclosure
5 is limited to the existing repository. Again, Google might say, "Well, here are the
6 keywords that we would ..."

7 THE CHAIR: Sorry, say that again. You want their proposals for keywords for ...?

8 MR LASK: We want their proposal for keywords, but in reference to the list of core
9 common issues, unlimited by the existing repository.

10 THE CHAIR: Yes, I understand that. But not beyond the list of core common issues.

11 MR LASK: Not beyond the list of issues, no. It might be that Google say, "Well, it
12 would be the same keywords whether we were confining our searches to the existing
13 repository or not". They might say that.

14 THE CHAIR: But it might be no different from the ones they've already used.

15 MR LASK: Indeed. But we need that information from Google to get the ball rolling.
16 Frankly, if they were to come back and say, "Well, if we're just talking about existing
17 repositories, it's these keywords; if we're going further, it's these additional keywords",
18 then that would sort of set alarm bells ringing really, because it would suggest that in
19 the wider universe, there were potentially relevant documents that hadn't been
20 captured.

21 THE CHAIR: I very much suspect that this is an argument about nothing, because
22 I very much suspect that their proposal is they'll use the same ones going forwards
23 and that's more or less what Ms Abram said is they've done what they've done and it'll
24 be over to you. It's a bit hard to say because you don't yet have any of the keywords
25 they've used so far.

26 MR LASK: We are completely in the dark.

1 THE CHAIR: Right.

2 MR LASK: And that's why we've really struggled to understand why this has been
3 such a struggle to get this further information out of Google because if the answer is
4 as you suggest, sir, "Well, here are the keywords we've been using so far to provide
5 the initial disclosure. We think those are the keywords".

6 THE CHAIR: Yes.

7 MR LASK: Then all right, well, that gives us a starting point. That gives us something
8 to work with.

9 THE CHAIR: Right.

10 MR LASK: But so far we haven't got any of it.

11 THE CHAIR: Well, I mean, I think it's very clear from what Ms Abram said is that their
12 proposal going forward will be what they've done already.

13 MR LASK: Right. But we would like -- we asked the Tribunal to order them to give us
14 that information.

15 THE CHAIR: Right.

16 MR LASK: Because if there is a potential difference between keywords that they've
17 applied so far and the ones that they would apply going forward, then we need to know
18 that.

19 Sir, it's worth bearing in mind that the existing disclosure, the initial disclosure that
20 they've given --

21 THE CHAIR: Yes.

22 MR LASK: -- set out most recently in the further disclosure order --

23 THE CHAIR: Yes.

24 MR LASK: -- in tab D15, only required Google to provide disclosure to the extent that
25 as of 31 March, they have been identified as clearly relevant to an issue which is likely
26 to be a core issue. We don't know whether that limitation on Google's obligation under

1 paragraph 1 of the further disclosure order would have affected the keywords it used
2 or the way in which it approached the searches but it seems possible, at least in
3 principle, that it may have done.

4 It may be the case that if one is thinking about keywords to be used going forward, not
5 qualified by paragraph 1 of the further disclosure order, it may be that there is a wider
6 set of keywords that would be appropriate.

7 THE CHAIR: Right. Okay.

8 MR LASK: I think that's all I need to say at this stage on the application.

9 THE CHAIR: Right. Okay. Thank you.

10 Anything you want to add to the matter, Ms Abram?

11 MS ABRAM: Nothing.

12 THE CHAIR: Okay.

13 (12.45 pm)

14

15 Ruling

16

17 THE CHAIR: Last year on 21 July 2025, the Tribunal made an order requiring the
18 definition of certain issues and by paragraph 4 that the defendants -- that I shall refer
19 to as Google -- should file and serve a disclosure report and an Electronic Disclosure
20 Questionnaire (EDQ) by 19 December 2025.

21 That was explained by me in a transcript passage, quoted in the Class
22 Representative's skeleton at paragraph 10, which is too long to read out in its entirety,
23 but included the following.

24 "The reason for giving Google an opportunity not to put that [which is the EDQ] in until
25 the core issues and core categories of documents have been provided is so that that
26 exercise can be simplified and reduced for Google, if it has been able to be engaged

1 and helpful in the process up to then. For example, if generous, sensible and useful
2 categories of core documents are provided which the Tribunal can be satisfied cover
3 a lot of the territory needed for disclosure in a proportionate way then the EDQ will be
4 a much easier job to do and can probably be much simpler, whereas on the other hand
5 if the core categories of documents provided are disappointingly narrow and not as
6 helpful as one might expect, then a greater degree of management going forward will
7 be appropriate."

8 Since then, the disclosure report and the EDQ have been provided and I have been
9 taken through those in quite a lot of detail, both by Mr Lask, King's Counsel, who
10 appears for the Class Representative and Ms Abram, King's Counsel, who appears
11 for Google.

