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### GOOGLE AGREES TO MEDIATE PRIVACY DISPUTE

In early October, 2014, U.S. District Court Magistrate Paul Grewal issued an order at the request of the parties requiring mediation in a dispute against Google based on 2012 changes to Google's privacy policy. The changes made to Google's privacy policy were intended to consolidate the more than seventy privacy policies that Google had in place at the time into a single unified policy that would govern all of Google's services. *Updating Our Privacy Policies and terms of Service*, GoogleBlog (January 24, 2012), <http://googleblog.blogspot.com/2012/01/updating-our-privacy-policies-and-terms.html>.

Pursuant to these changes, users experienced a single sign-in experience, whereby signing into one Google application allowed a user to be seamlessly logged in to all other Google services, such as YouTube, Gmail, Blogger, and Google Drive. This seamless integration, however, also allowed Google to compile user information from across its individual services to create a marketing profile and, additionally, to customize users' Google experiences, all without individual user consent.

In February 2013, the press began to report that individual application developers had access to identifying information about those who purchased their apps through Google Play, the company's marketplace for Android apps. The information provided to developers included user names, physical addresses, and e-mail addresses. Google defended its practice, citing an exception to the Google Wallet privacy policy that allows the company to share user information with third parties "as necessary to process your transaction and maintain your account." *Formal Complaint Regarding Google's Second Violation of Buzz Order*, Consumer Watchdog (Feb. 25, 2013), <http://www.consumerwatchdog.org/resources/ltrftc022513.pdf>. Although this information is often necessary in order to allow third-party merchants to fulfill Google Wallet orders—which are often tangible items that require shipment to a buyer's mailing address and delivery of a receipt—Google Play is an electronic-only app store, and "user transactions are routinely processed without developers even being aware of their access to user information, much less needing it." *Id.*

This unnecessary access to user information sparked concerns about how that information could be used and what it could reveal about users. According to a Consumer Watchdog complaint to the Federal Trade Commission, "Google Play apps deal with sensitive personal subjects, including health conditions and sexual activity. By disclosing personal user information to app developers, Google enables the identification of people who downloaded [these sensitive] apps." *Id.* Furthermore, the complaint expressed concern that developers—who are often younger people—may be motivated to profit off of the information by selling it to others.

A resulting lawsuit brought by users challenged this aggregation of user data as a violation of their privacy rights. *Elizabeth Warmerdam, Google Must Mediate Privacy Claims*, Courthouse News Service (October 3, 2014), <http://www.courthousenews.com/2014/10/03/72093.htm>. In April, Google responded to user concerns by updating its commerce site to display less user information to developers; the website now displays an anonymous list of app purchases without disclosing the name of each individual purchaser.

In July, Judge Grewal issued a ruling dismissing all the complaints in the original suit, but allowing the suit to proceed under a breach-of-contract claim for the disclosure of user information to third party app developers and a claim for fraud under the California Unfair Competition Law. *In re Google, Inc. Privacy Policy Litigation*, -- F. Supp. 2d ---

(N.D. Cal. 2014). In his written decision, Grewal determined that the plaintiffs had sufficiently alleged that Google had “left a privacy policy in place which led consumers to believe that access to their data would be limited to certain groups, even though it knew that it planned to distribute the data outside of those groups.” *Id.* Additionally, Judge Grewal determined that the plaintiffs had sufficiently plead that they relied on Google’s policies in their decisions to use Google Play and to download applications.

Although the July decision allowed the claims to go forward, in September the parties filed with the court a Stipulation and Proposed Order Selecting Mediation (available at <http://www.courthousenews.com/2014/10/03/Google%20Mediation.pdf>). Judge Grewal signed the order giving the parties to the lawsuit until early February to submit to mediation. On October 9th, the parties filed notice with the court of their scheduled mediation, set for January 22, 2015 at Durie Tangri Offices in San Francisco, California.

In their class action, the users sought damages and costs, as well as any other relief the court deemed necessary. Although it is unclear what the result of the impending mediation might be, users feel that their privacy has been violated. This, in turn, can lead to distrust in Google’s respect for its users’ data and threaten the company’s reputation. Thus, both sides of the dispute have an interest in restoring user confidence, and issues such as these—where both parties seek a similar outcome—are particularly well suited for mediation. Through the mediation process, Google will be able to engage in a constructive dialogue with its users, in which both parties can venture outside the strict courtroom environment and explore new and unique possibilities for resolution.

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