

PARTNER will receive a list of Text Search Matches (as defined below) for PARTNER's review through the Search & Claim Tool. In the event that PARTNER identifies a file as containing audio or audiovisual content owned or controlled by PARTNER, and designates its ownership or control through the Search & Claim Tool, PARTNER shall have the option to make the Election. Once a file is identified by PARTNER via the Search & Claim Tool as PARTNER content, the file will automatically be audio fingerprinted and added to the audio fingerprint library so future uploads of the file can be detected automatically via the audio fingerprint process described herein.

2. Blocked Content

- a. The parties agree that PARTNER will create a list of Blocked Content. "Blocked Content" shall mean any PARTNER content that PARTNER provides to the Fingerprint Vendor and designates as "Blocked" in the metadata associated with the PARTNER fingerprints. This list may be updated by PARTNER from time to time by providing a revised Blocked Content list to the Fingerprint Vendor (as defined below). YouTube/Google shall, acting on PARTNER's behalf, instruct the Fingerprint Vendor to promptly (and, no later than five (5) business days following the receipt by the Fingerprint Vendor of a revised Blocked Content list from, or on behalf of, PARTNER) incorporate any revisions to the Blocked Content list in the metadata provided by the Fingerprint Vendor to YouTube/Google along with the Fingerprint Matches.
- b. PARTNER agrees to designate as "Blocked Content" all PARTNER owned or controlled audio content with respect to which PARTNER has not obtained all necessary rights with respect to use of User Generated Content on the Service, including guild and union payments, synchronization rights and any required reproduction rights (for server copies, hosting, encoding, etc...).

3. User Generated Videos

- a. "User Generated Videos" shall mean those videos on the Video Service that are uploaded by a user of the Video Service and which PARTNER (or its authorized agent) or the Fingerprint Vendor determines contain PARTNER content that is not Blocked Content. For the avoidance of doubt, User Generated Videos shall include (a) Fingerprint Matches (as defined below) that do not match the fingerprint of any Blocked Content and (b) Text-Search Matches (as defined below) determined by PARTNER (or its authorized agent) to contain PARTNER content that is authorized via the Search & Claim Tool for use on the Video Service.
- b. YouTube/Google shall assign a unique identifier to each User Generated Video.

II. Monitoring Processes

1. Acoustic Fingerprinting

PARTNER shall deliver (or shall have already delivered) to the Fingerprint Vendor copies of its digital content files or fingerprints of its digital audio content that can be used to detect matching PARTNER content in videos on the Video Service. As of the Effective Date, the Fingerprint Vendor is a third-party company called Audible Magic, but the Fingerprint Vendor could change during the Term at YouTube/Google's sole discretion upon reasonable notice to PARTNER. The Fingerprint Vendor shall store the audio fingerprints of the PARTNER content in the YouTube/Google fingerprint library. PARTNER may deliver additional digital content or audio fingerprints to the Fingerprint Vendor throughout the Term to enhance the YouTube/Google fingerprint library of audio fingerprints. PARTNER acknowledges that the success of the audio fingerprinting efforts depends on PARTNER's delivery of digital files or fingerprints to the Fingerprint Vendor.

As part of the YouTube/Google general submission process for the Video Service, the audio portion of each file an end user attempts to upload to the Video Service shall be extracted from the video file as it is uploaded to the Video Service, and sent to the Fingerprint Vendor to compare against the YouTube/Google fingerprint library.

Any video that contains audio identified as a PARTNER audio recording by the Fingerprint Vendor shall be deemed to be a "Fingerprint Match." The Fingerprint Vendor shall, using the list of Blocked Content provided by or on behalf of PARTNER, identify Fingerprint Matches containing Blocked Content with a specified tag in the applicable fingerprint's metadata. The Fingerprint Vendor shall return Fingerprint Matches to YouTube/Google on an ongoing basis, multiple times throughout each day. For any Fingerprint Match that contains metadata indicating that the audio portion of such video contains Blocked Content, 97% percent of the time the Blocked Content in the audio portion of such video shall be removed from the Video Service within two (2) business days or less.

In the event Fingerprint Matches do not contain metadata indicating that the video contains Blocked Content, the corresponding PARTNER content shall thereafter be deemed to be licensed by PARTNER in connection with the Video Service, and shall be assigned a unique identifier by YouTube/Google in accordance with a mutually agreed process developed by the parties.