12 The disclosure report and the EDQ both proceed very strongly on the basis that the
13 disclosure to be given by Google would be from disclosure given in other proceedings
14 which have been referred to in other parts of our judgments in these proceedings, but
15 in particular, US proceedings, Commission proceedings and CMA studies and
16 investigations. The document descriptions in the disclosure report refer repeatedly
17 simply to documents listed in those other proceedings, expert reports and so on, that
18 sort of level of detail.

19 The EDQ contains the following statement early on:

20 "Google proposes that the US documents, CMA documents and EC documents stand
21 as repositories of material for the sake of disclosure in this proceeding. Google notes
22 that there is an overlap between those repositories and duplication in the documents
23 they hold."

24 And then this:

25
26 "Having considered the scope of the US documents, CMA documents and EC

1 documents, though it reserves its final position on the question, Google does not
2 presently consider that further searches to identify Electronic Documents are
3 reasonable or necessary. Google proposes to approach disclosure from the position
4 that the combination of the US documents, CMA documents and EC documents
5 stands as its 'Disclosure Repository' and this EDQ and accompanying Disclosure
6 Report have been completed on that basis." [as read]

7 So then, for example, in section 3 dealing with communications, the forms of
8 communication identified are email, Google Chat and SMS, which, as I understand it,
9 are the only forms of communication in the repositories from the other proceedings.
10 Likewise in section 4, Word, Excel and electronic images and the like, there are other
11 formats as well, are also those from other proceedings.

12 Google makes two high level points, which it is convenient to deal with at the outset
13 and which dispose of some of the deeper disagreements between the parties.

14 The first is that the initial disclosure took much longer and was considerably more
15 burdensome than expected, for a variety of reasons: third-party notifications, issues
16 with privilege in the EC documents, and the categories of known relevant documents.
17 I accept that. It certainly seems that by the time that the deadline in December came
18 around, Google, for reasons which will not have been anticipated and could not
19 reasonably be anticipated, was not as far forward as it could be and that may well
20 have hindered full and complete answers and information in the disclosure report and
21 the EDQ.

22 That, to my mind, cannot reasonably be said to have discharged it from the burden of
23 complying with the Tribunal's order. At most, it would have justified, and I think did
24 justify, more time being needed.

25 The second point urged on me by Ms Abram is that Google was operating on the basis
26 that the transcript passage that I have read out had the effect that Google only needed

1 to give disclosure from the existing repositories. And in my estimation, that is clearly
2 a bad point. The transcript did not say anything of that sort. It just said that the
3 response could be modulated to whatever the common issues were. The order that
4 Google had to comply with was the Tribunal's order and if Google thought that the
5 transcript had some very specific and different meaning, then it was for Google to seek
6 an amendment to the order, or clarification. I think the overall effect of the way in
7 which the EDQ and disclosure report were drawn up has had the effect that the Class
8 Representative is faced with an almost granite wall and is not in any position to engage
9 meaningfully with Google going forwards about the continuing process of disclosure.
10 In other words, I do not think the disclosure report and EDQ, as provided, serve the
11 purpose for which they are intended under the rules.

12 I have been presented with a draft order marking up the differences between Google
13 and the Class Representative and there has been progress and I certainly accept that
14 some of this progress has been enabled by matters not in hand, for reasons I have
15 touched on, at the date of the EDQ and disclosure report in December, but which are
16 available now. The dispute has therefore boiled down to matters marked up in
17 a number of paragraphs of the draft order. The convenient way for me to give this
18 judgment is to go through those, in order.

19 Disputed paragraph 1 concerns date ranges that Google considers appropriate for the
20 purpose of searching for documents relevant to each of the issues in the list of core
21 issues. The only dispute here is about the introductory words, which Class
22 Representative seeks: "in relation to question 1 of the EDQ".

23 In fact, in relation to paragraph 1, those words do not have any material effect but in
24 relation to other questions they do. The reason it matters, I can identify (leaping ahead
25 slightly to paragraph 5), is, for example, with question 3 where the words "with
26 reference to question 3 of the EDQ" are included. Mr Lask has explained to me that

1 that is to ensure that Google answers not just in relation to column A of the table at
2 paragraph 3 of the EDQ, but in relation to the other columns as well.

3 The concern expressed during the course of the oral argument (which I would have
4 accepted) by Ms Abram is that this intended some higher standard to be met or some
5 more rigid requirement and had that been the case, I would have not been open to
6 including these words, but, as explained, the purpose of ensuring that any of the other
7 parts of the EDQ are fully answered as to all their columns, is an appropriate one,
8 I think. As I say in relation to paragraph 1, that is inconsequential in its effect.

9 I move on to paragraph 2, which is as follows:

10 "In relation to question 2 of the EDQ, the custodian(s) and/or creator(s) of electronic
11 documents who Google considers may have or have had custody of documents that
12 are or may be relevant to each of the issues in the list of core common issues by
13 reference to the relevant date ranges, for the avoidance of doubt, such as custodians
14 or creators shall not be limited to those holding documents currently contained in the
15 Existing Disclosure Repository."

16 Mr Lask has pointed out to me certain issues which are not in common, at least at
17 a formal level, between these proceedings and the earlier proceedings and he referred
18 to causation and loss, in particular.

19 Ms Abram has responded that in practical terms, those issues probably are very
20 largely covered in the earlier proceedings and I accept that it is possible they are. It
21 is possible that they are not. It is probably a question of degree but I certainly agree
22 in any event with Mr Lask's overriding submission, that it is inappropriate to have
23 limited, or going forwards to limit, the custodians to those who were identified in
24 connection with the previous proceedings.

25 It is important, to my mind, that Google turns its mind to whether there are additional
26 custodians by reference specifically to the list of core common issues, and bearing in

1 mind my indication that what was said in the transcript leading to the previous order
2 does not give it carte blanche to treat the existing disclosure as all that it needs to
3 consider.

4 So I do require Google to identify custodians and creators, as required by paragraph 2.
5 This will require human-to-human inquiries, I think, with those responsible for the
6 disclosure in the other proceedings, and by reference to the list of core common issues
7 to try to establish, in real world terms, whether there are additional custodians who are
8 likely to have material documents in addition to ones already disclosed.

9 I do not require Google to find every single conceivable custodian who might have
10 some minimal number of additional documents. If, once Google has got into this
11 exercise and is able to identify that there are categories of custodians or individual
12 custodians in relation to which or whom further inquiry is dwindlingly unlikely to be
13 useful, it can seek clarification about whether it needs to make any further inquiries.
14 There has to be some general resort to the proportionality of the exercise.

15 I hope that with my indication that it was wrong simply to limit its disclosure to that
16 which already existed, and with the indication that inquiries have to be proportionate
17 to some extent, Google can understand what it needs to do. But it should not treat
18 itself as able to make only cursory inquiries, and it needs to continue to engage with
19 the Class Representative transparently and constructively, and if necessary, with the
20 Tribunal to carry out this work in an appropriate fashion.

21 Issue 3(i) is a short one. This is as follows. The text proposed by Google is, in relation
22 to the existing disclosure repositories, “a summary identifying the Core Issues to which
23 each Disclosure Repository relates”, and as proposed by Ms Stopford, the same
24 introductory words but then “a narrative description of whether and how each Existing
25 Disclosure Repository relates to the Core Issues”.

26 On this one, I rule in favour of Ms Stopford. I do not consider that an enormously

1 detailed description is necessary. My reason for rejecting Google's proposal is simply
2 that I think it would lead to nothing more than a statement that every existing
3 disclosure repository relates to some extent to every single one of the Core Issues,
4 which I do not think would be helpful. But for Google to go further and provide
5 a narrative description, I think will be helpful.

6 (ii) and (iii) under paragraph 3 simply concern whether what is stipulated should be
7 provided to the extent readily available to Google, or to the extent proportionate. On
8 this, I also rule in favour of Ms Stopford. I do not think there is probably the greatest
9 difference between them, but "proportionate" is a standard better understood in this
10 context. Furthermore, if Google had had some very specific idea of what is readily
11 available and what is not, it could have described it in evidence, but it has not done
12 so.

13 (5), (6), and (7) all relate to questions 3, 4 and 5 of the EDQ. Because each of those
14 responses is in a tabular form, I interpret the opening words "With reference to", as
15 I indicated earlier, simply to indicate that each of the columns is to be filled in.

16 My view of these requests is rather similar to the view I formed on the custodians issue
17 on paragraph 2. It was wrong of Google to answer these simply in relation to the
18 existing disclosure repositories, but it is, as I see it, not all that likely that there are
19 other forms of communication, electronic documents or databases, which are likely to
20 provide greater amounts of material that are proportionate to provide.

21 Nonetheless, and in the same general fashion, I require Google to make inquiries and
22 describe the results appropriately, filling in the tables at paragraph 3, 4 and 5 as
23 appropriate, so that the Class Representative can understand, that there are
24 definitively no other forms of communication documents and database, or, if inquiries
25 reveal it, that there are, or, in the middle ground, that Google has made inquiries, but
26 has satisfied itself by means which it can describe, if appropriate, that although there

1 are, for example, other electronic documents, they are extremely unlikely to provide
2 a proportionate benefit in these proceedings.

3 So with that understanding, I order paragraphs 5, 6 and 7.

4 Paragraph 8 requires:

5 "(i) In so far as not already provided pursuant to 4 above, details of keywords that
6 Google has used (by reference, if applicable, to individual custodians, creators,
7 repository file types and date ranges) for the purposes of providing Initial Disclosure,
8 by reference to the issues in the Core List of Issues."

9 That is agreed.

10 Then (ii):

11 "Details of Google's proposals as the keywords to be used by it (by reference, if
12 applicable, to individual custodians, creators, repositories file types and date ranges)
13 for the purposes of further disclosure in these proceedings in relation to the issues in
14 the List of Core Common Issues." [as read]

15 Paragraph 9 is the same, except it relates to details of automated searches that
16 Google has used or proposes to use.

17 Ms Abram, in resisting these paragraphs, said that it was now over to the Class
18 Representative to make counter proposals.

19 Phrased in that stark way, I would not have agreed. But in reality, I do accept the
20 point, because I think it is very likely that the keywords and automated techniques
21 already used will, when described to the Class Representative, provide a lot of useful
22 information. I suspect that an answer to these two questions would simply be that
23 Google at the moment does not have any different proposal from that which it has
24 done already.

25 So I decline to order 8(ii), and in relation to 9(ii) I order it only in relation to automated
26 searches/techniques already used. This can, if necessary, be revisited once Google

1 provides the information which it has agreed that it should. I will be disappointed if it
2 turns out that what has already been done is uninformative or unusable going
3 forwards, but if so, then it will be possible to react to that at a later hearing. I do not
4 think that time will materially be lost. I suspect that useful discussions can take place
5 on the basis of what has already been provided.

6 I was pressed by Google in relation to the amount of time all this will take. It was said
7 that Google could give what it has offered in a couple of months, by June, but if
8 anything else was required, it was going to take much longer.

9 In my view, an avoidable and unfortunate amount of delay has already crept in as
10 a result of the events that I have described. I do not say that was deliberate on
11 Google's part, but further delay is much to be deprecated, and the proceedings do
12 need to be kept on track with an eye to what is going on in the Brook proceedings.

13 I have given, dare I say it, a narrative description of the type of work that I expect to
14 be done by Google in relation to the disputed paragraphs 2, 5, 6 and 7 of the draft
15 order. Of course, I have just said that I do not require Google to do anything under 8
16 and 9 other than identify what has already been done. I have eased Google's task
17 very considerably in relation to keywords. Therefore, I am going to require the work
18 that I have indicated to be done by the due date that Google [*sic*] has identified. If that
19 is impractical, then Google will have to apply for an extension with an appropriately
20 detailed description of what it had already done and what remains to do.

21
22 (1.10 pm)

23 MR LASK: Thank you, sir. We're very grateful. I don't think there's anything further
24 I need to say on the ruling you've just given, sir. Subject to anything my learned friend
25 has to say, there are three other very short agenda items, all of which are agreed, and
26 if you're willing to --

1 THE CHAIR: Yes, let's knock those on the head and then we can --

2 MR LASK: (Overspeaking).

3 THE CHAIR: Yes.

4 MR LASK: So item 1 on the agenda concerns the list of issues. This is now agreed.

5 It's at tab --

6 THE CHAIR: Yes, you've agreed issue 0, I saw that.

7 MR LASK: We've agreed issue 0.

8 THE CHAIR: Yes.

9 MR LASK: So if you're willing to make that --

10 THE CHAIR: Yes.

11 MR LASK: -- order, sir, I'd be very grateful.

12 The recitals to the draft composite order that we've been dealing with refers to the draft

13 list of issues, so that will no doubt need to be amended.

14 THE CHAIR: Okay, yes. Thank you.

15 MR LASK: That's that one.

16 Agenda item 3 concerns amendments to the confidentiality ring order. The parties

17 have agreed those amendments. The draft amended order signed by both parties is

18 at H61 of the bundle, page 590. (Pause)

19 THE CHAIR: Yes, okay.

20 MR LASK: I don't have any particular points to make on it. It's been signed, it's been

21 agreed, so we'd be grateful if the Tribunal could make the order.

22 THE CHAIR: Okay, yes.

23 MR LASK: Then finally, agenda item 4, the order for the process to deal with third

24 party confidentiality. Again, that has been agreed. There is a version that is signed

25 by both parties that was enclosed with a letter my solicitors sent on Friday. I'm not

26 sure if it's in the bundle, but if I might just check. It is in the bundle. (Pause)

1 It's at tab G55.6.

2 THE CHAIR: Yes. Okay.

3 MR LASK: Yes, that's the version signed by both parties, so again, we'd be very
4 grateful if the Tribunal could make that order.

5 THE CHAIR: Okay. Yes, I will do that.

6 MR LASK: I'm very grateful for the Tribunal's time. I don't have anything else to
7 address you on.

8 THE CHAIR: Ms Abram?

9 MS ABRAM: Nothing further.

10 THE CHAIR: Thank you very much.

11 (1.13 pm)

12 (The court adjourned)

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Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
...	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?