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# Jenner & Block Fights Google's Demand for Client Records

Tech company claims files are relevant to its court battle against Mississippi's AG.

Zoe Tillman, The National Law Journal

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Google Inc. has long clashed with the Motion Picture Association of America over how the tech company polices third-party content online — including illegal copies of movies and television shows. Those tensions flared this month as Google took the association and its lawyers at Jenner & Block to court to try to squeeze documents from the law firm about its work for the MPAA.



Google in March demanded records from Jenner & Block, the MPAA and the consumer advocacy group Digital Citizens Alliance. Earlier this month, Google asked a Washington federal district judge to enforce the subpoenas, claiming the documents would reveal "anti-Google" lobbying efforts that were relevant to pending litigation between Google and Mississippi Attorney General Jim Hood (left).

Jenner & Block, which is representing itself and the MPAA, filed papers on June 15 arguing that the subpoenas were overbroad and irrelevant to the Mississippi case Google filed against Hood. The firm said many of the documents that Google wanted were protected by attorney-client privilege and the First Amendment, and that Google was abusing the litigation process in a hunt for ammunition for a public relations battle.

"The most fundamental purpose of these subpoenas is to send a message to anyone who dares to seek government redress for Google's facilitation of unlawful conduct: If you and your attorneys exercise their First Amendment right to seek redress from a government official, Google will come after you," Jenner & Block partner David Handzo wrote. "The court should not allow Google's abuse of the litigation process."

A Google spokesman declined to comment. Google is represented by Wilson Sonsini Goodrich & Rosati. Wilson Sonsini attorneys David Kramer in Palo Alto and Veronica Ascarrunz in Washington did not return a request for comment.

In the court fight in Mississippi, Google claims Hood unconstitutionally investigated the company's practices and threatened civil and criminal legal action against the company. The underlying dispute concerns third-party content online that Hood and others, such as the MPAA, find objectionable — ads for prescription drugs or videos of copyrighted material posted on Google-owned YouTube, for instance.

Google has alleged Hood illegally targeted the company after it refused to take down content that Hood deemed problematic.

In court papers filed on June 1 asking U.S. District Judge James Boasberg in Washington to force compliance with its subpoenas, Google said Jenner & Block, the MPAA and Digital Citizens Alliance helped to orchestrate Hood's alleged campaign against the company. The subpoenas seek records of any communication with Hood.

"To date, the subpoenaed parties have produced nothing," Google's lawyers wrote. Jenner & Block, the MPAA and the Digital Citizens Alliance "have withheld all responsive documents, objecting that they are irrelevant or protected by some unidentified and unsubstantiated privilege."

Google's lawyers rebuffed privilege claims, saying the subpoenas were narrow and directly relevant to the Mississippi action.

"More fundamentally, the documents are likely to show that the attorney general's investigation was intended not to uncover supposed violations of Mississippi law, but instead to coerce Google into silencing speech that the subpoenaed parties do not like (such as search results, user-generated content and advertising), in violation of Google's constitutional rights," Google's lawyers said.

## **FIRM RESPONDS**

Jenner & Block said in its response to Google that the MPAA's efforts to work with Hood were "unexceptional and entirely legitimate." The firm said it and the MPAA had already agreed to turn over documents exchanged with Hood, but Google "insists on more."

"Google demands documents that the attorney general never saw, and that instead include the internal deliberations of the MPAA, its communications with its members, and the legal advice of Jenner, as well as communications with others similarly aggrieved by Google's conduct, on the misguided theory that such documents somehow are probative of Attorney General Hood's intent," Handzo wrote.

The Digital Citizens Alliance also filed papers last week objecting to Google's request to compel compliance with the subpoenas. The group, represented by Washington's Massey & Gail, said Google's request was premature and that the company failed to engage in "good faith" efforts to resolve any differences.

Google earlier this month also filed papers in the U.S. District Court for the Southern District of New York asking that court to enforce subpoenas sent to Twenty-First Century Fox Inc.,

NBCUniversal Media Inc. and Viacom Inc., also related to the Mississippi case.

In March, U.S. District Judge Henry Wingate in Mississippi denied Hood's motion to dismiss Google's lawsuit. Wingate also granted Google's request for a preliminary injunction blocking Hood from taking action against Google.

Wingate said he was "persuaded that Google has demonstrated a substantial likelihood that it will prevail on its claim that Attorney General Hood has violated Google's First Amendment rights by: regulating Google's speech based on its content; by retaliating against Google for its protected speech (i.e., issuing the subpoena); and by seeking to place unconstitutional limits on the public's access to information."

Hood is appealing Wingate's decision. Wingate denied Hood's request to put the district court litigation on hold as the case goes before the U.S. Court of Appeals for the Fifth Circuit.

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