YouTube/Google shall run the following "legacy" videos against the Fingerprint Vendor's database of fingerprints on the following schedule:

Action	no	later	Legacy video scan
--------	----	-------	-------------------

than	
Launch +120 days	All videos in all categories with over 10,000 views

2. Text & Tag Searching

YouTube/Google shall provide a tool (the "Search & Claim Tool") that gives PARTNER the ability to define in an XML feed to YouTube/Google specific automated metadata text searches (or queries) comprised of PARTNER keywords, in each case, as may be updated by PARTNER from time to time by modifying the queries in the XML feed ("PARTNER Searches"). YouTube/Google shall run such PARTNER Searches at a frequency determined by PARTNER (but no more than once daily). The Search & Claim Tool shall also provide PARTNER with the ability to run PARTNER Searches on a one-off basis, or in connection with a particular event (e.g. relating to a particular actor/artist performance broadcast on a television awards program like the VMA's or Academy Awards). PARTNER may also use the Search & Claim Tool to modify (e.g. change, add or delete) the specific PARTNER Searches at PARTNER's sole discretion. PARTNER may experiment in its sole discretion to optimize the PARTNER Searches. YouTube/Google shall cooperate with PARTNER and use commercially reasonable efforts to work with PARTNER to optimize the PARTNER Searches throughout the Term.

YouTube/Google shall run the PARTNER Searches to locate, on PARTNER's behalf, any videos on the Video Service whose title metadata or tag metadata information matches any PARTNER Search ("Text-Search Match") for the purpose of identifying videos on the Video Service containing PARTNER content and not captured by the Audio Fingerprinting process. The URLs and corresponding thumbnail images for all of the Text-Search Matches shall be available for review by PARTNER (or its designated agent) through the Search & Claim Tool. PARTNER (or its designated agent) may, but shall not be required to, review the videos located at such URLs to determine and designate whether any such videos include audio content, visual content or both that is PARTNER content.

YouTube/Google shall via the Search & Claim Tool enable PARTNER to easily communicate to YouTube/Google that any Text-Search Match contains PARTNER content and shall enable PARTNER to easily make the Election with respect to any such video(s). In the event there is PARTNER content in a video, and PARTNER elects to designate such content as "Blocked Content" hereunder, YouTube/Google shall act expeditiously (i.e. 97% of the time within two (2) business days or less from receipt of such notification) to remove, or disable access to, the Blocked Content. In the event the PARTNER elects to designate such Partner content as licensed for use in connection with the Video Service, the video shall thereafter be deemed to be a User Generated Video under the Agreement and Partner shall be compensated accordingly.

In the event YouTube/Google's removal of PARTNER content from the Video Service as contemplated hereunder results in a "Counter Notice" from an End User that complies with 17 USC Section 512(g)(3) of the Digital Millennium Copyright Act claiming in good faith that a mistake occurred and the End User in fact has all necessary rights and permissions to upload the applicable video, PARTNER agrees to cooperate in good faith with YouTube/Google to resolve the dispute appropriately.

YouTube/Google shall create an audio fingerprint corresponding to each video that PARTNER identifies using the Search & Claim Tool as containing PARTNER content (for which the Fingerprint Vendor does not already have a corresponding audio fingerprint), which audio fingerprint shall be added to the YouTube/Google fingerprint library against which all newly uploaded videos will be compared. Any future Fingerprint Matches for that fingerprint shall be accorded the same status (e.g. Blocked Content or User Generated Video) as PARTNER designated through the Search & Claim Tool described in this section.

3. Video Hashing

As part of the YouTube/Google general submission process, each video uploaded to the Video Service shall be compared against a library of hash files stored by YouTube/Google. For any file that has been previously removed from the Video Service at PARTNER's request (because such file contained PARTNER-owned content not authorized for use in connection with the Video Service), additional submissions of an identically hashed file ("Video Match") shall not be made available on the Video Service, unless otherwise agreed by PARTNER in writing. For any file that has been previously designated as a User-Generated Video, additional submissions that are a Video Match will also be designated as a User-Generated Video and treated accordingly under the Agreement.

4. Unique Identifiers and Reporting of User-Generated Videos

All User-Generated Videos shall be given a unique identifier that corresponds to the applicable PARTNER content embodied therein, in accordance with a mutually agreed process, which unique identifier shall be reported to PARTNER with all required reporting under this Agreement.

5. Miscellaneous

Throughout the term, PARTNER shall not "claim" through the Search & Claim Tool or include on the Blocked Content list any audio recording that PARTNER does not own and/or control.

To: "David Eun" <deun@google.com>
 From: "Chris Maxcy" <maxcy@google.com>
 Cc:
 Bcc:
 Received Date: 2007-08-01 09:55:32 CST
 Subject: TW Summary - Encoding to H.264

Dave,

Here is the summary we discussed today on the H.264 encoding question. Please let me know if this is the format you are looking for.

Thanks!

Chris

Summary:

In an effort to support our strategy of making YouTube available anytime, on any screen, YouTube has been building partnerships with leading mobile carriers, handset manufacturers and CE device manufacturers worldwide. At the same time we've also launched a WAP site so users can access YouTube content from mobile phones. In order to deliver content through the WAP site and through IP connected devices like the Apple TV we made the decision to re-encode YouTube files into the H.264 (MPEG-4) format. This is an industry standard format for mobile delivery.

