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## Google Thoughts on DOJ Subpoena

Stock Rating  
**Overweight-V**

Industry View  
**Attractive**

### DOJ Subpoena Background

As was widely reported last week, the Department of Justice (DOJ) is preparing a defense of the constitutionality of the COPA (Child Online Protection Act). It is preparing this because the American Civil Liberties Union (ACLU) has sued the DOJ, "seeking a declaration that COPA violates the First Amendment of the Constitution, and also seeking corresponding injunctive relief," according to court documents. The DOJ wants URLs available through queries on Google's search engine and queries entered by users during certain time periods. The DOJ wants these datasets for its experts to analyze as they prepare their legal case. After negotiations with Google, the DOJ narrowed its request to: 1) a random sampling of 1MM URLs from its then-current search database and 2) a random sampling of 1MM search queries submitted to [www.google.com](http://www.google.com) on a given day.

The DOJ wants to use the data to "create a sample world-wide web against which to test various filtering programs for their effectiveness." The DOJ believes that "reviewing URLs available through search engines will help [the DOJ] understand what sites users can find using search engines" and "to estimate the prevalence of harmful-to-minors (HTM) materials among such sites." The DOJ believes that "reviewing queries will help [the DOJ] understand the behavior of current web users," and "to estimate how often web users encounter HTM materials through such searches."

While other online search-related companies (including Yahoo!, Microsoft and Time Warner / AOL) complied, in part, with requests from the DOJ's seeking similar or related kinds of information, Google, after negotiations with the DOJ, objected to the request and the DOJ has asked the court to compel Google to comply with the DOJ's data request.

### Key Ratios and Statistics

Reuters: GOOG.O Bloomberg: GOOG US

Internet & Consumer Software / United States of America

Shr price, close (Jan 23, 2006)	\$427.50
Mkt cap, curr (mm)	\$130,594
52-Week Range	\$448.96-172.57

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Based on its correspondence, Google is taking a position that the DOJ's request is too broad; that the DOJ can and should get relevant data from public sources; and that disclosure of such large data sets could expose Google trade secrets or possibly reveal private information that could be tied to specific users.

From a legal process perspective, we expect Google's response should be forthcoming within thirty days. Then the DOJ will respond and there will be oral arguments followed by a court decision – all in, this could take months. And, assuming an appeal, a final decision could take a year-plus-or-minus for an outcome.

While court rules general allow parties to a lawsuit to seek relevant evidence from non-parties, the DOJ subpoena to Google is rather unusual in that it is asking a private company to divulge large quantities of internal commercial records to assist government experts in analyzing how people use the Internet. In the more ordinary case, a party to a lawsuit would

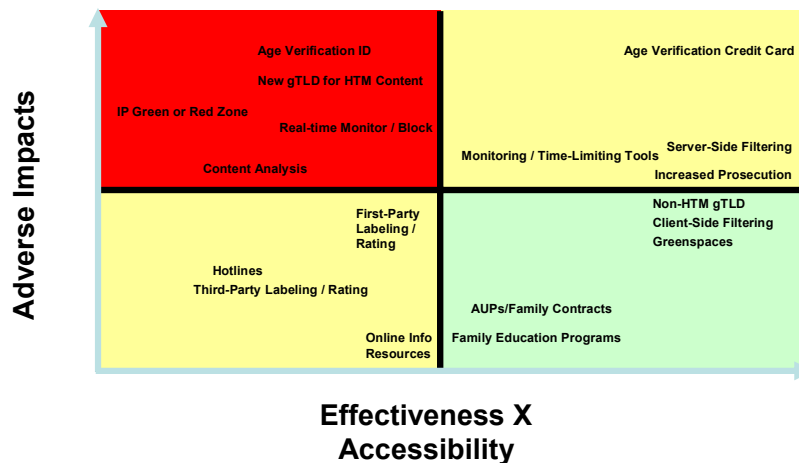
be expected to have its own experts derive or create such data on their own, from public sources, rather than attempting to shift the burden and cost of the exercise to an uninvolved non-party. Federal court rules say that courts should bar or limit subpoenas asking non-parties to disclose "trade secret or other confidential research, development or commercial information" if the requested data can be obtained through other less burdensome means, and that courts should assure that non-parties who are ordered to comply with such subpoenas are reasonably compensated for doing so.

### COPA Background

The purpose of COPA (Child Online Protection Act), signed into law in 1998, is to "prohibit online sites from knowingly making available to minors material that is 'harmful to minors' (sexually explicit material meeting definitions set forth in the Act). Commercial providers of 'harmful to minors' material may defend themselves against prosecution by restricting the access of minors to such material.'

Exhibit 1

### COPA Commission Scattergram of Technologies and Methods



Source: <http://www.copacommission.org/report/>. The horizontal axis shows scores for the combination of effectiveness and accessibility. The vertical axis shows cumulative scores for user cost, cost to sources of otherwise lawful harmful to minors (HTM) materials and adverse impacts on privacy, First Amendment values and law enforcement. gTLD = Generic Top-Level Domains.

