



APR 20 2010

MEMORANDUM FOR: Neil Sroka
Director of New Media
Office of Public Affairs

FROM: Barbara S. Fredericks *BSF*
Assistant General Counsel
for Administration

SUBJECT: Addendum to Terms of Service for Google Analytics

This provides clearance for the attached Addendum to the Terms of Service (TOS) for Google Analytics. Analytics is a free Google web-based platform that enables its users to track visits to their websites and determine how visitors interact with the website. Use of the platform will enable the Department, and its bureaus, to more effectively tailor its website content to the public's needs.

The General Services Administration (GSA) has negotiated an Addendum to the standard Analytics TOS. GSA's amendment to the Analytics TOS was negotiated to accommodate the needs of the Federal Government, with the intent that it could serve as a model for federal agencies desiring to use Analytics. An agency interested in using the Analytics service may coordinate with Google to sign an agency-specific Addendum based on the GSA-negotiated terms.

We have reviewed the GSA-negotiated Addendum to the Analytics TOS and have determined that the terms are acceptable. The Addendum presents no legal concerns for the Department of Commerce. We note, however, that the use of Analytics is governed by the same rules governing conventional websites and print media, especially with respect to maintenance and content. This holds true even where content is being stored off-site. Any policy developed by your office and OCIO relevant to agency activities in this arena should be followed.

Directions for executing the agreement:

Please follow the instructions provided by GSA for executing the Addendum, available at: https://forum.webcontent.gov/?page=TOS_GoogleAnalytics. These instructions direct that you contact Google directly at usgovernment-inquiry@google.com to arrange for signing a Department of Commerce-specific Addendum. Once the Addendum has been signed by the parties, you may register for the free Analytics account.

If you have any questions regarding this matter, please contact Sarah Coe of my staff at (202) 482-6807.

Attachment

GOOGLE – GENERAL SERVICES ADMINISTRATION ADDENDUM TO TERMS OF SERVICE FOR GOOGLE ANALYTICS

This addendum ("Addendum") to the Terms of Service ("Standard Google ToS") found at <http://www.google.com/analytics/tos.html> ("Standard Google ToS URL") for the Google services Analytics ("Services") is entered into on 10/20, 2009 ("Addendum Effective Date") by the General Services Administration ("Agency") and Google Inc. and its affiliates ("Google").

BACKGROUND

The parties recognize that Agency, as a United States Government entity, is required to follow applicable federal laws and regulations governing its agreements with other parties. Such laws and regulations include limitations on matters related to ethics, indemnification, fiscal law, advertising and endorsements, freedom of information, governing law and dispute resolution forum. Agency and Google agree that modifications to the Standard Google ToS are appropriate to accommodate Agency's legal status and public mission. The Services provided pursuant to this Addendum are commercial.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereby agree as follows:

TERMS

1. **Precedence:** If there is any conflict between this Addendum and the Standard Google ToS, this Addendum shall prevail. This Addendum may be further amended only upon written agreement executed by both parties.
2. **Government entity:** "You" within the Standard Google ToS shall mean the Agency itself and shall not apply to, or bind (i) the individual(s) who utilize the Google products or services on Agency's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Agency.
3. **Public purpose:** Any requirement(s) set forth within the Standard Google ToS that the Google products or services be used only for private, personal and/or non-commercial purposes is hereby waived.
4. **Intellectual property ownership:** Except as expressly allowed in the Standard Google ToS, no rights to any derivative works, subject inventions, or Google product modifications are conferred on Agency or any other party. All such rights belong solely to Google.
5. **Additional changes to Standard Google ToS:** Google may modify the Standard Google ToS occasionally. These changes may be necessary to reflect changes to the law or changes to the Services. Agency should look at the terms regularly. Google will post notice of

modifications to these terms at the Standard Google ToS URL. The changes will not apply retroactively and will become effective no sooner than seven days after they are posted. However, changes made for legal reasons or specific to new functionality for the Services will be effective immediately. If Agency does not agree to modified terms for the Services, Agency may terminate this Addendum immediately.