To date the YouTube engineering team has re-encoded approximately 30,000 of the top watched videos on YouTube. The re-encoding process is completely automated - we look for the most watched content and prioritize this for re-encoding. By October 2007 the goal is to have the entire YouTube video catalog encoded into the H.264 format to support our broad Mobile/IPTV efforts.

When we license content from a media company or identify & license content through the Content Management System (audio/video fingerprinting, or text search tool) the partner has the option to disable distribution of their content off of the YouTube.com site. This includes blocking content from the YouTube WAP site or from being displayed on the Apple TV/iPhone. Regardless of where consumers access YouTube (website, Apple TV or the WAP site) all content is delivered in a streaming only format - no downloads are permitted. Content that is removed from the main YouTube site is simultaneously removed from our IPTV and Mobile channels to ensure we protect the rights of content owners.

Chris Maxcy
 YouTube.com
 chris@youtube.com

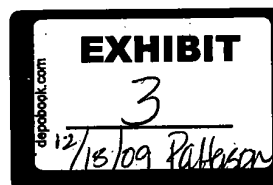
DATE: 8-28-08

EXHIBIT# 21

DEPONENT: MAXCY, CHRIS

CASE: Viacom, et al., v. YouTube, et al., The Football Association Premier League, et al., v. YouTube, et al., Case Nos. 07-CV-2203 and 07-CV-3582
 A. Ignacio Howard, CLR, RPR, CSR No. 9830

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G00001-00010746

To: "Bhanu Narasimhan" <bhanun@google.com>, "Nikesh Arora" [REDACTED]
 From: "David Eun" <dsun@google.com>
 Cc: "Peter Chane" <peterch@google.com>, "Hunter Walk" <hunter@google.com>, "Patrick Walker" <pjwalker@google.com>, "Ethan Anderson" <eanderson@google.com>, "David Fischer" <dfischer@google.com>, "Dave Eun" <deun@google.com>, "John Herlihy" <johnh@google.com>, "William Kipp" <wkipp@google.com>, "Jennifer Feikin" <jfeikin@google.com>, "Susan Wojcicki" <[REDACTED]>, "Nikhil Bhatia" <nikhil@google.com>
 Bcc:
 Received Date: 2006-03-08 18:25:03 CST
 Subject: RE: Video Ops Update

Thanks, Bhanu.

Nikesh et al, given the concerns that content owners have about properly screening for illegal content and our rapidly increasing base of user-submitted content in general, I thought it'd be helpful to have a clear view on what affirmative measures Bhanu and her team are taking today - and what they plan to do going forward.

We should all keep in mind that as more user-submitted content increases, our ability to screen for copyright infringements will become increasingly important - not just from a partnership standpoint but from a pure legal standpoint. At some point, the complaints/concerns we receive could turn into lawsuits from deep pocketed content owners, or a class of them. We need to make sure that the tools and capabilities we have to filter content continue to keep pace with developments to our Video strategy, as we readjust allocations of time and resources across all the functional areas involved...

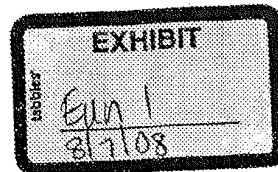
Dave

From: Bhanu Narasimhan [mailto:bhanun@google.com]
 Sent: Wednesday, March 08, 2006 9:59 AM
 To: Nikesh Arora
 Cc: Peter Chane; Hunter Walk; Patrick Walker; Ethan Anderson; David Fischer; Dave Eun; John Herlihy; William Kipp
 Subject: Video Ops Update

Hi Nikesh,

As you may already know, I am managing the video ops team here in MV. I was chatting with Dave Eun yesterday, giving him an overview of our tools and processes, and he mentioned that perhaps I could email you some information on this as well so you have better visibility into what we are currently doing and what our plans are for the future. I have

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included highlights below, and am also enclosing some slides that I shared with Dave a couple of weeks ago that contain an overview of video and video ops. Please feel free to email me any additional questions that you may have.

Thanks,
Bharu

Google Video Current State

US Product, US Policies Apply

Video is currently a US/.com product with IP restrict in china and India. We removed IP restrict recently in Fr, DE, Korea. Currently our team is working solely under US policies and applicable copyright laws, however, we are committed to honoring the rights of copyright owners worldwide.

Content Reviewed in US Only

Online and standard partner uploaded content currently gets reviewed only in the US. Our team sees thumbnails only, no audio. We disapprove for policy (porn, violence, etc.) or copyright - content that is not recognized by reviewer (like bollywood movies, european shows, etc) is not approvable.

Takedowns Based on DMCA, User/Googler Input

We rely on content owners sending us DMCA complaints to takedown copyright content. We review emails sent to us by users and review videos for possible policy violations.

We also have an internal sparrow page that googlers can leverage to bring content to our attention (<http://www.corp.google.com/sparrow/googlevideo/takedown.html#sparrow>) - we review this content and takedown if appropriate. We try to notify the uploader that their content was taken down soon after the fact. We also give uploaders info on how to counter complain if they think they do in fact own copyright to their video.

Part Time Dublin Team Fielding Complaints and Identifying Infringing Content

When we removed IP restrict in Fr, DE, we also trained and assigned 3 part time resources from the online ops team in Dublin to help with user/government complaints so we could provide more speedy resolution. These people work for Bill Kipp and are trained in policy/copyright related emails and takedowns.

We are currently leveraging this part time team to identify infringing UK/European content in the index and asking them to add the URLs to our sparrow page. We have just begun taking this content down. In the meantime, the BBC has recently been sending us DMCA complaints (nearly 200 videos thus far)

Google Video Future State

Google Video Engineering Currently Working on Tools to Protect Content Owners

1) Enhanced Google Operations tools [incremental releases over next 4-6 weeks]

Increased ease of use and accuracy via the presentation of video meta data into the review process, highlighting of family unsafe words, using metadata to find similar files already live or that have been previously removed from GV. Creation of a takedown tool to speed the removal of problematic videos once they are live. Tracking violations by uploader to facilitate closing accounts of serial violators.

2) Technical copyright/duplication file detection [next 1-3 months]
Introducing activities into the review pipeline which will compare the audio and/or video of uploaded files against canonical content already live within GV (or potentially even against premium content not live with GV but in an authoritative DB we can compare against). These reviews will potentially automatically disapprove matches or raise a flag for manual review.

3) Auto-DMCA request tool [first release by EOM]
Permissioned partners will be able to flag videos in the GV UI and electronically submit these in batches to Google as DMCA takedown requests.

Full Time Dublin Ops Team Upon Localization

When we localize video and launch in Europe, we will have a fulltime team in Dublin (probably one person per language) that will handle the full spectrum of video reviews, emails and takedowns. The review tool will have European queues so that content uploaded in Europe gets reviewed by Dublin. We are also working with the legal teams to localize our help content and CRs for European laws, and our steps may vary somewhat from the US. The MV team will train the Dublin team and ensure things get off the ground smoothly.

CODED FIELDS:

BEGDOC: GOO001-00507525

ENDDOC: GOO001-00507532

BEGATTACH: GOO001-00507525

ENDATTACH: GOO001-00507532

RECORDTYPE: E-File

CUSTODIAN: Dunton (Maryrose)-GOONDCE000001612

DATASETID: GOONDCE000001612

MASTER_DATE: 01/25/2006

SENTON_DATE_TIME:

CREATE_DATE_TIME: 01/25/2006:03:20:56

LASTMOD_DATE_TIME: 01/25/2006:03:20:56

RECEIVED_DATE_TIME:

PARENTFOLDER: HAL-SB-0207\1 Customer\Macintosh HD\Users\maryrose\Library\Application Support\Adium 2.0\Users\Default\Logs\AIM.maryrosedunton\tunawarrior-GOONDCE000001612

AUTHOR:

TO:

CC:

BCC:

SUBJECT_TITLE: tunawarrior (2006-01-24).html

ORIGINALSOURCE:

NATIVEPATH:

FILEEXT: html

FILENAME: tunawarrior (2006-01-24).html-GOONDCE000001612

FILESIZE: 35829

MD5HASH: 461e529cf645ec76295156c819523baf

DATE: 8.22.08 EXHIBIT# 3
DEPONENT:
DUNTON, MARYROSE
CASE: Viacom, et al., v. YouTube, et al., The Football
Association Premier League, et al., v. YouTube, et al.,
Case Nos. 07-CV-2203 and 07-CV-3582
A. Ignacio Howard, CLR, RPR, CSR No. 9830

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GOO001-00507525-GOO001-00507532

REDACTED

REDACTED

12:09:39 AM tunawarrior:

everyone's talking to us

12:10:05 AM maryrosedunton:

hah. oh totally. but ya, since the team is getting larger and larger, you can't really openly admit to that

12:10:21 AM maryrosedunton:

people freak out

12:10:24 AM tunawarrior:

if i were running the show. i'd say, we concentrate all of our efforts in building up our numbers as aggressively as we can through whatever tactics, however evil

12:10:30 AM tunawarrior:

ie, scraping myspace

12:10:33 AM maryrosedunton:

ya

12:10:38 AM tunawarrior:

but just get user metrics up, views up, keep scaling out.

12:10:47 AM tunawarrior:

then 3 months, sell it with 20m views per day and like 2m users or something.

12:10:57 AM tunawarrior:

because my fear is, in 3 months.

12:11:02 AM tunawarrior:

to keep up with this growth.

12:11:05 AM tunawarrior:

things are going to get so out of control.

12:11:14 AM tunawarrior:

we're going to be pushing like 10% of the traffic that google pushes or something.

12:11:20 AM tunawarrior:

with 1/1000th the budget.

12:11:24 AM maryrosedunton:

blah

12:11:37 AM tunawarrior:

hahaha

12:11:39 AM tunawarrior:

what's that blah mean

12:11:46 AM tunawarrior:

think i'm pessimistic?

12:12:02 AM maryrosedunton:

hah...oh no, I just mean that's a crazy amount of traffic

12:12:06 AM tunawarrior:

see, i think we can sell for somewhere between \$250m - \$500m.

12:12:08 AM tunawarrior:

in the next 3 months.

12:12:16 AM tunawarrior:

and there *is* a potential to get to \$1b or something.

12:12:28 AM tunawarrior:

but, man, that's going to take like 2 years of hard work and probably dilution and getting another round of funding.

12:12:29 AM maryrosedunton:

and honestly, I can't imagine we could make enough just in advertising to cover operating costs for something that large

12:13:56 AM tunawarrior:

ya, none of these internet companies that get a lot of traffic with a revenue model based on purely advertising make that much money.

12:14:02 AM tunawarrior:

thinking like friendster and even myspace

12:14:20 AM tunawarrior:

i think it has to be a more unique model

12:14:25 AM tunawarrior:

like google's is unique to google

12:14:38 AM tunawarrior:

i *think* we can try to pull off something like that but still highly risky

12:14:54 AM maryrosedunton:

ya, and a lot of time, and a lot of work.

12:16:14 AM tunawarrior:

hmm we're beating friendster nowadays in traffic

12:18:04 AM maryrosedunton:

nice. hrm, but you know, i still think to make us attractive to someone purchasing us, we've got to really build up users

12:18:39 AM tunawarrior:

agreed

12:18:52 AM tunawarrior:

and user retention

12:19:05 AM tunawarrior:

in ways other than just returning to watch more videos

12:19:26 AM maryrosedunton:

yup. the views are awesome. but I don't know how much that's really worth to someone at the end of the day

12:20:14 AM maryrosedunton:

oh shit. we passed flickr too

12:20:16 AM tunawarrior:

oh i personally think it's still highly valuable

12:20:18 AM tunawarrior:

but

12:20:30 AM tunawarrior:

i think there are some easy things
we can do for the next 3 months

12:20:33 AM tunawarrior:

that will make us worth a lot more

12:20:37 AM tunawarrior:

using the huge # of uunique visitors

12:20:42 AM tunawarrior:

as a foundation to build from

12:21:37 AM maryrosedunton:

right. I'm actually pleased with
the groups stuff, I wasn't sure how that would
do

12:21:45 AM tunawarrior:

oh i love it

12:22:00 AM tunawarrior:

i didn't really take a look at it
much pre-push except in passing on the QA
playground

12:22:04 AM tunawarrior:

but i'm happy that people are using
it

12:22:10 AM maryrosedunton:

ya, totally

12:22:11 AM tunawarrior:

ttthe profile stuff will be cool too

12:22:30 AM maryrosedunton:

agreed. oh, did you see my email
about the blog stuff. I do think Mike has a
good point actually

12:22:51 AM maryrosedunton:

and wonder if we want to reinvent
the wheel with all that stuff?

12:22:55 AM maryrosedunton:

(the blog stuff)

12:23:04 AM tunawarrior:

hmm

12:23:09 AM tunawarrior:

the only point that i'd contend with
is

12:23:14 AM tunawarrior:

for every person using the blog functionality

12:23:19 AM tunawarrior:

we'd be getting more user generated
content

12:23:27 AM tunawarrior:

and that person will want others
to read it, so on, that cycle

12:24:21 AM maryrosedunton:

right, but I wonder if we would gain

more users from integrating with livejournal,
instead of trying to duplicate them?

12:24:43 AM tunawarrior:

right, ya i see that point too

12:25:04 AM tunawarrior:

but the bulk of the user generated
content that these guys are spending 30+
minutes to write each day

12:25:08 AM tunawarrior:

is going to be hosted elsewhere,
hm

12:25:13 AM tunawarrior:

well, i can go either way

12:25:16 AM tunawarrior:

if it can get us to market faster

12:25:30 AM tunawarrior:

i really like the whole dropdown
to integrate address book thing

12:25:55 AM tunawarrior:

wondering if we can put rizzo on
like

12:26:04 AM tunawarrior:

permanent, small-features, going
out next week.

12:26:11 AM tunawarrior:

and he'll always be working on the
live branch.

12:26:28 AM maryrosedunton:

oh probably.

12:26:51 AM maryrosedunton:

hrm. the premium content provider
stuff though, do we want that going out on
the live branch?

12:26:58 AM maryrosedunton:

that's on rizzo's plate

12:27:03 AM tunawarrior:

hm it's pretty big, isn't it?

12:27:31 AM maryrosedunton:

actually, the flow isn't really all
that complicated. it's just rizzo needs to figure out
how to deal with the images.

