An Analysis of the Pivotal Evidence in the Streetmap vs Google Case

Under European Law, national courts are prohibited from reaching judgments that conflict (or risk conflicting) with decisions of the European Commission. For the Streetmap trial to proceed (rather than be stayed pending the outcome of the European investigation), both Google and Streetmap had to agree that there was no overlap between the issues to be tried and those currently under investigation by the European Commission.

Streetmap's case focused exclusively on the harm to Google's digital mapping competitors caused by the introduction of Google's new-style Maps Onebox that accompanied the introduction of Universal Search for maps in 2007.

In contrast to the anti-competitive Google practices set out in Foundem's case and the Commission's Statement of Objections, Streetmap's case only concerned the preferential treatment afforded to Google's own services. It was not concerned with the other half of Google's search manipulation practices—the exclusion or demotion of rival services through anti-competitive penalties. Moreover, Streetmap's preferencing allegations were limited to *geographic* queries only: the knock-on effect of the introduction of Google Maps Oneboxes for *local business listings*, which will have resulted in a substantial reduction in the number of geographic queries, was excluded from Streetmap's claim.

This document does not discuss the strengths and weaknesses of Streetmap's case. It focuses exclusively on the pivotal evidence (and lack thereof) surrounding the central question of the trial: when Google began to insert Google Maps Oneboxes at the top of nearly all geographic search result pages, did this lead (as one would expect it to) to a substantial increase in the traffic to Google's mapping service and a corresponding decrease to competing mapping services? On this pivotal question, Mr Justice Roth's March 2016 Judgment stated:

> *"This is a factual assessment, which I have found the most difficult part of this case. I remind myself that the issue is to be determined on the basis of the evidence before the Court, not on instinct or personal experience."*

Before the introduction of Universal Search, Google Maps Oneboxes were small, primarily text based, and often featured links to competitors alongside the links to Google's own service. Most importantly, prior to Universal Search, Google's mechanism for detecting geographic queries and triggering the display of a Maps Onebox was relatively crude and error-prone. As a result, Google only displayed Maps Oneboxes for a relatively small proportion of geographic queries. With the introduction of Universal Search and its more sophisticated detection and triggering capabilities, Google began inserting Maps Oneboxes far more frequently (and with fewer false-positives for queries such as "2 dead in LA"). At the same time, these inserts stopped featuring links to competitors and began to feature sizeable Google Maps images/thumbnails of the relevant geographic area.

Clearly, the inclusion of a large, colourful, and presumably relevant clickable Google map at the top of users' search results for virtually all varieties of geographic queries would be expected to result in a substantial increase in the volume of traffic delivered to Google's mapping service and a corresponding decrease in the volume of traffic delivered to rival mapping services for such queries. Remarkably, however, Google produced evidence at the Streetmap trial that seemed to suggest that this was not the case. Google claimed that the results of a December 2006 "live experiment" demonstrated that any increase in the volume of traffic to Google's mapping service was marginal and that the traffic to rival mapping services remained roughly the same.

Unfortunately, and unusually for an internet-based business, Streetmap had little or no historical traffic data with which to directly rebut Google's counterintuitive claims. Moreover, neither Streetmap nor its experts pointed out the fundamental flaw in Google's interpretation of its "live experiment". As a result, this misleading data went almost entirely unchallenged and became the most pivotal piece of evidence presented at the trial.

While Google's 2006 "live experiment" was no doubt suitable for its original purpose, it was entirely unsuitable for the purpose to which Google deployed it in the Streetmap trial. Google's experiment was designed to assess the impact and efficacy of the post-Universal-Search, new-style Maps Onebox compared to the pre-Universal-Search, old-style Maps Onebox. To this end, Google's experiment examined the impact of the change on the Search Engine Result Pages (SERPs) *featuring a Google Maps Onebox*. As illustrated in the Figures below, this is not at all the same as examining the impact of the change on the *geographic* SERPs at issue in the Streetmap trial.

Figure 1 below provides a crude, non-empirical, illustration of the changing overlap between the universe of geographic SERPs and the SERPs for which a Google Maps Onebox might have triggered before and after the introduction of Universal Search. Note that Google introduced Universal Search for maps in two phases: in June 2007, Maps Oneboxes were only triggered for city and neighbourhood searches (such as "london" and "camden town"), whereas, sometime during or shortly after July 2007, they also began to trigger for street addresses (such as "100 oxford street").