When Congress passed COPA it created an independently funded temporary commission (with 18 representatives from the private sector, federal government and non-profit organizations) to study "various technological tools and methods for protecting minors from material that is harmful to minors."

This group published a report in October, 2000 that focused on "a wide range of child-protective technologies and methods, including filtering and blocking services; labeling and rating systems; age verification efforts; the possibility of a new top-level domain for harmful to minors material; 'greenspaces' containing only child-appropriate materials; Internet monitoring and time-limiting technologies; acceptable use policies and family contracts; online resources providing access to protective technologies and

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methods; and options for increased prosecution against illegal online material.” See scattergram (Exhibit 1) that scores the positive and negative attributes of each of the technologies and methods evaluated in the report.

The commission concluded that “no single technology or method will effectively protect children from harmful material online....a combination of public education, consumer empowerment technologies and methods, increased enforcement of existing laws, and industry action are needed to address this concern.”

COPA represented an effort by Congress to come up with a statutory scheme for regulating sexually oriented content on the Internet that is likely to be seen by minors, and it was enacted after the Supreme Court struck down on First Amendment grounds parts of an earlier federal law, called the Communications Decency Act, which had similar aims. Because the content targeted by COPA includes content that falls short of the legal definition of “obscenity,” and because it is difficult or impossible to effectively limit what minors see on the Internet without simultaneously restricting what adults may see, many legal experts believe that COPA violates the First Amendment. The court hearing the ACLU challenge to the statute has preliminarily enjoined the government from enforcing the statute’s prohibitions during the pendency of the ACLU lawsuit.

## The Problem

### *Walking in the DOJ’s Shoes*

Pornography can be found easily on the Internet by directly visiting a large number of sites or using web or P2P (peer-to-peer) search engines. comScore Media Metrix estimates that 72MM U.S. online users (43% total of users) visited adult content sites in August 2005.

According to the Wirthlin survey, in 2002, 81% of Americans believed federal laws against Internet obscenity should be vigorously enforced, and 70% believed that strongly. 70% of Americans believed these laws were being vigorously enforced.

### *Walking in Google’s Shoes*

Google’s mission is to “organize the world’s information and make it universally accessible and useful.” To accomplish this goal, it is crucial for Google to have the trust of its users (consumers and vendors). Trust has been key to Google’s success to date. And it is impressive success: 1) 427MM

unique global users in 11/05 (up 38% Y/Y) per comScore Media Metrix; 2) 9B global searches in 11/05 (up 66% Y/Y) per comScore Media Metrix; 3) \$1.6B in CQ3 gross revenue (up 96% Y/Y); 4) \$600MM in CQ3 operating income, excluding stock compensation (up 113% Y/Y); 5) a market value of \$136B (as of 1/23/06) placing it #33 in the world and #18 in the U.S., according to FactSet. In addition, Google is the market leader for U.S. Web searches with 46% share, Yahoo (23%), and MSN (11%) in 11/05, per Nielsen / NetRatings.

The size and growth of the aforementioned numbers speaks to the power of Google’s core assets (data and the ability to manage the data). Google does not want to share its data and it doesn’t want to give its users the perception that their privacy may be violated. Being an advocate for user privacy rights should serve, at the margin, as a positive for brand loyalty, in our view.

A key issue for Google is its data is likely to get more valuable at a rapid clip and subsequently, it will become more relevant to more parties, and the company will, in our view, potentially receive more and more requests for the data.

## A Solution

While Google and its industry cohorts routinely process and comply with much more targeted requests from law enforcement agencies investigating crimes or terrorism and from private litigants engaged in run of the mill civil disputes, this latest controversy is different because it involves a sweeping request for large masses of commercially valuable information.

Ironically, while initial news reports about the latest controversy focused on the privacy implications of the DOJ subpoena, in fact the more routine requests — which can involve disclosure of personally identified information — are more likely to involve significant privacy issues than disclosure of the anonymous information at issue here. The larger issue here is whether, and on what conditions, the government and other litigants should be permitted to appropriate to their own cause large quantities of valuable commercial data generated by a private company such as Google.

As a global market and business leader who may face a growing number of such sweeping requests for its data, Google should have a strong interest in the development of reasonable standards regarding when and whether it should

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be expected to comply with such requests. The court's decision in this particular case will likely provide important guidance in this regard for all concerned — including the government, Google and other industry players. In any event, it's key for Google and its competitors to engage in a constructive dialogue with the government about ground rules for dealing with this potentially recurrent problem in the future.

## **Company Description**

Google Inc. serves its users by developing products that enable people to more quickly and easily find, create and organize information. The company's innovations in web search and advertising have made its web site, Google.com, a top Internet destination. Google maintains the world's largest online index of web sites and other content, and makes this information freely available to anyone with an Internet connection.

## **Industry View: Attractive**

Attractive

## **GICS Sector: Information Technology**

Strategist's Recommended Weight: 18.2%

S&P 500 Weight: 15.2%

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