12:27:46 AM tunawarrior:

ah right.

12:27:47 AM maryrosedunton:

allowing users to upload images for
their watch pages and profile

12:28:12 AM tunawarrior:

ya big problems to tackle seeing
as how we're already having so much trouble
serving out the images on our current machines.

12:28:19 AM tunawarrior:

it's funny how we have no problems
serving out videos

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

**The following is a true and correct copy of this
instant message conversation as produced by Defendants.**

REDACTED

<div class="receive">12:07:34 AM tunawarrior:
 <pre class="message">man, we better start making some revenue soon</pre></div>
 <div class="send">12:08:05 AM maryrosedunton:
 <pre class="message">ya? how bad are things?</pre></div>
 <div class="receive">12:08:23 AM tunawarrior:
 <pre class="message">not too bad but they will get bad as soon as we start doing everything to scale
 out</pre></div>
 <div class="send">12:08:30 AM maryrosedunton:
 <pre class="message">oh right</pre></div>
 <div class="receive">12:08:40 AM tunawarrior:
 <pre class="message">building out our own data center, cdn, serverbeach. and to keep up the
 growth.</pre></div>
 <div class="receive">12:08:43 AM tunawarrior:
 <pre class="message">oh let me see how we did yesterday.</pre></div>
 <div class="receive">12:08:59 AM tunawarrior:
 <pre class="message">my sort of opinion is that.</pre></div>
 <div class="receive">12:09:02 AM tunawarrior:
 <pre class="message">we should sell this thing in 3 months.</pre></div>
 <div class="receive">12:09:04 AM tunawarrior:
 <pre class="message">...</pre></div>
 <div class="send">12:09:15 AM maryrosedunton:
 <pre class="message">haha...but 'we're not for sale' :-P</pre></div>
 <div class="receive">12:09:31 AM tunawarrior:
 <pre class="message">ya i told chad that we should consider it</pre></div>
 <div class="receive">12:09:37 AM tunawarrior:
 <pre class="message">i mean, microsoft, google, yahoo</pre></div>
 <div class="receive">12:09:39 AM tunawarrior:
 <pre class="message">everyone's talking to us</pre></div>
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 <pre class="message">because my fear is, in 3 months.</pre></div>
 <div class="receive">12:11:02 AM tunawarrior:
 <pre class="message">to keep up with this growth.</pre></div>
 <div class="receive">12:11:05 AM tunawarrior:
 <pre class="message">things are going to get so out of control.</pre></div>
 <div class="receive">12:11:14 AM tunawarrior:
 <pre class="message">we're going to be pushing like 10% of the traffic that google pushes or
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 <div class="receive">12:11:20 AM tunawarrior:
 <pre class="message">with 1/1000th the budget.</pre></div>
 <div class="send">12:11:24 AM maryrosedunton:
 <pre class="message">blah</pre></div>

<div class="receive">12:11:37 AM tunawarrior:
 <pre class="message">hahaha</pre></div>
 <div class="receive">12:11:39 AM tunawarrior:
 <pre class="message">what's that blah mean</pre></div>
 <div class="receive">12:11:46 AM tunawarrior:
 <pre class="message">think i'm pessimistic?</pre></div>
 <div class="send">12:12:02 AM maryrosedunton:
 <pre class="message">hah...oh no, I just mean that's a crazy amount of traffic</pre></div>
 <div class="receive">12:12:06 AM tunawarrior:
 <pre class="message">see, i think we can sell for somewhere between \$250m - \$500m.</pre></div>
 <div class="receive">12:12:08 AM tunawarrior:
 <pre class="message">in the next 3 months.</pre></div>
 <div class="receive">12:12:16 AM tunawarrior:
 <pre class="message">and there *is* a potential to get to \$1b or something.</pre></div>
 <div class="receive">12:12:28 AM tunawarrior:
 <pre class="message">but, man, that's going to take like 2 years of hard work and probably dilution and
 getting another round of funding.</pre></div>
 <div class="send">12:12:29 AM maryrosedunton:
 <pre class="message">and honestly, I can't imagine we could make enough just in advertising to cover
 operating costs for something that large</pre></div>
 <div class="receive">12:13:56 AM tunawarrior:
 <pre class="message">ya, none of these internet companies that get a lot of traffic with a revenue
 model based on purely advertising make that much money.</pre></div>
 <div class="receive">12:14:02 AM tunawarrior:
 <pre class="message">thinking like friendster and even myspace</pre></div>
 <div class="receive">12:14:20 AM tunawarrior:
 <pre class="message">i think it has to be a more unique model </pre></div>
 <div class="receive">12:14:25 AM tunawarrior:
 <pre class="message">like google's is unique to google</pre></div>
 <div class="receive">12:14:38 AM tunawarrior:
 <pre class="message">i *think* we can try to pull off something like that but still highly risky</pre></div>
 <div class="send">12:14:54 AM maryrosedunton:
 <pre class="message">ya, and a lot of time, and a lot of work.</pre></div>
 <div class="receive">12:16:14 AM tunawarrior:
 <pre class="message">hmm we're beating friendster nowadays in traffic</pre></div>
 <div class="send">12:18:04 AM maryrosedunton:
 <pre class="message">nice. hrm, but you know, i still think to make us attractive to someone purchasing
 us, we've got to really build up users</pre></div>
 <div class="receive">12:18:39 AM tunawarrior:
 <pre class="message">agreed</pre></div>
 <div class="receive">12:18:52 AM tunawarrior:
 <pre class="message">and user retention</pre></div>
 <div class="receive">12:19:05 AM tunawarrior:
 <pre class="message">in ways other than just returning to watch more videos</pre></div>
 <div class="send">12:19:26 AM maryrosedunton:
 <pre class="message">yup. the views are awesome. but I don't know how much that's really worth to
 someone at the end of the day</pre></div>
 <div class="send">12:20:14 AM maryrosedunton:
 <pre class="message">oh shit. we passed flickr too</pre></div>
 <div class="receive">12:20:16 AM tunawarrior:
 <pre class="message">oh i personally think it's still highly valuable</pre></div>
 <div class="receive">12:20:18 AM tunawarrior:
 <pre class="message">but</pre></div>
 <div class="receive">12:20:30 AM tunawarrior:
 <pre class="message">i think there are some easy things we can do for the next 3 months</pre></div>
 <div class="receive">12:20:33 AM tunawarrior:
 <pre class="message">that will make us worth a lot more</pre></div>
 <div class="receive">12:20:37 AM tunawarrior:

