

BEFORE THE INFORMATION REGULATOR

In the matter between

**CAXTON AND CTP PUBLISHERS AND PRINTERS
LIMITED**

Complainant

and

GOOGLE LLC

Respondent

GOOGLE IRELAND LIMITED

Second Respondent

GOOGLE SOUTH AFRICA PROPRIETARY LIMITED

Third Respondent

SUPPORTING AFFIDAVIT: PAUL MICHAEL JENKINS

I, the undersigned,

PAUL MICHAEL JENKINS

do hereby make oath and say that:

1. I am an adult male and the Chairman of Caxton and CTP Publishers and Printers Limited ("**Caxton**"), the Complainant.
2. The facts contained in this affidavit fall within my personal knowledge and are both true and correct.
3. I have the requisite authority to depose to this affidavit on behalf of Caxton.
4. Where I make legal submissions, I do so on the basis of legal advice received from my legal representatives, which I believe to be correct.


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INTRODUCTION

5. This is a complaint made in terms of section 77A(2)(d)(ii) of the Promotion of Access to Information Act 2 of 2000 (“**PAIA**”). It relates to Caxton's request for access to records directed to the information officer for Google LLC, its Irish and South African subsidiaries Google Ireland Limited and Google South Africa Proprietary Limited (collectively the respondents, “**Google**”).
6. Caxton requests that the Information Regulator (“**Regulator**”) find that Google's extension dated 1 April 2024¹ (the “**Extension**”) (a copy of which attached hereto as “**Annexure A**”), in response to Caxton's Request² submitted to Google on 4 March 2024 (the “**Request**”), is unreasonable and that Google must provide the records requested by Caxton immediately.
7. I structure the remainder of this affidavit as follows:
 - 7.1 first, I set out the contextual framework and procedural history of the matter; and
 - 7.2 second, I set out a narrative account of the credible evidence that exists as to why Google is likely, in my submission, to be acting in bad faith and that Google's extension is *ultra vires*.

CONTEXTUAL FRAMEWORK AND PROCEDURAL HISTORY

¹ But received by Caxton on 2 April 2024

² Caxton's request to Google dated 4 March 2024 (a copy of which attached hereto as “**Annexure B**”). Following the Regulators recent approach of requiring requestors to submit to the Regulator requests made on Form 2 rather than forms that are comply with the provisions of PAIA, out of an abundance of caution Caxton submitted a second request to Google (a copy of which attached hereto as “**Annexure C**”). It is Caxton's view that Annexure B remains a valid request in terms of PAIA and that any relevant time periods stipulated in PAIA commenced from the date of submission of Annexure B.

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8. Caxton wishes to achieve an equitable licensing arrangement which accounts for the revenues derived by Google from exploiting Caxton's copyright protected news content, which Caxton disseminates in the exercise of its constitutionally protected right of freedom of expression as enshrined in section 16 of the South African Bill of Rights.
9. Caxton is legally entitled to protect its various rights and is entitled to require, as of right, that its commercial arrangements with Google reflect the value of Caxton's content unlawfully expropriated by Google and the content provided to Google by Caxton, under licence. Caxton seeks to protect, enforce and exercise such rights, amongst others, by, *inter alia*, agreeing on a fair remuneration model with Google, for the use of Caxton's proprietary news content (the "**Caxton Objective**"). The Caxton Objective may be achieved by way of negotiation with and/or by way of legal proceedings against Google.
10. While Caxton remains committed to the Caxton Objective, an intractable obstacle persists. As Caxton has repeatedly emphasised, Google possesses information that Caxton reasonably requires in order to formulate its commercial and legal position in the enforcement of its rights and in any negotiations. Yet, despite Caxton's requests for access thereto, adequate information has not been forthcoming, which would render any negotiations to be one-sided, imbalanced and ultimately futile.
11. The abovementioned information asymmetry makes it impossible for the parties to proceed on an equal basis, which is a prerequisite for any commercial negotiation,



or for the enforcement of rights and the formulation of claims for damages and or equitable licensing under copyright.

12. Google and Caxton are both stakeholders contributing to the South African Competition Commission's Media and Digital Platforms Market Inquiry ("Inquiry") initiated by the Competition Commission in terms of 43B(1)(a) of the Competition Act, 89 of 1998. The Inquiry is investigating whether there are any market features inherent to digital platforms markets that impede, distort, or restrict competition, prejudicing the interests of South African publishers.
13. News publishers (such as Caxton) have indicated that digital platforms (such as Google) derive value from its content, but that the information required to measure the value has not been made available by these platforms. Another submission made by news publishers is that the digital advertising market is distorted in that digital platforms have access to data that news publishers require to compete fairly in these markets. News publishers have also explained that digital platforms have become gatekeepers of information, who facilitate how and to whom news and commercial publisher content is distributed using methods and according to algorithms that have not been disclosed.
14. During the Inquiry process, Google has *inter alia* claimed that it does not gain any material value from Caxton's news content and that Google provides significant benefits to Caxton and other news publishers.
15. The information requested in the Request is required by Caxton to interrogate claims made by Google to the Inquiry. Google's claims made to the Inquiry affect not only Caxton, but the entire South African news industry. For Caxton and other media companies to respond to these claims, more information from Google is required, as set out below.

16. Caxton, as a member of the South African news industry, has the right to freedom of the press, and indeed is required to protect this right. Currently, this right is under threat due to, in our view, the distorted features of digital markets. Google plays a dominant role in these markets, which has caused a market failure and has resulted in inherent information asymmetry between market participants. These market distortions form the crux of the Inquiry's investigation, and it is Caxton's right and duty to gather all the information it can, to better inform the Inquiry in its investigation.

Google's withholding of information prejudices Caxton's rights

17. As indicated above, Caxton requires that Google provide the information Caxton needs in order to pursue fair and reasonable compensation, and in order to sustain its constitutionally protected right to freedom of expression and the press, which it cannot exercise in the absence of financial accountability by Google. If Google provides the Inquiry with the information required by South African media at large, such information will not be accessible by market participants due to the confidentiality regime imposed by the Competition Act on which Google has and will indubitably rely, rendering such disclosure meaningless.
18. Caxton also requires the records requested in the Request in order to formulate a legal claim against Google. Google has publicly acknowledged³ that it is subject legal claims of a similar nature to the claims Caxton may consider bring against Google. It is therefore reasonable for Caxton to consider formulating a legal claim against Google and requires the records in the Request to do so.

³ At page 13 of Item 1A of Google's ultimate holding company's (Alphabet Inc.) 2022 Annual Report it is stated that: *[Google is] subject to claims, lawsuits, regulatory and government investigations, other proceedings, and consent orders involving competition, intellectual property, data privacy... commercial disputes, content generated by our users, goods and services offered by advertisers or publishers using our platforms, personal injury, and other matters.*

19. Failure by Google to provide the records requested the Request imposes a limitation upon Caxton's right to freedom of expression – a right that Caxton exercises in order to participate in the markets which the Inquiry is investigating. Without freely exercising its Section 16 constitutional right, Caxton cannot compete freely in the market at hand.
20. Caxton's rights are prejudiced in that it does not have access to the information it needs in order to give effect to its rights under the Constitution or the Competition Act or the Copyright Act.
21. Section 32 of the South African Constitution and the Promotion of Access to Information Act entrenches Caxton's right of access to this information.

Caxton's Initial Request

22. On 6 February 2024 Caxton submitted a request for information to Google ("**Caxton's Initial Request**") (a copy of which attached hereto as "**Annexure D**"). Caxton's Initial Request was not made in terms of PAIA, however the information sought and rights relied on by Caxton were substantively the same as the rights relied upon and records requested in the Request.
23. Caxton provided Google with a reasonable period in which to provide the information requested in Caxton's Initial Request.
24. Google responded to Caxton's Initial Request on 29 February 2024 ("**Google's Initial Refusal**") (a copy of which is attached hereto as "**Annexure E**") and refused to provide Caxton with the information request on the basis that *inter alia* there was no legal basis for Caxton's request for information and that the information requested is not required by Caxton to:
 - 24.1 negotiate or conclude a commercial agreement with Google;

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24.2 protect the right to press freedom; or

24.3 interrogate claims made by Google to the Inquiry.

25. Caxton strongly refutes the claims made by Google in Google's Initial Refusal.

26. In Google's Initial Refusal, Google is notably silent on whether Caxton requires the information requested to protect its right to litigate against Google, as detailed in paragraph 18 of this affidavit.

The Request and ultra vires unilateral extension

27. On 4 March 2024 Caxton submitted the Request to Google.

28. At paragraph three of the Request it is stated that Caxton requires the records requested in order to exercise and protect Caxton's rights, namely:

28.1 the right to meaningfully participate in the Inquiry;

28.2 the right to fully consider and vindicate any actionable rights and corresponding claims which it may enjoy against Google in law, including but not limited to its right to be protected from unlawful competition practices and/or the intellectual property rights subsisting in the news content which it produces; and

28.3 the right to media freedom is entrenched in section 16 of the Constitution of the Republic of South Africa, 1996.

29. Caxton requested that Google provide the requested records on an urgent basis.

30. On 2 April 2024 Caxton received the Extension in terms of which Google extended the period to provide the records until 1 May 2024 in terms of section 57(1)(a) of PAIA.


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31. Google's apparent justification for the Extension is that the Request is for a large volume of records (44 records were requested, which does not constitute a 'large volume'), that there were a number of public holidays during the initial period for response and that compliances with the initial period would unreasonably interfere for the activities of Google.
32. Caxton is of the view that Google's justification for the Extension unreasonable, wanting and insincere, as is more fully explained in paragraphs 33 and 35 of this affidavit.

CREDIBLE EVIDENCE EXISTS AS TO WHY GOOGLE IS LIKELY ACTING IN BAD FAITH AND THAT GOOGLE'S EXTENTION IS *ULTRA VIRES*

33. Given its previous attitude and as set out further below, Caxton views the Extension as a bad faith tactical manoeuvre by Google to obfuscate and/or unnecessarily delay the Request, in an effort to ultimately avoid fully providing the records in the manner that Caxton requires in order for Caxton to protect and exercise its rights as set out in paragraph 28. Caxton bases this view on the following facts:

- 33.1 in Google's Initial Refusal, Google itself stated that it is of the view that Caxton has no legal basis for the information requested in Caxton's Initial Request. Such information is directly correlated to the records requested in the Request and therefore it is reasonable to assume that Google has no intention to provide the records requested; and
- 33.2 as a default it appears to Caxton that Google indiscriminately refuses to provide information and records by resorting to untested and blanket reliance on perceived legal or other restrictions. For instance, Google has informed the Inquiry panel that it will not provide certain information, including



information that likely relates to the records requested by Caxton on the basis that Google:

- 33.2.1 is regulated public company in the United States and is subject to legal restrictions that are even outside of the competence of anyone on the Inquiry panel;
 - 33.2.2 has already provided information under confidence to the Inquiry, and that Google does not disclose certain information to the public;
 - 33.2.3 cannot provide information that is covered by ongoing investigations that are happening in other jurisdictions; and
 - 33.2.4 cannot provide information that is covered by ongoing litigation.
34. On this basis it seems highly unlikely that Google intends on fully complying with the Request and that the Extension was made in bad faith.
35. Further, there appears to be no legal basis for the Extension. It is reasonable to assume that the records are easily accessible to Google for the following reasons:
- 35.1 Google has been aware of the information, and analogously the records, sought by Caxton since Caxton's Initial Request was submitted to Google, being 6 February 2024 – two months ago. And not one document has been provided to Caxton in this time;
 - 35.2 Google is a large and sophisticated multinational corporation with a large pool of internal resources and capacity that would enable it to process and obtain the mere 44 records requested in an efficient manner, and it is difficult to understand how processing the Request within the initial period for compliance would unreasonably divert Google's capacity;

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- 35.3 notwithstanding the fact the PAIA provides for 30 calendar days for the initial compliance period, a mere three public holidays occurred during the initial compliance period;
- 35.4 it is presumed that Google would have received requests for information from the Inquiry which would seek information of a similar nature to the records requested;
- 35.5 Google has recently prepared for and attended three separate extensive public hearing sessions held by the Inquiry, where questions were posed to Google that relate directly to the records requested;
- 35.6 during the course of the negotiations between Google and Caxton, Google has made mention of certain of the records Caxton has requested; and
- 35.7 it is reasonable to assume that Google used certain of the records to determine the Showcase offer made by Google to Caxton.

CONCLUSION

36. Given the above, I believe that the records sought must be disclosed under PAIA and that any delay and extension is unreasonable. It is the role of the Regulator to conduct an investigation, consider the relevant documents, and determine whether my belief is correct.



 PAUL MICHAEL JENKINS

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pa review on this the 9th day of April 2024,


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the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



*24938104
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P.W. 824040*

COMMISSIONER OF OATHS

FULL NAMES: *Pheliswa Wendy Jigayo*
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DESIGNATION: *Constable*
CAPACITY: *Parkview SAPS*

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1 April 2024

To: Caxton and CTP Publishers and Printers Limited

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**REQUEST FOR ACCESS TO INFORMATION IN TERMS OF SECTION 53(1) OF THE
PROMOTION OF ACCESS TO INFORMATION ACT OF 2000**

Dear Sir/s

We refer to Caxton and CTP Publishers and Printers Limited's (**Caxton** or the **Requester**) request for access to information in terms of section 53(1) of the Promotion of Access to Information Act of 2000 (**PAIA**) (the **Request**), which was received on 4 March 2024.

In terms of PAIA, the original period to respond to the Request is 3 April 2024 (30 days from when the Request is received) during a time period in which there are several public and religious holidays.

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The Request and response requires diligent review and consideration. The Request is for a large volume of records (it consists of 44 requests for records) and requires a search through a large number of records. Compliance with the original period would unreasonably interfere with the activities of Google.

Google hereby extends, as it is entitled to do in terms of section 57(1)(a) of PAIA, the original period until 1 May 2024.

The extension is not unreasonable in the circumstances.

The Requester is notified in terms of 57(3)(c) of PAIA that it may lodge a complaint to the Information Regulator or an application with a court against the aforementioned extension. Should the Requester wish to lodge a complaint to the Information Regulator the procedure is as follows:

Complaint to the Information Regulator

- The Requester must submit within 180 days of this notice, in accordance with section 77A of PAIA, a complaint to the Information Regulator in the prescribed manner and form;
- the complaint form is available at <https://www.justice.gov.za/infoereg/>; and
- the complaint form can be submitted to the Information Regulator at PAIAComplaints@infoRegulator.org.za.

Application to court

- The Requester may lodge a notice of motion and founding affidavit (the application) at court;
- Google shall deliver a notice to oppose within 10 court days of the delivery of the application;
- the Requester shall deliver an answering affidavit within 15 court days of the delivery of the answering affidavit;
- Google shall deliver a replying affidavit within 10 court days of the delivery of the answering affidavit; and
- the application shall be set down for hearing.

Yours sincerely

DocuSigned by:

Nancy Walker
3A571869987544B...

Nancy M. Walker Burma

Director of Google South Africa
(Pty) Ltd

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WEBBER WENTZEL

in alliance with > **Linklaters**

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By Email: nmackenzie@fasken.com;

Your reference	Our reference	Date
	D Milo / N Farrell / K Petersen 4006411	4 March 2024

Dear Sirs

Request for access to information in terms of section 53(1) of the Promotion of Access to Information Act of 2000 ("PAIA")

1. We act for **Caxton and CTP Publishers and Printers Limited**. We refer to your letter, sent on behalf of your client ("**Google**"), dated 29 February 2024.
2. Our client requests access to the records listed in Annexure "A" to this letter. Our client's request, in the prescribed form, is attached marked Annexure "B".
3. Our client brings this request in both its own interest and in the public interest. Access to the requested records is crucial to the exercise and protection of our client's rights, namely:
 - 3.1 Our client's right to meaningfully participate in the ongoing Media and Digital Platforms Market Inquiry ("**Inquiry**") initiated by the Competition Commission;
 - 3.2 Our client's right to fully consider and vindicate any actionable rights and corresponding claims which it may enjoy against Google in law, including but not limited to its right to be protected from unlawful competition practices and/or the intellectual property rights subsisting in the news content which it produces; and
 - 3.3 Our client's right to media freedom is entrenched in section 16 of the Constitution of the Republic of South Africa, 1996. The impact of the South African digital markets and the distorted market features present therein, in which Google plays a dominant role, on South Africans' access to a competitive and free press is well documented. Google's dominance in digital markets severely affects news publishers' commercial viability and directly impedes their ability to publish news. The requested records are

Senior Partner: JC Eis Managing Partner: SJ Hutton Partners: BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Bellings AE Bennett AP Blair AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealy S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Hofeld PH Holloway J Howard AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel J Lamb E Louw M Mahlangu V Mannar L Mareis G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlall M Moloi N Moodley LE Mostert VM Movshovich C Murphy G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan GI Rapson K Rew SA Ritchie J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Stræuill LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd

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crucial to ensuring that the right to media freedom is effectively realised not only by our client, but by all South Africans.

4. We look forward to your response as soon as possible. Given the ongoing Inquiry, our client requires access to the records requested on an urgent basis.
5. All our client's rights are reserved.

Yours faithfully

WEBBER WENTZEL

Dario Milo

Partner

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Email: dario.milo@webberwentzel.com

Letter sent electronically.

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Annexure B

Annexure "A"

Records requested by Caxton

1. Records of the gross annual revenue derived from all of Google's product offerings available to the South African market in the proceeding financial year which are attributable to Caxton's news content.
2. Records of Google's calculation of the gross annual revenue derived from its product offerings available to the South Africans which are attributable to Caxton.
3. Records of any mechanisms which Google may have for attributing indirect revenues for the use of Caxton's news content.
4. Records detailing the calculation of the percentage of Google's total annual global revenue which is attributable to Caxton's news content in the proceeding financial year.
5. Records reflecting the percentage of Google's global revenue that is related to Caxton's news content?
6. Records of the sources of Google's of revenue that could be directly or indirectly attributable to Caxton either through direct or indirect advertising (or generated through any information collected or any use of any algorithm affected by any search or any individual).
7. Records of Google's market share in online search in terms of advertising revenue and audience in South Africa.
8. Records of the metrics used in Google's determination of its market share in online search in terms of advertising revenue and audience in South Africa.
9. Records showing the calculation of Google's revenue split between:
 - 9.1 advertising;
 - 9.2 app store commissions;
 - 9.3 subscriptions; and
 - 9.4 other revenue
10. Records showing the calculation of Google's revenue profit before and after tax generated in South Africa over the past five years.

11. Records of any amounts provided by Google to South African government entities in the form of sponsorships in the last five years.
12. Records of Google's determination of the methodology for revenue sharing in respect of Google News Showcase.
13. It has been alleged by news publishers globally that Google's Bard AI was trained on a dataset that included news, magazine and digital publications. In this regard, Caxton requests:
 - 13.1 Records of any of Caxton's journalistic output used in the training of Bard AI.
 - 13.2 Records of any use by Google of any data from Caxton or its users for the purposes of constructing any algorithm or including a search algorithm, Bard AI, rubric, global rate setting algorithm or any other algorithm employed in any business activity of Google, Alphabet or Jigsaw.
 - 13.3 Records of how the value of the inclusion of this data was assessed or included in the profits or revenues attributed to Caxton.
 - 13.4 Records of Google's determination of what data is used to train Bard AI.
14. In Alphabet's 2022 annual report ("**2022 Annual Report**") it is stated at page 12 that: "In the U.S., we launched a new feature to help readers discover local and regional news from different states so they could better understand election coverage of the races they most care about." In this regard, Caxton requests:
15. At page 15 of the 2022 Annual Report it is stated that: "*People in affected areas turned to Search to find the latest news and information on where to find shelter and aid*".
16. At page 31 of the 2022 Annual Report it is stated that: "*Communities around the world rely on local news to thrive and stay connected. More than 90% of the publications that are part of the Google News Showcase, our curated online news experience and licensing program, represent local, community, and regional news*". In this regard, Caxton requests:
 - 16.1 Records of Google's determination of the news titles which can be included in Google News Showcase.
 - 16.2 Records of any indigenous languages which have been included by Google in its product partnerships.

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17. We understand that Google collects users' data. It is unclear what data Google collects on users that use Caxton's domains. Caxton asks that Google provides the following:
 - 17.1 Records pertaining to the manner in which Google makes Caxton's data and journalistic output available to Google's users;
 - 17.2 Records of any user data which Google collects from users while they are reading Caxton's journalistic output.
 - 17.3 Records of any use by Google of this user data to re-target audiences with advertising solutions.
 - 17.4 Records of any collection by Google of any user data through any tech solution that Caxton might use e.g. GAM.
18. In Google's submission to the Inquiry dated 15 November 2023 ("**Google's Submission**") a number of claims are made by Google which Caxton requires clarity on:
 - 18.1 At paragraph one of Google's Submission it is stated that "*[w]hen the user is searching for news, our algorithms try to connect them with publishers of relevant, original, trustworthy and high quality journalism. In this way we drive traffic to publisher websites, helping to grow readership, and connect our users with relevant and useful information available on the web.*" (emphasis added). Please provide the following:
 - 18.1.1 Records of any data showing the impact on Caxton's journalistic content affected by Google's algorithms, in terms of search results on the Google Search Engine Results Page?.
 - 18.1.2 Records of any differentiation or identification processes by Google's algorithms in establishing what content amounts to news content.
 - 18.1.3 Records that show how Google's algorithms determine what content is news content?
 - 18.1.4 Records of the number of referral clicks which Google has directed toward Caxton's news sites in the past 12 months, and records of how Google determines "free referral clicks".
 - 18.1.5 Records of any intentional deprioritisation of Caxton news content on the Google Search Engine Results Page.

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- 18.1.6 Records of any protocols applied by Google for deprioritizing news in search results and records of explanations for this.
- 18.1.7 Records of the metrics or factors used by Google to determine whether news content should be deprioritized in search results.
- 18.1.8 Records showing the calculation of the percentage of Google users who conduct a search for news and merely review the results on the Google Search Engine Results Page and do not click through to a publisher's website?
- 18.1.9 Records of any scanning by Google of Caxton's domains/ news sites in order to display recent content on Google Search Engine Results Page and Google News within seconds of publication.
- 18.1.10 Records of the mechanisms used by Google use ensure the news it displays is "*relevant, original, trustworthy and high-quality journalism*"?
- 18.1.11 Records of any steps taken by Google to mitigate against the unlawful use of Caxton's news content (plagiarism) by unscrupulous news outlets.
19. At paragraph three of Google's Submission, it is stated that "*[w]e do not earn material revenue from news.*" On this point, Caxton asks that Google provides the following:
- 19.1 Records of the direct revenue Google has made from "news" in the preceding decade.
- 19.2 Records of the calculation of direct revenue Google determine direct revenue.
20. At paragraph four of Google's Submission, it is stated that "*...Google Search only makes advertising revenue when users click on ads.*", further to this at paragraph 6 Google claims that "*[s]earch queries with a news intent account for a very small portion of overall searches on Google Search, and are typically not commercialised.*" Lastly, at paragraph seven, Google states that "*Google Search does not earn or seek to earn meaningful advertising revenue from displaying news results on the Google Search Engine Results Page.*" This seems to be in stark contrast with the statement made in Google Inc's 2010 Annual Report: "*[Google] believe[s] the factors that influence the success of [it's] advertising programs include the following: The relevance, objectivity, and quality of our search results and the relevance and quality of ads displayed with each search results page number of searches initiated at our websites and our Google Network members' websites and the underlying purpose of these searches (for instance, whether they are for academic research, to find a news article, or to find a product or service).* (emphasis added). Based on these comments, we ask that Google provides the following:

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- 20.1 Records of any benefit derived by Google from Caxton's journalistic output being available within Google's ecosystem / on Google surfaces.
- 20.2 Records of the calculation of the percentage of Google search results which can be classified as news searches.
- 20.3 Records of any determination by Google of the trustworthiness of Caxton's content is trustworthy and of any use by Google of Caxton's data to test if other sources are trustworthy in any way.
- 20.4 Records of the calculation of the percentage of searches made on Google in South Africa which could be classified as "information searches.
- 20.5 Records of the calculation of the percentage of South African Google search results which have included Caxton's journalistic content as part of the results on a Google Search Engine Results Page.
- 20.6 Records of the amount of keywords that have been sold in the proceeding financial year in South Africa.
- 20.7 Records of the amount of revenue contributed by keywords to the gross revenue generated in South Africa in the proceeding financial year.

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Annexure B

FORM C: REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

D. Particulars of record

- (a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
- (b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1. Description of record or relevant part of the record:

Please refer to Annexure A attached hereto.

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2. Reference number, if available:

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3. Any further particulars of record:

Please refer to Annexure A attached hereto.

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E. Fees

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees:

N/A

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Annexure B

FORM C: REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

Disability: Mark the appropriate box with an X. NOTES: (a) Compliance with your request for access in the specified form may depend on the form in which the record is available. (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form. (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.	Form in which record is required:
---	-----------------------------------

1. If the record is in written or printed form:					
x	copy of record*		inspection of record		
2. If record consists of visual images - (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.):					
	view the images	x	copy of the images*		transcription of the images*
3. If record consists of recorded words or information which can be reproduced in sound:					
	listen to the soundtrack (audio cassette)	x	transcription of soundtrack* (written or printed document)		
4. If record is held on computer or in an electronic or machine-readable form:					
	printed copy of record*		printed copy of information derived from the record*	x	copy in computer readable form* (stiffy or compact disc)

*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.	YES	NO	x
--	-----	----	---

G. Particulars of right to be exercised or protected

If the provided space is inadequate, please continue on a separate folio and attach it to this form.
The requester must sign all the additional folios.

1. Indicate which right is to be exercised or protected:
 Refer to cover letter, dated 4 March 2024, addressed to Fasken (Bell Dewar Inc).

2. Explain why the record requested is required for the exercise or protection of the aforementioned right:
 Refer to cover letter, dated 4 March 2024, addressed to Fasken (Bell Dewar Inc).

P-W

Annexure B

FORM C: REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

H. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved / denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

By email to paul@jenkins.co.za, copying Webber Wentzel, dario.milo@webberwentzel.com and nick.farrell@webberwentzel.com

Signed at Sandton this day the 4th of March year 2024

.....
SIGNATURE OF REQUESTER /
PERSON ON WHOSE BEHALF REQUEST IS MADE



FORM 2

REQUEST FOR ACCESS TO RECORD

[Regulation 7]

NOTE:

1. Proof of identity must be attached by the requester.
2. If requests made on behalf of another person, proof of such authorisation, must be attached to this form.

TO: The Information Officer

Google LLC, Google Ireland Ltd and Google South Africa Ballyoaks Office Park 35 Ballyclare Building E Bryanston Johannesburg Gauteng 2191	Fasken (Bell Dewar Inc) Neil MacKenzie and Kate Daniels 54 Wierda Road West Sandton 2196
---	--

E-mail address: nmackenzie@fasken.com

Fax number: _____

Mark with an "X"

- Request is made in my own name
 Request is made on behalf of another person.

PERSONAL INFORMATION	
Full Names	Caxton and CTP Publishers and Printers Limited / Paul M. Jenkins
Identity Number	Reg No.: 1947/026616/06
Capacity in which request is made (when made on behalf of another person)	
Postal Address	PO Box 43587, Industria, JHB, 2042
Street Address	368 Jan Smuts Ave, Craighall, Johannesburg, 2198
E-mail Address	paul@jenkins.co.za
Contact Numbers	Tel. (B): (011) 889 0600 Facsimile: (011) 474 8229
	Cellular: +27 83 303 9497
Full names of person on whose behalf request is made (if applicable):	

P.W

Annexure C

Identity Number			
Postal Address			
Street Address			
E-mail Address			
Contact Numbers	Tel. (B)		Facsimile
	Cellular		
PARTICULARS OF RECORD REQUESTED			
<i>Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed.)</i>			
Description of record or relevant part of the record:	Please refer to Annexure A attached hereto.		
Reference number, if available			
Any further particulars of record	Please refer to Annexure A attached hereto.		
TYPE OF RECORD <i>(Mark the applicable box with an "X")</i>			
Record is in written or printed form			X
Record comprises virtual images <i>(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)</i>			X

P.W

Annexure C

Record consists of recorded words or information which can be reproduced in sound	X
Record is held on a computer or in an electronic, or machine-readable form	X
FORM OF ACCESS (Mark the applicable box with an "X")	
Printed copy of record (including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)	X
Written or printed transcription of virtual images (this includes photographs, slides, video recordings, computer-generated images, sketches, etc)	
Transcription of soundtrack (written or printed document)	X
Copy of record on flash drive (including virtual images and soundtracks)	X
Copy of record on compact disc drive (including virtual images and soundtracks)	
Copy of record saved on cloud storage server	X

MANNER OF ACCESS (Mark the applicable box with an "X")	
Personal inspection of record at registered address of public/private body (including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format (including transcriptions)	
E-mail of information (including soundtracks if possible)	X
Cloud share/file transfer	X
Preferred language (Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available)	English

PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED
<i>If the provided space is inadequate, please continue on a separate page and attach it to this Form. The requester must sign all the additional pages.</i>

P.W

Annexure C

Indicate which right is to be exercised or protected	Please refer to cover letter, dated 4 March 2024, addressed to Fasken (Bell Dewar Inc).


Explain why the record requested is required for the exercise or protection of the aforementioned right:	Please refer to cover letter, dated 4 March 2024, addressed to Fasken (Bell Dewar Inc).

FEES	
a)	<i>A request fee must be paid before the request will be considered.</i>
b)	<i>You will be notified of the amount of the access fee to be paid.</i>
c)	<i>The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.</i>
d)	<i>If you qualify for exemption of the payment of any fee, please state the reason for exemption</i>
Reason	N/A

You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication <i>(Please specify)</i>
		Email to paul@jenkins.co.za copying, dario.milo@webberwentzel.com & nick.farrell@webberwentzel.com

Signed at _____ Sandton this 8 day of _____ April 2024 _____


 P.P. 185 _____ Nicholas Farrell
 Signature of Requester / person on whose behalf request is made

FOR OFFICIAL USE

Reference number:	
-------------------	--



Annexure C

<i>Request received by: (State Rank, Name And Surname of Information Officer)</i>	
<i>Date received:</i>	
<i>Access fees:</i>	
<i>Deposit (if any):</i>	

Signature of Information Officer

P-W

Records requested by Caxton

1. Records of the gross annual revenue derived from all of Google's product offerings available to the South African market in the proceeding financial year which are attributable to Caxton's news content.
2. Records of Google's calculation of the gross annual revenue derived from its product offerings available to the South Africans which are attributable to Caxton.
3. Records of any mechanisms which Google may have for attributing indirect revenues for the use of Caxton's news content.
4. Records detailing the calculation of the percentage of Google's total annual global revenue which is attributable to Caxton's news content in the proceeding financial year.
5. Records reflecting the percentage of Google's global revenue that is related to Caxton's news content?
6. Records of the sources of Google's of revenue that could be directly or indirectly attributable to Caxton either through direct or indirect advertising (or generated through any information collected or any use of any algorithm affected by any search or any individual).
7. Records of Google's market share in online search in terms of advertising revenue and audience in South Africa.
8. Records of the metrics used in Google's determination of its market share in online search in terms of advertising revenue and audience in South Africa.
9. Records showing the calculation of Google's revenue split between:
 - 9.1 advertising;
 - 9.2 app store commissions;
 - 9.3 subscriptions; and
 - 9.4 other revenue
10. Records showing the calculation of Google's revenue profit before and after tax generated in South Africa over the past five years.

11. Records of any amounts provided by Google to South African government entities in the form of sponsorships in the last five years.
12. Records of Google's determination of the methodology for revenue sharing in respect of Google News Showcase.
13. It has been alleged by news publishers globally that Google's Bard AI was trained on a dataset that included news, magazine and digital publications. In this regard, Caxton requests:
 - 13.1 Records of any of Caxton's journalistic output used in the training of Bard AI.
 - 13.2 Records of any use by Google of any data from Caxton or its users for the purposes of constructing any algorithm or including a search algorithm, Bard AI, rubric, global rate setting algorithm or any other algorithm employed in any business activity of Google, Alphabet or Jigsaw.
 - 13.3 Records of how the value of the inclusion of this data was assessed or included in the profits or revenues attributed to Caxton.
 - 13.4 Records of Google's determination of what data is used to train Bard AI.
14. In Alphabet's 2022 annual report ("**2022 Annual Report**") it is stated at page 12 that: "In the U.S., we launched a new feature to help readers discover local and regional news from different states so they could better understand election coverage of the races they most care about." In this regard, Caxton requests:
15. At page 15 of the 2022 Annual Report it is stated that: "*People in affected areas turned to Search to find the latest news and information on where to find shelter and aid*".
16. At page 31 of the 2022 Annual Report it is stated that: "*Communities around the world rely on local news to thrive and stay connected. More than 90% of the publications that are part of the Google News Showcase, our curated online news experience and licensing program, represent local, community, and regional news*". In this regard, Caxton requests:
 - 16.1 Records of Google's determination of the news titles which can be included in Google News Showcase.
 - 16.2 Records of any indigenous languages which have been included by Google in its product partnerships.

P-W

17. We understand that Google collects users' data. It is unclear what data Google collects on users that use Caxton's domains. Caxton asks that Google provides the following:
- 17.1 Records pertaining to the manner in which Google makes Caxton's data and journalistic output available to Google's users;
 - 17.2 Records of any user data which Google collects from users while they are reading Caxton's journalistic output.
 - 17.3 Records of any use by Google of this user data to re-target audiences with advertising solutions.
 - 17.4 Records of any collection by Google of any user data through any tech solution that Caxton might use e.g. GAM.
18. In Google's submission to the Inquiry dated 15 November 2023 ("**Google's Submission**") a number of claims are made by Google which Caxton requires clarity on:
- 18.1 At paragraph one of Google's Submission it is stated that "*[w]hen the user is searching for news, our algorithms try to connect them with publishers of relevant, original, trustworthy and high quality journalism. In this way we drive traffic to publisher websites, helping to grow readership, and connect our users with relevant and useful information available on the web.*" (emphasis added). Please provide the following:
 - 18.1.1 Records of any data showing the impact on Caxton's journalistic content affected by Google's algorithms, in terms of search results on the Google Search Engine Results Page?.
 - 18.1.2 Records of any differentiation or identification processes by Google's algorithms in establishing what content amounts to news content.
 - 18.1.3 Records that show how Google's algorithms determine what content is news content?
 - 18.1.4 Records of the number of referral clicks which Google has directed toward Caxton's news sites in the past 12 months, and records of how Google determines "free referral clicks".
 - 18.1.5 Records of any intentional deprioritisation of Caxton news content on the Google Search Engine Results Page.

P.W.

