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Google Street View Litigation Goes Forward

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On June 29, 2011, Judge James Ware of the U.S. District Court for the Northern District of California denied Google's motion to dismiss the complaints alleging that Google intentionally designed its Street View data collection system to capture not only panoramic images of streets, but individuals' data (including usernames, passwords and personal emails) sent across Wi-Fi networks. The complaints allege violations of the federal Wiretap Act, state wiretap statutes, and the California law.

At issue in the Court's consideration of Google's motion was the meaning of the phrase "readily accessible to the general public" in an exemption for radio communications under the Wiretap Act. Google argued that it was not liable for the alleged federal wiretapping violations since the Wi-Fi broadcasts were unencrypted, and because their actions fell under the statutory exemption for radio communications. After examining the language of the statute and the legislative intent, the Court held that the wireless networks did not fall under the narrow statutory definition of "radio communications," and that the wireless networks, although unencrypted, were "configured to prevent the general public from gaining access to the data packets without the assistance of sophisticated technology." The Court then found that the plaintiffs sufficiently pleaded that the facts supported a claim that the unencrypted Wi-Fi networks at issue were not readily accessible to the general public.

The Court dismissed the claims brought under state wiretap statutes, on the grounds that they were pre-empted by the federal Electronic Communications Privacy Act. Finally, the claims brought under California law alleging wrongful business conduct were also dismissed. The court reasoned that although these claims were not pre-empted by the federal Wiretap Act, the plaintiffs did not establish that they had suffered injury in fact or lost property as a result of Google's actions.

The plaintiffs have until August 1, 2011, to file Amended Complaints.

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