<pre class="message">using the huge # of uunique visitors</pre></div>
 <div class="receive">12:20:42 AM tunawarrior:
 <pre class="message">as a foundation to build from</pre></div>
 <div class="send">12:21:37 AM maryrosedunton:
 <pre class="message">right. I'm actually pleased with the groups stuff, I wasn't sure how that would
 do</pre></div>
 <div class="receive">12:21:45 AM tunawarrior:
 <pre class="message">oh i love it</pre></div>
 <div class="receive">12:22:00 AM tunawarrior:
 <pre class="message">i didn't really take a look at it much pre-push except in passing on the QA
 playground</pre></div>
 <div class="receive">12:22:04 AM tunawarrior:
 <pre class="message">but i'm happy that people are using it</pre></div>
 <div class="send">12:22:10 AM maryrosedunton:
 <pre class="message">ya, totally</pre></div>
 <div class="receive">12:22:11 AM tunawarrior:
 <pre class="message">tthe profile stuff will be cool too</pre></div>
 <div class="send">12:22:30 AM maryrosedunton:
 <pre class="message">agreed. oh, did you see my email about the blog stuff. I do think Mike has a
 good point actually</pre></div>
 <div class="send">12:22:51 AM maryrosedunton:
 <pre class="message">and wonder if we want to reinvent the wheel with all that stuff?</pre></div>
 <div class="send">12:22:55 AM maryrosedunton:
 <pre class="message">(the blog stuff)</pre></div>
 <div class="receive">12:23:04 AM tunawarrior:
 <pre class="message">hmm</pre></div>
 <div class="receive">12:23:09 AM tunawarrior:
 <pre class="message">the only point that i'd contend with is</pre></div>
 <div class="receive">12:23:14 AM tunawarrior:
 <pre class="message">for every person using the blog functionality</pre></div>
 <div class="receive">12:23:19 AM tunawarrior:
 <pre class="message">we'd be getting more user generated content</pre></div>
 <div class="receive">12:23:27 AM tunawarrior:
 <pre class="message">and that person will want others to read it, so on, that cycle</pre></div>
 <div class="send">12:24:21 AM maryrosedunton:
 <pre class="message">right, but I wonder if we would gain more users from integrating with livejournal,
 instead of trying to duplicate them? </pre></div>
 <div class="receive">12:24:43 AM tunawarrior:
 <pre class="message">right, ya i see that point too</pre></div>
 <div class="receive">12:25:04 AM tunawarrior:
 <pre class="message">but the bulk of the user generated content that these guys are spending 30+
 minutes to write each day</pre></div>
 <div class="receive">12:25:08 AM tunawarrior:
 <pre class="message">is going to be hosted elsewhere, hm</pre></div>
 <div class="receive">12:25:13 AM tunawarrior:
 <pre class="message">well, i can go either way</pre></div>
 <div class="receive">12:25:16 AM tunawarrior:
 <pre class="message">if it can get us to market faster</pre></div>
 <div class="receive">12:25:30 AM tunawarrior:
 <pre class="message">i really like the whole dropdown to integrate address book thing</pre></div>
 <div class="receive">12:25:55 AM tunawarrior:
 <pre class="message">wondering if we can put rizzo on like</pre></div>
 <div class="receive">12:26:04 AM tunawarrior:
 <pre class="message">permanent, small-features, going out next week.</pre></div>
 <div class="receive">12:26:11 AM tunawarrior:
 <pre class="message">and he'll always be working on the live branch.</pre></div>
 <div class="send">12:26:28 AM maryrosedunton:
 <pre class="message">oh probably. </pre></div>

