

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PERSONAL AUDIO, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 17-1751-CFC-CJB
)	
GOOGLE LLC,)	
)	
Defendant.)	

MEMORANDUM ORDER

The Court, having reviewed Plaintiff Personal Audio, LLC’s (“PA”) discovery dispute motion, (D.I. 422), and briefing related thereto, (D.I. 423; D.I. 425; D.I. 428; D.I. 429), by which PA seeks an order compelling Defendant Google LLC (“Google”) to produce discovery relating to “the total number of all Android devices and Android users[,]” (D.I. 423 at 3), and having considered the arguments made on the October 28, 2019 teleconference, hereby ORDERS that PA’s motion is DENIED for the following reasons:

1. PA’s motion is predicated on the broad assertion that “[Google Play Music] [‘GPM’] was pre-installed on every Android device during the damages period in this case[.]” (D.I. 423 at 1) Yet PA has not demonstrated that this assertion is actually true. While PA points to the deposition testimony of Mr. Razumeiko to support this assertion, it does not do the work that PA claims. In the portion of testimony that PA relies upon, (D.I. 428 at 1), PA’s counsel asked Mr. Razumeiko to “go to a hypothetical. If a brand-new device comes from the factory, it’s pre-installed with the system image of Android and GPM, right?” (*Id.*, ex. A at 418) Mr. Razumeiko answered “[p]resumably. . . . I’m saying that because I don’t exactly know how it works.” (*Id.*) The Court agrees with Google that this testimony falls far short of establishing PA’s sweeping assertion that GPM was pre-installed on every Android device. (D.I.

429 at 1) And Google, for its part, contends that this assertion is untrue. (D.I. 425 at 2; D.I. 429 at 1) Moreover, Google backs this contention up by pointing out that Android is open source, and one could therefore build something that includes Android but that is not compatible with GPM. (D.I. 425 at 2 & ex. A at 1, 3; D.I. 429, ex. 2 at 144) Google further notes that “Android devices” would include cars, watches, game consoles, TVs, and other types of devices not accused in this case. (D.I. 425 at 2 & ex. B at 1, 2)

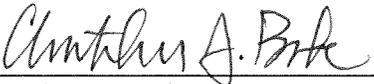
2. Even if it was true that GMP was preinstalled on most Android devices, it is not clear that Google has data on “the total number of all [REDACTED] users.” Google represents that it “does not install [REDACTED] and does not track the [REDACTED]” and can only count [REDACTED]. (D.I. 425 at 3; *see also* Transcript at 20, 25-27) Google notes that PA could have directly sought such information from the third-party manufacturers themselves, but did not. (Tr. at 20)

3. In the absence of PA sufficiently demonstrating an equivalence between GPM installations and Android devices, there is not an underlying factual or logical basis that would support the grant of PA’s motion, especially in light of the asserted burden to Google in searching within a historical time period to see what data may exist and to understand what such data represents. (D.I. 425 at 3; Transcript at 29, 31, 35)

4. Because this Memorandum Order may contain confidential information, it has been released under seal, pending review by the parties to allow them to submit a single, jointly proposed, redacted version (if necessary) of the document. Any such redacted version shall be submitted by no later than **November 20, 2019** for review by the Court, along with a motion for redaction that includes a clear, factually detailed explanation as to why disclosure of any

proposed redacted material would “work a clearly defined and serious injury to the party seeking closure.” *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994) (internal quotation marks and citation omitted). The Court will subsequently issue a publicly-available version of its Memorandum Order.

Dated: November 15, 2019



Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE