

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 1:20-cv-03010-APM

HON. AMIT P. MEHTA



**PLAINTIFFS' MOTION TO SANCTION GOOGLE AND COMPEL DISCLOSURE OF  
DOCUMENTS UNJUSTIFIABLY CLAIMED  
BY GOOGLE AS ATTORNEY-CLIENT PRIVILEGED**

Plaintiffs respectfully move the Court to sanction Defendant Google LLC (Google) and compel the disclosure of documents unjustifiably claimed by Google as attorney-client privileged. Plaintiffs have conferred with Google's counsel pursuant to Local Rule 7(m), and Google opposes this motion. Plaintiffs request an oral hearing.

Pursuant to its inherent authority, the Court should sanction Google for its intentional efforts to misuse the attorney-client privilege to shield ordinary-course business communications from discovery, harming Plaintiffs, undermining their discovery efforts, and subverting the judicial process. In a program called "Communicate with Care," Google trains and directs employees to add an attorney, a privilege label, and a generic "request" for counsel's advice to shield sensitive business communications, regardless of whether any legal advice is actually needed or sought. Often, knowing the game, the in-house counsel included in these Communicate-with-Care emails does not respond at all.

In 2016, Google instructed employees to create artificial indicia of privilege for all written communications related to revenue-share agreements and Mobile Application Distribution Agreements (MADAs), the exclusionary agreements at the heart of this action. Google reiterated those instructions after the Department of Justice issued its first Civil Investigative Demand in the investigation preceding this case. The Court should, therefore, sanction Google for its deliberate and deceptive misuse of the attorney-client privilege and order the company to produce, unredacted, all emails between non-attorneys where included in-house counsel did not bother to reply, indicating that any request for legal advice was most likely a pretext.

Alternatively, the Court should hold that Google has not, and cannot, make the necessary showing to support its privilege claims over these communications, and order these same documents produced immediately.

Accordingly, Plaintiffs' respectfully request that this Court order that:

1. No later than May 2, 2022, Google must produce all withheld or redacted communications (including attachments and linked documents) in unredacted form where an in-house attorney was included but did not respond in the chain of communications with non-attorneys.
2. No later than May 2, 2022, Google must provide a single privilege log for all of the documents on which Google continues to maintain an attorney-client privilege claim. This privilege log must not include an entry for any document on which Google no longer claims attorney-client privilege, including documents produced in response to this Order.
3. No later than May 2, 2022, Google must provide an index of all documents that Google





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