REDACTED

REDACTED

REDACTED

REDACTED

CODED FIELDS:

BEGDOC: GOO001-00507535

ENDDOC: GOO001-00507540

BEGATTACH: GOO001-00507535

ENDATTACH: GOO001-00507540

RECORDTYPE: E-File

CUSTODIAN: Dunton_(Maryrose)-GOONDCE000001612

DATASETID: GOONDCE000001612

MASTER_DATE: 02/28/2006

SENTON_DATE_TIME:

CREATE_DATE_TIME: 02/28/2006:07:51:49

LASTMOD_DATE_TIME: 02/28/2006:07:51:49

RECEIVED_DATE_TIME:

PARENTFOLDER: HAL-SB-0207\1 Customer\Macintosh HD\Users\maryrose\Library\Application Support\Adium 2.0\Users\Default\Logs\AIM.maryrosedunton\tunawarrior-GOONDCE000001612

AUTHOR:

TO:

CC:

BCC:

SUBJECT_TITLE: tunawarrior (2006-02-27).html

ORIGINALSOURCE:

NATIVEPATH:

FILEEXT: html

FILENAME: tunawarrior (2006-02-27).html-GOONDCE000001612

FILESIZE: 24265

MD5HASH: e38111c769642284cc539cd2fe3acff6

DATE: 8-22-08 EXHIBIT# 5
DEPONENT: DUNTON, MARYROSE

CASE: Viacom, et al., v. YouTube, et al., The Football
Association Premier League, et al., v. YouTube, et al.,
Case Nos. 07-CV-2203 and 07-CV-3582
A. Ignacio Howard, CLR, RPR, CSR No. 9830

HIGHLY CONFIDENTIAL

1

GOO001-00507535-GOO001-00507540

REDACTED

REDACTED

REDACTED

REDACTED

hah. god, I still keep 1/2 expecting
us to hit a ceiling...to plateau - but it doesn't
seem like it's going to happen

12:21:37 AM tunawarrior:

i have been thinking a little differently
about it. i was thinking, maybe we're doing
so well on all the rankings and registrations is that we may
be fundamentally different from all these other
websites, as in.

12:21:46 AM tunawarrior:

we don't really provide a service
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but we're the first mass entertainment
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uhm, like we're some kind of convergence thing between tv/internet.

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yup. I spent like an two hours today
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dude, watch your email in about 2
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these numbers are amazing

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I run into more and more random people
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hah

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I like the steve mike thing you put in there

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f-ing a. look at the numbers from 2/1 to now

12:27:52 AM tunawarrior:

ya

12:27:55 AM tunawarrior:

like a 150% increase

12:27:59 AM tunawarrior:

and!!

12:28:06 AM tunawarrior:

the thing is, still, a ton of people have never heard of us.

12:28:20 AM tunawarrior:

if we can keep up the scaling and make some revenue

12:28:44 AM maryrosedunton:

oh, I know, although I meet more and more people who have heard of us now

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who wouldn't use us? potentially better entertainment than cable and you don't have to pay for it, you can talk to other users about it, you can create your own channels, so on so on.

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yup. registrations doubled this month, but I still feel like we're lacking there

12:29:51 AM tunawarrior:

hahaha. it's a little funny, being in the product side of youtube, isn't it?

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it's like, you have to look at these charts and numbers and see where we can improve

12:30:03 AM tunawarrior:

when this is like unprecedented growth

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12:38:55 AM maryrosedunton:

hah. shit. never mind

12:39:12 AM tunawarrior:

hahaha

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maryrose, you're fired.

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oh, what I meant to say is after
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yes, error on the side of protecting
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yes, sticking to our in-house 1 strike
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love the guy to death, but rules
are rules.

tunawarrior disconnected (1:41:46 AM)

11:51:48 PM tunawarrior:

<http://www.apple.com/downloads/dashboard/>

**The following is a true and correct copy of this
instant message conversation as produced by Defendants.**

REDACTED

A-860

REDACTED

REDACTED

<pre class="message">haha</pre></div>
 <div class="receive">12:20:26 AM tunawarrior:
 <pre class="message">what if...</pre></div>
 <div class="receive">12:20:27 AM tunawarrior:
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 <div class="status">tunawarrior disconnected (1:41:46 AM)</div>
 <div class="receive">11:51:48 PM tunawarrior:


```
</span><pre class="message"><a href="http://www.apple.com/downloads/dashboard/"  
title="http://www.apple.com/downloads/dashboard/">http://www.apple.com/downloads/dashboard/</a></pre></div>
```