

WEBBER WENTZEL

in alliance with > **Linklaters**

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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 Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beilings 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 Holfeld PM 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 Marais 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 Straeuli 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 Warmington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd

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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Direct fax: +27 11 530 6232

Email: dario.milo@webberwentzel.com

Letter sent electronically.

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.

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.

- 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:

- 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.

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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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:	Form in which record is required:
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.	

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
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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).
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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).
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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

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SIGNATURE OF REQUESTER /
PERSON ON WHOSE BEHALF REQUEST IS MADE