

EXHIBIT 5



LEVINE SULLIVAN
KOCH & SCHULZ, LLP

1899 L Street, NW
Suite 200
Washington, DC 20036
(202) 508-1100 | Phone
(202) 861-9888 | Fax

Seth D. Berlin
(202) 508-1122
sberlin@skslaw.com

Alia L. Smith
(202) 508-1125
asmith@skslaw.com

October 23, 2014

VIA ELECTRONIC MAIL

Charles J. Harder, Esq.
Harder Mirell & Abrams LLP
1925 Century Park East
Suite 800
Los Angeles, CA 90067

**Re: *Bollea v. Clem, Gawker Media, LLC, et al.*,
No. 12012447-CI-011**

Dear Charles:

This letter responds to yours of October 2, 2014 regarding the objections of Gawker Media, LLC (“Gawker”) to the subpoenas plaintiff has proposed to serve on Google, Inc. and Fastly, Inc., as well as the motion to overrule Gawker’s objections to the subpoenas. Although we apologize for not getting a response to you before you felt compelled to move, we hope that the additional information provided below will help clarify and narrow the issues. To that end, we have investigated further the questions and issues you raised and respond as follows:

Plaintiff’s proposed subpoena to Fastly: As an initial matter, based on our further investigation, we want to clarify our initial description of the services Fastly provides. While we had previously advised that Fastly is “a service which Gawker uses to *host* certain audio and video displayed on its websites,” in fact it is more precise to describe Fastly as a “content delivery network” that *serves* (not *hosts*) Gawker’s text and photo content to users.

Either way, based on our significant further investigation about the items raised in the subpoena and your letter, we still are having difficulty understanding what information even arguably relevant to this lawsuit plaintiff seeks with a subpoena to Fastly given that Fastly provides a backend IT service that facilitates the user experience on Gawker’s websites. First, Gawker did not begin its relationship with Fastly until February 2013, four months after the post at issue was published. Second, Fastly has nothing to do with the substance of the *content* appearing on Gawker’s websites. Third, Fastly does not store *traffic* data for Gawker’s websites (*i.e.*, it does not keep track of user IP addresses or otherwise maintain logs of user sessions,

including without limitation exit data), and any sessions for which Fastly serves content would be included in the traffic data previously provided and available from Google Analytics and Quantcast.¹ Finally, apart from providing this service to Gawker, Fastly does not, and has not ever, had a relationship of any kind with Nick Denton or Blogwire Hungary. While it is our belief that Fastly does not appear to have information related to any of the issues in this case, and that a subpoena to it would therefore be improper, we look forward to discussing this with you further tomorrow.

Plaintiff's proposed subpoena to Google: We have also conducted additional investigation into the items identified in your letter in connection with the proposed subpoena to Google.

As an initial matter, based on our further investigation, it is our understanding that Google does not have access to any traffic data different from what Gawker can access. Gawker has already provided that information, updating it several times. Accordingly, a subpoena that seeks the same information from a vendor, *see* Requests Nos. 7-9, continues to seem improper to us. You seem to assert otherwise in your letter and in your motion papers, and we hope that our discussion of this issue tomorrow can help get to the bottom of this.

It also appears that the other requests seek information that does not bear on any of the issues in this case, including (a) defendants' relationship with Google (particularly given Judge Campbell's prior denial of discovery concerning relationships with and payments to vendors providing usual and customary services, *see* Feb. 26, 2014 Order ¶ 2), and (b) a web posting from April 25, 2013 that is not the post at issue. In a similar vein, the request for query and trends data about generalized terms like "sex tape" and "Gawker" would seem to be pretty far afield since plaintiff already has detailed traffic information for multiple years from multiple sources and searches for these terms were likely conducted for many reasons unrelated to this post. That said, we are pleased to discuss this with you further tomorrow.


¹ In the interest of completeness, we understand that Fastly has limited short-term retention (*i.e.*, for up to 7 days) of some events for troubleshooting and statistical analysis. However, those events are not customer-specific and are typically limited to operational incidents.

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We realize that the proposed subpoenas involve rather precise issues about what these two services provide, both generally and to Gawker, and appreciate the opportunity to discuss these issues further by telephone tomorrow. Thank you.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 

Seth D. Berlin
Alia L. Smith