6. **Indemnification:** All indemnification provisions of the Google Standard ToS are hereby waived, except to the extent expressly authorized by law. Liability for any breach of the Standard Google ToS or this Addendum shall be determined under the Federal Tort Claims Act or other governing authority.
7. **Governing law:** This Addendum will be governed by and interpreted and enforced in accordance with the laws of the United States of America without reference to conflict of laws. To the extent permitted by federal law, the laws of the State of California (excluding California's choice of law rules) will apply in the absence of applicable federal law.
8. **Uploading, deleting:** The parties understand and agree that Agency is not obligated to use the Services, including but not limited to uploading any content to the Services.
9. **No endorsement:** Google agrees that Agency seals, trademarks, logos, service marks, trade names, or the fact that Agency utilizes the Services, shall not be used by Google to imply an endorsement of Google or the Service by the Agency. Either party may list the other party's name in a publicly available customer list so long as the name is not displayed in a more prominent fashion than any other third party name.
10. **No business relationship created:** The Parties are independent entities and nothing in this Addendum or the Standard Google ToS creates an agency, partnership or joint venture.
11. **No cost agreement:** Nothing in this Addendum or Standard Google ToS obligates Agency to expend appropriations or incur financial obligations. The parties acknowledge and agree that none of the obligations arising from this Addendum or Standard Google ToS are contingent upon the payment of fees by one party to the other.
12. **Future fee based arrangements:** Google provides these Services at a basic level free of charge to the public, but that may change in the future. Agency acknowledges that while Google will provide Agency with the Services for free, Google reserves the right to begin charging for the Services and features at some point in the future. Google will provide Agency with advance notice of such a change. Agency understands that Google currently offers other premium and enterprise services for a fee. Before deciding to enter into a premium or enterprise subscription, or any other fee-based service Google may offer in the future, Agency agrees to determine whether it has a need for those additional services, to consider the subscription's value in comparison with comparable services available elsewhere, to determine that Agency funds are available for payment, to properly use the Government Purchase Card if that Card is used as the payment method, to review this Addendum and the Google Standard ToS for conformance to federal procurement law, and in

all other respects to follow applicable acquisition laws, regulations, and agency guidelines when initiating that separate action.

13. **Assignment:** Neither party may assign its obligations under this Addendum or Standard Google ToS to any third party without prior written consent of the other; provided, however Google or its subsidiaries may assign this Addendum and the Standard Google ToS to a subsidiary or parent without written consent from Agency.
14. **Public availability of this Addendum:** The parties agree this Addendum contains no confidential or proprietary information, and either party may release it to the public upon request and to other agencies interested in using the Services.
15. **Termination rights:** Any provision in the Google Standard ToS allowing Google to terminate the Services, at any time, for any reason, is modified to reflect the parties' agreement that Services may be terminated and/or the Agency's account closed by Google, only for good cause. "Good cause" includes but is not limited to Google's decision to cease providing the Services to any third party, termination of Services to Agency based on Google's policy decisions affecting Agency on a non-discriminatory individual basis, or termination of Services to Agency for financial or technical reasons. Notwithstanding anything to the contrary, the foregoing modification to the Standard Google ToS shall not apply to any Google product that is in Beta or experimental status. Notwithstanding the foregoing, Google may terminate this agreement upon ninety (90) days prior written notice to Agency.
16. **Advertisements:** Google agrees not to serve or display any commercial advertisements in the publicly available portion of the Services displaying content uploaded by or under the control of the Agency; provided, however, Google may serve or display advertisements in such publicly available portion of the Services if Agency opts to include optional feature(s) of the Services that include(s) advertisements. For example purposes only, the Google Blogger product contains an optional ads feature which provides advertisements at the user's discretion. This exclusion shall not extend to house ads, which Google may serve on such pages in a non-intrusive manner.
17. **Modifications of Agency content:** Google agrees that the right reserved in the Standard Google ToS to "modify" or "adapt" Agency content is limited to technical actions necessary to index, format and display that content. The right to modify or adapt does not include the right to edit or otherwise intentionally alter the meaning of the content. Notwithstanding anything to the contrary, Agency understands that automated modifications or adaptations that may alter the meaning of the content are not a violation of this section. For example purposes only, Google Moderator may automatically truncate a user generated question for formatting purposes and in the event the meaning of the question is altered, such automated truncation by Google is permitted. In the event Agency discovers that Agency content has been modified in a manner that negatively alters the meaning of such content, Agency may contact Google and the parties shall work together in good faith to correct the modification. Notwithstanding the foregoing, nothing in this Addendum shall result in an expansion of

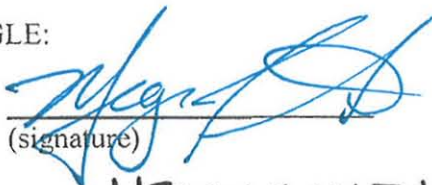
Agency's rights as a United States Government entity under the Copyright Act of 1976 (17 U.S.C. §§101 et seq.), specifically including Section 105 of said Act.

Except as expressly set forth herein, the Standard Google ToS will remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Addendum through their duly authorized representatives.

GOOGLE:

By:


(signature)

Printed Name:

MEGAN J. SMITH

Title:

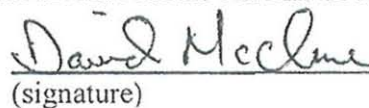
VP, NEW BUSINESS DEV.

Date:

3 FEB 2010

GENERAL SERVICES ADMINISTRATION:

By:


(signature)

Printed Name:

DAVID MCCLURE

Title:

Associate Administrator/OCS

Date:

10/20/09

