

## A-292

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<p>executive Peter Chane, Google vice president of content partnerships David Eun, and others for integration into the material prepared for the GPS, the Google Video team stated: “Premium Content Owners . . . (mainly) perceive YouTube as trafficking mostly illegal content -- ‘it’s a video Grokster’”; “we should beat YouTube by improving features and user experience, not being a ‘rogue enabler’ of content theft”; “YouTube’s content is all free, and much of it is highly sought after pirated clips”; and “YouTube’s business model is completely sustained by pirated content. They are at the mercy of companies not responding with DMCA requests.”</p>	<p>GOO001-00496633, GOO001-00496637.</p>
<p>158. In a May 12, 2006 email to Google CEO Eric Schmidt and Google senior vice president Omid Kordestani, Google vice president David Eun stated that “the Video team” at Google “has focused on two questions . . . 1) how we ‘beat YouTube’ in the short term; and 2) how we win over time”; and that “there was heated debate about whether we should relax enforcement of our copyright policies in an effort to stimulate traffic growth, despite the inevitable damage it would cause to relationships with content owners. I think we should beat YouTube . . . -- but not at all costs.”</p>	<p>Hohengarten ¶ 65 &amp; Ex. 62, GOO001-00496651, at GOO001-00496651.</p> <p>Hohengarten ¶ 375 &amp; Ex. 341 (Kordestani Dep.) at 20:14-21:7 (testifying to Omid Kordestani’s job title).</p>
<p>159. In the same May 12, 2006 email, Google vice president of content partnerships David Eun stated, regarding YouTube, that a “large part of their traffic is from pirated content. When we compare our traffic numbers to theirs, we should acknowledge that we are comparing our ‘legal traffic’ to their mix of traffic from legal and illegal content. One senior media executive told me they are monitoring YouTube very closely and referred to them as a ‘Video Grokster.’”</p>	<p>Hohengarten ¶ 65 &amp; Ex. 62, GOO001-00496651, at GOO001-496652.</p>
<p>160. In a June 2, 2006 instant message conversation, Google vice president of content partnerships David Eun (IM user</p>	<p>Hohengarten ¶ 211 &amp; Ex. 199, GOO001-02363217, at 2 at &amp; at GOO001-02363217.</p>

name deun@google.com) told another Google executive Patrick Walker (IM user name pwalker@google.com) that although Eun and Google co-founder Sergey Brin opposed relaxing Google Video's copyright policies, Google's CEO Eric Schmidt supported the change.	Hohengarten ¶ 352 & Ex. 318 (Brin Dep.) at 7:15-7:17 (testifying to Sergey Brin's job title).  <i>See also</i> Hohengarten ¶ 67 & Ex. 64, GOO001-00563430, at GOO001-00563431 ("Shouldn't the lesson here be [t]o play faster and looser and be aggressive until either a court says ["no"] or a deal gets struck. I don't think there can be an in [b]etween").
161. On June 8, 2006, Google senior vice president Jonathan Rosenberg, Google Senior Vice President of Product Management, emailed Google CEO Eric Schmidt and Google co-founders Larry Page and Sergey Brin a Google Video presentation that stated the following: "Pressure premium content providers to change their model towards free[;] Adopt 'or else' stance re prosecution of copyright infringement elsewhere[;] Set up 'play first, deal later' around 'hot content.'" The presentation also stated that "[w]e may be able to coax or force access to viral premium content," noting that Google Video could " <b>Threaten</b> a change in copyright policy" and "use threat to get deal sign-up."	Hohengarten ¶ 66 & Ex. 63, GOO001-00791569, at GOO001-00791575, GOO001-00791594 (emphasis in original).  Hohengarten ¶ 384 & Ex. 350 (Rosenberg Dep.) at 12:9-12:18 (testifying to Jonathan Rosenberg's position).
162. In a June 28, 2006 email to numerous other Google executives, Google vice president of content partnerships David Eun stated: "as Sergey pointed out at our last GPS, is changing policy [t]o increase traffic knowing beforehand that we'll profit from illegal [d]ownloads how we want to conduct business? Is this Googley?"	Hohengarten ¶ 67 & Ex. 64, GOO001-00563430, at GOO001-00563430.
163. In his deposition, Google vice president of content partnerships David Eun identified the "Sergey" referred to in his June 28, 2006 email ( <i>see</i> SUF ¶ 162) as Google founder Sergey Brin.	Hohengarten ¶ 366 & Ex. 332 (Eun Dep.) at 170:4-8.
164. On June 17, 2006, Google Video business product manager Ethan Anderson sent	Hohengarten ¶ 68 & Ex. 65, GOO001-00563469, at GOO001-00563469.

<p>Google executive Patrick Walker an email listing the “Top 10 reasons why we shouldn’t stop screening for copyright violations,” including: “1. It crosses the threshold of Don’t be Evil to facilitate distribution of other people’s intellectual property, and possibly even allowing monetization of it by somebody who doesn’t own the copyright”; “2. Just growing any traffic is a bad idea. This policy will drive us to build a giant index of pseudo porn, lady punches, and copyrighted material . . .”; “3. We should be able to win on features, a better [user interface] technology, advertising relationships - not just policy. It’s a cop out to resort to dist-rob-ution”; and “7. It makes it more difficult to do content deals with you have an index of pirated material.”</p>	<p><i>See also</i> Hohengarten ¶ 317 &amp; Ex. 387 (Google Investor Relations page entitled “Google Code of Conduct”) (“The Google Code of Conduct is one of the ways we put ‘Don’t be evil’ into practice.”).</p>
<p>165. On September 24, 2006, less than three weeks before Google announced its acquisition of YouTube, a Google employee sent an email that included a link to a Daily Show video that had been uploaded to YouTube, stating: “Good old YouTube - copyright, schmopyright.”</p>	<p>Hohengarten ¶ 69 &amp; Ex. 66, GOO001-00792297, at GOO001-00792297.</p>

Google’s Knowledge and Intent Concerning Infringement on YouTube Through Pre-Acquisition Due Diligence	
Undisputed Fact	Evidence
<p>166. Prior to Google’s announcement of its acquisition of YouTube on October 9, 2006, a team of Google employees performed due diligence relating to the proposed acquisition of YouTube.</p>	<p>Hohengarten ¶ 361 &amp; Ex. 327 (Drummond Dep.) at 23:5-26:8.</p>
<p>167. Google hired Credit Suisse to perform a valuation of YouTube and to render a fairness opinion regarding the proposed \$1.65 billion purchase price.</p>	<p>Hohengarten ¶ 362 &amp; Ex. 328 (Duncan 30(b)(6) Dep.) at 60:16-68:25.</p> <p>Hohengarten ¶ 321 &amp; Ex. 290, CSSU 002845 at, CSSU 002847.</p>
<p>168. Google’s due diligence team analyzed a</p>	<p>Hohengarten ¶ 322 &amp; Ex. 291 CSSU</p>

random sample of hundreds of videos provided by YouTube that Google believed to be representative of the types of content on YouTube.	002686, at CSSU 002686.  Hohengarten ¶ 362 & Ex. 328 (Duncan 30(b)(6) Dep.) at 87:3-91:8.
169. This random sample of YouTube videos was given to the Google due diligence team by YouTube co-founder Steve Chen.	Hohengarten ¶ 70 & Ex. 67, GOO001-04736644, at GOO001-04736644.
170. Google's analysis of the random sample of YouTube videos determined that 63% of the videos on YouTube were "Premium/removed," meaning that the content was "copyright (either in whole or substantial part)" or "removed [and] taken down."	Hohengarten ¶ 322 & Ex. 291 CSSU 002686, at CSSU 002686.  Hohengarten ¶ 362 & Ex. 328 (Duncan 30(b)(6) Dep.) at 89:4-7, 95:18-98:19.
171. Storm Duncan, managing director of Credit Suisse and part of Google's YouTube acquisition due diligence team, wrote in hand-written notes that "60% is premium," which he defined as "Professionally Produced" and categorized as "Legitimate" and "Illegitimate."	Hohengarten ¶ 320 & Ex. 289, CSSU 001863, at CSSU 001957.  Hohengarten ¶ 362 & Ex. 328 (Duncan 30(b)(6) Dep.) at 199:24-200:5, 207:25-210:13.
172. Credit Suisse used Google's analysis of YouTube videos as an input to its valuation of YouTube.	Hohengarten ¶ 362 & Ex. 328 (Duncan 30(b)(6) Dep.) at 90:23-91:4.
173. Credit Suisse's valuation model for YouTube estimated that 60% of the video views on YouTube were of "premium" content.	Hohengarten ¶ 323 & Ex. 292, CSSU 004069, at CSSU 004071.
174. Credit Suisse's valuation model for YouTube estimated that in 2007, only 10% of the video views of premium content would be of content that was authorized to be on YouTube.	Hohengarten ¶ 323 & Ex. 292, CSSU 004069, at CSSU 004071.
175. Credit Suisse prepared a presentation regarding its valuation of YouTube and presented it to Google's board of directors on October 9, 2006, before the board voted to acquire YouTube.	Hohengarten ¶ 324 & Ex. 293, CSSU 003560, at CSSU 003561-86.  Hohengarten ¶ 362 & Ex. 328 (Duncan 30(b)(6) Dep.) at 117:11-119:15.  Hohengarten ¶ 361 & Ex. 327 (Drummond Dep.) at 15:20-16:2.

176. Credit Suisse's October 9, 2006 presentation to Google's board of directors estimated that "60% of total video streams on [the YouTube] website are 'Premium,'" and that "10% of premium content providers allow [YouTube] to monetize their content in 2007E."	Hohengarten ¶ 324 & Ex. 293 CSSU 003560, at CSSU 003570.  Hohengarten ¶ 375 & Ex. 341 (Kordestani Dep. at 109:24-110:22).  Hohengarten ¶ 362 & Ex. 328 (Duncan 30(b)(6) Dep. at 158:13-159:1).
177. An October 8, 2006 draft of Credit Suisse's presentation defined "[p]remium content [a]s copyrighted content such as movies/TV trailers, music videos, etc."	Hohengarten ¶ 325 & Ex. 294 CSSU 003326, at CSSU 003335.
178. The October 9, 2006 Credit Suisse presentation emphasized the "tremendous growth" in YouTube's userbase and its "loyal global following."	Hohengarten ¶ 324 & Ex. 293 CSSU 003560, at CSSU 003569 (emphasizing YouTube's "tremendous growth" and "loyal global following").
179. The October 9, 2006 Credit Suisse presentation projected that there would be 126 billion views of YouTube watch page views in 2007, and more than 154 billion views of YouTube home and search results pages in 2007.	Hohengarten ¶ 324 & Ex. 293 CSSU 003560, at CSSU 003570 (45% of 280 billion; 55% of 280 billion).
180. In the October 9, 2006 presentation, Credit Suisse advised Google's board that the base case financial value of YouTube was \$2.7 billion, derived from Google's ability to monetize YouTube's user base in the future.	Hohengarten ¶ 324 & Ex. 293 CSSU 003560, at CSSU 003573.
181. The October 9, 2006 presentation informed Google's board that "60% of total video streams on yellow [their code name for the YouTube website] are 'Premium.'"	Hohengarten ¶ 324 & Ex. 293 CSSU 003560, at CSSU 003570; <i>see also id.</i> at CSSU 003569 (listing "[u]ncertain legal issues" under "[i]ssues for [c]onsideration").  Hohengarten ¶ 362 & Ex. 328 (Duncan 30(b)(6) Dep.) at 24:22-25:16 (confirming that "Yellow" was the code name for YouTube and "green" was the code name for Google).
182. In the October 9, 2006 presentation Credit Suisse advised Google's board that Credit	Hohengarten ¶ 324 & Ex. 293, CSSU

Suisse’s valuation “[a]ssumes 10% premium content providers allow [YouTube] to monetize their content in [fiscal year 2007].”	003560, at CSSU 003570.
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YouTube’s Agreement to Indemnify Google For Copyright Infringement Liability	
Undisputed Fact	Evidence
183. On October 4, Google sent YouTube a term sheet offering to buy YouTube for \$1.65 billion in Google stock; in the term sheet, Google proposed that YouTube and its stockholders “indemnify and hold Google harmless for any losses and liabilities (including legal fees) relating to copyright lawsuits filed against the Company or Google” for up to 12.5% of the purchase price, which was to be held in escrow.	Hohengarten ¶ 326 & Ex. 295 CSSU 002982, at CSSU 002985-86.
184. During negotiations, YouTube pushed for a smaller escrow amount.	Hohengarten ¶ 388 & Ex. 354 (Yu Dep.) at 107:4-108:3.
185. The October 9, 2006 Google/YouTube merger agreement included indemnification and escrow provisions providing that 12.5 percent of the consideration Google paid for YouTube would be held in escrow to satisfy legal claims made against YouTube and Google, including copyright infringement claims.	Hohengarten ¶ 335 & Ex. 303, TP000055, at TP000079-80 (¶ 2.9).  Hohengarten ¶ 348 & Ex. 314 (Schmidt Dep.) at 65:10-65:23 (testifying that he is “aware of what I’m going to call a holdback . . . that . . . includes areas of copyright” and that the Google board of directors discussed the “holdback” around the time of the acquisition).
186. In April 2007, Defendants executed an amendment to the Google/YouTube merger agreement to correct a “scrivener’s error”; the correction increased the proportion of the escrowed merger consideration that could be used to cover copyright infringement claims brought against Defendants in connection with the YouTube website.	Hohengarten ¶ 331 & Ex. 299, SC 010022, at SC 010023.  Hohengarten ¶ 361 & Ex. 327 (Drummond Dep.) at 89:7-92:6.  Hohengarten ¶ 333 & Ex. 301, AC007823, at AC007824.

Defendants' Knowledge and Intent Concerning Infringement on YouTube After Google Acquired YouTube	
Undisputed Fact	Evidence
187. The press release issued by Google announcing the acquisition of YouTube stated: "With Google's technology, advertiser relationships and global reach, YouTube will continue to build on its success as one of the world's most popular services for video entertainment."	Hohengarten ¶ 71 & Ex 68, GOO001-03548410, at GOO001-03548410.
188. A September 14, 2007 email from Google vice president of content partnerships David Eun to Google sales director Suzie Reider, YouTube's Chief Marketing Officer, Eun stated: "If we think back to last Nov. you are chad [Hurley], your head is spinning and Eric Schmidt, CEO of the most powerful company in the world tells you your only focus is to grow playbacks to 1B/day. . . . that's what you do."	Hohengarten ¶ 72 & Ex. 69, GOO001-02021241, at GOO001-02021241.  Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) at 254:11-255:22.  Hohengarten ¶ 382 & Ex. 348 (Reider Dep.) at 8:24-12:24.
189. Google did not apply Google Video's earlier policy of proactively reviewing for copyright infringement to YouTube; instead, Google adopted YouTube's policy of allowing substantially all infringing video to remain freely available on YouTube until a copyright owner could detect it and send a takedown notice.	Hohengarten ¶ 393 & Ex. 356 at ¶¶ 14-15 (Declaration of Steve Chen dated January 5, 2007).  Hohengarten ¶ 385 & Ex. 351 (Schaffer Dep.) at 183:7-184:3.  Hohengarten ¶ 74 & Ex. 71, GOO001-01271624, at GOO001-01271624.  <i>See also</i> Hohengarten ¶ 88 & Ex. 85 GOO001-00827503, at GOO001-00827503 ("[T]he general YT policy has shifted to be, 'Never police anything proactively, all content reviews should be reactive.'").
190. In an October 13, 2006 email to other Google employees, Google Video Product Manager Hunter Walk provided a link to a Colbert Report clip on YouTube.	Hohengarten ¶ 75 & Ex. 72 GOO001-03383629, at GOO001-03383629.



191. In a March 9, 2007 email to YouTube employees, a Google employee provided a link to a “Funny south park” video on YouTube.	Hohengarten ¶ 76 & Ex. 73, GOO001-01364485, at GOO001-01364485.
192. In a March 15, 2007 instant message conversation YouTube product manager Virginia Wang (IM user name missveeandchip) discussed her attempts to find videos on YouTube to put in a “cute video” category and stated that “it was hard to find anything i thought was vote worthy . . . that we could use . . . since so much of it involves copywritten stuff.” In an email the same day, Wang stated, “we’re running into issues finding enough videos because they have so many copyright violations.”	<p>Hohengarten ¶ 212 &amp; Ex. 200, GOO001-07738864, at 2-3 &amp; at GOO001-07738864.</p> <p>Hohengarten ¶ 199 &amp; Ex. 375, GOO001-06669529, at GOO001-06669529 (noting that missveeandchip is Virginia Wang’s IM user name).</p> <p>Hohengarten ¶ 77 &amp; Ex. 74, GOO001-07155101, at GOO001-07155101.</p> <p>Hohengarten ¶ 378 &amp; Ex. 344 (Liu Dep.) at 60:6-61:8 (testifying to Virginia Wang’s job description).</p>
193. In a March 23, 2007 email to other Google employees, a Google employee provided a link to a Daily Show clip on YouTube.	Hohengarten ¶ 78 & Ex. 75, GOO001-00217336, at GOO001-00217336.
194. In an April 2, 2007 email, Google employee Matthew Arnold wrote to two other Google employees (Crosby Freeman and Hugh Moore), highlighting a “Daily Show” clip on YouTube.	Hohengarten ¶ 80 & Ex. 77, GOO001-05154818, at GOO001-05154818.
195. A draft May 2007 presentation prepared by Shashi Seth, YouTube’s head of monetization, and distributed to Google vice president of content partnerships David Eun, YouTube co-founder Chad Hurley, and others, reported that [REDACTED] of YouTube searches are directed toward music videos, movies, celebrities, and TV programs, but that only [REDACTED] of videos watched by users consisted of authorized professional content. The same presentation stated that “[u]sers are searching for lots of things, but primarily for premium content.”	<p>Hohengarten ¶ 81 &amp; Ex. 78, GOO001-05943950, at GOO001-05943951-55.</p> <p>Hohengarten ¶ 387 &amp; Ex. 353 (Seth Dep.) at 15:15-17:2 (testifying to Shashi Seth’s job title), 157:13-24.</p> <p><i>See also</i> Hohengarten ¶ 82 &amp; Ex. 79, GOO001-01016844, at GOO001-01016844 (statement from YouTube head of monetization Shashi Seth that based on an analysis of the top search queries on YouTube, “[REDACTED] fall under entertainment - not surprising.”).</p> <p><i>See also</i> Hohengarten ¶ 83 &amp; Ex. 80,</p>



	GOO001-00225766, at GOO001-00225767 (analysis by Google executive Alex Ellerson of the top 100 search queries, determining that approximately ■ of the queries were for premium content, and that of the queries for premium content, ■ of those were for “Entertainment TV.”).
196. An analysis by Google in May 2007 showed that while the average YouTube video was viewed 110 times, videos that had been removed for copyright infringement were viewed an average of 765 times.	<p>Hohengarten ¶ 84 &amp; Ex. 81, GOO001-02414976, at GOO001-02414980.</p> <p>Hohengarten ¶ 85 &amp; Ex. 82, GOO001-03241189, at GOO001-03241189; <i>see also id.</i> at GOO001-03241191 (showing that premium content is selected by users as “favorite” content an average of ■ times per video, while original user-generated content is selected as “favorite” an average of only ■ times).</p> <p>Hohengarten ¶ 387 &amp; Ex. 353 (Seth Dep.) at 143:17-144:23, 146:12-150:18.</p>
197. In a June 13, 2007 email, YouTube head of monetization Shashi Seth stated that based on his review of the top 10,000 search queries on YouTube: “[C]onsistent with my earlier findings, music video (being searched mostly by artist names . . .) are being searched a lot, as are TV shows, . . . and celebrities. . . . Going down the list of 10k [search terms], it seems that the queries do reflect the popularity of the artists, songs, celebrities . . . Music, TV Shows, Movies, Celebrities, Sports, etc. are definitely our top categories to attack;” Mr. Seth further stated that “Searches do reflect popularity pretty well.”	<p>Hohengarten ¶ 86 &amp; Ex. 83, GOO001-00747816, at GOO001-00747816.</p> <p>Hohengarten ¶ 387 &amp; Ex. 353 (Seth Dep.) at 103:12-20.</p>
198. A June 2007 “YouTube Profile Study” showed that ■ of all YouTube users and ■ of users who visit YouTube daily watch “television shows” on YouTube.	Hohengarten ¶ 87 & Ex. 84, GOO001-02201131, at GOO001-02201132.0002 (study index stating that Table 31 is about the “Kind of Video” users “Typically

	Watch”), GOO001-02201132.0061 (Table 31 page containing percentage totals for YouTube users generally); GOO001-02201132.0062 (Table 31 page containing percentage totals for users who visit YouTube with varying frequencies).
199. In a July 18, 2007 email YouTube employee Julie Havens wrote: “A trend we see is that people upload copyrighted videos to their private videos (which are not reviewed unless flagged), and then invite large numbers of people to view the video which bypasses our copyright restrictions.”	Hohengarten ¶ 88 & Ex. 85, GOO001-00827503, at GOO001-00827503.
200. A February 19, 2008 Google presentation titled “EMG Deal Review -- YouTube & South Park Studios” stated that based on YouTube search “query data,” there was “proven interest on YouTube” for clips of South Park; the presentation further stated that South Park was [REDACTED]	Hohengarten ¶ 89 & Ex. 86, GOO001-01998134, at GOO001-01998136.
201. In March 2008, YouTube co-founder Chad Hurley sent an email to Google executives Susan Wojcicki and Google Video Product Manager Hunter Walk stating that “three weeks ago Eric shifted his thinking on YouTube’s focus. So, since that time we have rapidly been redirecting our efforts from user growth to monetization.”	Hohengarten ¶ 73 & Ex. 70, GOO001-01395950, at GOO001-01395950.  Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) at 253:18-254:5.
202. A YouTube user survey from April 2008 showed that [REDACTED] of users watch music videos on YouTube, [REDACTED] of users surveyed watch comedy on YouTube, [REDACTED] of users surveyed watch “Full length TV programs” on YouTube, and [REDACTED] of users watch “Full length movie[s]” on YouTube.	Hohengarten ¶ 90 & Ex. 87, GOO001-00829227, at GOO001-00829229.0002.

Defendants' Knowledge and Intent Concerning Infringement on YouTube Through Licensing Negotiations with Viacom	
Undisputed Fact	Evidence
203. From November 2006 until February 2007, Viacom negotiated with Google over a possible "content partnership" agreement under which Viacom would license some of its copyrighted works to appear on YouTube.	Hohengarten ¶ 348 & Ex. 314 (Schmidt Dep.) at 173:22-174:23.  Hohengarten ¶ 91 & Ex. 88, GOO001-00797774, at GOO001-00797774.  Hohengarten ¶ 195 & Ex. 371, GOO001-01529251, at GOO001-01529251.  Hohengarten ¶ 201 & Ex. 382, GOO001-08050272, at GOO001-08050272.
204. During the negotiations, Viacom made clear that without such a license, the appearance of Viacom works on YouTube was unauthorized.	Hohengarten ¶ 270 & Ex. 244, VIA01475465, at VIA01475465-76.
205. Viacom also insisted on compensation for past infringement of its works as part of any license.	Hohengarten ¶ 92 & Ex. 89, GOO001-05942431, at GOO001-05942431.
206. Google offered a package that it valued at more than [REDACTED] for a content license from Viacom.	Hohengarten ¶ 93 & Ex. 90, GOO001-02057400, at GOO001-02057400.
207. Google's offer and term sheet included an explicit guarantee that Google would use digital fingerprinting technology to prescreen all uploads to YouTube and block any videos from Viacom works not licensed under the agreement.	Hohengarten ¶ 271 & Ex. 245, VIA00727696, at VIA00727696.  Hohengarten ¶ 94 & Ex. 91, GOO001-00984825, at GOO001-00984837.
208. Ultimately negotiations broke down and Defendants never obtained a license from Viacom.	Hohengarten ¶ 270 & Ex. 244, VIA01475465, at VIA01475465-76.
209. After the parties' license negotiations ended in impasse, Viacom's General Counsel, Michael Fricklas, wrote Google on	Hohengarten ¶ 270 & Ex. 244, VIA01475465, at VIA01475465-76.

