

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

IN RE APPLICATION OF THE
UNITED STATES OF AMERICA FOR
AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

MISC. NO. 09Y080-CBS

**GOVERNMENT'S MOTION TO WITHDRAW ITS MOTION TO COMPEL
COMPLIANCE WITH 2703(d) ORDER**

The United States of America, by and through its attorneys, Assistant United States Attorney Pegeen Rhyne, and Nathan Judish, Senior Counsel, Computer Crime and Intellectual Property Section, United States Department of Justice, hereby files the Government's Motion to Withdraw its Motion to Compel Compliance with 2703(d) Order.

Based on a prior application by the government, on December 3, 2009, United States Magistrate Judge Shaffer signed an Order pursuant to 18 U.S.C. § 2703(d) requiring Yahoo! Inc. ("Yahoo") to produce certain records and other information associated with targeted accounts. In response to this order, Yahoo produced certain limited records and information. The government reviewed Yahoo's production, and believing that Yahoo failed to comply with the court's order, filed, on March 3, 2010, a Motion to Compel Compliance with 2703(d) Order. After the government filed its motion to compel, Yahoo discovered that it had failed to comply even with that portion of the court's order that Yahoo does not contest and, thereafter, produced further responsive records and information. In order to give the government an opportunity to review and evaluate this new production of records and information, the parties requested and were granted a two-week delay in the briefing schedule. Based on the government's review of the

newly produced records and information from Yahoo, the government has concluded that further production of records and information by Yahoo would not be helpful to the government's investigation. Accordingly, the government moves to withdraw its Motion to Compel Compliance with 2703(d) Order.¹

RESPECTFULLY SUBMITTED, this 16th day of April, 2010.

DAVID M. GAOUCETTE
UNITED STATES ATTORNEY

Pegeen D. Rhyne
Assistant United States Attorney
United States Attorney's Office
District of Colorado
1225 17th Street, Suite 700
Denver, CO 80202

Nathan Judish
Senior Counsel
Computer Crime and Intellectual Property Section
United States Department of Justice

¹ The undersigned counsel is aware that Yahoo and other various parties have now submitted briefs on various privacy issues in the context of the prior motion to compel. The government respectfully disagrees with positions taken in those briefs, but because the need for the motion to compel has been vitiated by Yahoo's further production, the government declines to litigate this matter in this moot context.

Certificate of Service

I certify that I have served a copy of the following Government's Motion to Withdraw its Motion to Compel by U.S. Mail (as well as a courtesy copy by email) on the following:

Frederic M. Winocur
Marc A. Gilligan
Ridley, McGreevy & Weisz, P.C.
303 16th Street, Suite 200
Denver, CO 80202
winocur@rmwpc.com
gilligan@rmwpc.com

Marc J. Zwillinger
Zwillinger Genetski, LLP
1705 N. Street, NW
Washington, D.C. 20036
marc@zwillgen.com

Matthew M. Linton
John R. Mann
Kennedy Childs and Fogg, P.C.
633 17th Street, Suite 2200
Denver, CO 80265
mlinton@kcfpc.com
Jmann@kcfpc.com

Andrea K. Hough
Office of the U.S. Attorney