- 18.1.6 Records of any protocols applied by Google for deprioritizing news in search results and records of explanations for this.
 - 18.1.7 Records of the metrics or factors used by Google to determine whether news content should be deprioritized in search results.
 - 18.1.8 Records showing the calculation of the percentage of Google users who conduct a search for news and merely review the results on the Google Search Engine Results Page and do not click through to a publisher's website?
 - 18.1.9 Records of any scanning by Google of Caxton's domains/ news sites in order to display recent content on Google Search Engine Results Page and Google News within seconds of publication.
 - 18.1.10 Records of the mechanisms used by Google use ensure the news it displays is "*relevant, original, trustworthy and high-quality journalism*"?
 - 18.1.11 Records of any steps taken by Google to mitigate against the unlawful use of Caxton's news content (plagiarism) by unscrupulous news outlets.
19. At paragraph three of Google's Submission, it is stated that "*[w]e do not earn material revenue from news.*" On this point, Caxton asks that Google provides the following:
- 19.1 Records of the direct revenue Google has made from "*news*" in the preceding decade.
 - 19.2 Records of the calculation of direct revenue Google determine direct revenue.
20. At paragraph four of Google's Submission, it is stated that "*...Google Search only makes advertising revenue when users click on ads.*", further to this at paragraph 6 Google claims that "*[s]earch queries with a news intent account for a very small portion of overall searches on Google Search, and are typically not commercialised.*" Lastly, at paragraph seven, Google states that "*Google Search does not earn or seek to earn meaningful advertising revenue from displaying news results on the Google Search Engine Results Page.*" This seems to be in stark contrast with the statement made in Google Inc's 2010 Annual Report: "*[Google] believe[s] the factors that influence the success of [it's] advertising programs include the following: The relevance, objectivity, and quality of our search results and the relevance and quality of ads displayed with each search results page number of searches initiated at our websites and our Google Network members' websites and the underlying purpose of these searches (for instance, whether they are for academic research, to find a news article, or to find a product or service).*" (emphasis added). Based on these comments, we ask that Google provides the following:


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- 20.1 Records of any benefit derived by Google from Caxton's journalistic output being available within Google's ecosystem / on Google surfaces.
- 20.2 Records of the calculation of the percentage of Google search results which can be classified as news searches.
- 20.3 Records of any determination by Google of the trustworthiness of Caxton's content is trustworthy and of any use by Google of Caxton's data to test if other sources are trustworthy in any way.
- 20.4 Records of the calculation of the percentage of searches made on Google in South Africa which could be classified as "information searches.
- 20.5 Records of the calculation of the percentage of South African Google search results which have included Caxton's journalistic content as part of the results on a Google Search Engine Results Page.
- 20.6 Records of the amount of keywords that have been sold in the proceeding financial year in South Africa.
- 20.7 Records of the amount of revenue contributed by keywords to the gross revenue generated in South Africa in the proceeding financial year.

P.W



CAXTON & CTP LIMITED publishers & printers

Annexure D

Co. Reg No.: 1947/026616/06

Tel: +27 (0) 11 474 8750

Fax: +27 (0) 11 474 8229

28 Wright St, Industria West, JHB, 2093

PO Box 43587, Industria, JHB, 2042

Page 1

6 February 2024

Google LLC and Google South Africa
Ballyoaks Office Park 35 Ballyclare
Building E Bryanston
Johannesburg
Gauteng
2191

Attention: Alistair Mokoena and Marianne Erasmus

By Hand and by email

By email: allymokoena@google.com / merasmus@google.com

Dear Mr. Mokoena and Ms. Erasmus

CAXTON: REQUEST FOR INFORMATION

Introduction

1. Caxton and CTP Publishers and Printers Limited and its subsidiary CTP Limited ("Caxton") has, over the past two years, unsuccessfully sought to achieve redress of the disputes and economic and commercial disparity between Caxton's news publications and the exploitation thereof by the dominant digital platform operated by Alphabet Incorporated, its subsidiary Google LLC and its Irish and South African affiliates ("Google Ireland") and Google South Africa Proprietary Limited (registration number 2006/035611/07) ("Google SA") (collectively, "Google"). We refer to all these entities as "Google" on the basis that Google, in its day-to-day interactions with Caxton, and in the general conduct of its business in South Africa, makes no distinction between the separate identities of these entities.
2. Caxton wishes to achieve an equitable licensing arrangement and accounting for the revenues derived by Google from exploiting Caxton's copyright protected news content, which Caxton disseminates in the exercise of its constitutionally protected right of freedom of expression as enshrined in section 16 of the South African Bill of Rights.
3. Caxton is legally entitled to protect its various rights and is entitled to require, as of right, that its commercial arrangements with Google reflect the value Caxton's content unlawfully expropriated by Google and the content provided to Google by Caxton, under licence. Caxton seeks to protect, enforce and exercise such rights by, *inter alia*, agreeing on a fair remuneration model with Google, for the use of Caxton's proprietary news content ("the

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Caxton Objective"). The Caxton Objective may be achieved by way of negotiation with and/or by way of legal proceedings against Google.

4. While Caxton remains committed to the Caxton Objective, an intractable obstacle persists. As Caxton had repeatedly emphasised, Google possesses information Caxton reasonably requires in order to formulate its commercial position in the enforcement of its rights and in any negotiations. Yet, despite Caxton's requests for access thereto, adequate information has not been forthcoming, which would render any negotiations to be one-sided, imbalanced and ultimately futile.
5. The abovementioned information asymmetry makes it impossible for the parties to proceed on an equal basis, which is a prerequisite for any commercial negotiation, or for the enforcement of rights and the formulation of claims for damages and or equitable licensing under copyright.

Contextual framework:

6. Google and Caxton are both stakeholders contributing to the South African Competition Commission's Media and Digital Platforms Market Inquiry ("Inquiry") initiated by the Competition Commission in terms of 43B(1)(a) of the Competition Act, 89 of 1998. The Inquiry is investigating whether there are any market features inherent to digital platforms markets that impede, distort, or restrict competition, prejudicing the interests of South African publishers.
7. News publishers (such as Caxton) have indicated that digital platforms (such as Google) derive value from its content, but that the information required to measure the value has not been made available by these platforms. Another submission made by news publishers is that the digital advertising market is distorted in that digital platforms have access to data that news publishers require to compete fairly in these markets. News publishers have also explained that digital platforms have become gatekeepers of information who facilitate how

P. W. [Signature]



and to whom news and commercial publisher content is distributed using methods and according to algorithms that have not been disclosed.

8. During the Inquiry process, Google has *inter alia* claimed that it does not gain any material value from Caxton's news content and that Google provides significant benefits to Caxton and other news publishers.
9. The information requested in this letter is required by Caxton to interrogate claims made by Google to the Inquiry. Google's claims made to the Inquiry affect not only Caxton, but the entire South African news industry. For Caxton and other media companies to respond to these claims, more information from Google is required, as set out below.
10. Caxton, as a member of the South African news industry, has the right to freedom of the press, and indeed is required to protect this right. Currently, this right is under threat due to, in our view, the distorted features of digital markets and Google plays a dominant role in these markets, which has caused a market failure and has resulted in inherent information asymmetry between market participants. These market distortions form the crux of the Inquiry's investigation, and it is Caxton's right and duty to gather all the information it can to better inform the Inquiry in its investigation.

Google's withholding of information prejudices Caxton's rights:

11. Caxton requires that Google must provide the information Caxton needs in order to pursue fair and reasonable compensation, and in order to sustain its constitutionally protected right to freedom of expression and the press, which it cannot exercise in the absence of financial accountability by Google. If Google provides the Inquiry with the information required by South African media at large, such information will not be accessible by market participants due to the confidentiality regime imposed by the Competition Act on which Google has an will indubitably rely, rendering such disclosure meaningless.
12. If any negotiations undertaken as part of the process adopted by Caxton for the achievement of the Caxton Objective fail or do not proceed on an equal basis, Caxton will require the information requested in this letter in order to formulate a legal claim against Google. Google

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P.W



has publicly acknowledged¹ that it is subject legal claims of a similar nature to the claims Caxton may consider bring against Google. It is therefore reasonable for Caxton to consider formulating a legal claim against Google and requires the information requested in this letter to do so.

13. As this letter sets out above, the failure of digital platforms such as Google to provide the information requested in this letter imposes a limitation upon Caxton's right to freedom of expression – a right that Caxton exercises in order to participate in the markets which the Inquiry is investigating. Without freely exercising its Section 16 constitutional right, Caxton cannot compete freely in the market at hand.
14. Caxton's rights are prejudiced in that it does not have access to the information it needs in order to give effect to its rights under the Constitution or the Competition Act or the Copyright Act.
15. Section 32 of the South African Constitution and the Promotion of Access to Information Act entrenches Caxton's right of access to this information.
16. If Google fails to provide the information requested below, Caxton will proceed to seek the information by means of exercising the rights referred to in this letter.
17. On the above basis we require Google to provide the information requested in "Annexure A" of this letter.
18. Please provide the information requested in Annexure A by close of business on 1 March 2024.

Yours sincerely

Paul Jenkins
Non-executive Chairman
Caxton and CTP Publishers and Printers Limited
CTP Limited
Cell - 083 250 1000
Email – paul@jenkins.co.za

¹ At page 13 of Item 1A of the 2022 Annual Report it is stated that: *[Google is] subject to claims, lawsuits, regulatory and government investigations, other proceedings, and consent orders involving competition, intellectual property, data privacy... commercial disputes, content generated by our users, goods and services offered by advertisers or publishers using our platforms, personal injury, and other matters.*

P. W.



Annexure A

Information requested by Caxton

1. What percentage of Google's gross annual revenue derived from all of Google's product offerings available to the South African market in the preceding ten financial years can be attributable to Caxton's news content?
2. How does Google determine its gross annual revenue derived from all of Google's product offerings available to the South African that could be attributable to Caxton?
3. Does Google have any mechanism for attributing indirect revenues for the use of Caxton's news content?
4. What percentage of Google's total annual global revenue is attributable to Caxton's news content in the preceding ten financial years?
5. How does Google determine the percentage of global revenue that is Caxton's news content?
6. Please provide all sources of Google's revenue that could be directly or indirectly attributable to Caxton either through direct or indirect advertising (or generated through any information collected or any use of any algorithm affected by any search or any individual).
7. What is Google's market share in online search in terms of advertising revenue and audience in South Africa?
8. How does Google determine its' market share in online search in terms of advertising revenue and audience in South Africa?
9. What is Google's revenue split between:
 - 9.1 advertising;
 - 9.2 app store commissions;
 - 9.3 subscriptions; and
 - 9.4 profit before and after tax?

DIRECTORS: PM Jenkins (Chairman), TD Moolman (Chief Executive), TJW Holden, L Witbooi,
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P.W



10. What is the nature of inter-group charges and amounts involved, particularly between Alphabet Inc, Google Ireland Limited and Google LLC (or any of its worldwide subsidiaries) and Google South Africa Proprietary Limited?
11. How much has Google donated to South African political parties in the last ten years?
12. How much has Google's provided to South African government entities in the form of sponsorships in the last ten years?
13. How does Google determine the methodology for revenue sharing in respect of Google News Showcase?
14. It has been alleged by news publishers globally that Google's Bard AI was trained on a dataset that included news, magazine and digital publications.
 - 14.1 Was any of Caxton's journalistic output used in the training of Bard AI?
 - 14.2 Has Google ever used any data from Caxton or its users for the purposes of constructing any algorithm or including a search algorithm, Bard AI, rubric, global rate setting algorithm or any other algorithm employed in any business activity of Google, Alphabet or Jigsaw?
 - 14.3 How was the value of the inclusion of this data in any way assessed or included in the profits or revenues attributed to Caxton?
 - 14.4 How does Google determine what data is used to train Bard AI?
15. In Alphabet's 2022 annual report ("**2022 Annual Report**") it is stated at page 12 that: *"In the U.S., we launched a new feature to help readers discover local and regional news from different states so they could better understand election coverage of the races they most care about."*
 - 15.1 Why would Google launch new features that are reliant on journalist output if news was not important to Google's business model?
 - 15.2 What steps does Google take to ensure the content related to elections is unbiased and accurate?



16. At page 15 of the 2022 Annual Report it is stated that: "*People in affected areas turned to Search to find the latest news and information on where to find shelter and aid*".
- 16.1 How would Google be in a position to provide users with these search results and services without the latest news and information being produced by news publishers and served on Google surfaces?
17. At page 31 of the 2022 Annual Report it is stated that: "*Communities around the world rely on local news to thrive and stay connected. More than 90% of the publications that are part of the Google News Showcase, our curated online news experience and licensing program, represent local, community, and regional news*".
- 17.1 Does Google acknowledge the profound importance of local news to consumers?
- 17.2 How does Google determine the which news titles can be included in Google News Showcase?
- 17.3 Is Google inclusive of indigenous languages in its product partnerships?
18. We understand that Google collects users' data. It is unclear to Caxton what data Google collects on users that use Caxton's domains, as such we ask that Google provides the following information:
- 18.1 Does Google collect any user data from users while they are reading Caxton's journalistic output?
- 18.2 If so, what data does Google collect from users while they are reading Caxton's journalistic output?
- 18.3 Does Google use this user data to re-target audiences with advertising solutions?
- 18.4 Does Google collect any user data through any tech solution that Caxton might use e.g. GAM?
19. In Google's submission to the Inquiry dated 15 November 2023 ("**Google's Submission**") a number of claims are made by Google which Caxton requires clarity on:



- 19.1 At paragraph one of Google's Submission it is stated that "[w]hen the user is searching for news, our algorithms try to connect them with publishers of relevant, original, trustworthy and high quality journalism. In this way we drive traffic to publisher websites, helping to grow readership, and connect our users with relevant and useful information available on the web." (emphasis added). Please provide the following information:
- 19.1.1 How is Caxton's journalistic content affected by Google's algorithms, in terms of search results on the Google Search Engine Results Page?
- 19.1.2 Are Google's algorithms capable of identifying what content is news content?
- 19.1.3 How does Google's algorithms determine what content is news content?
- 19.1.4 How many referral clicks has Google directed toward Caxton's news sites in the past 12 months?
- 19.1.5 What are "free referral clicks" and how does Google determine this?
- 19.1.6 Has Google ever intentionally deprioritised Caxton news content on the Google Search Engine Results Page, if so why?
- 19.1.7 Does Google have any protocols for deprioritizing news in search results? What are the circumstances under which this is done?
- 19.1.8 How does Google determine whether news content should be deprioritized in search results?
- 19.1.9 What percentage of Google users conduct a search for news and merely review the results on the Google Search Engine Results Page and do not click through to a publisher's website? And how does Google determine this?
- 19.1.10 Does Google crawl Caxton's domains over time to scan Caxton's news sites in order to display recent content on Google Search Engine Results Page and Google News within seconds of publication?
- 19.1.11 What mechanisms does Google use to ensure the news it displays is "relevant, original, trustworthy and high-quality journalism"?

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- 19.1.12 How does Google mitigate against the unlawful use of Caxton's news content (plagiarism) by unscrupulous news outlets?
20. At paragraph three of Google's Submission, it is stated that "*[w]e do not earn material revenue from news.*" On this point, we ask that Google informs us:
- 20.1 of how much direct revenue Google has made from "*news*" in the preceding decade?
- 20.2 How does Google determine direct revenue?
- 20.3 How does Google determine what is "*material revenue*"?
- 20.4 How does Google define "*news*"?
- 20.5 How does Google define "*news queries*"?
21. At paragraph four of Google's Submission, it is stated that "*...Google Search only makes advertising revenue when users click on ads.*", further to this at paragraph six Google claims that "*[s]earch queries with a news intent account for a very small portion of overall searches on Google Search, and are typically not commercialised.*" Lastly, at paragraph seven, Google states that "*Google Search does not earn or seek to earn meaningful advertising revenue from displaying news results on the Google Search Engine Results Page.*" This seems to be in stark contrast with the statement made in Google Inc's 2010 Annual Report: "*[Google] believe[s] the factors that influence the success of [it's] advertising programs include the following: The relevance, objectivity, and quality of our search results and the relevance and quality of ads displayed with each search results page number of searches initiated at our websites and our Google Network members' websites and the underlying purpose of these searches (for instance, whether they are for academic research, to find a news article, or to find a product or service).* (emphasis added). Based on these comments, we ask that Google provides the following information:
- 21.1 Does Google derive any benefit from Caxton's journalistic output being available within Google's ecosystem / on Google surfaces?
- 21.2 How does Google define "*news searches*"?
- 21.3 What percent of Google search results can be classified as news searches and how does Google determine this?

DIRECTORS: PM Jenkins (Chairman), TD Moolman (Chief Executive), TJW Holden, L Witbooi, ACG Molusi, NA Nemukula, J Phalane, T Slabbert, J Edwards (Company Secretary)

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- 21.4 Does Google consider Caxton's journalistic output to be content that is trustworthy?
- 21.5 How does Google determine whether Caxton's content is trustworthy and does Google use Caxton data to test if other sources are trustworthy in any way?
- 21.6 To the extent that Google labels content as trustworthy is this done using any of Caxton's data?
- 21.7 Would it be reasonable to conclude that the generally high level of trust that people have in news has a positive effect on Google's brand equity as a platform and thus creates an advantage for Google?
- 21.8 Does Google consider Caxton's journalistic output to be quality content that is relevant to South African's searching for South African information and news?
- 21.9 Does Google consider Caxton's journalistic content to be up-to-date and published on a regular basis?
- 21.10 What percentage of searches made on Google in South Africa could be classified as "information searches"?²
- 21.11 What percentage of South African Google search results have included Caxton's journalistic content as part of the results on a Google Search Engine Results Page?
- 21.12 How does Google determine what news item or what item people are looking for at a search?
- 21.13 It could be argued that Google is able to achieve power and scale through network effects by connecting producers and consumers. Further, that Google benefits from network effects by attracting more users and advertisers to its platform, which in turn increases the supply and demand and sets a positive cycle in motion. To this end, the more users that use Google, the more data it can collect, and analyse, to improve its search results and advertising campaigns. This in turn leads to a better experience for users and a higher ROI for advertisers, which sequentially attracts more users and

² An "information search" describes a search which is used to find information about a certain topic and would exclude commercial searches and navigation searches.



advertisers and strengthens the cycle. Does Google disagree with any of these statements?

21.14 How many keywords have been sold in the proceeding financial year in South Africa?

21.15 How much revenue did keywords contribute to the gross revenue generated in South Africa in the proceeding financial year?

Annexure E



Confidential

29 February 2024

Paul Jenkins
Caxton and CTP Print Publishers Limited
28 Wright Street
Industria West
Johannesburg
2093

RESPONSE TO CAXTON'S REQUEST FOR INFORMATION

Dear Paul,

Thank you for your letter of 9 February 2024. Google denies that its digital platform contravenes any applicable law or otherwise harms Caxton's rights in South Africa, and further denies that there is any basis for a legal claim against Google by Caxton or on which to seek the information requested in Annexure A to your letter.

Google is committed to helping South Africans find relevant, trustworthy, diverse and high-quality news content, and to supporting the sustainability of the South African public interest news industry. It does this in a variety of ways. First, our freely-available search engine and a news aggregation service both create monetisation opportunities for publishers through valuable referral traffic. Second, our advertising technology products are available to those publishers which may choose to utilise them to connect with advertisers and further monetise their sites. In addition, we have also committed to make available a set of mutually beneficial measures that we believe will meaningfully contribute to a sustainable future for public interest news journalism in South Africa. These include training and digital skills development initiatives, making Google News Showcase ("**Showcase**") available in South Africa, as well as establishing a country fund for South Africa dedicated to the digital transformation of South African public interest news publishers. Several South African publishers have welcomed these measures and are participating in them.

Google does not reproduce the copyright-protected content of news publishers, so it would not be appropriate or necessary to enter into a bespoke licensing arrangement with Caxton. However, Caxton's publications would qualify both for participation in Showcase and to receive funding for digital transformation projects under the proposed fund.

Therefore, in line with our non-binding Letter of Intent agreed with the PSS and the AIP, we extended a Showcase offer to Caxton. We are committed to the good faith engagements promised in the Letter of Intent on measures that we believe will support South African public interest news publishers in transitioning their businesses to the digital environment, and will achieve meaningful progress towards a sustainable and vibrant news ecosystem.

We are disappointed that Caxton has decided not to accept our Showcase offer to date, despite our efforts to adapt the proposed agreement for Caxton's circumstances, but we remain open to progressing such discussions should you wish. As we have explained, Showcase enables the transfer of appropriate value from Google to publishers through the display and curation of selected, high quality journalistic content on Google's specialized news surfaces including Google News and Discover. This benefits readers and publishers. Publishers can control and design the content that is shown in Showcase, and users can access high-quality news content on events that local, national, and global newsrooms highlight through their Showcase panels.

The information requested in your letter is not required to negotiate or conclude a Showcase contract with Google. Further, Caxton is not otherwise entitled in law to the information requested. You will appreciate that the information you have requested is confidential, and includes proprietary, commercial and financial information, and trade secrets. In some instances, the requests do not relate to the media industry at all and also are irrelevant to the Caxton Objective.

The requested information also is not required to protect the right to press freedom, and we deny that Google's products limit the media's freedom. Our products promote freedom of expression, including freedom of the press. Every day, we link hundreds of millions of people around the world, including South Africans, to publishers' websites containing the news that people want to read.

Finally, Caxton does not require and is not entitled to the requested information for the claimed reason of interrogating the claims made by Google to the Media and Digital Platforms Market Inquiry ("MDPMI"). The Competition Commission is statutorily-required to perform that function given its expertise and independence, and will no doubt engage with all stakeholders, including Caxton, as it fulfills its statutory mandate through the MDPMI. Google and Caxton both participate in the MDPMI by providing perspectives and information for the Commission to consider. There is no statutory need or purpose fulfilled by circumventing and undermining the Commission as Caxton seeks to do by requesting disclosure from Google directly. The MDPMI is not a process through which a market participant may seek to obtain information to which it is not entitled directly from another market participant. We urge Caxton to respect the market inquiry process and make any submissions that it wishes to the Commission for its consideration.

We repeat that Google remains available and committed to progressing engagements with Caxton on a potential Showcase contract. Please let us know when you would be available to meet to discuss this opportunity further.

Yours sincerely,

Google LLC

A handwritten signature in black ink, appearing to be 'P.W.', is located in the bottom right corner of the page.