February 2, 2007, pressing Defendants to use fingerprinting technology to prevent infringement of Viacom's works, and offering to have Viacom technology experts cooperate with Defendants as needed to that end.	
210. On February 2, 2007, Viacom issued a request to YouTube to remove over 100,000 videos from the YouTube website.	Hohengarten ¶ 270 & Ex. 244, VIA01475465, at VIA01475465.
211. On February 2, 2007, after Viacom requested that Defendants remove over 100,000 videos from the YouTube website, Chris Maxcy stated that he would provide Viacom with access to a new search tool that was "still in alpha" to assist Viacom in taking down content from the YouTube website.	Hohengarten ¶ 192 & Ex. 189, GOO001-00746412, at GOO001-00746412.
212. On February 2, 2007, Maxcy agreed to speak to a technical team at Viacom about the new takedown tool by phone on February 5, 2007.	Hohengarten ¶ 273 & Ex. 383, VIA17716283, at VIA17716284-85.
213. On February 5, 2007, Maxcy cancelled the scheduled conference call with Viacom's technical team and informed Adam Cahan that Defendants would not provide Viacom with access to the new takedown tool without a content partnership deal.	Hohengarten ¶ 273 & Ex. 383, VIA17716283, at VIA17716283.
214. On February 6, 2007, instead of providing Viacom with access to the new takedown tool, Maxcy provided Viacom with access to YouTube's Content Verification Program, a system that had been in place for nearly a year and allowed content owners to check boxes to designate individual videos for take down.	<p>Hohengarten ¶ 95 &amp; Ex. 92, GOO001-00746418, at GOO001-00746418.</p> <p>Hohengarten ¶ 96 &amp; Ex. 93, GOO001-00751570, at GOO001-00751570.</p> <p>Hohengarten ¶ 97 &amp; Ex. 94, GOO001-00869300, at GOO001-00869300.</p> <p><i>See also</i> Hohengarten ¶ 394 &amp; Ex. 357 (Declaration of Zahavah Levine dated January 5, 2007) at ¶ 14.</p> <p><i>See also</i> Hohengarten ¶ 309 &amp; Ex. 281 (YouTube page entitled "Content</p>

	<p>Verification Program”).</p> <p><i>See also</i> Hohengarten ¶ 310 &amp; Ex. 282 (YouTube “Copyright Infringement Notification” page linked to from YouTube “Content Verification Program” page as “instructions” for submitting “removal requests” through YouTube’s Content Verification Program).</p>
<p>215. The Content Verification Program is separate from Google’s audio and video fingerprinting tools and does not include access to those tools.</p>	<p>Hohengarten ¶ 394 &amp; Ex. 357 (Declaration of Zahavah Levine dated January 5, 2007) at ¶ 14 (“We have even created a content verification program . . . that enables content owners to search for their content on the site. The tool allows content owners to easily notify us that they wish specific content to be removed simply by checking a box.”).</p> <p>Hohengarten ¶ 318 &amp; Ex. 388 (YouTube page entitled “YouTube Content ID System”) (distinguishing “content verification program” from “audio ID” and “video ID”).</p> <p>Hohengarten ¶ 309 &amp; Ex. 281 (YouTube page entitled “Content Verification Program”) (describing content verification program).</p> <p>Hohengarten ¶ 147 &amp; Ex. 144 GOO001-01511226, at GOO001-01511226.</p>
<p>216. In a February 15, 2007 email, Google vice president of content partnerships David Eun stated that YouTube’s “CYC tools,” including an “Audio fingerprinting system whereby the content partner can send ‘reference fingerprints’ to Audible Magic’s database,” “are now live as well and are only offered to partners who enter into a</p>	<p>Hohengarten ¶ 147 &amp; Ex. 144, GOO001-01511226, at GOO001-01511226.</p>

revenue deal with us.”	
217. In a February 16, 2007 email, Google Vice President and General Counsel Kent Walker informed Viacom General Counsel Michael Fricklas and NBC General Counsel Rick Cotton that although YouTube was responding to takedown notices and had implemented “automated filtering” in the form of “a unique hash” that “block[s] any attempt to re-upload [] identical video files,” YouTube had agreed to provide “audio fingerprinting technology services” only to a “handful of partners,” and would not provide audio fingerprinting to Viacom or NBC.	Hohengarten ¶ 201 & Ex. 382, GOO001-08050272, GOO001-08050272.  Hohengarten ¶ 371 & Ex. 337 (K. Walker Dep.) at 8:2-9:23 (testifying to Kent Walker’s job title).
218. Instead of agreeing to provide Viacom and NBC with audio fingerprinting, Walker instead offered to speak with Viacom and NBC about possibly providing them with access to a “metadata search tool” that enables users to “define search terms via XML feeds and automatically and regularly receive search results matching the defined search terms.”	Hohengarten ¶ 201 & Ex. 382, GOO001-08050272, at GOO001-08050272.
219. On June 28, 2007 Donald Verrilli, then a partner at Jenner & Block, counsel for Viacom, sent a letter to Mark Ouweleen of Bartlit Beck Herman Palenchar & Scott LLP and David Kramer of Wilson Sonsini Goodrich & Rosati, counsel for Defendants. The letter highlighted ongoing infringement on YouTube of many Viacom works, reiterated that Viacom had not authorized the upload of these works to YouTube, and demanded their removal.	Hohengarten ¶ 406 & Ex. 369 (2007-06-28 Verrilli to Ouweleen and Kramer) at 1-2.
220. On June 29, 2007 Mark Ouweleen responded to Donald Verrilli’s June 28, 2007 letter. In his response Ouweleen represented that YouTube would not use a list of Viacom works to locate future infringing videos on YouTube and stated:	Hohengarten ¶ 407 & Ex. 370 (2007-06-29 Ouweleen to Verrilli) at 1-2.

<p>“If in the future someone posts a video Paramount claims to infringe a copyright on one of those movies, and Paramount would like it removed, Paramount can use the Content Verification Program tools or send a DMCA takedown notice.” The letter did not offer Viacom access to any digital fingerprinting technology or any YouTube-provided tool other than the Content Verification Program tool.</p>	
<p>221. On February 20, 2008, Google executed an agreement with Viacom under which Google was, for the first time, obligated to implement digital fingerprinting to protect against infringement of Viacom’s copyrighted works on YouTube.</p>	<p>Hohengarten ¶ 98 &amp; Ex. 95, GOO001-02244041, at GOO001-02244041.</p>
<p>222. Defendants did not implement digital fingerprinting to prevent the infringement of Viacom’s copyrighted works on the YouTube website until May 2008.</p>	<p>Hohengarten ¶ 3 &amp; Ex. 2 (Solow Decl. ¶¶ 29).</p>

Defendants’ Knowledge and Intent Concerning Infringement on YouTube Through Discussions with the Motion Picture Association of America	
Undisputed Fact	Evidence
<p>223. Beginning in April 2006, the Motion Picture Association of America (“MPAA”), an organization that advocates for all movie studios, including Paramount Pictures Corporation, engaged in negotiations with YouTube in order to obtain YouTube’s cooperation in preventing infringement of the copyrighted works of the MPAA’s members, including Paramount.</p>	<p>Hohengarten ¶ 367 &amp; Ex. 333 (Garfield Dep.) at 14:14-15:4, 15:10-12 (“there was a lot of copyrighted content on the site that was owned or controlled by the motion picture studios”).</p> <p>Hohengarten ¶ 383 &amp; Ex. 349 (Robinson Dep.) at 23:12-24:10 (testifying that the MPAA represents movie studios, including Paramount).</p>
<p>224. The MPAA was represented in the negotiations by its Executive Vice President and Chief Strategic Officer.</p>	<p>Hohengarten ¶ 367 &amp; Ex. 333 (Garfield Dep.) at 13:16-15:4.</p>
<p>225. The negotiations between the MPAA and YouTube were about encouraging YouTube</p>	<p>Hohengarten ¶ 367 &amp; Ex. 333 (Garfield Dep.) at 14:19-15:4 (“The discussion</p>



to remove infringing content belonging to MPAA members, and “relatedly integrating filtering software that would address that copyrighted content.”	was about encouraging YouTube to do two things: deal with the content that we identified on the site that was copyrighted, infringement content from the motion picture studios; and two, and relatedly integrating filtering software that would address that copyrighted content”).
226. After months of discussions, YouTube informed the MPAA that it refused to work with the MPAA to utilize or even test digital fingerprinting and filtering technologies because the rampant piracy on YouTube was acting as a “major lure” for YouTube’s users, drawing them to the site.	Hohengarten ¶ 367 & Ex. 333 (Garfield Dep.) at 28:2-30:3, 53:4-7 (“for those companies who were not and did not develop a licensing agreement with Google, they weren’t going to be doing this sort of a pilot initiative or filtering”).
227. After Google’s acquisition of YouTube was announced, on October 13, 2006, the MPAA sent a written proposal to Defendants calling for cooperation and testing of filtering technologies, including the technology of a company called Audible Magic; the MPAA agreed to pay for the test.	Hohengarten ¶ 341 & Ex. 307, MPAA012777, at MPAA012777.  Hohengarten ¶ 367 & Ex. 333 (Garfield Dep.) at 32:15-34:2.
228. On November 9, 2006, the MPAA transmitted another written proposal to Defendants calling for cooperation and testing of filtering technologies, including Audible Magic technology; the MPAA again agreed to pay for the test.	Hohengarten ¶ 342 & Ex. 308, MPAA012806, at MPAA012806.  Hohengarten ¶ 367 & Ex. 333 (Garfield Dep.) at 41:14-46:25.
229. Google did not respond to the MPAA’s proposal until early 2007, when Google rejected cooperation with the MPAA and its member studios, and rejected the deployment of filtering to prevent the uploading of the studios’ works in the absence of the studios executing a licensing and revenue sharing agreements with Google.	Hohengarten ¶ 367 & Ex. 333 (Garfield Dep.) at 52:7-53:7.

## IV. DEFENDANTS' DIRECT FINANCIAL BENEFIT FROM INFRINGEMENT

Building Up YouTube's User Base Through the Popularity of Infringing Content	
Undisputed Fact	Evidence
230. A draft 2007 strategy document from Google's company wide monetization team noted that "pornographic and copyright infringed content" were "among the primary drivers of YouTube traffic"; the document further noted that "[b]y developing and [sic] audience following the users first, YouTube has created advertiser and monetization value."	Hohengarten ¶ 107 & Ex. 104, GOO001-00330654, at GOO001-00330658.
231. In a draft July 2006 presentation, YouTube co-founder Chad Hurley stated that YouTube "provide[s] the best experience on the Internet for both user-generated and professional content," and he described YouTube's growth in terms of the growth in the number of videos being watched every day, the number of unique users on YouTube, and the "amount of time each of the 20M users spends daily on YouTube."	Hohengarten ¶ 108 & Ex. 105, GOO001-05164894, at GOO001-05164894.
232. Wendy Chang, a Google finance manager, stated in her deposition that "Advertisers want eyeballs. . . . so you can't make money from the advertisers unless you have the users, and you're only going to have -- have users if you have the right content."	Hohengarten ¶ 354 & Ex. 320 (Chang Dep.) at 7:18-10:3 (testifying to Wendy Chang's job title), 134:3-7.
233. In notes from a meeting that occurred on October 12, 2006, Google executive Susan Wojcicki stated: "Interesting lesson from YouTube and Google Print, we always need to be able to rely on DMCA . . . Focus on the users and get the traffic. . . . Be comprehensive: index everything . . . YouTube as well--opt out, DMCA afterward for takedown . . . Then you have audience, and monetization will follow."	Hohengarten ¶ 109 & Ex. 106, GOO001-00330681, at GOO001-00330682.
234. In her deposition, Google finance manager Wendy Chang agreed with the statement	Hohengarten Decl. ¶ 354 & Ex. 320 (Chang Dep.) at 138:15-139:12.

that “Then you have an audience and monetization will follow,” adding that the three core elements of YouTube’s business model are “the audience, the content, and the monetization.”	
235. By October 2006, when Google’s board of directors approved the acquisition of YouTube, the number of video views per month on YouTube had grown to 180 million.	Hohengarten ¶ 324 & Ex. 293, CSSU 003560, at CSSU 003565-66.

Monetizing YouTube’s User Base Through Advertising	
Undisputed Fact	Evidence
236. In his deposition, YouTube director of finance Brent Hurley stated that YouTube’s “primary” business model was an advertising based business model and that the goal of such a business model is: “you get traffic, people come to you, the site, and then you can insert ads onto those pages and -- and earn revenue from those ads.”	Hohengarten ¶ 350 & Ex. 316 (B. Hurley Dep.) at 53:4-56:4.
237. As a result of Google’s acquisition of YouTube, YouTube director of finance Brent Hurley received Google shares worth approximately \$10.74 million.	Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement (February 7, 2007)) at 5 (page numbers at bottom center) (showing 22,334 shares issued to Brent Hurley).  Hohengarten ¶ 306 & Ex. 278 (screenshot of Google’s finance webpage showing that the high price for Google shares on November 13, 2006 was \$481.03).
238. In a January 5, 2007 declaration, YouTube co-founder Steve Chen stated that “YouTube earns revenue through the display of banner advertising on pages throughout our website. At various times, ads have appeared, for example, on our homepage, on pages displaying thumbnail images of clips responsive to users’ search	Hohengarten ¶ 393 & Ex. 356 (Declaration of Steve Chen dated January 5, 2007) at ¶ 19.

queries, on pages displaying the most popular (or highest rated) clips for the day, and on ‘watch pages.’”	
239. In December 2005, YouTube began earning advertising revenue from banner advertisements displayed across the YouTube website.	Hohengarten ¶ 110 & Ex. 107, GOO001-00633965, at GOO001-00633965.  Hohengarten ¶ 111 & Ex. 108, GOO001-05920388, at GOO001-05920388-89.
240. Google’s 2007 Annual Report stated “We recognize as revenue the fees charged advertisers each time an ad is displayed on the YouTube site.”	Hohengarten ¶ 315 & Ex. 287 (Google 2007 Annual Report) at 40.
241. From early 2006 until January 2007, advertisements appeared on the “watch page” on YouTube for substantially all videos.	Hohengarten ¶ 382 & Ex. 348 (Reider Dep.) at 50:23-53:5; 54:24-25.  Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) at 226:5-14.  Hohengarten ¶ 350 & Ex. 316 (B. Hurley Dep.) at 151:1-23.  Hohengarten ¶ 112 & Ex. 109, GOO001-00763354, at GOO001-00763364-76.  Hohengarten ¶ 387 & Ex. 353 (Seth Dep.) at 25:18-26:15.  Hohengarten ¶ 111 & Ex. 108, GOO001-05920388, at GOO001-05920388-89.  Hohengarten ¶ 398 & Ex. 361 (Defendants’ Responses and Objections to Plaintiffs’ Second Set of Interrogatories, Interrogatory No. 1) at 7.
242. The “watch page” is the page on the YouTube website where a user views a video.	Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) at 113:25-114:6.

<p>243. In an October 7, 2006 email from YouTube director of finance Brent Hurley to Google executive Sean Dempsey and Credit Suisse managing director Storm Duncan, Brent Hurley stated “Yes, we are running ROS ads on both the search, watch and browse pages.”</p>	<p>Hohengarten ¶ 113 &amp; Ex. 110, GOO001-00658376, at GOO001-00658376.</p> <p>Hohengarten ¶ 350 &amp; Ex. 316 (B. Hurley Dep.) at 155:21-157:16.</p> <p>Hohengarten ¶ 362 &amp; Ex. 328 (Duncan 30(b)(6) Dep.) at 10:18-11:10 (testifying to Storm Duncan’s job title).</p>
<p>244. A “run of site” advertisement on YouTube is an advertisement the placement of which is not guaranteed to the advertiser, and which YouTube can place anywhere on YouTube at YouTube’s discretion.</p>	<p>Hohengarten ¶ 382 &amp; Ex. 348 (Reider Dep.) at 282:20-283:5.</p>
<p>245. Credit Suisse’s October 9, 2006 presentation to Google’s board of directors stated that YouTube watch pages constituted “45% of total page views,” that “run of site ads” ran on YouTube’s search and watch pages, and that “sponsored advertising” ran on YouTube’s home page.</p>	<p>Hohengarten ¶ 324 &amp; Ex. 293, CSSU 003560, at CSSU 003570.</p>
<p>246. Credit Suisse’s October 9, 2006 presentation to Google’s board of directors estimated that in 2007 there would be approximately 126 billion YouTube watch page views in 2007.</p>	<p>Hohengarten ¶ 324 &amp; Ex. 293, CSSU 003560, at CSSU 003570 (estimating 280 billion total page views, 45% from watch pages).</p>
<p>247. Prior to January 2007, when a viewer watched an infringing clip taken from Viacom’s hit program “South Park,” an advertisement appeared next to the video and YouTube earned revenue from that advertising.</p>	<p>Hohengarten ¶ 284 &amp; Ex. 256, VIA14375466, at VIA14375466.</p>
<p>248. In January 2007, YouTube stopped advertising on substantially all watch pages.</p>	<p>Hohengarten ¶ 398 &amp; Ex. 361 (Defendants’ Repones and Objections to Plaintiffs’ Second Set of Interrogatories, Interrogatory No. 1) at 7 (“[A]dvertisements . . . on watch pages associated with user-uploaded video clips . . . ceased to appear on or about January 1, 2007”).</p>

	<i>See also infra</i> <i>SUF</i> ¶ 250
249. From January 2007 forward, YouTube has advertised only on those watch pages displaying content belonging to one of YouTube's "content partners."	<p>Hohengarten ¶ 398 &amp; Ex. 361 (Defendants' Responses and Objections to Plaintiffs' Second Set of Interrogatories, Interrogatory No. 1) at 7 ("[A]dvertisements . . . on watch pages associated with user-uploaded video clips . . . ceased to appear on or about January 1, 2007").</p> <p>Hohengarten ¶ 382 &amp; Ex. 348 (Reider Dep.) at 50:23-54:25.</p> <p><i>See infra</i> <i>SUF</i> ¶ 250.</p>
250. A November 30, 2006 email from Google sales director Suzie Reider to Google advertising executive Tim Armstrong stated, "A major decision in the works that you should be aware of -- for legal reasons (that I don't fully understand what has changed, and our GC will be back in SF on Monday to articulate) all ads/monetization on the watch pages for user generated content will need to come down. This will have a tremendous impact on inventory."	Hohengarten ¶ 114 & Ex. 111, GOO001-02656593, at GOO001-02656593.
251. During the period when YouTube was advertising on substantially all watch pages, advertisements regularly appeared on watch pages for Viacom's content, including works in suit in this action.	<p>Hohengarten ¶ 284 &amp; Ex. 256, VIA14375466, at VIA14375466.</p> <p>Hohengarten ¶ 276 &amp; Ex. 248, VIA14375471, at VIA14375471.</p> <p>Hohengarten ¶ 277 &amp; Ex. 249, VIA14375444, at VIA14375444.</p> <p>Hohengarten ¶ 278 &amp; Ex. 250, VIA14375526, at VIA14375526.</p> <p>Hohengarten ¶ 279 &amp; Ex. 251, VIA14375557, at VIA14375557.</p> <p>Hohengarten ¶ 280 &amp; Ex. 252, VIA14375446, at VIA14375446.</p>
252. Before and after January 2007, Defendants sold ads appearing on the YouTube	<i>See supra</i> <i>SUF</i> ¶ 238.

homepage.	<p>Hohengarten ¶ 366 &amp; Ex. 332 (Eun Dep.) at 315:14-316:14.</p> <p>Hohengarten ¶ 112 &amp; Ex. 109 GOO001-00763354, at GOO001-00763364-76 (chart of advertising revenue listing advertisements by site page, referring to “home right” as the right side of YouTube’s home page).</p> <p>Hohengarten ¶ 350 &amp; Ex. 316 (B. Hurley Dep.) at 154:25-155:4.</p> <p>Hohengarten ¶ 354 &amp; Ex. 320 (Chang Dep.) at 185:17-185:25.</p> <p>Hohengarten ¶ 375 &amp; Ex. 341 (Kordestani Dep.) at 174:14-175:12.</p> <p>Hohengarten ¶ 115 &amp; Ex. 112, GOO001-02338150, at GOO001-02338170.</p>
253. The home page on YouTube is the page that first appears when a user accesses www.youtube.com over the Internet.	Hohengarten ¶ 379 & Ex. 345 (Maxcy Dep.) at 43:9-11.
254. Before and after January 2007, Defendants sold ads that appear on YouTube search results pages.	<p>Hohengarten ¶ 354 &amp; Ex. 320 (Chang Dep.) at 185:5-186:10.</p> <p>Hohengarten ¶ 376 &amp; Ex. 342 (Levine Dep.) at 271:11-18.</p> <p>Hohengarten ¶ 111 &amp; Ex. 108, GOO001-05920388, at GOO001-05920388-89.</p> <p>Hohengarten ¶ 115 &amp; Ex. 112, GOO001-02338150, at GOO001-02338170.</p>
255. Search results pages on YouTube are the pages where YouTube displays results of user searches using YouTube’s search function.	<p>Hohengarten ¶ 346 &amp; Ex. 312 (C. Hurley Dep.) at 114:23-115:8.</p> <p>Hohengarten ¶ 313 &amp; Ex. 285 (screenshot of search results pages).</p>



	Hohengarten ¶ 393 & Ex. 356 (Declaration of Steve Chen dated January 5, 2007) at ¶ 5.
256. Advertisements on YouTube search results pages were the largest revenue source for YouTube in 2007.	Hohengarten ¶ 116 & Ex. 113, GOO001-02439050, at GOO001-02439050-53.  Hohengarten ¶ 117 & Ex. 114, GOO001-00255239, at GOO001-00255240.  Hohengarten ¶ 118 & Ex. 115, GOO001-00237661, at GOO001-00237662.
257. A YouTube monetization planning document from May 2007 prepared for Google CEO Eric Schmidt states: “From a monetization perspective, the largest opportunity for revenue resides on the YouTube search pages.”	Hohengarten ¶ 119 & Ex. 116, GOO001-01295801, at GOO001-01295802.
258. YouTube enables advertisers to target their advertisements on YouTube’s search pages to the search terms entered by a YouTube user.	Hohengarten ¶ 376 & Ex. 342 (Levine Dep.) at 273:15-274:25.  Hohengarten ¶ 314 & Ex. 286.  Hohengarten ¶ 382 & Ex. 348 (Reider Dep.) at 199:24-200:12.  Hohengarten ¶ 378 & Ex. 344 (Liu Dep.) at 24:3-26:17.
259. When a YouTube user searches YouTube for Viacom content, YouTube displays advertising next to the search results for that content.	Hohengarten ¶ 378 & Ex. 344 (Liu Dep.) at 24:3-26:17; 181:16-182:20; 185:24-186:7.  Hohengarten ¶ 287 & Ex. 259, VIA14375204, at VIA14375204.  Hohengarten ¶ 313 & Ex. 285, at 3, 7, 9.  Hohengarten ¶ 288 & Ex. 260,

	<p>VIA14375664, at VIA14375664.</p> <p>Hohengarten ¶ 289 &amp; Ex. 261, VIA14375611, at VIA14375611.</p> <p>Hohengarten ¶ 290 &amp; Ex. 262, VIA14375671, at VIA14375671.</p> <p>Hohengarten ¶ 291 &amp; Ex. 263, VIA14375620, at VIA14375620.</p> <p>Hohengarten ¶ 292 &amp; Ex. 264, VIA14375635, at VIA14375635.</p> <p>Hohengarten ¶ 293 &amp; Ex. 265, VIA14375638, at VIA14375638.</p>
260. Before and after January 2007, Defendants also sold advertisements on the browse pages of the YouTube website.	<p>Hohengarten ¶ 393 &amp; Ex. 356 (Declaration of Steve Chen dated January 5, 2007) at ¶ 19.</p> <p>Hohengarten ¶ 112 &amp; Ex. 109, GOO001-00763354, at GOO001-00763364.</p> <p>Hohengarten ¶ 350 &amp; Ex. 316 (B. Hurley Dep.) at 152:21-152:24.</p> <p>Hohengarten ¶ 113 &amp; Ex. 110, GOO001-00658376, at GOO001-00658376.</p>
261. The browse pages on YouTube are the pages where YouTube suggests videos for users to watch, including “Most Viewed,” “Top Favorites,” “Most Discussed,” “Recent Videos,” and “Top Rated.”	<p>Hohengarten ¶ 363 &amp; Ex. 329 (Dunton Dep.) at 79:5-10.</p> <p>Hohengarten ¶ 346 &amp; Ex. 312 (C. Hurley Dep.) at 115:19-116:9.</p>
262. Before and after January 2007, YouTube has also sold advertising on the video upload page, the page where users upload videos to YouTube.	<p>Hohengarten ¶ 115 &amp; Ex. 112, GOO001-02338150, at GOO001-02338182.</p> <p>Hohengarten ¶ 120 &amp; Ex. 117, GOO001-08030008, at GOO001-08030009.</p>

<p>263. A “house advertisement” on YouTube is an advertisement that appears on a YouTube page, promotes some other aspect of YouTube, and directs the user to the corresponding YouTube page.</p>	<p>Hohengarten ¶ 182 &amp; Ex. 179, GOO001-02034326, at GOO001-02034326.</p>
<p>264. Even after YouTube decided to limit its use of advertisements on watch pages, YouTube placed “house advertisements” on watch pages, without limiting these advertisements to watch pages of authorized content.</p>	<p>Hohengarten ¶ 182 &amp; Ex. 179, GOO001-02034326, at GOO001-02034326.</p> <p>Hohengarten ¶ 183 &amp; Ex. 180, GOO001-06811230, at GOO001-06811230.</p>
<p>265. House advertisements have appeared on watch pages of Viacom-owned content that was uploaded without Viacom’s consent, including as recently as September 14, 2009.</p>	<p>Hohengarten ¶ 286 &amp; Ex. 258 (screenshot, taken September 14, 2009, of YouTube watch page titled “Kanye West shifts on Taylor Swift - 2009 VMA’s” showing a house advertisement in the upper right corner).</p> <p>Hohengarten ¶ 378 &amp; Ex. 344 (Liu Dep.) at 177:25-179:2 (testifying that Liu Dep. Ex. 11 appears to be a YouTube watch page and that the box in the upper right corner containing the text “Gundam 00” appears to be a house ad for YouTube.com/shows).</p>
<p>266. From 2006 until today, if a user went to YouTube looking for clips that infringe Viacom’s copyrights in popular shows such as “South Park,” “The Daily Show With Jon Stewart,” or “The Colbert Report,” either via YouTube’s home page, search results page, or browse page, YouTube earned revenue from the ads served to that user on those pages.</p>	<p><i>See supra</i> SUF ¶¶ 238-241, 247, 251, 252, 254, 256-261, 265.</p>

## V. DEFENDANTS' RIGHT AND ABILITY TO CONTROL INFRINGEMENT

YouTube's Terms of Use, Termination of Users, and Removal of Videos	
Undisputed Fact	Evidence
267. YouTube's Terms of Use have always given YouTube sole discretion to remove any video from YouTube for any reason and to terminate any YouTube user account for any reason.	<p>Hohengarten ¶ 121 &amp; Ex. 118, GOO001-00421229, at GOO001-00421231 (YouTube Terms of Use, dated February 3, 2006 per metadata).</p> <p>Hohengarten ¶ 122 &amp; Ex. 119, GOO001-02826891, at GOO001-02826893 (YouTube Terms of Use, dated March 14, 2006 per metadata).</p> <p>Hohengarten ¶ 123 &amp; Ex. 120, GOO001-00824855, at GOO001-00824857 (YouTube Terms of Use, dated July 26, 2006 per metadata).</p> <p>Hohengarten ¶ 124 &amp; Ex. 121, GOO001-02829970, at GOO001-02829972 (YouTube Terms of Use, dated August 18, 2006 per metadata).</p> <p>Hohengarten ¶ 196 &amp; Ex. 372 GOO001-02316969, at GOO001-02316970 (YouTube Terms of Use, dated November 20, 2006).</p> <p>Hohengarten ¶ 394 &amp; Ex. 357 (Declaration of Zahavah Levine dated January 5, 2007) at Ex. A ¶ 5.C.</p> <p>Hohengarten ¶ 127 &amp; Ex. 124, GOO001-07056597, at GOO001-07056600 (YouTube Terms of Use, dated February 26, 2007 per metadata).</p> <p>Hohengarten ¶ 128 &amp; Ex. 125, GOO001-01232697, at GOO001-01232700 (YouTube Terms of Use, dated June 19, 2007 per metadata).</p>
268. In her deposition, YouTube content review manager Heather Gillette testified that "The	Hohengarten ¶ 368 & Ex. 334 (Gillette Dep.) at 110:25-111:3.

terms of use states specifically that we have the right to remove content at our sole discretion for any reason whatsoever.”	
269. Until late November 2005, just before YouTube’s official launch, YouTube employees reviewed thumbnail images for every video uploaded to YouTube and removed videos that violated YouTube’s terms of use, including for reasons of violence, pornography, and copyright infringement.	Hohengarten ¶ 350 & Ex. 316 (B. Hurley Dep.) at 66:17-67:3, 137:7-12, 164:3-12.  Hohengarten ¶ 19 & Ex. 16, GOO001-00629095, at GOO001-00629095.
270. After November 2005, YouTube employees stopped reviewing thumbnails of every video uploaded to YouTube.	Hohengarten ¶ 350 & Ex. 316 (B. Hurley Dep.) at 66:17-67:3, 164:9-12.
271. On November 24, 2005, YouTube director of finance Brent Hurley instructed YouTube employees to look for and remove some infringing material, such as clips of “Family Guy, South Park, and full-length anime episodes.”	Hohengarten ¶ 19 & Ex. 16, GOO001-00629095, at GOO001-00629095.  Hohengarten ¶ 350 & Ex. 316 (B. Hurley Dep.) at 81:5-82:2.
272. Sporadically during 2005 and 2006, YouTube employees proactively searched the YouTube site for infringing clips belonging to certain content owners and removed thousands of such clips.	Hohengarten ¶ 129 & Ex. 126, GOO001-02768034, at GOO001-02768034.  Hohengarten ¶ 368 & Ex. 334 (Gillette Dep.) at 46:20-47:17, 54:2-63:23, 72:24-73:7.  Hohengarten ¶ 130 & Ex. 127, GOO001-01027757, at GOO001-01027766.  Hohengarten ¶ 363 & Ex. 329 (Dunton Dep.) at 163:5-14.  Hohengarten ¶ 376 & Ex. 342 (Levine Dep.) at 211:19-212:5.  Hohengarten ¶ 385 & Ex. 351 (Schaffer Dep.) at 97:25-100:13, 104:25-106:6.
273. When it was in YouTube’s interest to do so, YouTube personnel manually screened	Hohengarten ¶ 132 & Ex. 129, GOO001-04431787, at GOO001-

<p>narrow subsets of YouTube videos to ensure that they did not infringe copyright.</p>	<p>04431787 (describing the “YouTube Director” program).</p> <p>Hohengarten ¶ 133 &amp; Ex. 130, GOO001-00509640, at GOO001-00509640 (showing that YouTube has proactively reviewed videos uploaded to Director Accounts for copyright infringement).</p> <p>Hohengarten ¶ 134 &amp; Ex. 131, GOO001-00222797, at GOO001-00222797 (same).</p> <p>Hohengarten ¶ 135 &amp; Ex. 132, GOO001-02754251, at GOO001-02754251 (describing the “User Partner Program”).</p> <p>Hohengarten ¶ 79 &amp; Ex. 76, GOO001-03037036, at GOO001-03037043-44 (March 2007 Monetization Strategy presentation noting that the User Partner Program used “fingerprinting and manual-review” to “[e]nsure that only original content can be monetized.”).</p> <p>Hohengarten ¶ 136 &amp; Ex. 133, GOO001-02027618, at GOO001-02027618.</p> <p>Hohengarten ¶ 185 &amp; Ex. 182, GOO001-02866493, at GOO001-02866501, GOO001-02866503 (YouTube presentation about the User Partner Program noting that in considering applicants for the program YouTube employees should “[l]ook for TV watermarks and other indicators,” and determine whether the user has videos “that are in a prohibited category”).</p> <p>Hohengarten ¶ 187 &amp; Ex. 184, GOO001-06361166, at GOO001-06361173, GOO001-06361175.</p>
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	<p>Hohengarten ¶ 387 &amp; Ex. 353 (Seth Dep.) at 17:17-24:11, 34:4-35:12, 54:11-56:21, 61:2-18, 68:5-11 (describing several aspects of the User Partner Program, including human review).</p> <p>Hohengarten ¶ 131 &amp; Ex. 128, GOO001-01535521, at GOO001-01535521 (content review manager Heather Gillette stating: “we pro-actively screen any videos and/or users that we are highlighting on our ‘honors’ pages (most watched, most subscribed, most discussed, etc.) and remove, or restrict these videos/users such that they won’t be on the site at all, or they won’t be highlighted if we deem the video as needing to be restricted.”).</p>
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YouTube’s Ineffective “Hash Based Identification” Technology	
Undisputed Fact	Evidence
274. YouTube employed a technology called hash-based identification to prevent a user from uploading a video clip to YouTube that is exactly identical in every respect to a video clips that YouTube had previously removed pursuant to a takedown notice.	Hohengarten ¶ 393 & Ex. 356 (Declaration of Steve Chen dated January 5, 2007) at ¶ 12.
275. Hash-based identification cannot prevent re-upload of the same infringing content to YouTube if the second video clip differs in even the slightest degree (e.g., in length or resolution) from the first clip that was removed.	<p>Hohengarten ¶ 393 &amp; Ex. 356 (Declaration of Steve Chen dated January 5, 2007) at ¶ 12.</p> <p>Hohengarten ¶ 355 &amp; Ex. 321 (Chastagnol Dep.) at 56:2-22.</p> <p>Hohengarten ¶ 376 &amp; Ex. 342 (Levine Dep.) at 254:24-255:11.</p>
276. And even this minimal protection against infringement generally was triggered only if	Hohengarten ¶ 385 & Ex. 351 (Schaffer Dep.) at 132:17-20.



a copyright owner first sent a takedown notice.	Hohengarten ¶ 137 & Ex. 134 GOO001-00561601, at GOO001-00561605.
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YouTube's Ability to Use Keyword Searching to Root Out Infringement	
Undisputed Fact	Evidence
277. YouTube has always had the ability to find infringing clips after they are made available for viewing on the YouTube website by searching for keywords associated with copyrighted content.	<i>See</i> SUF <i>infra</i> ¶¶ 278, 280, 300, 302, 305; <i>supra</i> ¶¶ 112, 113, 139,
278. Viacom and other copyright owners use keyword searching to find videos that infringe their copyrights on YouTube in order to send takedown notices.	Hohengarten ¶ 369 & Ex. 335 (Housley Dep.) at 36:22-37:8.  Hohengarten ¶ 3 & Ex. 2 (Solow Decl. ¶ 2).
279. However, until mid-2008, copyright holders such as Viacom could search for infringing videos on YouTube only after YouTube made the videos publicly searchable, resulting in inevitable delay before the copyright holders can search for and find the infringing content and then send a takedown notice.	Hohengarten ¶ 136 & Ex. 133 (YouTube Help page entitled "Solve a Problem: Video not in search").  Hohengarten ¶ 138 & Ex. 135, GOO001-08643428, at GOO001-08643428.
280. YouTube has always had the ability to apply keyword searching or filtering (human or automated) to identify and block infringing videos before they are made available for viewing on YouTube.	Hohengarten ¶ 347 & Ex. 313 (Karim Dep.) at 119:4-121:24 (testifying that YouTube could have reviewed videos before they were made publicly viewable, that it would have been a very simple change to do so, and that it was very likely that they did do so for some time).  Hohengarten ¶ 256 & Ex. 238, JK00009130, at JK00009130 ("[W]e can always approve videos first BEFORE they are shown anywhere, that's a one-line code change.").

YouTube's Refusal to Employ Digital Fingerprinting to Stop Infringement	
Undisputed Fact	Evidence
281. A digital fingerprint is a software-generated digital identifier of the content in the audio and/or video track of an audio-visual work.	<p>Hohengarten ¶ 140 &amp; Ex. 136, GOO001-02493069, at GOO001-02493070-71.</p> <p>Hohengarten ¶ 370 &amp; Ex. 336 (Ikezoye Dep.) at 15:15-16:11.</p> <p>Hohengarten ¶ 395 &amp; Ex. 358, at ¶¶ 3-4.</p> <p>Hohengarten ¶ 396 &amp; Ex. 359, at ¶¶ 4-5.</p>
282. Digital fingerprinting service providers such as Audible Magic maintain reference databases of the digital fingerprints of copyrighted works.	<p>Hohengarten ¶ 370 &amp; Ex. 336 (Ikezoye Dep.) at 23:13-19.</p>
283. When a video is uploaded to a website such as YouTube, digital fingerprinting technology can take the digital fingerprint of the uploaded video and compare it to reference databases of fingerprints of copyrighted works to determine whether there is a match.	<p>Hohengarten ¶ 370 &amp; Ex. 336 (Ikezoye Dep.) at 15:15-16:11.</p> <p>Hohengarten ¶ 395 &amp; Ex. 358, at ¶¶ 10-12 .</p> <p>Hohengarten ¶ 396 &amp; Ex. 359, at ¶¶ 4-6, 10, 15.</p> <p>Hohengarten ¶ 355 &amp; Ex. 321 (Chastagnol Dep.) at 88:18-25.</p> <p>Hohengarten ¶ 399 &amp; Ex. 362 (July 27, 2007 Status Conference Transcript) at 17:2-5 (“[A]ny video that gets uploaded basically gets filtered through the fingerprint database, and like the AFIS that the FBI has, and if there’s a hit, then within minutes the computer knows that and pulls it down.”).</p>

284.If there is a fingerprint match -- indicating that the audio and/or video track of the uploaded video matches a copyrighted work in whole or in part -- then a website such as YouTube can automatically discard the upload or take another action, such as flagging the video for review by an employee.	Hohengarten ¶ 395 & Ex. 358, at ¶ 11.  Hohengarten ¶ 396 & Ex. 359, at ¶¶ 15-19.
285.Computers can readily accomplish this fingerprint matching function so that infringing videos never go live on the site.	Hohengarten ¶ 395 & Ex. 358, at ¶ 11.  Hohengarten ¶ 396 & Ex. 359, at ¶¶ 11-12.
286.Audible Magic began providing audio fingerprinting to clients in 2004.	Hohengarten ¶ 370 & Ex. 336 (Ikezoye Dep.) at 11:15-19, 109:14-25.
287.Audible Magic could have deployed its audio fingerprinting services on YouTube as early as February 2005, when YouTube was founded, and April 2005, when the YouTube website was launched in beta form.	Hohengarten ¶ 370 & Ex. 336 (Ikezoye Dep.) at 109:22-110:22.
288.By February 2006, Audible Magic was conducting over five million fingerprint match requests, or “look ups,” a day and could easily have handled tens of millions of such requests.	Hohengarten ¶ 396 & Ex. 359, at ¶ 21.  Hohengarten ¶ 370 & Ex. 336 (Ikezoye Dep.) at 21:21-22:7.
289.At no time in YouTube’s history have anywhere close to five million videos been uploaded to YouTube in a single day.	Hohengarten ¶ 324 & Ex. 293 CSSU 003560, at CSSU 003561, CSSU 003565 (“Current number of videos uploaded daily: 100,000”).  Hohengarten ¶ 140 & Ex. 137, GOO001-02930251, at GOO001-02930256 (stating that in March 2008 YouTube had “400,000+ uploads per day”).
290.Between 2006 and mid-2009, Audible Magic had approximately 30 website customers, including video sites MySpace, Grouper, and Microsoft Soapbox, who deployed Audible Magic’s fingerprinting technology to identify and block	Hohengarten ¶ 370 & Ex. 336 (Ikezoye Dep.) at 13:5-14:13.  Hohengarten ¶ 383 & Ex. 349 (Robinson Dep.) at 61:13-62:7.

unauthorized audio or audiovisual content on their respective sites.	Hohengarten ¶ 343 & Ex. 309, MPAA0011721, at MPAA0011721.  Hohengarten ¶ 143 & Ex. 140, GOO001-09612201, at GOO001-09612201.
291. Starting early in 2006, copyright owners urged YouTube to use fingerprinting technology, such as Audible Magic, to stop infringement.	Hohengarten ¶ 367 & Ex. 333 (Garfield Dep.) at 14:1-28:12.  Hohengarten ¶ 337 & Ex. 304, AM 002090, at AM 002091.
292. On October 5, 2006, YouTube and Audible Magic signed an agreement for Audible Magic to provide audio fingerprinting services to YouTube.	Hohengarten ¶ 144 & Ex. 141, GOO001-03427120, at GOO001-03427120.
293. YouTube did not begin using Audible Magic's audio fingerprinting service until February 2007.	Hohengarten ¶ 142 & Ex. 139, GOO001-01950611, at GOO001-01950611.  Hohengarten ¶ 370 & Ex. 336 (Ikezoye Dep.) at 57:6-16.  Hohengarten ¶ 145 & Ex. 142, GOO001-02867502, at GOO001-02867502 ("Audible Magic - Audio Fingerprinting . . . Platform went live 2/14").
294. From 2007 through the end of 2009, YouTube used Audible Magic to check every video uploaded to the YouTube site, but only against a limited set of audio and audiovisual works specified by YouTube.	Hohengarten ¶ 374 & Ex. 340 (King 30(b)(6) Dep.) at 96:22-97:3.  <i>See</i> SUF <i>infra</i> ¶¶ 295-298.
295. Audible Magic was capable of identifying millions of copyrighted works, but YouTube directed Audible Magic to limit its searches to identifying only specific content belonging to content owners who had agreed to licensing and revenue sharing deals with YouTube.	<i>See</i> SUF <i>infra</i> ¶¶ 296-298.  Hohengarten ¶ 370 & Ex. 336 (Ikezoye Dep.) at 33:4-9, 48:18-22.  Hohengarten ¶ 141 & Ex. 138, GOO001-02604786, at GOO001-02604789-90.

	<p>Hohengarten ¶ 144 &amp; Ex. 141, GOO001-03427120, at GOO001-03427122, GOO001-03427124 (final agreement between YouTube and Audible Magic for Audible Magic’s audio fingerprinting services, defining “Copyrighted Content Database” as consisting “solely of the materials pertaining to those Content Owners <i>designated by [YouTube]</i>” (emphasis added)).</p> <p>Hohengarten ¶ 146 &amp; Ex. 143, GOO001-02493328, at GOO001-02493328-29.</p> <p>Hohengarten ¶ 355 &amp; Ex. 321 (Chastagnol Dep.) at 182:19-186:19.</p> <p>Hohengarten ¶ 370 &amp; Ex. 336 (Ikezoye Dep.) at 64:15-66:6, 79:4-16, 80:15-81:16, 93:20-94:9.</p> <p>Hohengarten ¶ 146 &amp; Ex. 143, GOO001-02493328, at GOO001-02493328-29.</p> <p>Hohengarten ¶ 355 &amp; Ex. 321 (Chastagnol Dep.) at 182:19-186:19.</p> <p>Hohengarten ¶ 338 &amp; Ex. 305, AM001241, at AM001241-42.</p>
<p>296. YouTube also used Audible Magic to create fingerprints of audio and audiovisual works belonging to content owners who had agreed to licensing and revenue sharing deals with YouTube, and then to search for those works on the YouTube site, but YouTube did not use this ability to fingerprint or search for content owned by Viacom.</p>	<p>Hohengarten ¶ 339 &amp; Ex. 306, AM000917, at AM000917.</p> <p>Hohengarten ¶ 370 &amp; Ex. 336 (Ikezoye Dep.) at 65:20-66:14.</p> <p>Hohengarten ¶ 374 &amp; Ex. 340 (King 30(b)(6) Dep.) at 47:16-50:14.</p> <p>Hohengarten ¶ 338 &amp; Ex. 305, GOO001-01511226, at GOO001-01511226.</p>

	<p>Hohengarten ¶ 142 &amp; Ex. 139, GOO001-01950611, at GOO001-01950613 (noting that YouTube’s “[r]eference fingerprint database” was populated only with partner-owned content).</p> <p>Hohengarten ¶ 361 &amp; Ex. 327 (Drummond Dep.) at 158:12-17, 159:13-160:18 (testifying that YouTube would have been willing to use audio fingerprinting on Viacom’s behalf if Viacom was willing to “work with us,” defined as “provide [YouTube] with [Viacom] content”).</p> <p>Hohengarten ¶ 137 &amp; Ex. 134, GOO001-00561601, at GOO001-00561607-08, GOO001-00561612-15.</p> <p>Hohengarten ¶ 148 &amp; Ex. 145, GOO001-02506828, at GOO001-02506828.0003, GOO001-02506828.0005.</p> <p>Hohengarten ¶ 149 &amp; Ex. 146, GOO001-01202238, at GOO001-01202240-41.</p> <p>Hohengarten ¶ 375 &amp; Ex. 341 (Kordestani Dep.) at 244:13-23.</p> <p>Hohengarten ¶ 348 &amp; Ex. 314 (Schmidt Dep.) at 156:3-24.</p> <p>Hohengarten ¶ 346 &amp; Ex. 312 (C. Hurley Dep.) at 271:17-288:15.</p>
297. YouTube used Audible Magic to block taken-down videos from being re-uploaded to the site, but only on behalf of some content owners who had entered agreements with YouTube, and not on behalf of content owners who had not, such as Viacom.	<p>Hohengarten ¶ 374 &amp; Ex. 340 (King 30(b)(6) Dep.) at 67:10-68:15, 70:22-78:3, 84:21-88:23, 89:20-90:9, 95:7-95:25.</p>

298. Even after Defendants began using Audible Magic fingerprinting on YouTube, they refused requests by copyright owners to use that technology to prevent infringement of any copyright owner's copyrights unless the owner first granted YouTube a content license and revenue sharing deal.	Hohengarten ¶ 201 & Ex. 382 GOO001-08050272, at GOO001-08050272.  Hohengarten ¶ 348 & Ex. 315 (Schmidt Dep.) at 156:3-24.  Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) at 271:17-288:15.
299. In a September 2006 licensing and revenue-sharing agreement, YouTube offered to use digital fingerprinting to prevent the infringement of copyrighted works owned by Warner Music Inc.	Hohengarten ¶ 191 & Ex. 188, GOO001-09684752, at GOO001-09684765-66, GOO001-09684803-05.  Hohengarten ¶ 40 & Ex. 37, GOO001-01627276, at GOO001-01627276.
300. In a September 2006 licensing and revenue-sharing agreement, YouTube offered to use metadata tag searching to prevent the infringement of copyrighted works owned by Warner Music Inc.	Hohengarten ¶ 191 & Ex. 188, GOO001-09684752, at GOO001-09684805-06.
301. In an October 2006 licensing and revenue-sharing agreement, YouTube offered to use fingerprinting to prevent the infringement of copyrighted works owned by CBS Digital Media.	Hohengarten ¶ 190 & Ex. 187, GOO001-09684647, at GOO001-09684660-61.  Hohengarten ¶ 151 & Ex. 148, GOO001-01870875, at GOO001-01870876.
302. In an October 2006 licensing and revenue-sharing agreement, YouTube offered to use metadata tag searching to prevent the infringement of copyrighted works owned by CBS Digital Media.	Hohengarten ¶ 190 & Ex. 187, GOO001-09684647, at GOO001-09684660.
303. In negotiations for a licensing and revenue-sharing agreement YouTube offered to use fingerprinting to prevent the infringement of copyrighted works owned by Turner Broadcasting Inc. in October 2006.	Hohengarten ¶ 152 & Ex. 149, GOO001-02826036, at GOO001-02826039.
304. In an October 2006 Memorandum of Understanding, YouTube offered to use fingerprinting to prevent the infringement	Hohengarten ¶ 189 & Ex. 186, GOO001-09684681, at GOO001-09684705-08.



of copyrighted works owned by Sony BMG Music Entertainment.	Hohengarten ¶ 151 & Ex. 148 GOO001-01870875, at GOO001-01870879.
305. In an October 2006 Memorandum of Understanding, YouTube offered to use metadata tag searching to prevent the infringement of copyrighted works owned by Sony BMG Music Entertainment.	Hohengarten ¶ 189 & Ex. 186, GOO001-09684681, at GOO001-09684705, GOO001-09684709.
306. In negotiations for a licensing and revenue-sharing agreement YouTube offered to use fingerprinting to prevent the infringement of copyrighted works owned by The Walt Disney Company in December 2006.	Hohengarten ¶ 197 & Ex. 373, GOO001-02502815, at GOO001-02502819 (deal framework between YouTube and The Walt Disney Company agreeing to provide audio fingerprinting services).
307. In negotiations for licensing and revenue-sharing agreements YouTube offered to use fingerprinting for Viacom in July 2006 and for Viacom's MTV Networks in February 2007.	Hohengarten ¶ 271 & Ex. 245, VIA00727695, at VIA00727696.  Hohengarten ¶ 94 & Ex. 91, GOO001-00984825, at GOO001-00984837.
308. In negotiations for a licensing and revenue-sharing agreement YouTube offered to use fingerprinting to prevent the infringement of copyrighted works owned by NBC Universal in February 2007.	Hohengarten ¶ 155 & Ex. 152, GOO0001-02874326, at GOO0001-02874326.
309. In negotiations for a licensing and revenue-sharing agreement YouTube offered to use fingerprinting to prevent the infringement of copyrighted works owned by EMI in March 2007.	Hohengarten ¶ 156 & Ex. 153, GOO001-02240369, at GOO001-02240369.  Hohengarten ¶ 157 & Ex. 154, GOO001-02524911, at GOO001-02525000.
310. In negotiations for a licensing and revenue-sharing agreement YouTube offered to use fingerprinting to prevent the infringement of copyrighted works owned by Universal Music in June 2007.	Hohengarten ¶ 181 & Ex. 178, GOO001-06147947, at GOO001-06147947 (draft agreement between YouTube and Universal Music Group Recordings, Inc. dated October 6, 2006).  Hohengarten ¶ 151 & Ex. 148,

	<p>GOO001-01870875, at GOO001-01870882.</p> <p><i>See also</i> Hohengarten ¶ 158 &amp; Ex. 155, GOO001-02241782, at GOO001-02241782 (amending October 6, 2006 agreement).</p>
311. The October 5, 2006 agreement between Audible Magic and YouTube required YouTube to pay Audible Magic \$200,000 in service fees for 2007 and \$300,000 in service fees for 2008.	Hohengarten ¶ 144 & Ex. 141, GOO001-03427120, at GOO001-03427122, GOO001-03427126.
312. The cost to YouTube of using Audible Magic's entire reference database of fingerprints of film and TV works would have been approximately twice the amount that Audible Magic was charging YouTube each month under the October 5, 2006 contract.	Hohengarten ¶ 370 & Ex. 336 (Ikezoye Dep.) at 105:21-106:3.
313. Google developed its own audio fingerprinting tool as early as November 2006, but did not start using it on the YouTube site to prevent infringement of any copyrighted content until approximately February 2008.	<p>Hohengarten ¶ 151 &amp; Ex. 156, GOO001-02354601, at GOO001-02354601.</p> <p>Hohengarten ¶ 160 &amp; Ex. 157, GOO001-09612078, at GOO001-09612078.</p> <p>Hohengarten ¶ 373 &amp; Ex. 339 (King Dep.) at 125:15-126:10.</p>
314. At the first status conference before this Court in July 2007, Defendants' counsel announced for the first time that Defendants would implement their own proprietary video fingerprinting technology and would make it available to all copyright holders, not just those who had agreed to licensing deals with Defendants.	Hohengarten ¶ 399 & Ex. 362 (July 27, 2007 Status Conference Transcript) at 15:15-17:7.

**VI. DEFENDANTS' CONDUCT AS DIRECT INFRINGEMENT AND AS BEYOND STORAGE AT THE DIRECTION OF A USER**

Defendants' Copying and Transcoding of Videos Uploaded to YouTube	
Undisputed Fact	Evidence
315. When a user submits a video for upload, YouTube makes one or more exact copies of the video in its original file format (i.e., the format in which it is uploaded by the user).	Hohengarten ¶ 356 & Ex. 322 (Do Dep.) at 19:21-20:6.
316. YouTube makes one or more additional copies of every video during the upload process in a different encoding scheme and different file format called Flash.	Hohengarten ¶ 357 & Ex. 323 (Do 30(b)(6) Dep.) at 85:18-86:10.  Hohengarten ¶ 356 & Ex. 322 (Do Dep.) at 19:21-20:6.
317. Making copies of a video in a different encoding scheme is called "transcoding."	Hohengarten ¶ 356 & Ex. 322 (Do Dep.) at 17:4-15.
318. In a July 11, 2006 email, YouTube product manager Matthew Liu states that all YouTube videos are transcoded for delivery in Flash format.	Hohengarten ¶ 161 & Ex. 158, GOO001-05175716, at GOO001-05175716.
319. Via delivery in the Flash format of videos to users, YouTube ensures that its videos are viewable over the Internet to most users.	Hohengarten ¶ 257 & Ex. 239, JK00008859, at JK00008859 ("Want to convert uploaded AVIs to Flash movies, so it displays nicely everywhere").  Hohengarten ¶ 222 & Ex. 204, JK00009887, at JK00009887.  Hohengarten ¶ 356 & Ex. 322 (Do Dep.) at 18:2-6.  Hohengarten ¶ 162 & Ex. 159, GOO001-00889264, at GOO001-00889266.
320. The uploading user does not have any choice whether YouTube transcodes the video, or instead stores the video in the	Hohengarten ¶ 356 & Ex. 322 (Do Dep.) at 25:14-27:18.  <i>See infra</i> SUF ¶ 321.

original format chosen by the user.	
321. YouTube engineering manager Cuong Do stated in his deposition, “[t]he system performed . . . the replication as a course of its normal operation, . . . uninstructed by the user.”	Hohengarten ¶ 356 & Ex. 322 (Do Dep.) at 27:16-18.
322. In the past, “for particularly popular videos that are watched very frequently” on YouTube, YouTube sent “[a] replica” of the video “to a third-party content distribution partner to facilitate timely streaming to all users.” Currently, YouTube uses some of Google’s own services to perform that function.	Hohengarten ¶ 191 & Ex. 188, GOO001-09684752, at GOO001-09684711-12.  Hohengarten ¶ 357 & Ex. 323 (Do 30(b)(6) Dep.) at 90:16-92:1.
323. YouTube performs videos by streaming them to users’ computers. As part of that process, YouTube also distributes a complete and durable copy of a video to the computer of any user who views it.	Hohengarten ¶ 186 & Ex. 183 GOO001-00718495, at GOO001-00718495.  Hohengarten ¶ 408.
324. YouTube has contracts with Apple to distribute videos over iPhones and AppleTV devices.	Hohengarten ¶ 163 & Ex. 160, GOO001-09684557, at GOO001-09684557-79 (Product Integration Agreement between YouTube Inc. and Apple Inc.).  Hohengarten ¶ 164 & Ex. 161, GOO001-02276277, at GOO001-02276277 (“Apple / YouTube Partnership Revenue Opportunity”).  Hohengarten ¶ 165 & Ex. 162, GOO001-07726987, at GOO001-07726987 (May 30, 2007 compilation of press coverage of the Apple deal).
325. YouTube has a contract with Sony to distribute YouTube videos over Sony devices.	Hohengarten ¶ 166 & Ex. 163, GOO001-02243231, at GOO001-02243231 (Product Integration Agreement between Sony Electronics, Inc. and Google Inc.).
326. YouTube has a contract with Panasonic to distribute YouTube videos over Panasonic	Hohengarten ¶ 168 & Ex. 165, GOO001-02242506, at GOO001-

devices.	02242506-23 (Product Integration Agreement between Google Inc. and Panasonic Consumer Electronics Company, Division of Panasonic Corporation of North America).
327. YouTube has a contract with TiVo to distribute YouTube videos over TiVo devices.	Hohengarten ¶ 169 & Ex. 166, GOO001-02242907, at GOO001-02242907-24 (Product Integration Agreement between Google Inc. and TiVo Inc.).
328. YouTube has contracts with major cellular telephone companies including AT&T, Verizon Wireless, and Vodafone.	<p>Hohengarten ¶ 170 &amp; Ex. 167, GOO001-02392607, at GOO001-02392607-43 (Content Agreement between YouTube, Inc. and Cellco Partnership d/b/a Verizon Wireless).</p> <p>Hohengarten ¶ 171 &amp; Ex. 168, GOO001-06176212, at GOO001-06176212-24 (YouTube Integration Agreement between Google Ireland Limited and Vodafone Group Services Limited).</p> <p>Hohengarten ¶ 172 &amp; Ex. 169, GOO001-06176368, at GOO001-06176368-86 (agreement between Google and AT&amp;T Mobility LLC).</p> <p>Hohengarten ¶ 173 &amp; Ex. 170, GOO001-02552363, at GOO001-02552363 (press releases for YouTube deals with Verizon Wireless, Vodafone, and Nokia).</p>
329. As part of YouTube's agreement with Verizon Wireless, YouTube provided Verizon with copies of the YouTube videos that Verizon wished to make available on its mobile devices, which consisted solely of videos YouTube had selected for prominent placement as featured videos on YouTube.	<p>Hohengarten ¶ 379 &amp; Ex. 345 (Maxcy Dep.) at 219:21-222:13.</p> <p>Hohengarten ¶ 391 &amp; Ex. 385 (Patterson Dep.) at 37:20-38:7.</p> <p><i>See also infra</i> SUF ¶ 331.</p>
330. In 2007, without any request from the	Hohengarten ¶ 356 & Ex. 322 (Do

uploading users, Defendants created copies of all previously uploaded videos in two formats other than Flash so that the videos could be viewed on additional platforms, including Apple devices and non-Apple mobile phones.	<p>Dep.) at Tr. 215:21-217:25.</p> <p>Hohengarten ¶ 379 &amp; Ex. 345 (Maxcy Dep.) at 215:25-218:13.</p> <p>Hohengarten ¶ 174 &amp; Ex. 171, GOO001-00010746, at GOO001-00010746.</p> <p>Hohengarten ¶ 391 &amp; Ex. 385 (Patterson Dep.) at 57:18-62:22.</p>
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Defendants' Use of Features to Make YouTube an Entertainment Site	
Undisputed Fact	Evidence
331. YouTube employs "editors" to scour the YouTube site for interesting videos that YouTube on its own initiative then "features" with conspicuous positioning on its home page.	<p>Hohengarten ¶ 363 &amp; Ex. 329 (Dunton Dep.) at 29:23-30:6, 94:14-100:4 (testifying that she selected videos to feature on YouTube's home page, to highlight "relevance" and "entertaining content" to users).</p> <p>Hohengarten ¶ 359 &amp; Ex. 325 (Donahue Dep.) at 140:11-25 (testifying that Donahue, Chen, and Dunton selected featured videos to appear on YouTube's homepage).</p>
332. Some of the videos identified by Viacom as infringing Viacom's copyrights were selected and promoted by YouTube employees as featured videos.	Hohengarten ¶ 398 & Ex. 361 (Defendants' Responses and Objections to Plaintiffs' Second Set of Interrogatories, Interrogatory No. 4) at 10 (identifying two clips in suit that were promoted or featured by YouTube).
333. YouTube gives prominent placement to videos that are most viewed, most frequently tagged as "favorites" by users, or currently being watched on the site.	<p>Hohengarten ¶ 312 &amp; Ex. 284 (screenshot of youtube.com website showing prominent placement of "videos being watched right now").</p> <p>Hohengarten ¶ 356 &amp; Ex. 322 (Do. Dep.) at 112:22-118:20, 121:24-123:16.</p>

<p>334. YouTube uses an algorithm that it designed to identify videos that are “related” to a video that a user watches, and links to videos identified by that tool appear both in a box on the right-hand side of the watch page of the video to which they are related (the “related videos” box) and also within the video player after the video that the user watches ends.</p>	<p>Hohengarten ¶ 346 &amp; Ex. 312 (C. Hurley Dep.) at 173:25-174:23.</p> <p>Hohengarten ¶ 175 &amp; Ex. 172, GOO001-00243149, at GOO001-00243149.</p> <p>Hohengarten ¶ 282 &amp; Ex. 254, VIA14375701, at VIA14375701 (screenshot of conclusion of South Park clip showing other “related” South Park clips).</p> <p>Hohengarten ¶ 176 &amp; Ex. 173, GOO001-09684201, at GOO001-09684202-05.</p>
<p>335. When a user views an infringing clip from a major media company like Viacom on a YouTube watch page, YouTube’s related videos tool likely will direct the user to other similar infringing videos.</p>	<p>Hohengarten ¶ 280 &amp; Ex. 252, VIA14375446, at VIA14375446.</p> <p>Hohengarten ¶ 281 &amp; Ex. 253 VIA14375721, at VIA14375721</p> <p>Hohengarten ¶ 282 &amp; Ex. 254, VIA14375701, at VIA14375701.</p> <p>Hohengarten ¶ 283 &amp; Ex. 255, VIA14375674, at VIA14375674.</p> <p>Hohengarten ¶ 284 &amp; Ex. 256, VIA14375466, at VIA14375466.</p> <p>Hohengarten ¶ 285 &amp; Ex. 257, VIA14375535, at VIA14375535.</p>
<p>336. [REDACTED] of all video views on YouTube come from use of the related videos tool.</p>	<p>Hohengarten ¶ 176 &amp; Ex. 173, GOO001-09684201, at GOO001-09684205.</p>
<p>337. YouTube indexes and categories videos using information supplied by the uploading user and provides a search function so that viewers can find videos using search terms.</p>	<p>Hohengarten ¶ 393 &amp; Ex. 356 (Declaration of Steve Chen dated January 5, 2007) at ¶¶, 4,5.</p> <p>Defendants’ Answer at ¶ 31.</p> <p>Hohengarten ¶ 177 &amp; Ex. 174,</p>

	<p>GOO001-02338330, at GOO001-02338330, GOO001-02338340-42 .</p> <p>Hohengarten ¶ 357 &amp; Ex. 323 (Do 30(b)(6) Dep.) at 104:1-17, 105:11-19, 111:12-20.</p> <p>Hohengarten ¶ 401 &amp; Ex. 364 (deposition “cheat sheet” prepared by Do listing data YouTube maintains regarding videos).</p> <p>Hohengarten ¶ 378 &amp; Ex. 344 (Liu Dep.) at 62:21-63:8, 63:22-64:23.</p>
338. As a user types search terms into YouTube’s search field, YouTube suggests additional search terms to “help [YouTube users] more quickly find the videos [they’re] looking for.”	<p>Hohengarten ¶ 378 &amp; Ex. 344 (Liu Dep.) at 183:4-9.</p> <p>Hohengarten ¶ 302 &amp; Ex. 274.</p>
339. YouTube’s suggested search terms assist users in locating infringing works by providing variations of the complete name or content owner of a copyrighted work even though the user has not typed the work’s or owner’s full name.	<p>Hohengarten ¶ 294 &amp; Ex. 266, VIA14375228, at VIA14375228.</p> <p>Hohengarten ¶ 295 &amp; Ex. 267, VIA14375363, at VIA14375363.</p> <p>Hohengarten ¶ 296 &amp; Ex. 268, VIA14375413, at VIA14375413.</p> <p>Hohengarten ¶ 297 &amp; Ex. 269, VIA14375207, at VIA14375207.</p>
340. YouTube also provides many different ways for users to browse through the site.	<p><i>See supra</i> SUF ¶¶ 261, 334.</p>
341. When YouTube first instituted “categories” for videos in September 2005, YouTube employees reviewed and categorized the videos that had been previously uploaded to YouTube, without any input from the users who had uploaded those videos.	<p>Hohengarten ¶ 178 &amp; Ex. 175, GOO001-01177848, at GOO001-01177848.</p> <p>Hohengarten ¶ 298 &amp; Ex. 270 (September 12, 2005 YouTube Blog entry).</p>
342. Once YouTube had instituted “categories” for videos, YouTube thereafter required users who uploaded videos to choose a	<p>Hohengarten ¶ 357 &amp; Ex. 323 (Do 30(b)(6) Dep.) at 117:14-20.</p>



“category” for the video, such as “Entertainment” or “Comedy.”	
343. YouTube makes and stores four “thumbnails” from each uploaded video without any input from or opportunity to opt out for the uploading user.	<p>Hohengarten ¶ 357 &amp; Ex. 323 (Do 30(b)(6) Dep.) at 97:20-98:25.</p> <p>Hohengarten ¶ 356 &amp; Ex. 322 (Do Dep.) at 38:8-20.</p> <p>Defendants’ Answer at ¶ 31.</p>
344. Defendants display the “thumbnail images” of uploaded videos at various places on the YouTube site, including on search results pages.	<p>Hohengarten ¶ 179 &amp; Ex. 176, GOO001-00508644, at GOO001-00508646.</p> <p>Hohengarten ¶ 354 &amp; Ex. 320 (Chang Dep.) at 187:2-18.</p>
345. YouTube requires uploading users to accept Terms of Service providing that the user “grant[s] YouTube a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform” each uploaded video.	<i>See supra</i> SUF ¶ 267.
346. YouTube also requires a user to warrant that he or she owns the copyright for the videos a user uploads, or has permission from the copyright owner to upload the videos.	<i>See supra</i> SUF ¶ 267.
347. In seeking content partnership licenses from content owners, Defendants demanded a release for their prior infringing activities “arising out of or in connection with, the unauthorized reformatting, duplication, distribution, hosting, performance, transmission or exhibition of” the content owners’ intellectual property.	<p>Hohengarten ¶ 156 &amp; Ex. 153, GOO001-02240369, at GOO001-02240393 (agreement with EMI Music Marketing).</p> <p>Hohengarten ¶ 180 &amp; Ex. 177, GOO001-09531942, at GOO001-09531954 (agreement with Universal Music Group with similar language).</p> <p>Hohengarten ¶ 181 &amp; Ex. 178, GOO001-06147947, at GOO001-06147947 (draft UMG agreement showing that YouTube inserted similar language).</p>

Respectfully submitted,

By: /s/ Stuart J. Baskin

Stuart J. Baskin (No. SB-9936)  
John Gueli (No. JG-8427)  
Kirsten Nelson Cunha (No. KN-0283)  
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By: /s/ Paul M. Smith

Paul M. Smith (No. PS-2362)  
William M. Hohengarten (No. WH-5233)  
Scott B. Wilkens (*pro hac vice*)  
Matthew S. Hellman (*pro hac vice*)  
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Susan J. Kohlmann (No. SK-1855)  
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Facsimile: (212) 891-1699

To "Steve Chen" [REDACTED]  
From "Jawed" [REDACTED]  
Cc "YouTube Group" [REDACTED]  
Bcc  
Received Date 2005-09-01 19:56:54 GMT  
Subject Re: Fwd: YouTube Message: hey dude

---

well, we SHOULD take down any

- 1) movies
- 2) TV shows

we should KEEP

- 1) news clips
- 2) comedy clips (Conan, Leno, etc)
- 3) music videos

In the future, we'd also reject these last three, but not yet

So yes, we should take down the other family guy clips

Jawed

---

<http://www.jawed.com/>

On Thu, 1 Sep 2005, Steve Chen wrote

> what do we do here?  
>  
> -s  
>  
> Begin forwarded message  
>  
>> From: YouTube Service <service@youtube.com>  
>> Date: September 1, 2005 10:27:17 AM PDT  
>> To: [REDACTED]  
>> Subject: YouTube Message: hey dude  
>>  
>>  
>>  
>> YouTube Message: hey dude  
>>  
>>  
>> koolkeith500 has sent you this message at YouTube  
>>  
>> so I take it that you guys are going to have that UCbearcats guy  
>> take down all of those family guy videos he uploaded?  
>>  
>>  
>> if not, I might as well upload mine back on here. O)  
>>  
>> Steve wrote  
>>

> > > hey dude. do you mind taking down the family guy videos? i'm  
> > afraid we're going to get in trouble because it's copyrighted  
> > content...  
> >  
> >  
> >  
> > To respond, click here.  
> > Thank you for using YouTube,  
> > YouTube Team.  
> >  
> > Copyright © 2005 YouTube, LLC™  
> >  
>  
>

---

To: Cuong Do <cdo@youtube.com>; YouTube Group [REDACTED]  
From: [REDACTED]  
Cc: [REDACTED]  
Bcc: [REDACTED]  
Received Date: 2005-11-24 02:57:44 CST  
Subject: Re: Please read: reviewing videos

---

I certainly appreciate everyone's help, especially over the long weekend!

If you're not familiar with the process, videos are reviewed here:  
<http://www.youtube.com/admin.php>

Please reject any nudity/porn and any death videos, along with anything else that's glaringly inappropriate.

As far as copyright stuff is concerned, be on the look out for Family Guy, South Park, and full-length anime episodes...music videos and news programs are fine to approve.

Please mark bikinis and other racy but not entirely inappropriate vids as racy, using the 'Approve, mark as racy' dropdown selection.

Other than that, just use your impartial judgment. The community is pretty good at flagging stuff, so you can lean on them to catch anything that slips through. That said, we do have some inspired uber conservatives that flag excessively, so no need to reject everything that gets flagged.

Cheers, and gobble, gobble!

--Brent

On 11/23/05 6:14 PM, "Cuong Do" <cdo@youtube.com> wrote:

> As most or all of you already know, Brent has been a video reviewing  
> army of one. Sometimes, he even reviews suspected inappropriate  
> videos multiple times to be absolutely sure. Unfortunately, given  
> our volume of new videos, we should all help out if/when we get the  
> chance. So, if you already have YouTube admin access, please review  
> videos when you get the chance. If you don't have YouTube admin  
> access, please e-mail me with your YouTube user name, and I'll add  
> you to the list of admin users.

>

> Cuong

>

>

> All mailing list

>

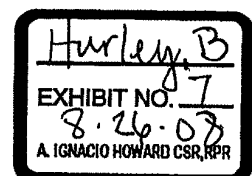
> <http://dev.youtube.com/mailman/listinfo/all>

---

All mailing list

<http://dev.youtube.com/mailman/listinfo/all>

---



---

**From:** Julie Supan [julie@youtube.com]  
**Sent:** Thursday, March 23, 2006 2:33 AM  
**To:** [REDACTED]  
**Subject:** FW: Newsweek: Video Napster?

---

**From:** Julie Supan [mailto:julie@youtube.com]  
**Sent:** Wednesday, March 01, 2006 12:24 PM  
**To:** 'Julie Supan'  
**Subject:** Newsweek: Video Napster?



'Print this' sponsored by

## Video Napster?

**Only a year old, YouTube has already rocketed past Google and Yahoo to become No. 1 in Web video. But can it survive the fear of a copyright crunch?**

### WEB-EXCLUSIVE COMMENTARY

Updated: 10:40 a.m. ET March 1, 2006

March 1, 2006 - YouTube.com, one of the leading video sites on the Web, should present a disclaimer to its users: *may consume large chunks of otherwise productive time*. In a single, wasteful afternoon this week, I watched 10 minutes of highlights from NBC's "The Office" and nearly the entire pilot episode of the network's, "My Name is Earl"; I took a small tour of various curiosities, such as the surreal David Hasselhoff "Hooked on a Feeling" music video, and a brilliant lampoon of what iPod packaging would look like if Microsoft designed it. I laughed at a hilarious, decades-old Richard Pryor stand-up performance and groaned at some of the worst ads from the last Super Bowl, then concluded my binge with an entire episode of "The Simpsons"—the one where Homer adopts a monkey.

There are of two distinct categories of clips on YouTube: short movies like the Microsoft parody, produced by creative folks and voluntarily distributed free to the world, and the professional fare like the network shows, which TV viewers typically upload straight from their sets to the Net—without permission. The copyright-infringing video that sits on YouTube's servers sticks a big, fat finger into the eye of media companies, who no doubt want to sell this material in online video stores like Apple's iTunes.

It would be easy to call the venture-backed, San Mateo-based YouTube the Napster of video, an outlaw startup rocketing onto dotcom radar screens on the backs of rights-holders. But that's a designation that the year-old company desperately wants to avoid. YouTube is far friendlier to copyright owners than the peer-to-peer sharing pioneer, and offers to take any material off its servers when a rights-holder complains (as NBC did earlier this month, asking the company to remove the popular Saturday Night Live "Lazy Sunday" clip from its site.) YouTube execs point out that, unlike Napster, they control what's on their site and can boot users who are breaking the law. "This is not 1999. Those guys [Napster] were renegades. They thought no one could touch

them," says Kevin Donahue, YouTube's VP of marketing and programming. "We want to be in business with content owners, not in conflict."

Hollywood execs aren't reaching for the emergency telephones that connect them to their lawyers—at least not yet. A representative from the Motion Picture Association of America said that YouTube is generally "a good corporate citizen." Rick Cotton, general counsel for NBC Universal, said he felt the network was "getting good cooperation in taking down material" from YouTube. "Although there is a lot of material we have questions about, our sense is that they are engaged and recognizing that that they do have obligations."

YouTube is riding the online video wave like few other Internet firms. It gets more visitors a week than the video sections of either Yahoo or Google and the average user spends almost twice the amount of time there, according to Hitwise researcher Lee-Ann Prescott.

The seeds of YouTube's popularity stretch back to the origins of the company, and the founders' intention to make watching video on the Web as easy and infectious as possible. Former PayPal employees Chad Hurley, 29, and Steve Chen, 27, started the company in Hurley's garage after complaining about the clunky experience of watching video on the Net. Users often had to choose which media player they wanted to use, then download a bulky clip.

Chen, a programmer, used Adobe's flash development language to let users stream video clips inside their browser. Hurley, a user interface expert, designed ways to let users easily share the video they liked and put descriptive designations or "tags" on their favorite clips. Ingeniously, the founders decided to let users paste YouTube clips right into their own Web pages—a trick that led to exploding popularity of YouTube, especially on the site of another high-flying Web business, MySpace.

YouTube is still a young firm, and it shows. It has 21 employees and sparsely decorated, Ikea-infested digs above a pizzeria in downtown San Mateo. A rubber chicken hangs from the rafters, and a large stretch of empty carpet awaits new employees. Staffers keep long hours, and despite their promises to work with Hollywood, they are often outmaneuvered by their users. Earlier this week, for example, despite all the publicity and controversy around NBC's efforts to remove the SNL's "Lazy Sunday" from YouTube, a user had reposted the clip, which was nestled amid other user-created sequels and parodies. (An NBC spokesperson responded: "We'll continue to request that they take down material put up on the site without our permission.")

The company faces a conundrum when it comes to copyrighted material: its rapidly growing user base loves the wide-ranging video content, some of which may be infringing. YouTube can pull just enough off its servers to keep the lawyers at bay, or it can try to get media companies to contribute material for promotional purposes. The company has had a few successes so far; execs point to a grainy video of soccer star Ronaldhino trying out new sneakers, which was watched millions of times before YouTube learned that sneaker giant Nike had intentionally slipped it onto the site. Music labels such as Warner Records and EMI are also using YouTube to get more exposure for their music videos.

But when it comes to potentially infringing content, things get even trickier when YouTube starts trying to make real money—which it hopes to do later this year by selling its own ads on the site. That could aggravate its already shaky legal status. Its "beg for forgiveness" approach—taking copyrighted content off its site only when faced with a complaint—probably places them comfortably within the safe harbor provisions of 1998's Digital Millennium Copyright Act. But as Electronic Frontier Foundation attorney Fred von Lohmann points out, companies that benefit financially from infringement don't necessarily enjoy the same legal protections. "There's a real question whether an advertising-based business model creates extra risk" for a company like YouTube, von Lohmann says.

If nothing else, all the copyrighted content on YouTube—what one rival calls the "cloud of infringement"—actually puts the firm at a disadvantage in the rapidly evolving online video marketplace. Yahoo and Google can keep their video portions of their site ad-free and subsidize it with other parts of their business. YouTube doesn't have those deep pockets. And though its impressive traffic statistics should make it an attractive acquisition candidate to a number of new and old media firms, the possibility of lawsuits will probably keep potential suitors away for now.

To really turn its current winning streak into profits, YouTube will have to get serious about policing its network for copyrighted content while retaining much of the user-creativity that makes it such a fantastic place to waste an afternoon. Just like the video clips on the site itself, that's a story worth watching.

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URL: <http://msnbc.msn.com/id/11617588/site/newsweek/page/2/>





To "Hong Qu" <hong@youtube.com>  
From "Rizzo" <[REDACTED]>  
Cc  
Bcc  
Received Date 2006-03-16 00:24:38 GMT  
Subject cc.py

---

[mrizzo@0]dev01 ~/dev/branches/live-v6/src/python/servlets> svn log  
copyright\_cop.py

-----  
r6088 | mrizzo | 2006-03-14 15:14:18 -0600 (Tue, 14 Mar 2006) | 4 lines

this is some ugly javascript so these copyright cop assholes can click  
through the pages and store what they checked

I hope they die and rot in hell!

-----  
r6068 | mrizzo | 2006-03-13 16:45:32 -0600 (Mon, 13 Mar 2006) | 2 lines

adding copyright cop feature so ppl can mass flag videos

-----

---

To: [REDACTED]  
From: [REDACTED]  
Cc: [REDACTED]  
Bcc: [REDACTED]  
Received Date: 2006-09-19 22:50:11 GMT  
Subject: FW: Keyword Searches

---

Guys, these are the top keyword searches for YouTube.

---

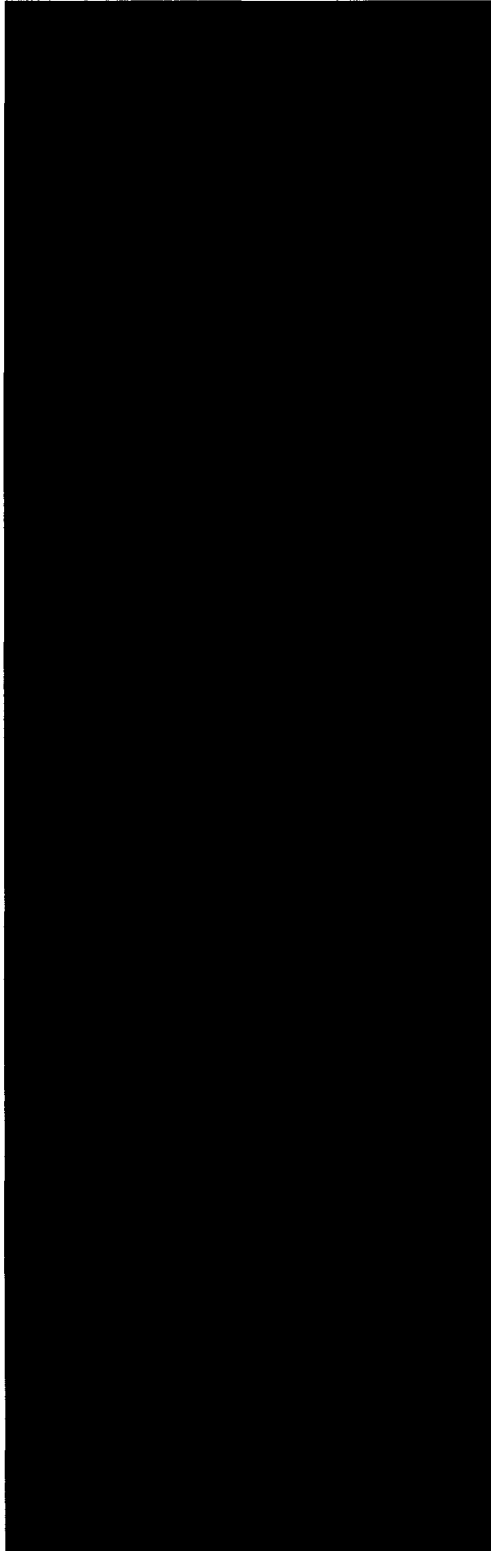
From: Alex Jakovleski [mailto:ajakovleski@youtube.com]  
Sent: Tuesday, September 19, 2006 2:10 PM  
To: heather@youtube.com; Micah@youtube.com  
Subject: Keyword Searches

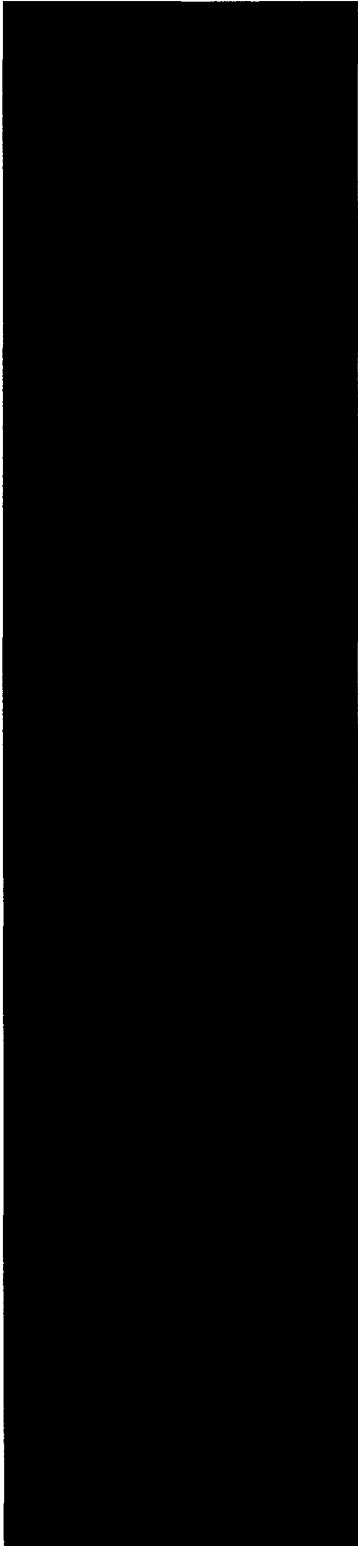
These are US only and for just one Day.

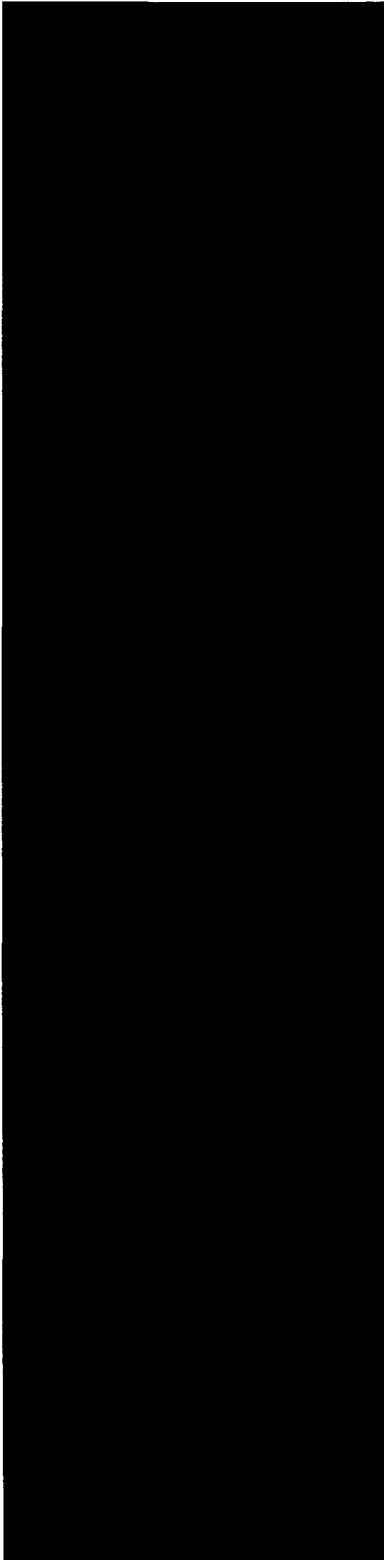
Alex Jakovleski  
Director of Sales Operations  
71 East Third Avenue | San Mateo, Ca 94401  
Phone: [REDACTED]  
email: alexj@youtube.com  
<http://www.youtube.com/>

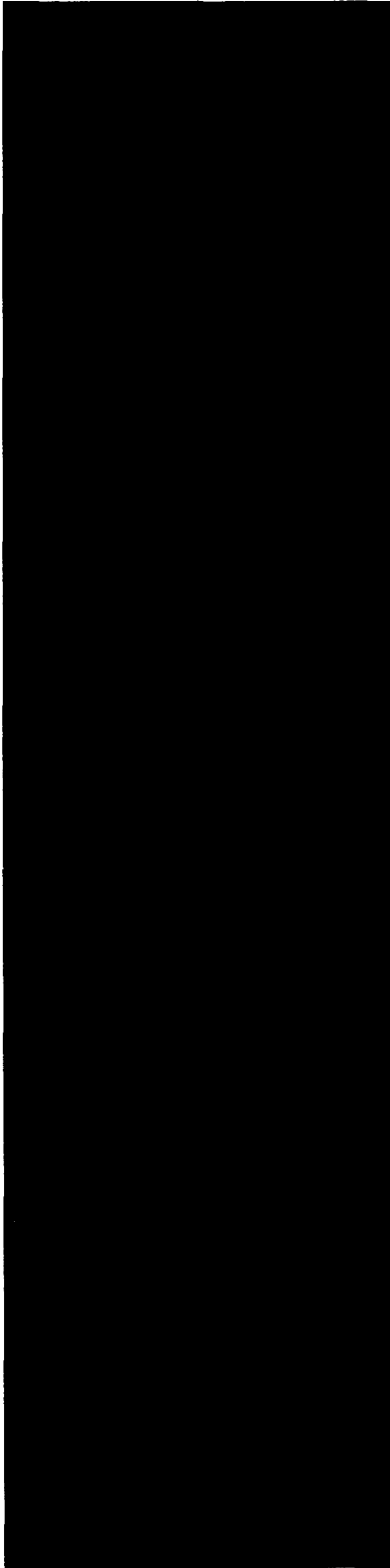
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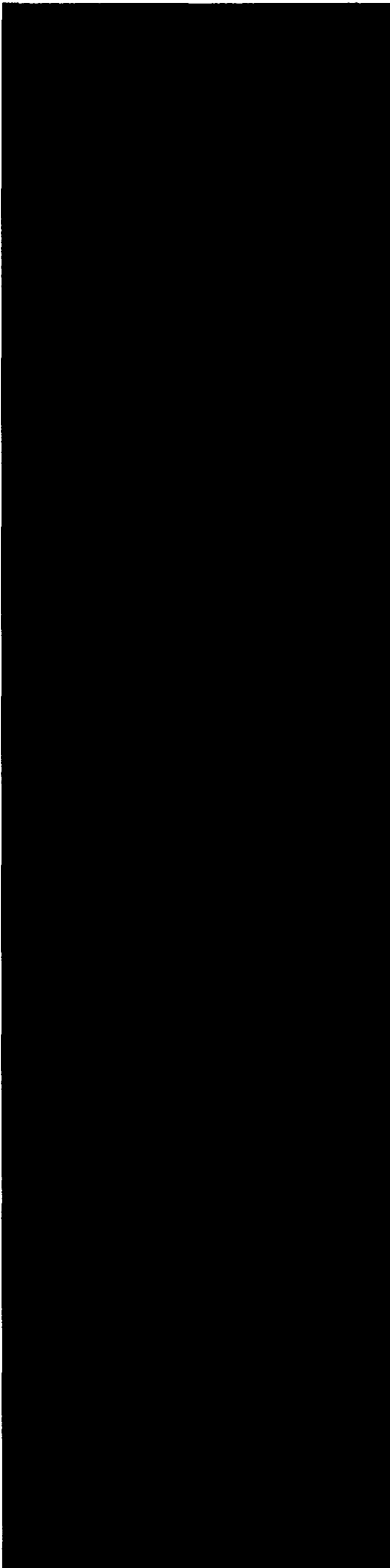
Attachments:  
sortedkeywords2.csv



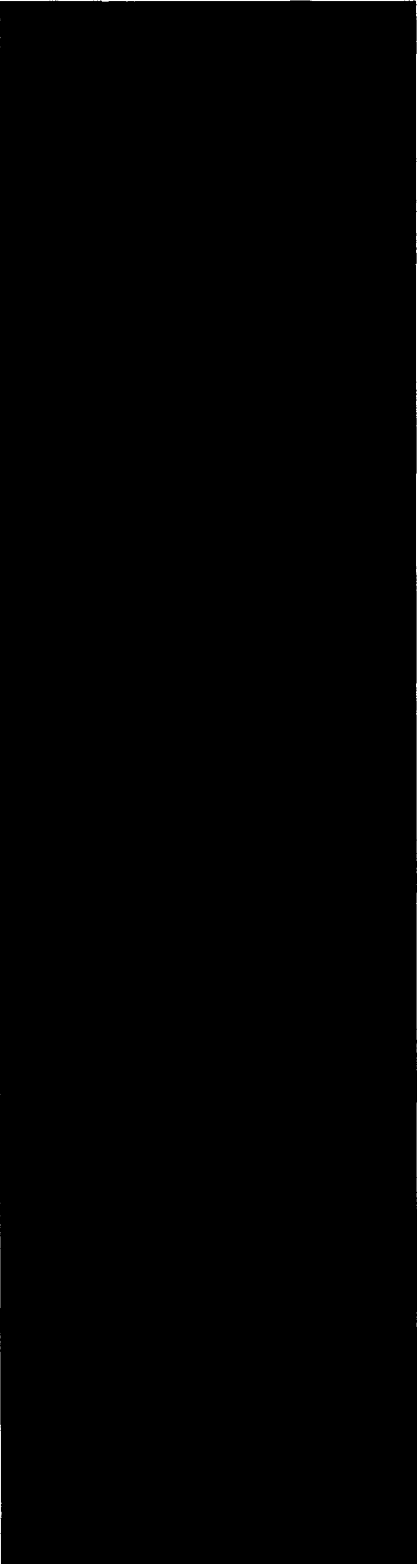


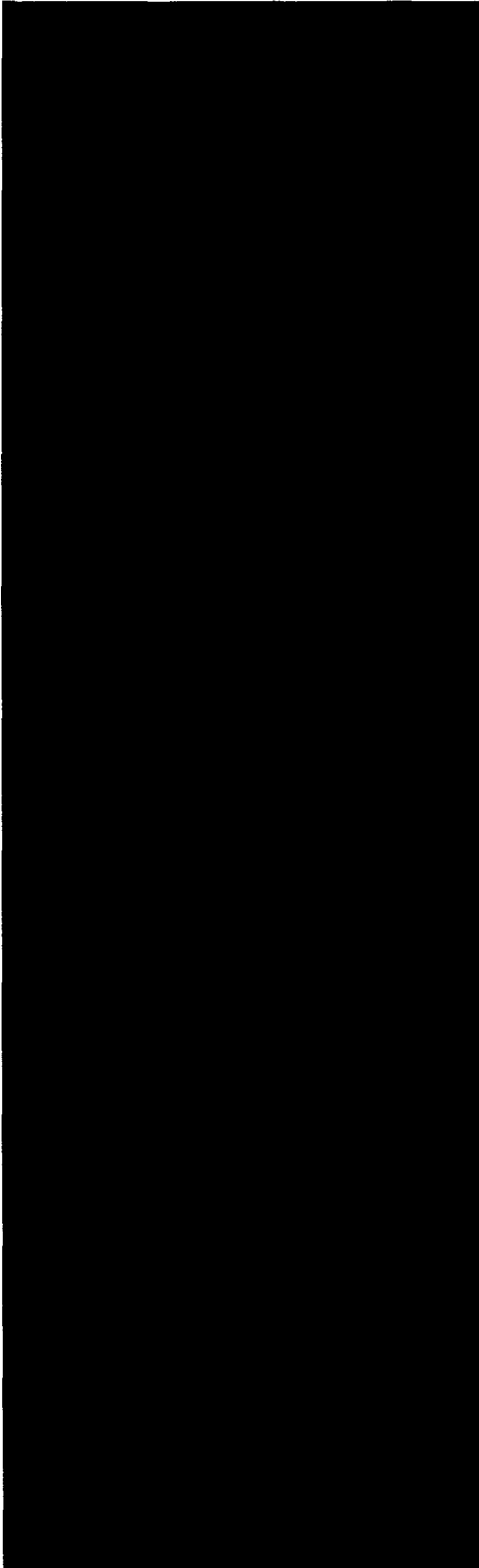


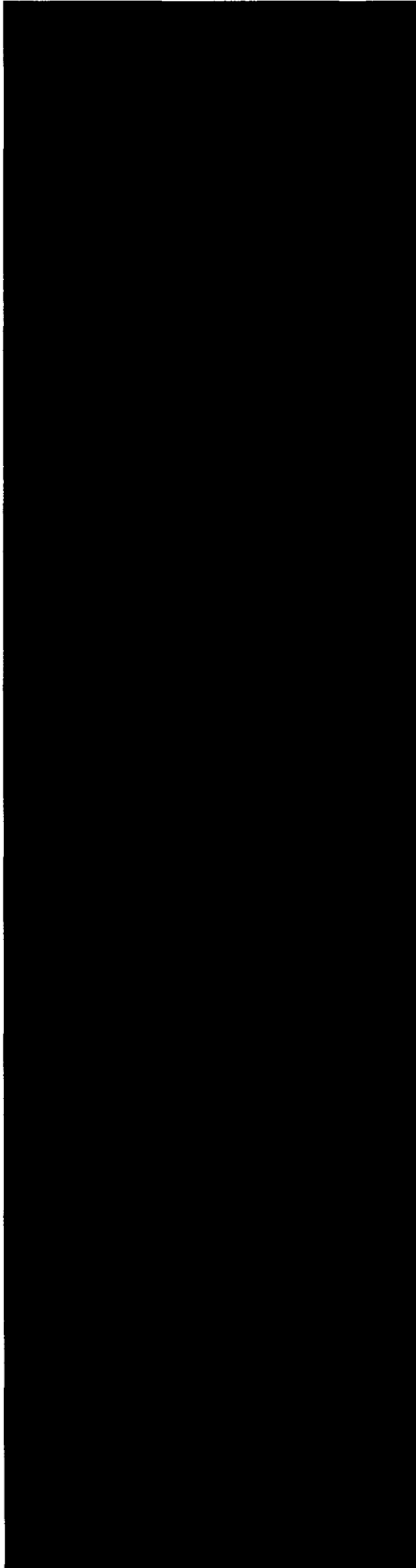


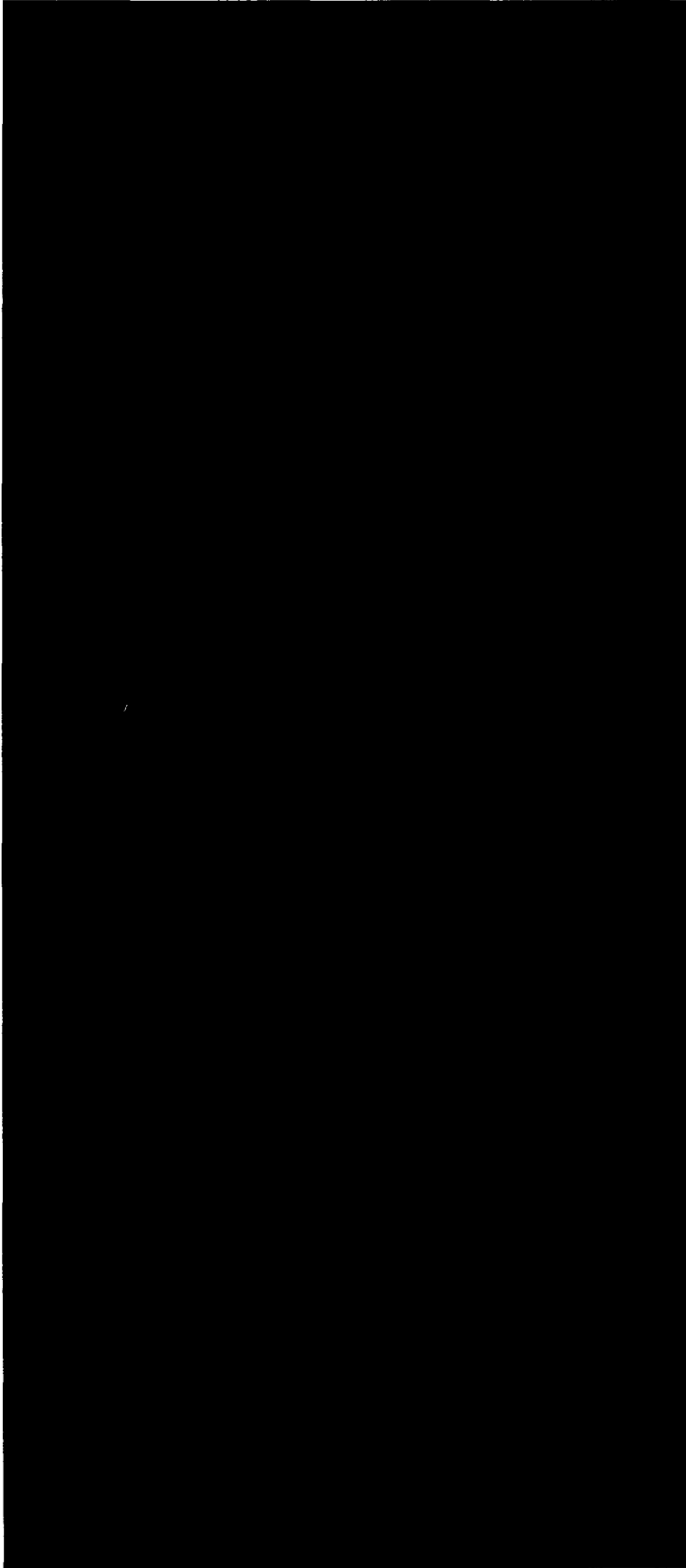


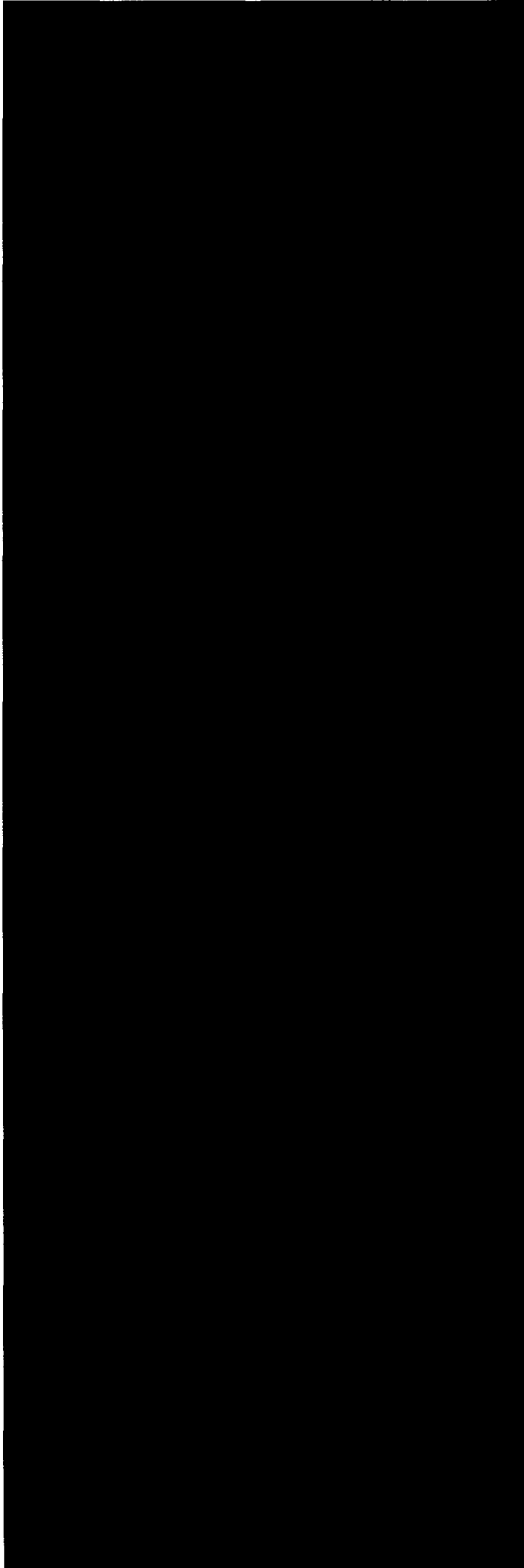


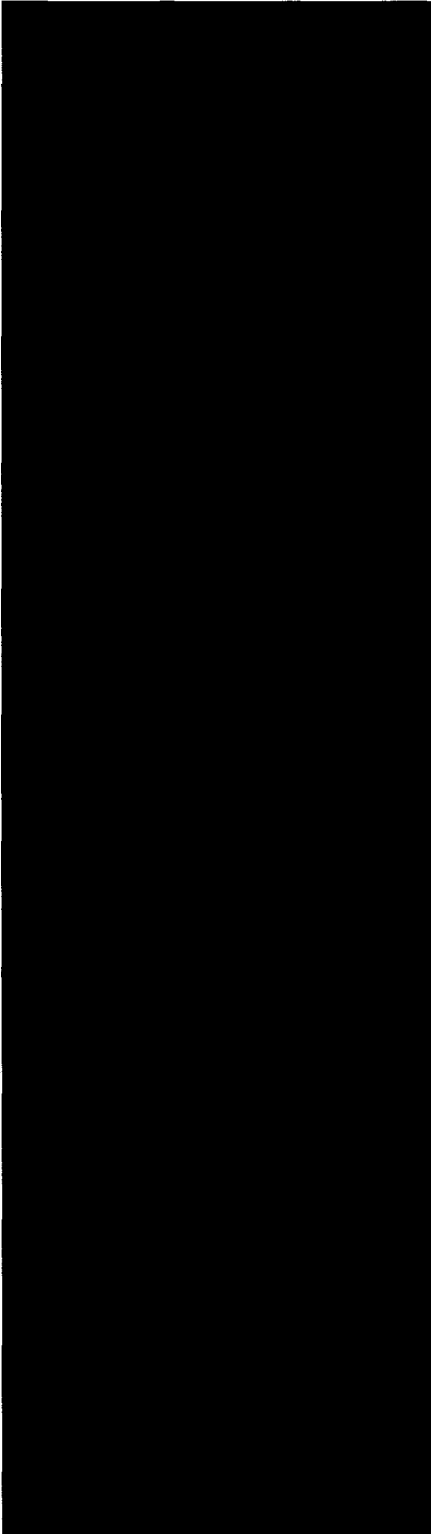


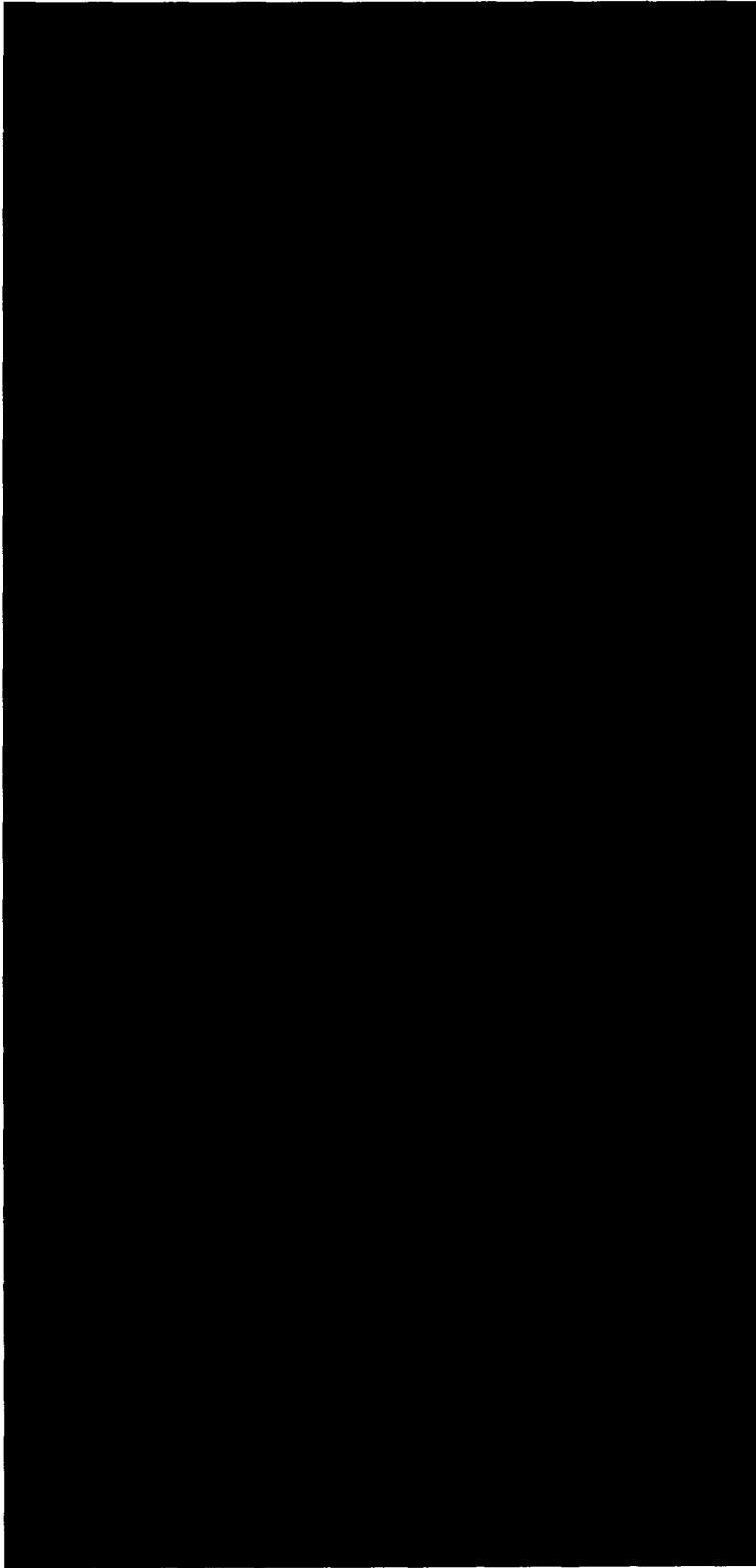


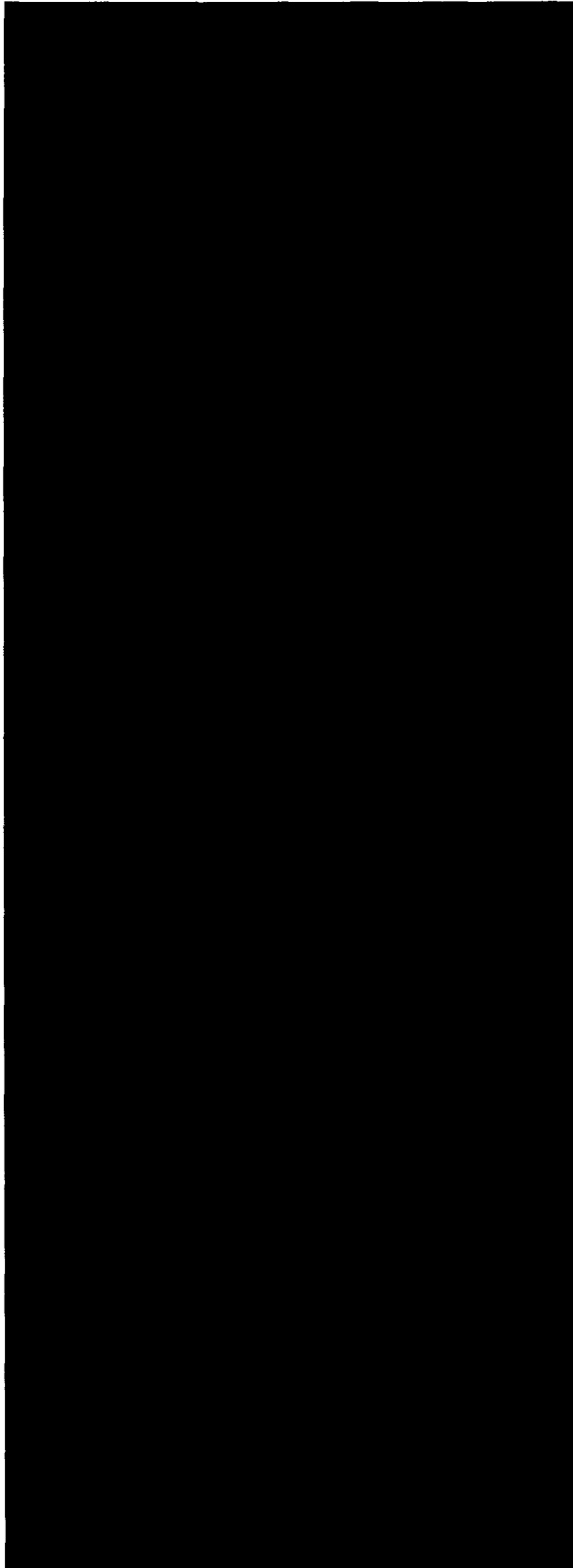




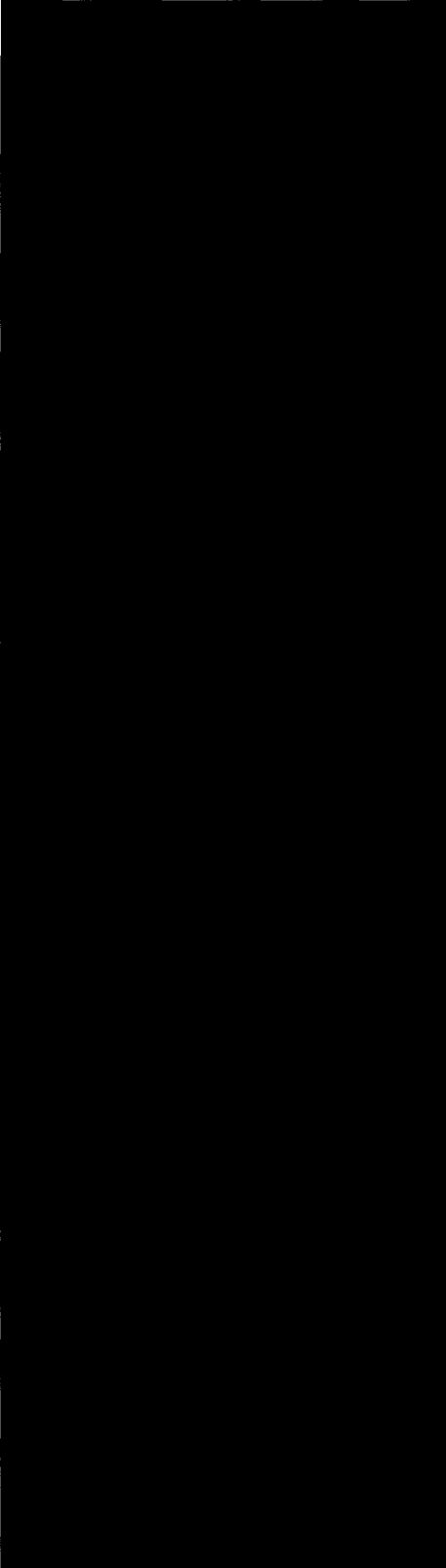


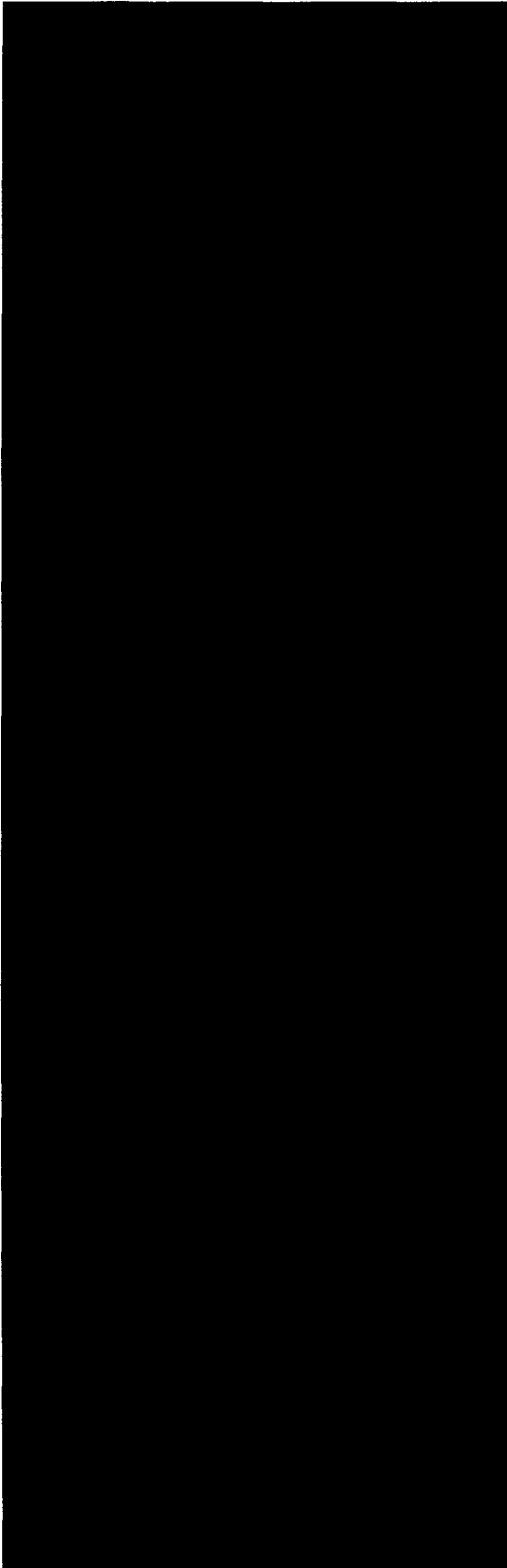


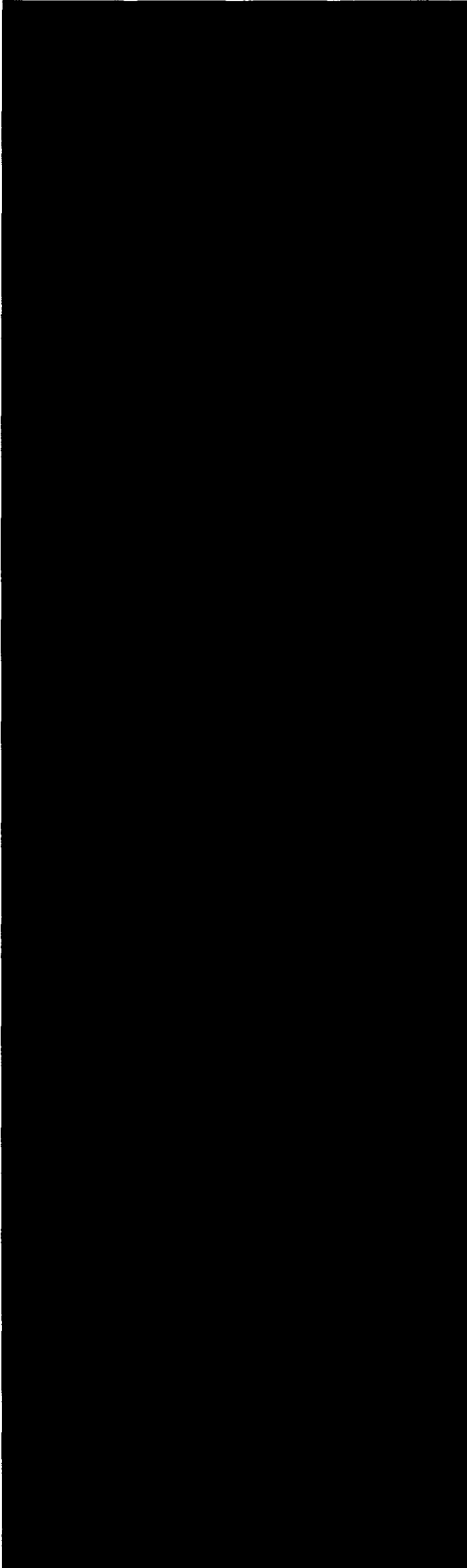


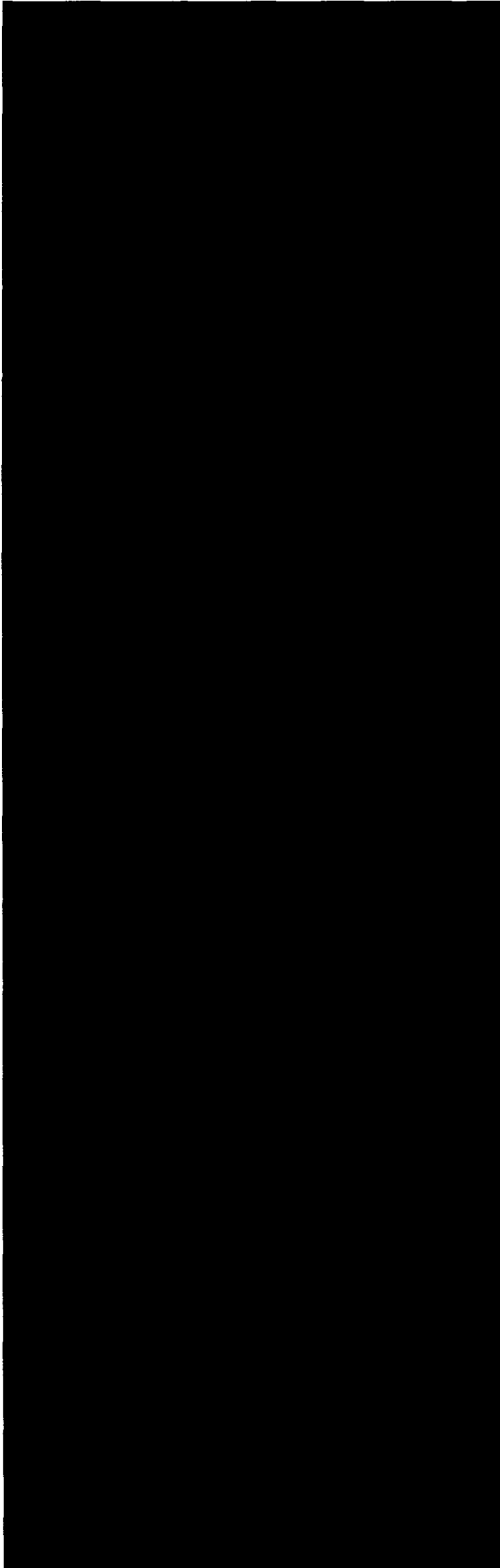


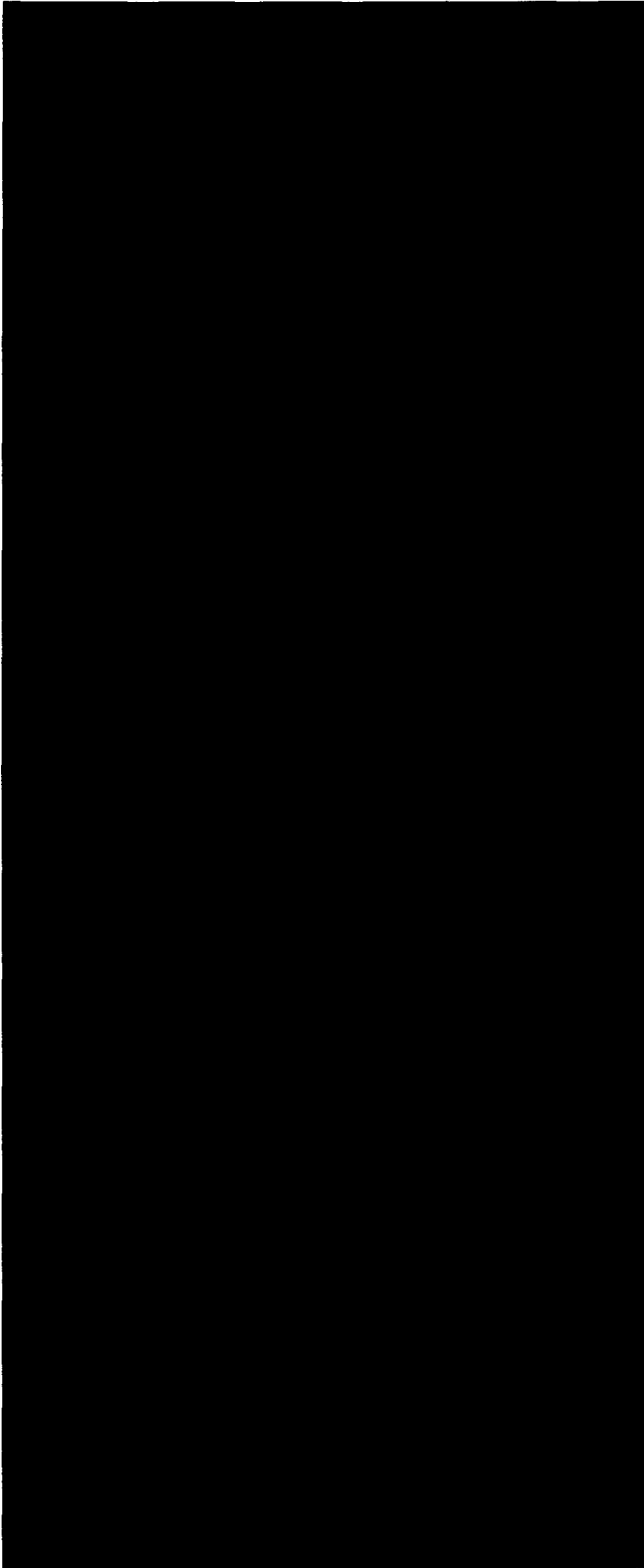


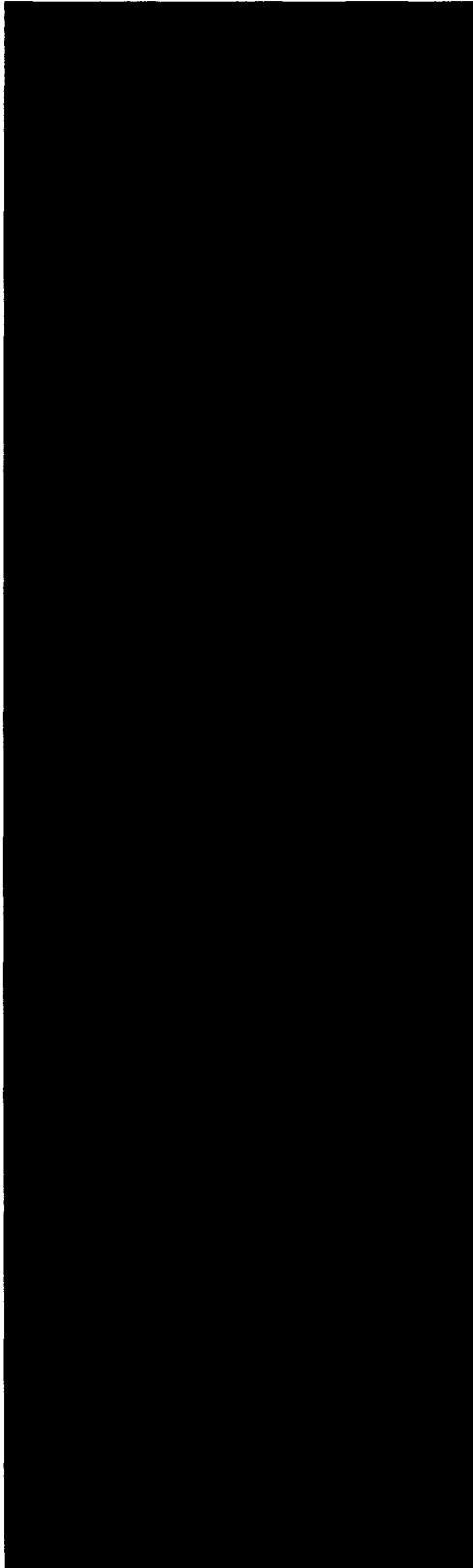


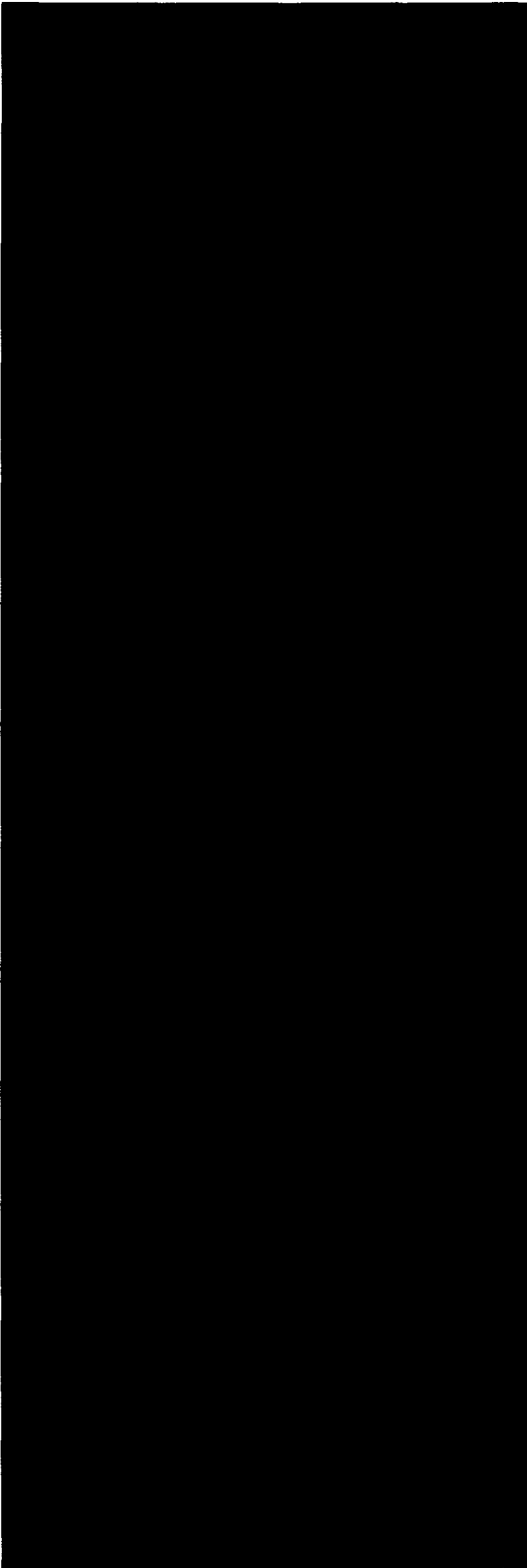


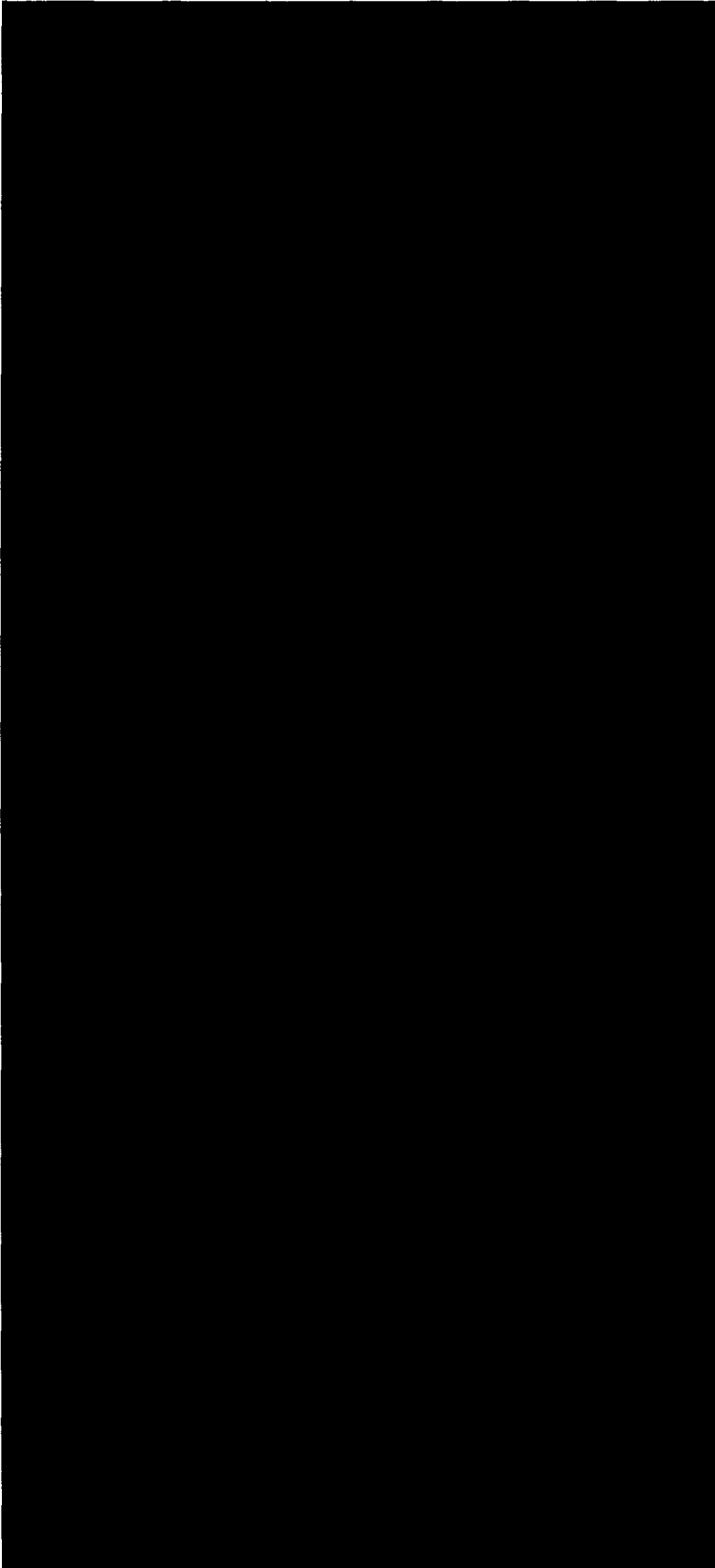




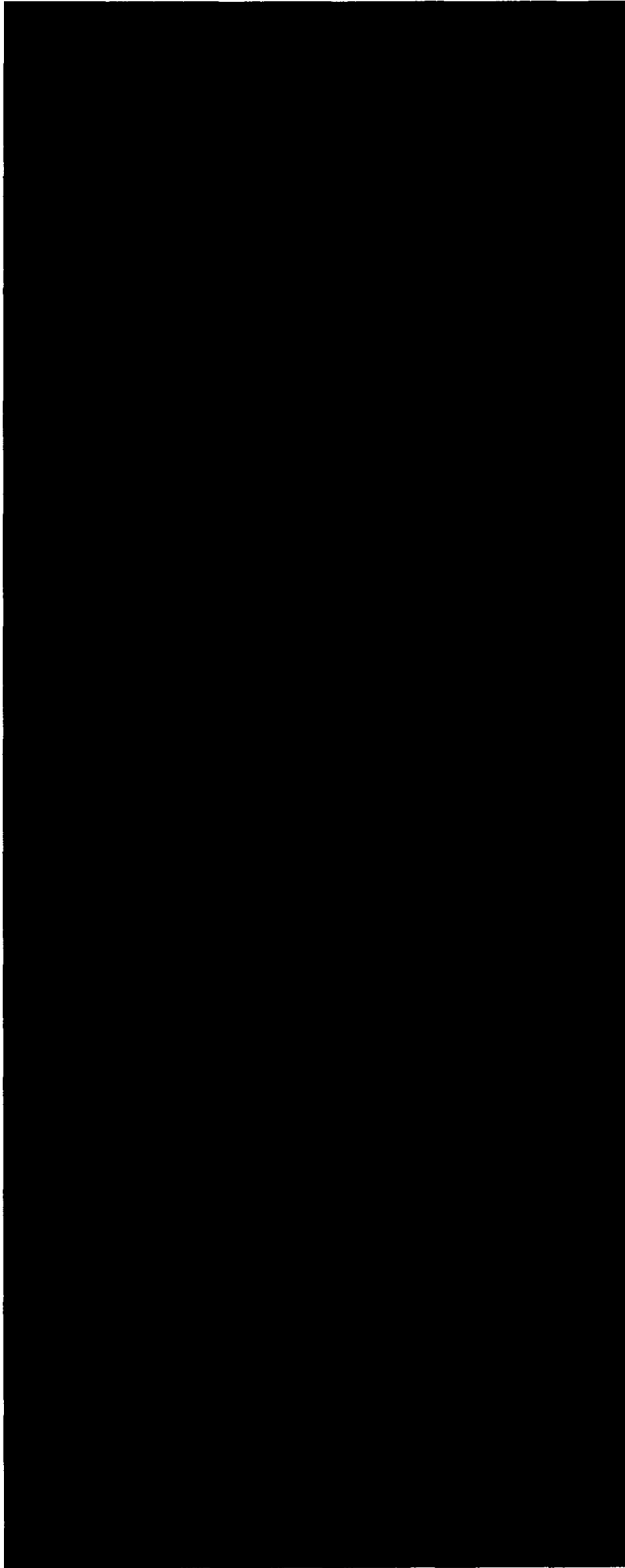


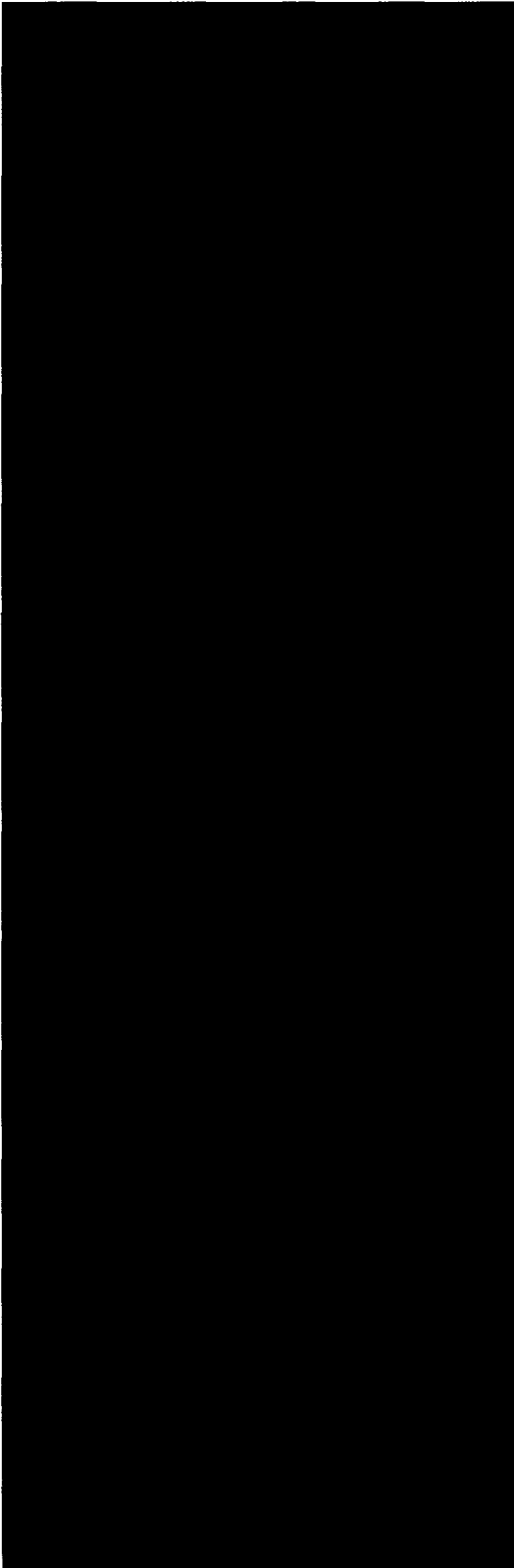


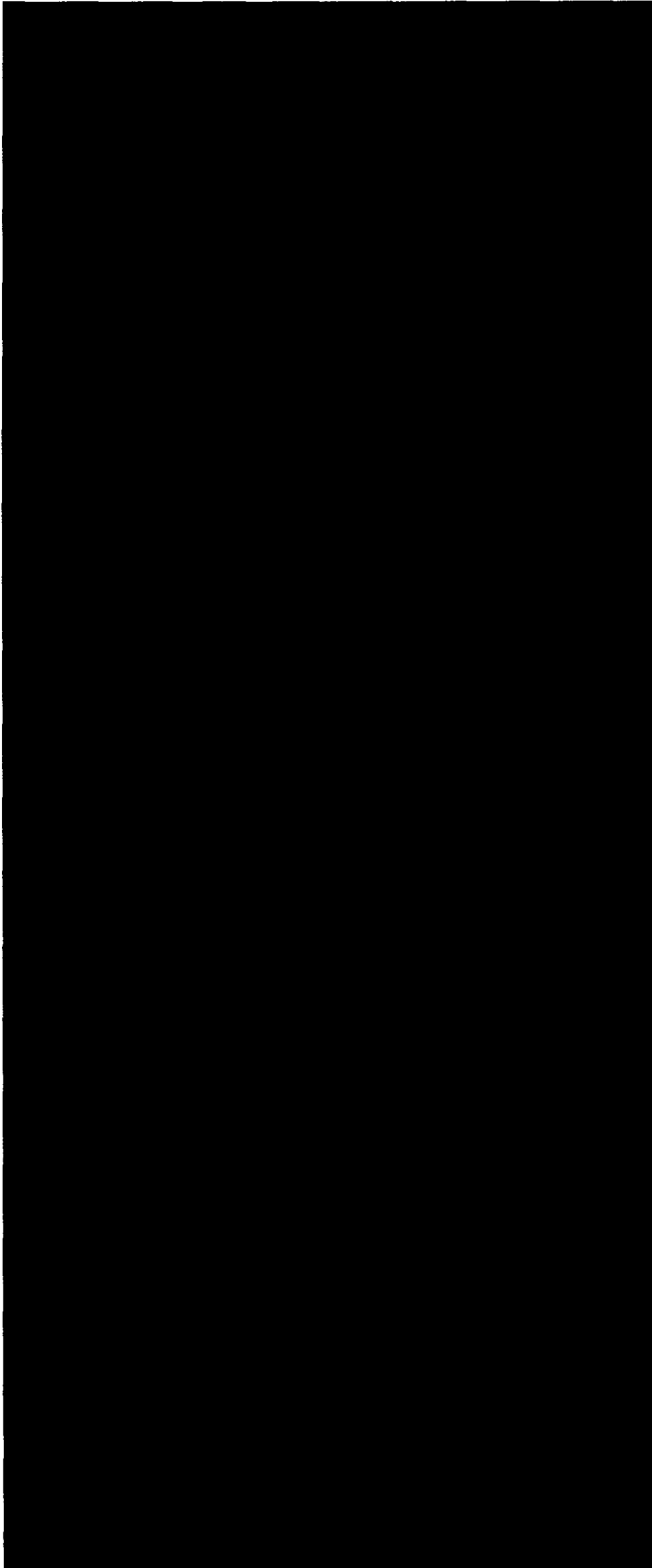


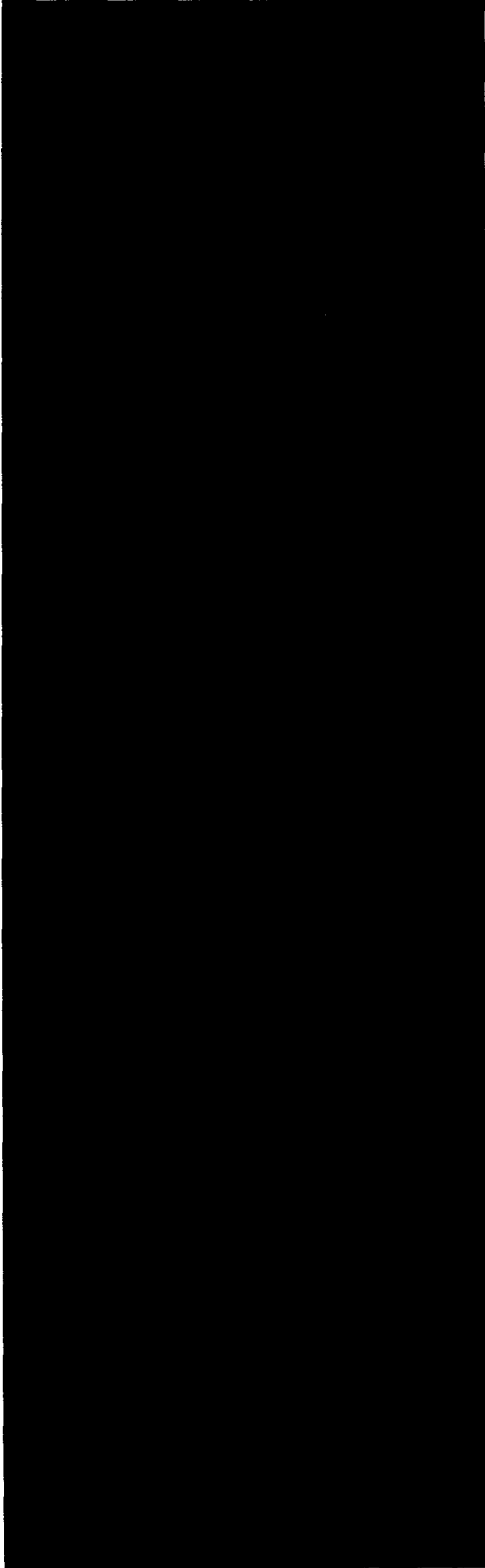












To: "David Eun" <deun@google.com>  
 From: "Bhanu Narasimhan" <bhanun@google.com>  
 Cc:  
 Bcc:  
 Received Date: 2006-06-28 17:13:09 CST  
 Subject: Re: Illegal Uploads

---

Hi Dave,

We catch around 10% of all online user uploaded videos during review. Of these approximately 90% is disapproved due to copyright violation, and the rest due to policy (porn, violence, etc.) We discuss these stats weekly in the ops team meeting so I am enclosing our slides from this week - see slides 3-9 for review and takedown stats.

Please let me know if you would like more information or if you need this data summarized differently. Also, the raw data is in our filer and is updated weekly so if you would like to get access to this, do let me know.