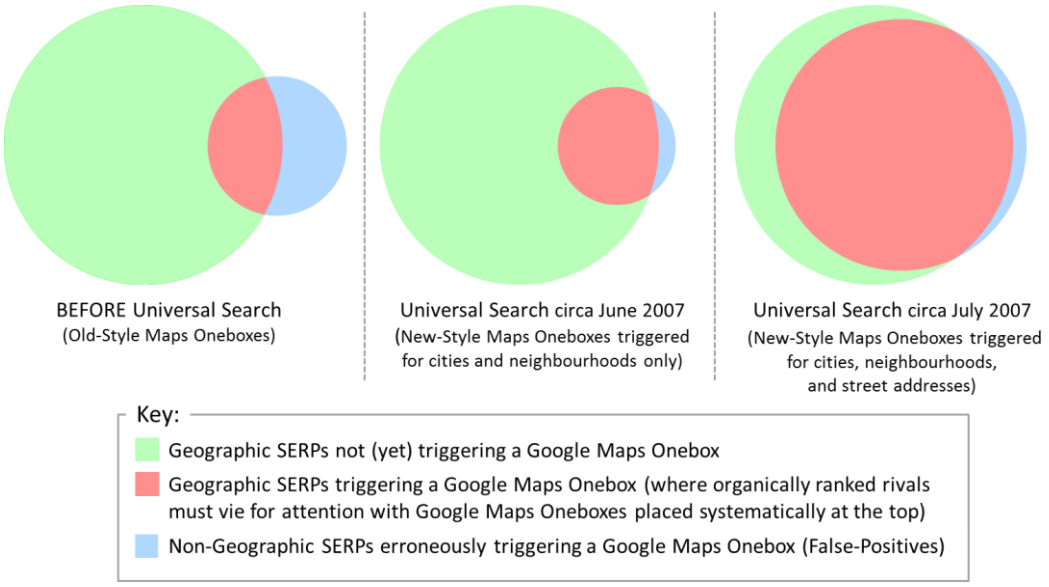

Figure 1: An illustration of the relationship between geographic SERPS and those triggering a Maps Onebox

Figure 2 below illustrates the *geographic SERPs* (circled in dark blue) that would need to be examined in order to draw legitimate conclusions about the before-and-after impact of Universal Search on the click-through-rates to Google Maps and its competitors for the *geographic queries* at issue in the Streetmap trial:

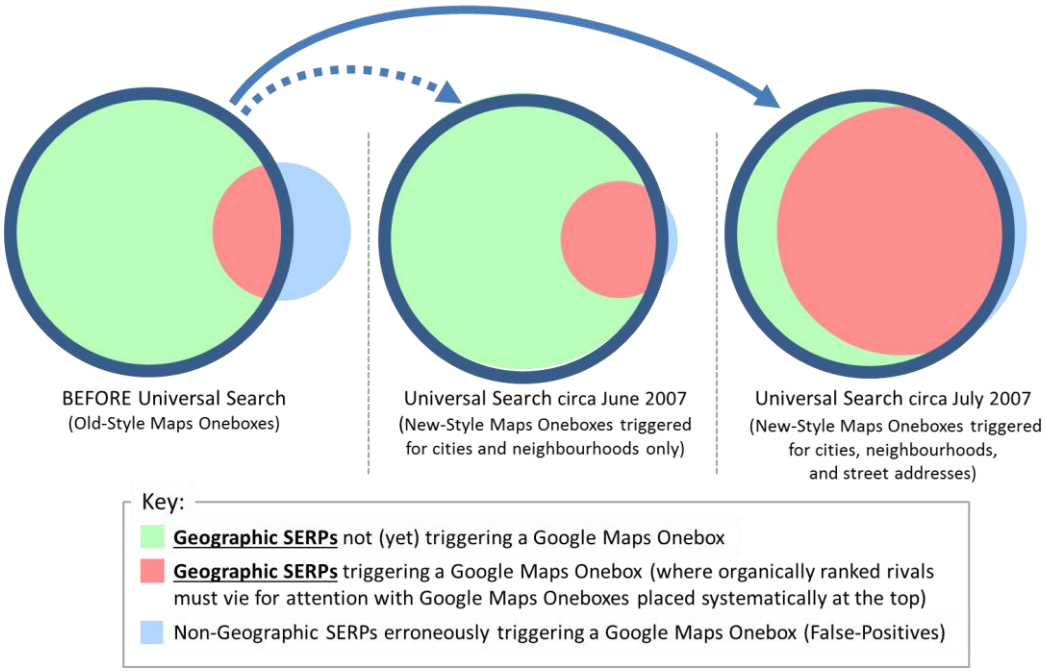

Figure 2: An illustration of what would need to be evaluated (circled in blue)

Figure 3 below illustrates the mix of geographic and non-geographic SERPs (circled in red) that were *actually* examined by Google's live experiment—i.e. those for the queries triggering a Google Maps Onebox, *not* for the *geographic queries* at issue in the Streetmap trial:

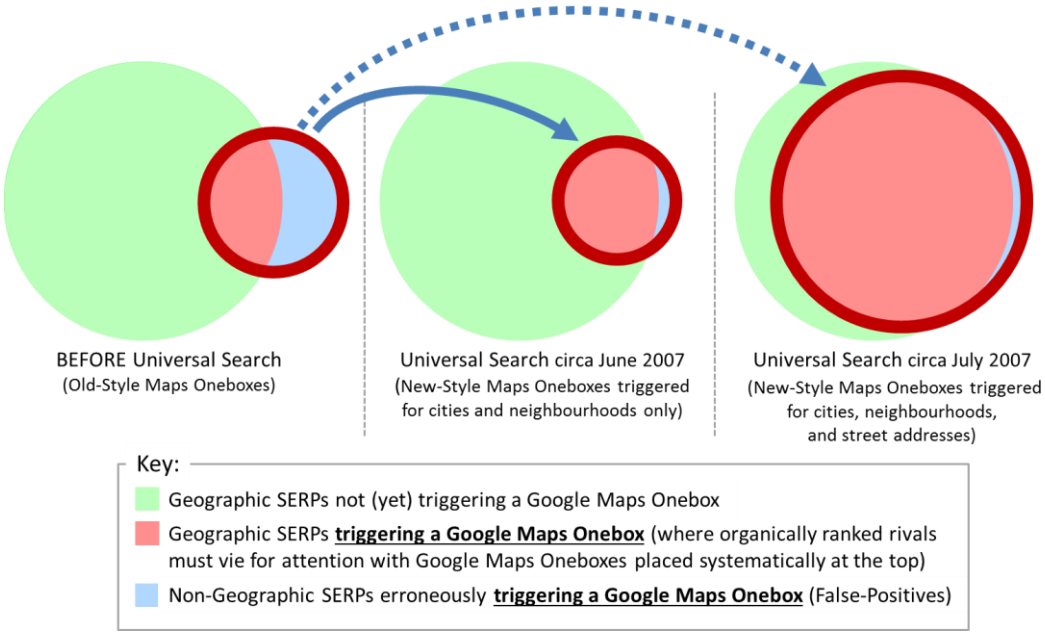

Figure 3: An illustration of what was actually evaluated (circled in red)

While an argument could be made that following July 2007 the *queries triggering a Google Maps Onebox* are a reasonable proxy for *geographic queries*, this is certainly not the case in June 2007 or earlier. This is particularly troubling because it appears that the December 2006 "live experiment" cited by Google in the Streetmap trial evaluated the impact of the June 2007 version of Universal Search, not its substantially more impactful (circa July 2007 onwards) replacement.

As illustrated by the above Figures, in the context of the Streetmap case Google's 2006 experiment takes false account of the substantial volume of false-positive, non-geographic queries in the control group (i.e. "BEFORE Universal Search").

Most importantly, the experiment fails to take any account of the substantial volume of geographic queries that did not trigger a Google Maps Onebox (shown in green). Clearly, these geographic SERPs (the ones not yet featuring a Google Maps Onebox at the top of the page) would be expected to result in substantial volumes of clicks to Google's mapping rivals—both because they would be relevant and because they were not yet vying for attention with prominently placed, eye-catching Google Maps Oneboxes. Had Google's live experiment taken these crucially important geographic SERPs into account, it would, of course, have found a substantial decrease in the click-through-rates to rival mapping services—one commensurate with the substantial decrease in the number of geographic SERPs not featuring a Google Maps Onebox at the top of the page: