



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

July 8, 2008

Sergey Brin
President of Technology
Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043

Peter Fleischer
Global Privacy Counsel
Google Inc.
1600 Amphitheatre Parkway
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Dear Mr. Brin and Mr. Fleischer,

Re: Disclosure of YouTube Users' Personal Information to Viacom

I am writing you today to urge Google to appeal the July 3, 2008 ruling of U.S. District Court Judge Louis Stanton, requiring Google to disclose information relating to YouTube users to Viacom. I expressed my deep concerns about the privacy aspects of the ruling when I was invited to discuss this topic on Canada's national TV morning news program, Canada AM. You are no doubt aware of the shortcomings of the disclosure order and its ancillary protection order, which are particularly disturbing from a privacy perspective.

I was astounded to learn that Google had been ordered to disclose certain YouTube information, which includes users' login IDs and IP addresses, for use in Viacom's copyright infringement lawsuit against YouTube. In calling the privacy concerns "speculative," Judge Stanton failed to consider that user login IDs and video viewing habits can reveal a great deal of sensitive personal information. Kurt Opsahl, counsel for the Electronic Frontier Foundation, stated that if "any single one of the YouTube users in the Logging database picked a Login ID that does identify that user (i.e. if my YouTube login was kurtopsahl) then the Logging database information about viewing habits is protected" by the U.S. *Video Privacy Protection Act*.

It struck me that the Judge's order ignored key elements of the U.S. *Video Privacy Protection Act* which, "prohibits video tape service providers from disclosing information on the specific video materials subscribers request or obtain." The Act applies to "prerecorded video cassette tapes or similar audio visual materials." Judge Stanton should have considered the application of this law to the YouTube context.

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Despite the fact that the protection order attempts to limit the authorized uses or disclosures of YouTube users' information by Viacom, it is insufficient. This is due to the fact that any form of disclosure of personal information inevitably increases the potential risk of unauthorized uses of personal information. Witness the example of identity theft: the majority of instances of identity theft result from insider abuse. Companies simply cannot guarantee that information, once obtained, will not be subject to unauthorized use or disclosure.

I appreciate that you have offered a compromise to Viacom, in an effort to minimize the amount of personal information that will be disclosed under the order. However, as you know, discrete pieces of information such as a last name or date of birth used in a login ID may serve to identify an individual. Further, "anonymous" viewing habits may nonetheless yield clues about a user's identity. Simply stripping certain data fields from a database may not be sufficient to safeguard the privacy of individuals.

Academic research conducted in both the United States and Canada has demonstrated how it is possible to re-identify individuals by linking anonymous databases with publicly available databases of personal information, such as telephone directories. The recent public release of three months of search queries of AOL users provides a chilling example of the potential threat to privacy posed by the re-identification of individuals from "anonymous" data. In this particular case, the search queries of user number 4417749 were used to identify the user by name, gender, age, marital status, city and state of residence. Upon discovering what AOL had done, the user said, "My goodness, it's my whole personal life ... I had no idea somebody was looking over my shoulder."

While I do have sympathy for the rights of intellectual property holders, businesses should not, in my view, rely on the surveillance of consumers to protect their copyright interests. It is not acceptable to allow copyright enforcement to come at the expense of users' privacy.

Google has successfully fought broad government subpoenas for users' search records in the past. Mr. Brin was quoted as saying that it was Google's "obligation" to protect users' privacy. Google now has the opportunity to champion users' privacy in this case, and to garner widespread support from the privacy community and the public by taking decisive action. I would be glad to offer my assistance in any way to advance the privacy interests of YouTube users. If there is anything I can do in this regard, please let me know.

Sincerely yours,



Ann Cavoukian, Ph.D.
Commissioner

cc. Jane Horvath, Senior Privacy Counsel, Google Inc.
Catherine Lacavera, Senior Litigation Counsel, Google Inc.
Ken Anderson, Assistant Privacy Commissioner and General Counsel