To be honest, I don't have insight into youtube stats but I believe they proactively review videos based on #playbacks in the last Xmins (if a video is getting very popular) and takedown if the video has porn or other bad content. I am not sure they do anything about copyright other than take these down when they get a dmca. I can try to ask around and find out more.

Thanks,  
 Bhanu

On 6/28/06, David Eun <deun@google.com> wrote:

>  
 > Bhanu,  
 >  
 > In the swirl of discussions around copyright enforcement policies, can you  
 > tell me how many illegal videos we "catch" every week on average and what  
 > types/kinds/categories they fall into?  
 >  
 > How do they correspond to the stuff that gets uploaded to YouTube?  
 >  
 > Your info and insight would be appreciated!  
 >  
 > Dave  
 >  
 > --  
 > David Eun  
 > NY: 212-589-8070  
 > MV: 650-253-1993  
 >

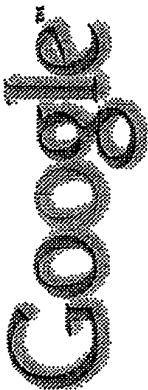
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Attachments:

Video Meeting 06-26-06.ppt

DATE: 5.6.09 EXHIBIT# 6  
 DEPONENT: Schmidt, E.  
 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

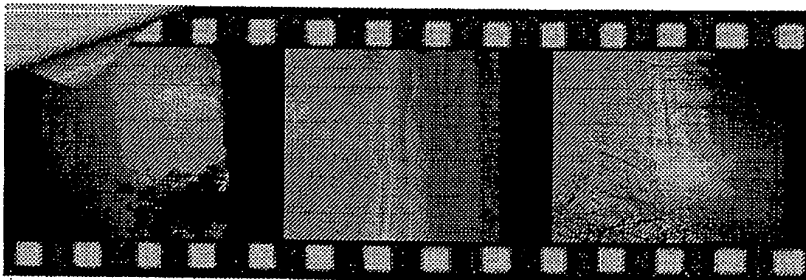
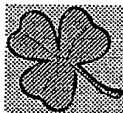
A. Ignacio Howard, CSR, RPR, CCRR, CLR, No. 9830



## Google Video Team Meeting

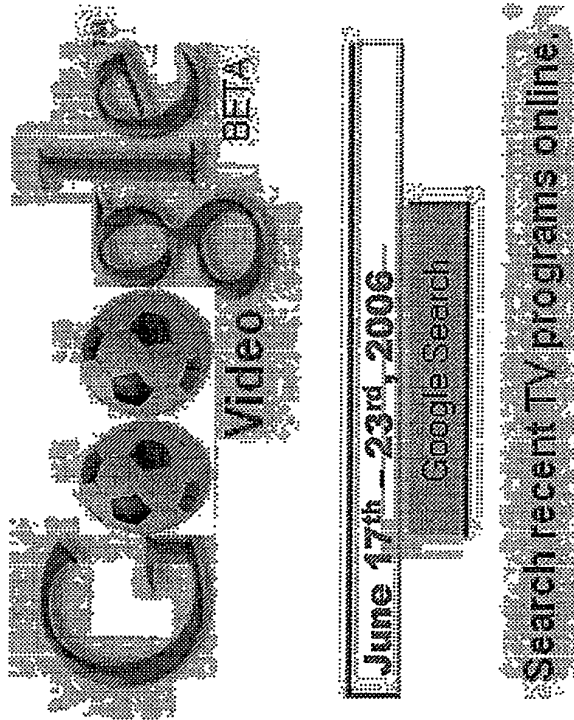
### Agenda for 6/26/06

- Updates
  - Welcome, Dublin Team!
  - Video Reviews - Amy
  - Take Downs & DMCA – Katrina & Stephanie
  - Emails – Sarah
  - Frankie – CBG meeting
  - Harappa Meeting – cancelled!
- Boo Boos, and Warm Fuzzies
- Our Google Video \*STAR(s)\*
- Special Topics
  - T-shirts / jerseys
- Two Truths & a Lie - Sarah



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# Video Review Statistics

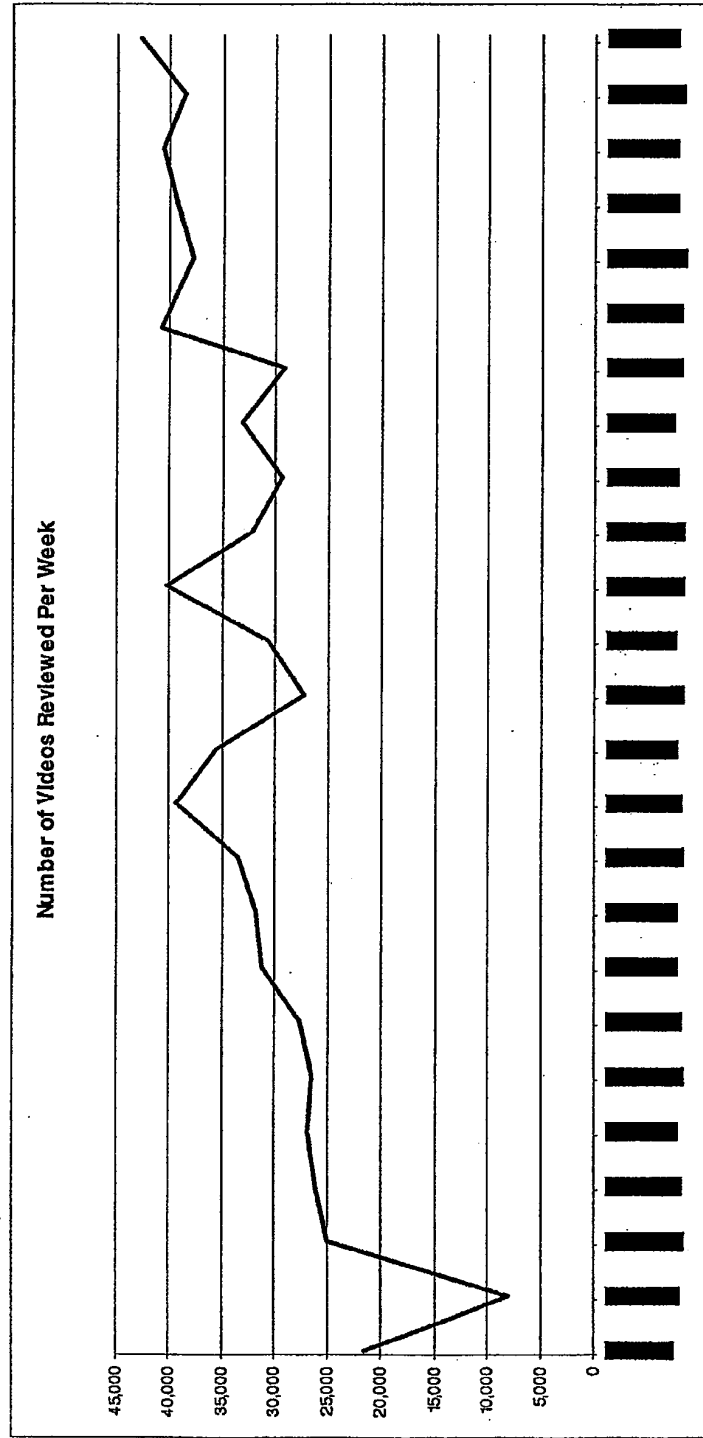


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# Google™ Google Video Team

**Total Videos Reviewed: 42,679!**

- That's 4,187 more than last week

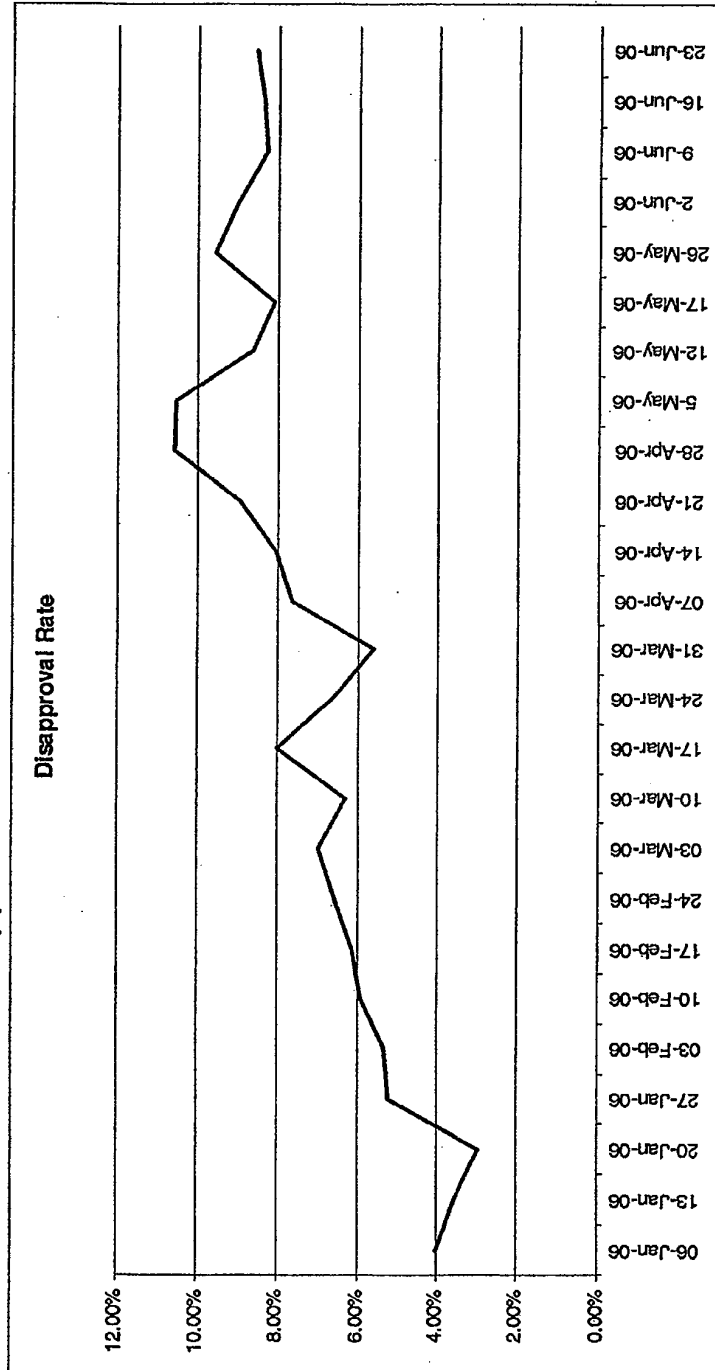




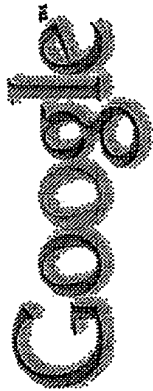
# Google™ Google Video Team

Total Disapprovals: 3,640

- That's 424 more than last week, and 8.5% of total reviews
- That means we approved 39,039 videos this week!



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## Google Video Team

### Disapproval Reasons

# Disapproved		Reason	% of total Disapproved	
Last week	This week		Last week	This week
1532	1955	TV General	47.6%	53.7%
755	722	TV Sports	23.5%	19.8%
377	396	Music	11.7%	10.9%
197	218	Film	6.1%	6.0%
297	285	Porn/Nudity	9.2%	7.8%
22	27	Bad Quality	0.7%	0.7%
4	4	Obscenity	0.1%	0.1%
29	28	Violence	0.9%	0.8%
3	5	Drug Use	0.1%	0.1%
4	2	Illegal Content	0.1%	0.1%

90.4%  
total  
Copyright  
violations

9.6% total  
Policy  
violations

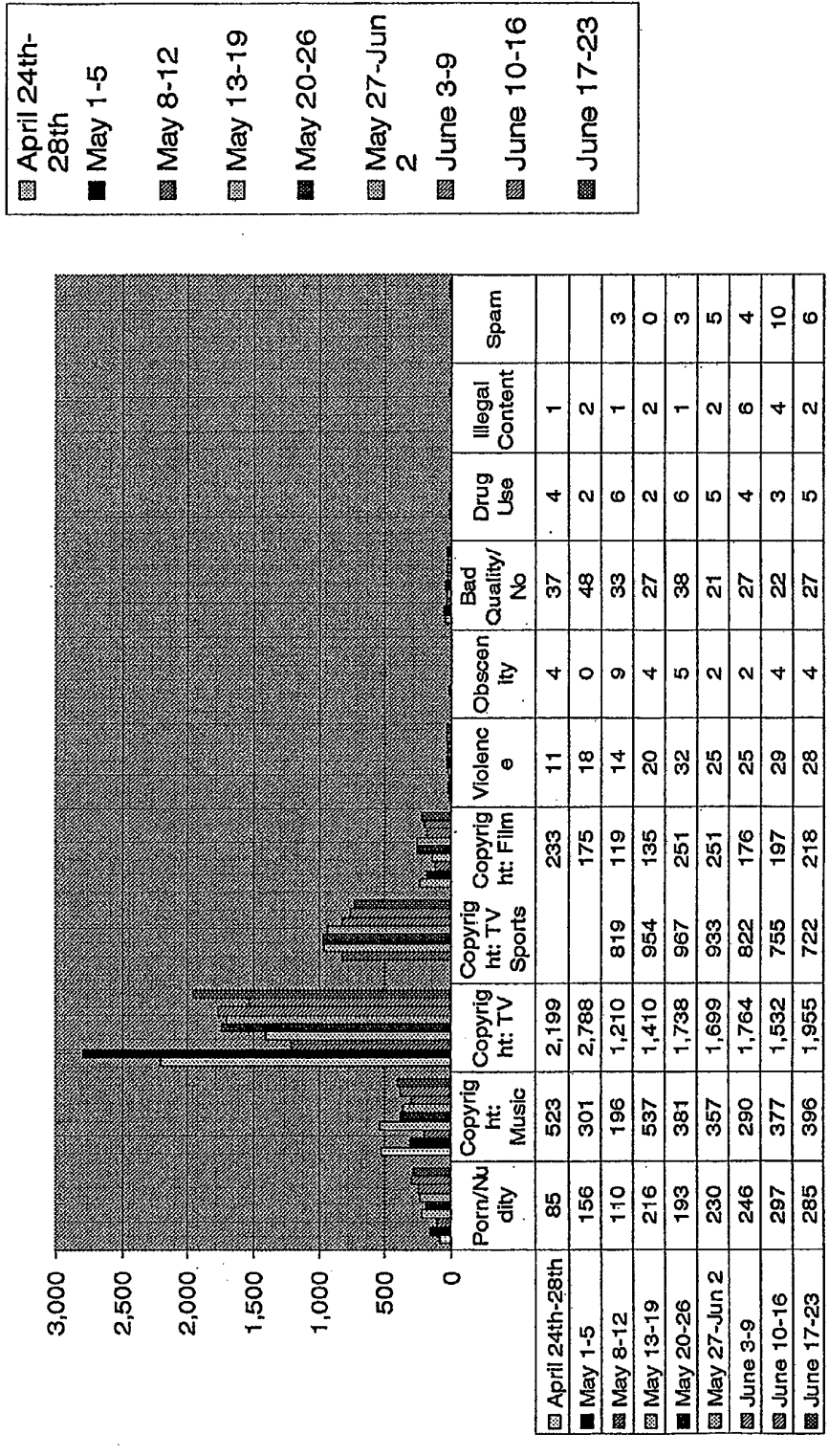
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# Google™

## Google Video Team

### Disapproval Trends

#### Disapproval Reasons



# Google™

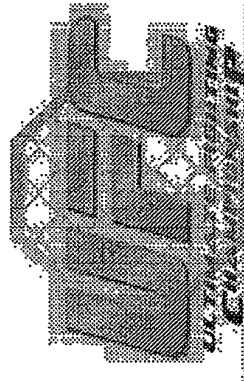
## DMCA & Takedown Updates by Katrina & Steph

### • DMCAs:

- 9 total complaints with 110 takedowns
- Notable DMCAs:

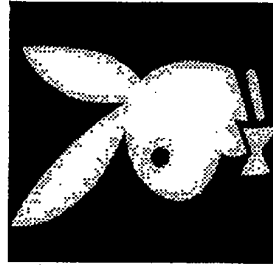
#### UFC:

More fighting clips

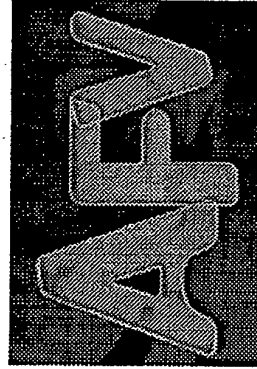


#### Playboy:

Grateful Dead & Byrds at  
Playboy Mansion



Hollywood Licensing:  
AFV content

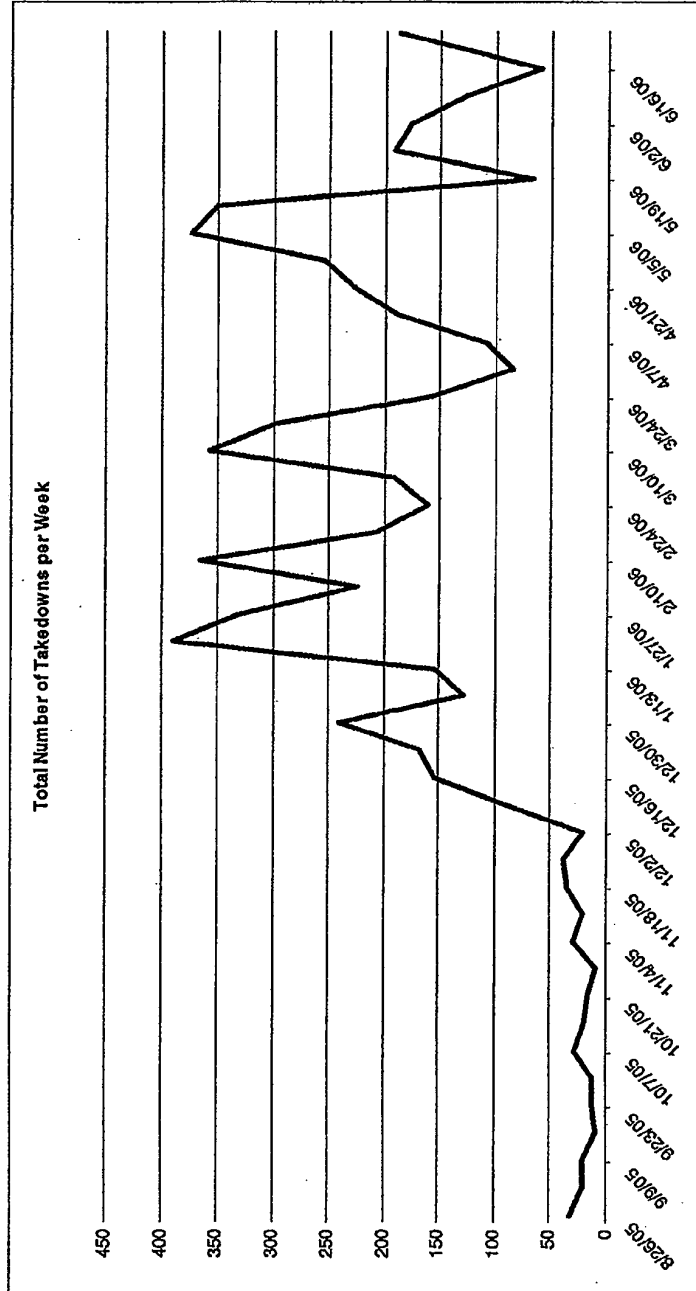


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## Takedowns...

- Total Takedowns including DMCA's: 186, increase from 60 last week
- Total Takedowns from Sparrow: 61, increase from 51 last week

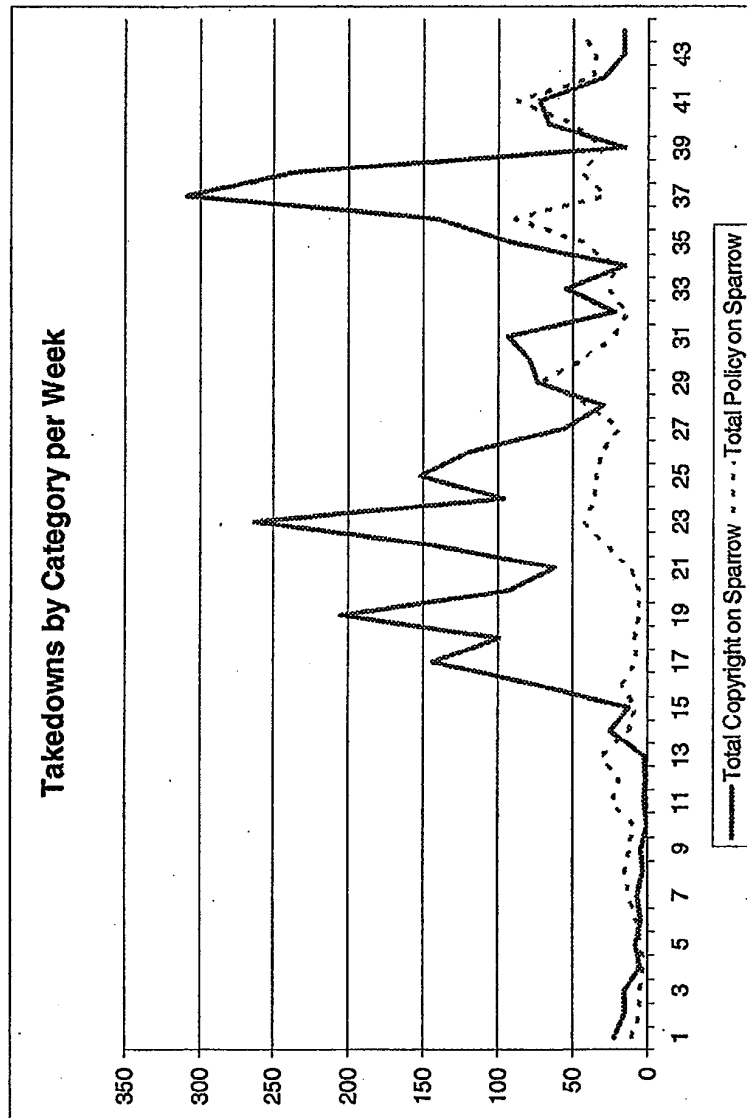


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## Takedowns...

- Copyright on sparrow: 16, equal to 16 from last week
- Policy on sparrow: 45, increase from 35 last week
- Porn: 22, Violence: 17, Video Quality: 2, Drugs: 1, Obscenity: 1, Hate/Anti: 1, Illegal: 1

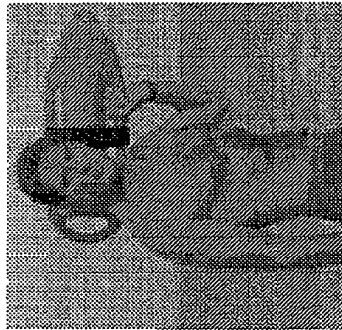


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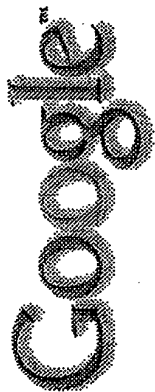


Notable Takedowns

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## Google Video Team

### Email Updates

June 17th – June 23rd

- emails Received: 681 (633 last week)
  - emails Sent: 512 (442 last week)
- Average: 102 emails a day

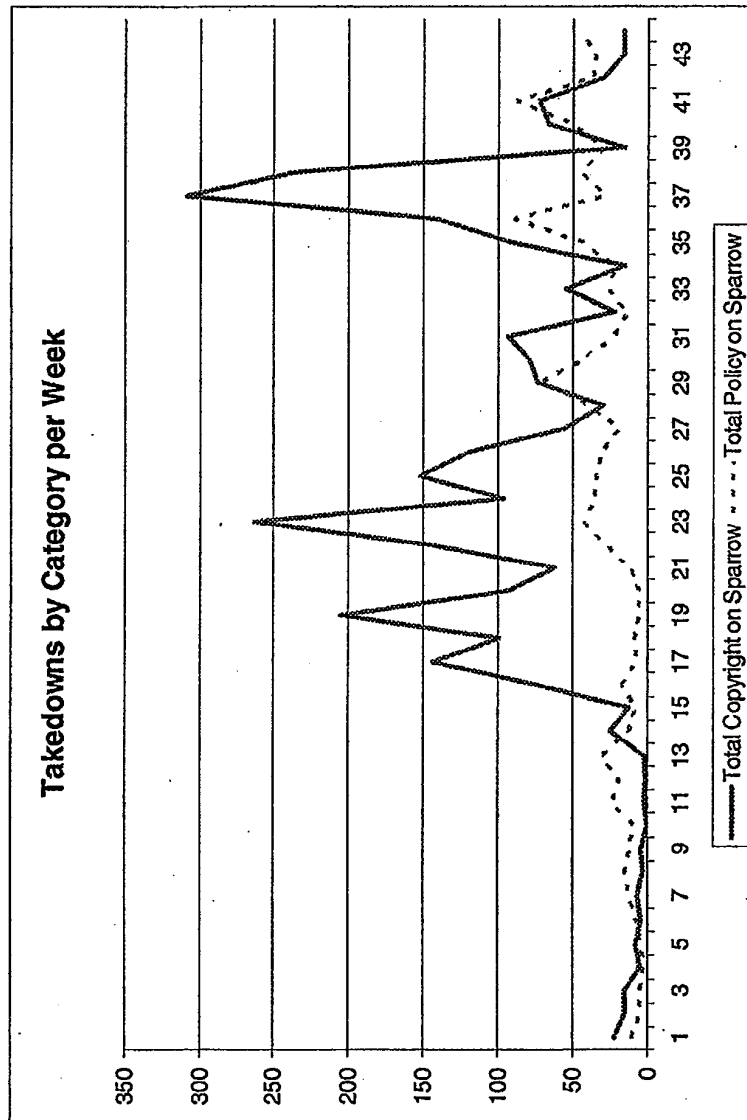
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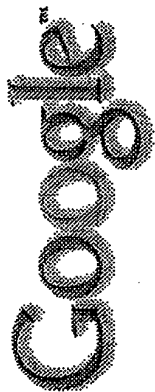
# Google™

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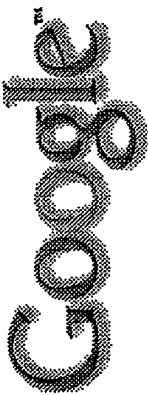
## Google Video Team

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## VIDEO

33% emails Uploader

23 - Uploader Tech: Transcoding Failed, Gmail Upload Issues

13 - Uploader Tech: Reload Technical Difficulties, Error Security Settings

25% emails Playback

20 - GVP: Connection Error, Audio Issue

13 - GVP: Access Purchased Video, Proxy and Password Auth. Issues

25% emails Policy – DMCA/Tools Auto Email

40 - responses for Videos Removed for Policy, URL, Copyright Violations

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**CBG**

8% emails Video Buyer Questions

8 - refunds: Multiple Purchase (3), Technical Difficulties (4), Refund General (1)

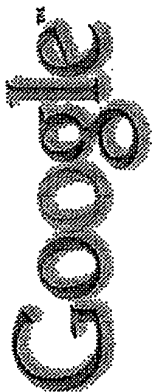
16 - Can't See IP, Online Requirement, Can I Charge?

**One - offs**

5 - Video One-offs

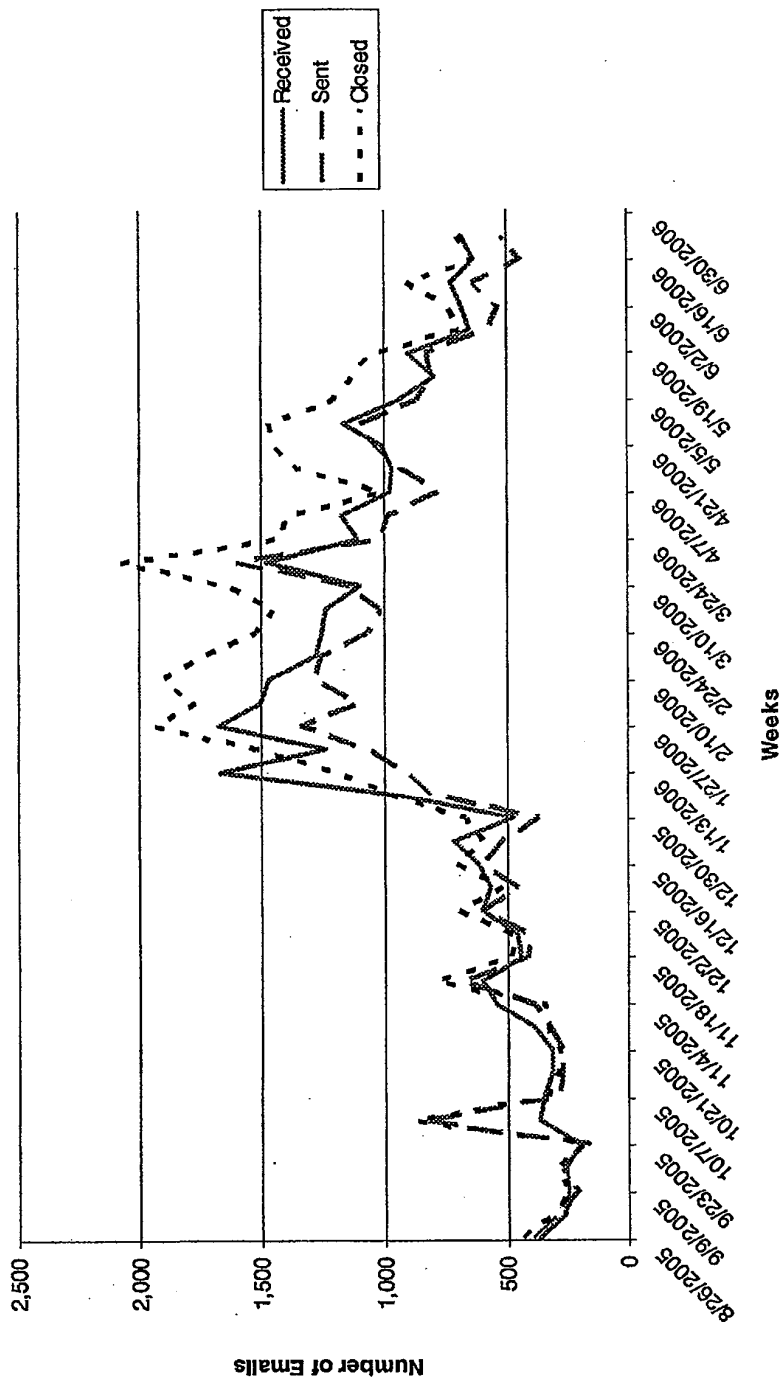
- User asked about using Video API

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\\filer\shares\Google\VideoOperations\Ops Stats

Google Video Emails per Week



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